Special Education Formal Complaint Decisions 2023-2024

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, 24FC01 signifies a Formal Complaint filed in the 2024 state fiscal year (July 1, 2023 to June 30, 2024). The case citation of 24FC02 Appeal Review signifies the decision of the state appeal committee for case number 24FC02. All files are PDF.

24FC01	Appeal Review	24FC29		24FC57	Appeal Review
24FC02		24FC30		24FC58	
24FC03		24FC31		24FC59	
24FC04		24FC32		24FC60	
24FC05		24FC33	Numbering Error	24FC61	Appeal Review
24FC06		24FC34		24FC62	
24FC07	Appeal Review	24FC35	Numbering Error	24FC63	
24FC08		24FC36		24FC64	
24FC09		24FC37		24FC65	
24FC10	Appeal Review	24FC38		24FC66	
24FC11		24FC39		24FC67	
24FC12		24FC40		24FC68	
24FC13		24FC41		24FC69	
24FC14	Appeal Review	24FC42	Appeal Review	24FC70	
24FC15		24FC43		24FC71	
24FC16		24FC44		24FC72	
24FC17	Numbering Error	24FC45		24FC73	
24FC18		24FC46		24FC74	
24FC19		24FC47		24FC75	
24FC20		24FC48		24FC76	
24FC21		24FC49		24FC77	
24FC22	Appeal Review	24FC50		24FC78	
24FC23		24FC51		24FC79	Appeal Review
24FC24		24FC52	Appeal Review	24FC80	
24FC25		24FC53		24FC81	
24FC26		24FC54		24FC82	Appeal Review
24FC27		24FC55	Appeal Review		
24FC28		24FC56	Appeal Review		

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #229
ON AUGUST 8, 2023

DATE OF REPORT AUGUST 16, 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." ---------- will be referred to as "the father," "the parent," or "the complainant." ---------- will be referred to as "the mother." Together, ---------- and ---------- will be referred to as "the parents."

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 August 8, 2023, and the issuance of this report ended the complaint investigation.

Investigation of Complaint

Gwen Beegle, Complaint Investigator, contacted the parent by phone on August 9, 2023 to clarify the issues in the complaint. The concern raised on the written complaint was that the district did not provide Prior Written Notice (PWN) upon refusal of an oral request for a meeting to discuss "regression from the summer ESY [Extended School Year]" and that the district intended to have only one IEP meeting during the school year.

During the collection of evidence, a second concern was raised by the parent, which pertained to the teaching goals of the student's ESY program. This concern was previously investigated and will not be investigated again. An additional concern regarding the availability of information about the members of the IEP team for the 2023-24 school year was raised by the parent. Regular ongoing communication between the parties is not an issue to be investigated under the provisions of IDEA.

Gwen Beegle interviewed Mark Schmidt USD #229 Assistant Superintendent of Special Education on August 9, 2023. The complaint investigator also received emails from the parent and USD #229 between August 9, 2023 and August 14, 2023. Because some of these 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:

- Blue Valley USD #229 School Calendar, 2023-24 School year
- Email thread with the heading: Visitation about meeting on behalf of the ESY regression report (3 emails)
    - Email from the parent to Mark Schmidt, Cindy Ray, Loren Gore, Mark Ward and Crista Grimwood dated July 19, 2023 at 12:21 p.m.
    - Email from Mark Schmidt to the parent, Cindy Ray, Loren Gore, Mark Ward and Crista Grimwood dated July 19, 2023 at 12:32 p.m.
    - Email from the parent to Mark Schmidt, Cindy Ray, Loren Gore, Mark Ward and Crista Grimwood dated July 19, 2023 at 12:34 p.m.
- Email thread with the heading: Response to your phone message
    - Email from Mark Schmidt to the parent and Kristen Venable dated August 4, 2023 at 12:48 p.m.
- Email thread with the heading: New school year (6 emails)
    - Email from Kristen Venable to the parent dated August 7, 2023 at 2:18 p.m.
    - Email from the parent to Kristen Venable, Mark Schmidt, Nancy Thomas, Tonya Merrigan and Crista Grimwood dated August 7, 2023 at 2:35 p.m.
    - Email from Mark Schmidt to the parent dated August 7, 2023 at 3:41 p.m.
    - Email from the parent to Mark Schmidt, Kristen Venable, Tonya Merrigan and Crista Grimwood dated August 7, 2023 at 4:04 p.m.
    - Email from Mark Schmidt to the Investigator dated August 9, 2023 at 10:04 p.m.
    - Email from Mark Schmidt to the Investigator dated August 10, 2023 at 10:23 a.m.
- Email from Mark Schmidt to the Investigator dated August 10, 2023 at 3:17 p.m.
- Email from Kristen Veneble to the parents, Carol Lujano (School Psychologist), Margaret Barilleaux (Case Manager and Resource Teacher), and Samantha Lovgren-Uribe (Speech Language Therapist) dated August 14, 2023 at 8:30 a.m.

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. The student attended the district's Extended School Year (ESY) program during June, 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 one issue that was investigated.

Issue One

> The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide prior written notice for refusing to hold an IEP meeting at the request of the parent.

Positions of the Parties

The parent reported that he requested a meeting to discuss the reporting on the student's lack of progress resulting from the student's attendance at ESY during June, 2023. He reported that he asked for the meeting during a phone call on July 19, 2023 with Dr. Mark Schmidt, Assistant Superintendent Special Education, Blue Valley USD #229. The parent alleged that his request for a meeting to discuss the student's regression during ESY was denied, and he was told the district would meet with him only one time annually, as required by law.

The district acknowledged that the parent had requested a meeting and further stated that the district had contacted the parent to schedule the meeting during the opening weeks of the school year. Additionally, the district stated: "The district has 15 school days to respond to this request. School will not return to session until August 16, 2023 with the 15th school day landing on September 6, 2023 (BV Calendar Attached). The principal has already emailed Mr. Molina and told him they will meet prior to Labor Day (September 4th)."

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 program was held between June 5, 2023 and June 29, 2023. The student attended ESY at Heartland Elementary School. The parent received a progress report after the program ended.

- The parent and the district agreed that the parent called the district on July 19, 2023. The parent reported that he asked for a meeting during that call.
- The district provided an email reply to the parent dated July 19, 2023 asking if the parent was requesting a meeting and if so, the district would respond as required by law.
- The parent and the district agreed that the parent called the district office on August 4, 2023, and left a message for the special education director. The district provided an email dated August 4, 2023 in which the director replied and informed the parent that the meeting would be scheduled by the principal when school was back in session after the summer break.
- The district provided an email that showed that on August 7, 2023, the principal contacted the parent in reply to the request for a meeting. This email (a) acknowledged the request for an IEP meeting, (b) alerted the parent that the district wanted to schedule the requested IEP meeting prior to the Labor Day holiday, (c) stated the names and positions of the school members of the IEP team, (d) informed the parent that the teacher would be available in ParentVue on August 14, 2023, and (e) clarified the methods of communication to be used with the parent for the upcoming school year. Documentation showed that the parent received this email.
- The district provided an email that showed that on August 14, the principal emailed the parents and members of the IEP team offering three possible IEP meeting times between August 30 and September 1, 2023.
- The 2023-24 school calendar for USD #229 showed that the first day of the fall school term for teachers and students is August 16, 2023.
- It is the district's practice to respond to parent requests for special education actions within 15 days, taking the school calendar into account.

Applicable Regulations and Conclusions

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.

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.

Parents are members of any group that makes decisions on the placement and education of their child (KS 72-330(b)(7) and the student's IEP team is required to review their IEP periodically, "but not less than annually to determine whether the annual goals for the child are being achieved and revise the IEP as appropriate." The IEP can be revised to address a lack of expected progress

toward annual goals or progress in the general education curriculum, the results of evaluation, information about the child provided by the parents, the child's anticipated needs or other matters (KS 72-329(f)).

In this case, the parent requested a meeting to discuss the child's progress as reported in a progress report provided after the child's summer ESY attendance. There are two instances of this request by phone on July 19, 2023 and August 4, 2023. In an email response to the call on July 19, 2023, the district sought to clarify if the parent wanted a meeting. On August 4, 2024 when it was clear to the district that the parent requested a meeting, the district responded by email that the request had been received and that the meeting would be set up after the beginning of the 2023-24 school year (August 16, 2023).

On August 7, 2023 (within one business day of the August 4, 2023 phone call), the principal emailed the parent to state that an IEP meeting would be held within 13 business days (before Labor Day). On August 14, 2023 (within 5 business days), the principal emailed the parent to offer 3 possible meeting dates, all occurring before Labor Day.

Therefore, it is found that the district did not refuse a meeting request by the parent. The district communicated to the parent in a reasonable period of time that it intended to schedule a meeting when school staff would be available. Additionally, the district proceeded to schedule an IEP team meeting as quickly as was practical under the school calendar restraints. No prior written notice of the district's beginning or refusing to begin a special education action specified under 34 CFR § 300.503(a)(2) and K.S.A 72-3430(b)(2) is required in this instance.

Based on the foregoing, according to IDEA and Kansas special education regulations, it is ***not*** substantiated that the district failed to provide prior written notice for refusing to hold an IEP meeting at the request of the parent.

Investigator

Gwen P. Beegle, Ph.D.

Gwen P. Beegle, 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).

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. 229
Blue Valley Public Schools: 24FC229-001

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on August 7, 2023, by ---------- on behalf of his child, ----------. In the remainder of the decision, ---------- will be referred to as "the parent", and ---------- will be referred to as "the student". An investigation of the complaint was undertaken by complaint investigator, Gwen Beegle, 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 August 16, 2023. In the Complaint Report, the investigator concluded that there was not a violation of special education laws 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 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.

Parent's Appeal

The following issue in this complaint has been addressed by the Appeal Committee:

Issue One

The USD#229, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to provide prior written notice for refusing to hold an IEP meeting at the request of the parent.

The Investigator found that a violation did not occur. In response, the parent argues that,

1. The district "violated IDEA regulations 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) session in summer 2023",
2. Category Writing showed a baseline "in writing five part retell [w]ith 0% accuracy with date 5/26/2023 48% avg accuracy on 4/5 opportunities, this goal was not in progress during ESY services", and
3. There was no meeting provided or PWN served to the parent because the parent "noticed on my door about a package was tried to leave" but that the district had not said they would "send a package."

First, the parent argues the district failed to provide a progress report on Category 3 of Language. This is not an issue that was addressed in the original complaint. It was, however, an issue previously addressed by the Committee in Appeal 23FC229-005. In that appeal the Committee affirmed the investigator's finding that a violation was unsubstantiated. Therefore, because this is not an issue in this complaint the Committee will not address it.

Second, the parent argues that the student did not make progress in Category Writing. Again, this was not an issue in the original complaint and the Committee will not address it now.

Finally, the parent argues that, following a parent request for a meeting, the district failed to provide the parent with a PWN and refused to hold an IEP meeting.

Both parties agree that on July 19, 2023, the parent called the district. The parent asserts that this call was to ask for an IEP team meeting. Documents in the record show that the district responded to this call on the date it was received, July 19, 2023, with an e-mail asking if the parent "was requesting a meeting, and if so, the district would respond by law".

Following this correspondence, the district and the parent then agree that the parent called the district again on August 4, 2023, leaving a message for the Special Education Director. Documents further establish that the Special Education Director followed up that same day, August 4, 2023, in an e-mail to the parent, stating that "the meeting would be scheduled by the principal when school was back in session after the summer break."

On August 7, 2023, documents show that the district sent another e-mail to the parent, again acknowledging the parent's request for a meeting and informing the parent that the district would hold the requested meeting within 13 business days. This response was one school day following the parent's request for a meeting.

On August 14, 2023, documents show that the principal once again contacted the parent, by e-mail, offering multiple dates for a meeting.

On August 19, 2023, documents show a Notice of Meeting was sent via email to the parents.

The district states that on August 21, 2023, a notice of meeting was sent to the parents through certified mail and was rejected by the parent on August 23, 2023. In the appeal, the parents acknowledges that a "package" was left at their door, but because the district had not informed them that a letter was coming, the parent refused to receive the package. The district further reports that the parent was personally presented with the Notice of Meeting at a back-to-school night on August 24, 2023, and documents show that the parent signed that notice on the aforementioned date.

When a parent makes a request for an IEP meeting, certain steps must be followed by a district. First, a district has a reasonable amount of time in which to respond to the parent. KSDE has interpreted a "reasonable time" as 15 school days. Also, a Notice of Meeting (NOM) must be provided, in writing, at least 10 days prior to a scheduled meeting. (K.A.R. 91-40-17(a)(2)). Finally, as noted by the investigator, a Prior Written Notice (PWN) is required, as a procedural safeguard, when certain proposed special education actions either occur or are refused. Under K.S.A. 72-3430(2)(A)-(B), a PWN must be provided to the parent, "whenever an agency: (A) Proposes to initiate or change; or (B) 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." KSDE has determined that the PWN must be provided in a reasonable time, which again, has been interpreted as 15 school days from the date of the parent's initial request regarding identification, evaluation, placement, or the provision of FAPE, unless unusual circumstances exist. In this situation, at the time of the formal complaint, there had not been any proposed change, or refusal of change regarding the student's IEP. In fact, the Committee finds that the district was in the process of attempting to schedule a meeting.

In the original complaint, and in the appeal, the parent argues that the district refused to schedule a meeting. The investigator found no violation regarding that allegation. The Investigator stated that "the district did not refuse a meeting request by the parent", and that, "the district communicated to the parent in a reasonable period of time that it intended to schedule a meeting when school staff would be available." Documents in the record support these statements, and upon review, the Committee agrees with the investigator's findings. Here, documents show that the district did respond to the parent in a reasonable amount of time (1 school day following the initial request for a meeting, and then again 6 school days after the request).

As noted above, when a parent requests an IEP meeting, the district has a reasonable amount of time to respond (15 school days). The records shows that the district did respond to the parent on the same day the parent contacted the district about a meeting (on both July 19th and August 4th). Following clarification from the parent that they wanted a meeting, the district properly sent a Notice of Meeting to the parent. Documents show that the district provided a NOM to parents at least 10 days prior to the meeting, first through email on 8/19/2023 (12 days prior), then, according to the district, through certified mail (8/23/2023), and finally presented personally to the parent on back-to-school night (8/24/2023).

The parent also alleged that the district failed to provide a PWN. Again, the investigator found no violation and the Committee agrees. In this case, there is evidence that the district attempted to send a Notice of Meeting to the parents on several occasions, but no evidence that a meeting date had yet been agreed to by the parent. Further, there was no evidence presented by either party that a request regarding identification, evaluation, placement, or the provision of FAPE had occurred. Therefore, because the district was not implementing a change, or refusing to implement a change, the Committee finds that the district was under no obligation to provide a PWN to the parent. The Committee sustains the investigator's finding that the district did not violate IDEA by failing to provide a PWN.

Conclusion

The Appeal Committee sustains the investigator's finding that, "it is not substantiated that the district failed to provide prior written notice for refusing to hold an IEP meeting at the request of the parent." No corrective action is required.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 21 day in September 2023.

Appeal Committee:

Brian Dempsey: Assistant Director of Early Childhood, 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 #233
ON JULY 18, 2023

DATE OF REPORT AUGUST 21, 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 parent."

Investigation of Complaint

On July 20 and 31 and August 8 and 11, 2023, the complaint investigator spoke via telephone with Deb Chappell, Assistant Director of Special Services for USD #233. On August 4, 2023, the investigator spoke by conference call with the assistant director and with Andy Heinicke, Special Services Coordinator. The investigator spoke by telephone with the parent on July 28 and August 16, 2023.

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

- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated December 7, 2019
- Notice of Meeting dated January 8, 2019
- Evaluation Report dated January 24, 2019
- Basis for Eligibility Determination (Autism) dated January 24, 2019
- Basis for Eligibility Determination (Developmental Delay) dated January 24, 2019
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated January 24, 2019
- Notice of Meeting dated January 29, 2019
- Evaluation Report dated March 7, 2019
- Basis for Eligibility Determination (Autism) dated March 7, 2019
- Basis for Eligibility Determination (Developmental Delay) dated March 7, 2019
- IEP for student dated March 7, 2019
- Prior Written Notice for Identification Initial Services, Placement, and Change in Services, Change of Placement, and Request for Consent dated March 7, 2019
- Notice of Meeting dated April 8, 2019
- IEP Amendment for the student dated April 8, 2019
- Prior Witten Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated April 8, 2019
- Meeting Notes dated April 12, 2019

- Notice of Meeting dated January 8, 2020
- IEP Amendment for the student dated January 9, 2020
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated January 8, 2020
- Notice of Meeting dated January 21, 2020
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated February 12, 2020
- IEP for the student dated February 12, 2020
- Prior Written Notice Consent to Amend IEP without Team Meeting dated September 10, 2020
- Notice of Meeting dated December 18, 2020
- IEP for the student dated January 21, 2021
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated January 21, 2021
- Evaluation or Reevaluation and Request for Consent dated November 5, 2021
- Notice of Meeting dated December 8, 2021
- IEP for the student dated January 12, 2022
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated January 12, 2022
- Email dated August 10, 2022 from the parent to the classroom teacher
- Email dated August 12, 2022 from the parent to the classroom teacher
- Email dated August 18, 2022 from the classroom teacher to the parent
- Email dated August 24, 2022 from the classroom teacher to the parent
- Email dated August 27, 2022 from the parent to the classroom teacher
- Email dated September 28, 2022 from the classroom teacher to the parent
- Email exchange dated October 2, 2022 between the parent and the building principal
- Email dated October 10, 2022 from the speech/language pathologist to the classroom teacher
- Email dated October 20, 2022 from the classroom teacher to the parent
- Email dated October 21, 2022 from the parent to the classroom teacher
- Email dated October 23, 2022 from the parent to the classroom teacher
- Email dated October 26, 2022 from the classroom teacher to the parent
- Email dated October 28, 2022 from the parent to the classroom teacher
- Email dated November 9, 2022 from the classroom teacher to the parent
- Notice of Meeting dated December 1, 2022
- IEP for the student dated December 5, 2022
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Changes of Placement, and Request for Consent dated December 5, 2022
- Email dated March 23, 2023 from the parent to the classroom teacher
- Email dated March 24, 2023 from the parent to the classroom teacher
- Email dated April 11, 2023 from the resource teacher to the parent
- Email dated April 20, 2023 from the speech/language pathologist to the parent
- Email dated April 20, 2023 from the parent to the speech/language pathologist

- Email dated April 21, 2023 from the speech/language pathologist to the parent
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated May 2, 2023
- Contact logs for the speech/language pathologist covering the period of October 2, 2022 through April 20, 2023
- IEP Progress Reports for the period of May 2022 through May 2023
- 150 pages of emails provided by the parent covering the period of August 10, 2022 through the end of the 2022-23 school year; those considered most relevant to the issues identified in this complaint have been included in the above listing.
- Olathe Public Schools Special Services Study with areas highlighted by the parent

Background Information

This investigation involves a 7-year old boy who will enter the second grade in his neighborhood school at the start of the 2023-24 school year. The student was initially placed in foster care with the parent after being dismissed from the NICU (Neonatal Intensive Care Unit) at 10 days of age. The student's biological parents relinquished their rights to the student on January 26, 2017, and the student was adopted by the parent at age 4.

The parent was concerned about the student's lack of eye contact with her and pursued an evaluation of the student at approximately 18 months. The student was seen at Children's Mercy Hospital's Neurodevelopmental Clinic on July 20, 2017 and was diagnosed with Early Atypical Autism Disorder. The student began attending his grandmother's in-home preschool where he received ABA therapy from Autism Services of Kansas for 25-30 hours per week.

The student received in-home services from Infant Toddler Services of Johnson County beginning in March 2017 to address communication and social/behavioral concerns.

The student was again seen by Children's Mercy Hospital's Neurodevelopmental Clinic on January 18, 2018 and was diagnosed with Autism Spectrum Disorder without global developmental delay and an expressive language delay.

A diagnosis of Neurofibromatosis Type 1 (NF1) was confirmed by genetic testing on June 9, 2018.

The student was referred for evaluation by USD #233 to prepare for a possible transition to Early Childhood services. The evaluation took place in January 2019 while the student attended an Early Childhood Special Education classroom in a district program for 4 mornings per week for 3 weeks. Evaluation data indicated that he did not meet eligibility criteria for early childhood special education or speech/language services at that time. Eligibility determination reports provided by the district show that the student did not meet disability criteria for either Developmental Delay or Autism. Neither the parent nor the student's educational advocate agreed with the team's decision.

On January 28, 2019, the educational advocate provided consent for additional evaluation of the student. The team's initial eligibility decision was revisited on March 7, 2019, and the student was

determined to be eligible for special education services under the exceptionality of Developmental Delay. While the district recommended services 5 days per week, the parent opted to access services for 3 days a week, delaying the initiation of services until the beginning of the next school year in August of 2019. The student continued to participate in the grandparent's in-home preschool program for the other 2 days each week. Services were increased to 5 days per week as of January 9, 2020.

At an annual IEP team meeting on February 12, 2020, the team determined that the student should participate in the district's TIPPS (Teaching Intensive Programming and Play Skills) program for extended school year (ESY). The team determined that the student's needs could be met in the ECSE (Early Childhood Special Education) classroom for the 2020-21 school year.

The student's IEP was amended in September 2020. The student was provided with 2 days per week of in-person learning and 2 days per week of remote learning due to COVID-19.

At the Kindergarten level, beginning in August of 2021, 20 minutes of special education services were provided to the student twice per week in the general education classroom at his neighborhood school. Special education services were reduced to once a week for 15 minutes at the annual IEP review for the student on January 12, 2022.

The student's IEP was reviewed and revised on December 5, 2022. Special education services for the student were reduced to 15 minutes of consultative support once a month for 15 minutes.

The student experienced episodes of wetting and soiling during the first part of the 2022-23 school year, but those episodes had reduced significantly by the time of the annual IEP review in December of 2022. At the start of the second semester, a change was made in the instructional patterns for the student's school day. Rather than having a homeroom teacher who provided instruction in all core content, first grade students at the school began receiving reading instruction from one first grade teacher, math instruction from another, and other core content instruction from a third teacher. Additionally, the first-grade students were preparing for a presentation to be given in another city.

The parent reports that the student's behavior became more challenging beginning in January 2023. The student was unwilling to complete classwork for teachers who were not his homeroom teacher, and he began missing recess to complete assignments. Soiling episodes increased. The incidence of inappropriate behavior escalated.

On April 12, 2023, the parent sent an email to district staff stating:

> *"...We are requesting a full comprehensive evaluation at this time so the team can write a robust iep that allows for [the student] to make meaningful progress in light of his circumstances and addresses his skill deficiencies with the modifications and accommodations necessary for his meaningful student engagement."*

The parent had the student privately evaluated by an outside agency and shared the results of that evaluation with the school team in a meeting on April 26, 2023, having already submitted a request

on April 12, 2023 for a full comprehensive evaluation of the student with a follow-up written request on April 20, 2023. At the meeting, the parent shared her concerns regarding the student's social skills, social language, academic performance, and motor/sensory needs. The team determined that the district should conduct a reevaluation of the student. The parent provided her written consent for the reevaluation on May 2, 2023.

Issues

In her written complaint, the parent raised a number of additional issues in addition to her stated initial concern. After speaking with the parent on July 28, 2023, the investigator developed a proposed list of nine issues to be addressed as a part of this investigation. That proposed list was sent to the parent via email for approval on July 28, 2023.

During the July 28, 2023 telephone call with the investigator, the parent raised an additional issue. On July 31, 2023, the investigator shared that new issue with the Assistant Director of Special Education for the district who agreed to the inclusion of that new issue in this complaint.

Once the revised issues were approved by the parent, the district was notified. The parent's complaint as revised contains a total of ten issues.

Applicable Statutes and Regulations

A formal complaint must allege that 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 will be noted below, the investigator determined during the course of this investigation that some of the issues raised by the parent in her complaint alleged violations which occurred outside of the 12-month period prior to July 18, 2023 and thus were not investigated further.

Issue One

The district changed the student's eligibility without the consent of the parent.

Parent's Position

It is the position of the parent that the district had, without her knowledge or consent, changed the disability category under which the student had been determined eligible for special education service from "Autism" to "Developmental Delay."

District's Position

It is the district's position that no change has been made to the student's disability designation since the student was initially determined eligible to receive special education services in March 2019 under the disability category of Developmental Delay.

Applicable Statutes and Regulations

When making an eligibility determination, an IEP team must ensure (1) that the child meets the definition of one of the categories of exceptionality and, (2) as a result of that exceptionality, needs special education and related services (KAR 91-40-1(k)(w); 34 CFR 300.8).

Kansas regulations, at K.A.R. 91-40-10(a)(1)(A), require that the evaluation report include a statement as to whether the child has an exceptionality. These regulations do not require that the evaluation report include the particular category of exceptionality in which a child has been identified. However, no information should be withheld from parents. It is important that parents be informed of the particular category of exceptionality in which eligibility for special education was determined, and which is reported by the school to the state through the Management Information System (MIS).

There is no requirement in special education statutes and regulations which requires that the parent provide written consent for a change to the disability category under which a child is determine eligible to receive special education services.

Once a child is identified as a child with a disability, determination of services to be provided are based on the child's needs, functional performance, and the impact of the exceptionality on the child's ability to access and progress in the general education curriculum – not on the child's disability category.

At K.A.R. 91-40-1(f), Kansas regulations define "Autism" as a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three but not necessarily so, that adversely affects a child's educational performance.

At K.A.R. 91-40-1(q), Kansas regulations define "Developmental Delay" for children age 9 and younger as a deviation from average development in one or more of the following developmental areas to the degree that special education and related services are required:

(A) Physical;
(B) cognitive;
(C) adaptive behavior;
(D) communication; or,
(E) social or emotional development.

Investigative Findings

The student was initially determined to be eligible for special education services on March 7, 2019 under the category of Developmental Delay. Eligibility under the categorical designation of Autism was considered at the time, but it was determined that the student did not meet the criteria for eligibility under that disability. The student had been considered for eligibility under both categories in January 2019 but had not been considered eligible under either category at that time. Both the parent and the educational advocate were members of the March 7, 2019

multidisciplinary evaluation team and signed the evaluation report showing that they agreed to the determination of the student's eligibility under the disability category of Developmental Delay.

No evidence was provided by either party to show that the student's eligibility was considered again until a reevaluation was completed in January of 2022.

A triennial reevaluation of the student was completed in January of 2022. According to the prior written notice and consent form signed by the parent on January 12, 2022, the district "proposed to implement an IEP for [the student] beginning 01/12/22 with the exceptionality of Developmental Delay" – the same disability category under which his eligibility had originally been established.

No evidence was provided to show that any changes to the student's disability category have been made since January 2022.

In an email to the parent dated April 11, 2023, the resource teacher wrote:

> *"When looking back at the documents that I had sent, during [the student's] initial evaluation in March 2019, his eligibility was under Developmental Delay. The eligibility document stated that the disability criteria for autism was not met. Since then, his eligibility has been Developmental Delay."*

Summary and Conclusions

The educational advocate for the student and the parent were members of the multidisciplinary evaluation team that completed the student's initial evaluation in January 2019 when it was determined that the student was not eligible for special education services.

According to a March 7, 2019 evaluation report, both the parent and the advocate were members of the multidisciplinary team that reconsidered the student's eligibility. Both the parent and the advocate signed the evaluation report to show that they agreed with the team's findings of eligibility for the student under the category of Developmental Delay. While special education statutes and regulations do not require districts to inform the parent of the disability category under which a student has been determined to be eligible for special education services, the evaluation report for this student did identify his eligibility category (Developmental Delay).

There is no requirement in special education statutes and regulations that parents provide written consent for a change to their child's disability designation. However, in the case of this student, no evidence was provided to show that the student's disability category was changed at any time prior to January 12, 2022 when – following a reevaluation – the student was again determined to be eligible for special education services under the category of Developmental Delay. The parent was at that time provided with prior written notice that included the disability category designation for the student and gave written consent for the student to continue to receive special education services. No evidence was provided to show that any change has been made to the student's disability category since January 2022.

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

Issue Two

The district failed to complete a thorough OT (Occupational Therapy) evaluation of the student.

Parent's Position

The parent asserts that the district did not conduct a thorough OT assessment when the parent informed the district that the student had been diagnosed with Autism, and the district did not assess his sensory needs. According to the parent, the district did not consider the student eligible for OT services even though the student had poor handwriting and spatial awareness issues.

District's Position

It is the position of the district that while the parent and the education decision-maker did not agree with the student's initial evaluation on January 24, 2019, (which did not include an OT evaluation), they did agree with the findings of two subsequent evaluations on March 7, 2019 and January 12, 2022, both of which included OT evaluations. The district asserts that until the filing of this complaint, the parent had not expressed dissatisfaction with the OT portions of those evaluations.

The district states that, on May 2, 2023, the parent gave her written consent for a reevaluation of the student that includes an evaluation of the student's motor abilities based on new and existing data. That reevaluation is ongoing. The district is open to convening a meeting with the parent to discuss her specific requests regarding that component of the reevaluation.

Applicable Statutes and Regulations

At K.S.A. 72-3428(h)(1), Kansas statutes establish guidelines for the reevaluation of each exceptional child. A reevaluation should be conducted if the school determines that the educational or related services needs of the child, including academic achievement or functional performance, warrant a reevaluation or if the child's parent or teacher requests a reevaluation. The school should conduct a reevaluation of a child not more frequently than once a year, unless the parent and the agency agree otherwise; and at least once every three years, unless the parent and the agency agree that a reevaluation is unnecessary.

Investigative Findings

The initial special education evaluation of the student by the district was completed in January 2019. The student's OT needs were not assessed during that time, but motor needs were assessed during a reassessment completed in March 2019. Both the parent and the student's education advocate provided written consent for the reevaluation. At the time of the triennial reevaluation completed in January 2022, the parent gave written consent for the assessment of the student's motor skills to be completed using existing data.

All these evaluations/reevaluations were completed more than 12 months prior to the date this complaint was received.

According to the parent, the student's classroom teacher sent the parent an email on September 28, 2022 writing:

> *"I talked with [the building principal] today about [the student] and his IEP. He does not currently have OT support or goals written in his IEP, however, I am going to request that the OT teacher come and observe [the student] a few times in different settings and give me support, strategies, and ideas that can help [the student] with his handwriting and other small motor skills. I will let you know at conferences where we are with this."*

The parent responded via email stating:

> *"Last year they said he did not qualify for OT, but I personally think he needs help. They mentioned they had a 'group fine motor table' and that might benefit from that if his writing started to decline. He has low muscle tone and he hurries through fine motor tasks because it's hard for him.*

No evidence was provided by the parent to show that either she or the classroom teacher requested a reevaluation of the student's motor skills prior to April of 2023 when the parent submitted a written request for the reevaluation of the student. The parent provided written consent for a reevaluation on May 2, 2023. That reevaluation is currently in progress. The district will have 60 school days from the date parental consent was received to complete the reevaluation.

Summary and Conclusions

While the parent and the classroom teacher did have an email exchange regarding the student's motor needs in September 2022, no evidence was provided by the parent to show that either she or the student's classroom teacher specifically requested a special education reevaluation of the student's OT needs prior to April 2023. The parent provided written consent for a full reevaluation of the student which included a reassessment of his motor skills on May 2, 2023. That evaluation will be completed during the 2023-24 school year.

Two previous reevaluations were conducted more than 12 months prior to the receipt of this complaint, and the current reevaluation has not yet been completed. Under these circumstances, this issue was not investigated further, and a violation of special education statutes and regulations is *not* substantiated on this issue.

Issue Three

> The student was provided with speech services without the notice and consent of the parent.

Parent's Position

The parent asserts that, following a team meeting in April 2023, the speech/language pathologist (SLP) told the parent that she would be sending home work sheets the parent could use over the summer. According to the parent, the SLP stated that the work sheets would allow the student to continue to work on the articulation skills he had been developing when working with the

pathologist in a small group during the school year. The parent contends that she had never given consent for the pathologist to work with the student and was unaware that the pathologist was seeing the student.

District's Position

It is the position of the district that the SLP has not provided any direct special education services to the student. According to the district, the SLP's only contact time with the student was for two informal observations in October 2022 which the parent had requested and agreed to.

The district asserts that the SLP spoke with the parent on April 18, 2023 about having the student participate in a short-term general education intervention group. While, according to the district, the parent initially agreed to the intervention, the parent subsequently notified the SLP that she did not want the student to participate in the intervention group, therefore, no general education interventions were provided.

Applicable Statutes and Regulations

For children in kindergarten through age 21, Kansas screening laws require that schools utilize observations, instruments, measures, and techniques that disclose any potential exceptionality or a need for a special education evaluation.

Collaboration between special education and general education staff is an important part of the general education intervention process. Because child find is required by special education law, and GEI (General Education Intervention) is Kansas' method of conducting child find for school age children, it is expected that special educators will, in part, support carrying out GEI.

Federal requirements indicate that the screening of a student to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services (34 C.F.R. 300.302). Further explanation in comments to the federal regulations indicates that screening refers to a process that a teacher or specialist uses to determine appropriate instructional strategies. The comments go on to describe screening as typically being a relatively simple and quick process that could include such activities as the observation of children in various environments.

The difference between screening and evaluation is the intent of the activities. If the intent of the activities is to determine instructional strategies or interventions to be used by staff in a general education setting, that constitutes screening. If the intent changes to determine if the student is a child with an exceptionality, or if the student needs special education, that is evaluation and all due process protections come into play. At that point, parents must be contacted to seek consent for evaluation.

Investigative Findings

On October 2, 2022, the SLP was copied on an email from the school principal to the parent regarding concerns that had been voiced by the parent about the student's motor and speech skills. The principal wrote:

> *"Finally, I wanted to address the piece related to articulation and phonological awareness. Our curriculum supports phonological awareness through what is called the 95% curriculum. I know that [the classroom teacher] will share with you [the student's] abilities in this area during conferences. As for the articulation possibility, I am happy to have one of my Speech Language Pathologists peek in on him to see if they feel there is any need for concern. Again, if you are okay with that, just let me know. Having an SLP or PT check in on [the student] is not a formal evaluation, just a check."*

The building principal received an email from the parent on October 2, 2022 stating:

> *"I would be happy for him to be checked out by OT, PT and speech. His N1F1 condition has many impacts on his life. He will always have low muscle tone and learning disabilities. I am glad he is on an IEP so when [the classroom teacher] or [the special education case manager] see breakdowns we can repair it before he gets behind. He will have an IQ test this March that will give better specifics of what areas are causing the breakdown, whether it be working memory, alternating attention or initiating. I am certain [the classroom teacher] will also let me know if she noticed any areas to grow in. So hopefully that assessment will also help create supportive goals for his success long term."*

According to a statement from the SLP, she emailed the classroom teacher asking whether the teacher had specific concerns about the student's articulation skills and followed up with the teacher in person. According to the SLP, the classroom teacher did not at that time identify any specific speech/language concerns but reported that the request for consultation was initiated by the parent.

The SLP completed two informal observations of the student. For the first observation on October 6, 2022, the student joined an already existing speech group in the speech room so the SLP could observe speech/language abilities within a structured activity with peers. For the second observation on October 10, 2022, the student was seen in the speech room for informal observation of articulation skills. According to the SLP, the purpose of the observations was to look at overall speech/language abilities at a baseline level. The SLP provided the classroom teacher with the following statement to be shared with the parent during parent/teacher conferences later in October 2022:

> *"Overall [the student] has good speech intelligibility. The two sounds he exhibits difficulty with are with /r, th/ sounds. He was able to correctly imitate the /th/ sound at the beginning of words when I prompted him to get his tongue between his teeth and then model the word for him. The /r/ sound was harder and he was not able to get correct production with this same support. At this time, I would suggest to continue to give him more time to develop in his speech. It is okay to*

cue and prompt for sounds (for /r/ we talk about pulling the tongue back and for /th/ getting the tongue tip between his teeth). I would like to check in on him mid-April and see where he is at. If he continues to really struggle, I'll start some interventions with him at the end of first grade to give him a little extra support and recheck him in second grade.

In regard to other speech/language areas, everything looked good. He easily engaged with me and the peers in his group. He had good eye contact and body orientation, took turns, provided relevant responses, and engaged with others appropriately. He communicated for different purposes (answered questions, commented on activities/what happening, asked for clarification). He followed directions, demonstrated understanding of instruction, used good vocabulary and concept words in his oral language, and answered different wh-question forms (who, what, when, where, why). Appropriate sentence structure and grammar were observed.

I will keep [the student] on my watch list and see how he is doing come April with speech sounds and go from there. I would be happy to touch base further with parents if need be. If they would like to chat more, call me and I can come to the conference or talk to them after your conference."

The information was shared with the parent by the classroom teacher during conferences. According to the SLP, she did not receive any feedback from the school team or parents, and she conducted no further observations. The SLP stated that she did not provide any intervention or direct support to the student during the ensuing months.

According to the SLP, she began developing general education intervention groups for first-grader student beginning in April 2023. These groups were formed based upon previously-expressed parent/teacher concerns and request for intervention, with parent consent.

The SLP states that she spoke in-person with the parent after school on April 18, 2023 when the parent came to pick up the student. According to the SLP, the parent agreed to the provision of front-end interventions (GEI) for the student in the area of articulation and expressed her concerns regarding the student's social/pragmatic skills. By report of the SLP, the parent expressed concern with the student's interaction during unstructured play (recess time), noting that he tended to play alone. The SLP states that she told the parent that there may be times students prefer to play alone and that observations across multiple settings and different social contexts would aid in gathering information on how the student is interacting and engaging with his peers throughout and across his school day. The SLP states that she told the parent that she could informally observe and monitor language/communication and social/pragmatic skills when the student came for front-end interventions for articulation. According to the SLP, the parent appeared to agree with the provision of the GEI.

On April 18, 2023, the SLP provided the parent with an outline of the referral and intervention process she was proposing for the student. According to the SLP, the parent provided her with copies of previous communication with the school team as background information on the student. The SLP sent an email to the parent on April 20, 2023, writing:

"I appreciate you sharing this information as I begin to work with [the student]. I want to touch base a little further since we last spoke regarding the intervention support I will be providing him. As part of the referral process with students with speech sound errors, I typically start with a general observation and informal assessment of skills following parent or teacher referral. If it is a teacher referral, I receive parent consent prior to seeing the student. [The classroom teacher] had reached out to me back in the fall following parent concerns you had shared with her and from there I pulled [the student] in my room for general observations of overall speech/language skills. The only noted area that showed continued monitoring was with articulation skills of later developing sounds. I followed up with feedback to [the classroom teacher], which she indicated she would share at parent conferences. My feedback was to keep [the student] on my watch list and recheck skills in April. His errors were with later developing sounds (r, th) that I begin to work with students on as they near second grade. I am attaching a speech sound development chart I give families so they can see age level at which typical mastery of sounds is achieved. In my recheck with [the student] this week, he continues to have errors with these later sounds, with primary errors noted with /r/ that are most prevalent in his oral communication. At this time, I am looking at doing informal intervention to work with him on skills and see how he progresses. Some students do not need further intervention besides this informal support to work on skills (4-6 weeks). Others show need for continued intervention with direct instruction, practice, and ongoing corrective feedback. If that is the case, moving forward with formal evaluation is the typical path. The informal intervention allows me to see levels of support students need and progress over time so I can best determine if a home program will then meet needs or if an evaluation is necessary. It's a process to help determine least restrictive environment for students. Informal interventions with [the student] would be for the remainder of this school year, and then when he returns in the fall, I will do a recheck of skills and see where he is at. It is my understanding that you are okay with me to start this informal support for [the student]. Please reach out and we can touch base further if you feel otherwise. If the team decides to move forward with a comprehensive evaluation, then the intervention support would be part of this evaluation process.

I am including other members of the team so we are all aware of the plan and on the same page. Please confirm that you are okay with this plan and reach out if you have questions or would like to touch base further. I will also forward the email I had sent [the classroom teacher] back in the fall so you have the specific feedback from that initial observation.'

The parent responded to the SLP on April 20, 2023, writing:

"…I have not had concerns about [the student's] articulation because his errors are still age appropriate for him…My concerns are more complex than articulation errors that are typical for his age. I am not okay with informal intervention. I want data to be collected and progress reports demonstrating he has generalized his social skills and regulates his emotions independently. I feel a comprehensive evaluation is necessary to establish patient centered goals that build [the student's] participation with peers at school…"

The SLP sent an email to the parent on April 21, 2023, writing:

> *"I will plan to take [the student] out of the articulation intervention group at this time. You are familiar with cueing and support to help him in this area at home, and I can provide support and reinforce skills at school as he continues to progress in his speech development, if you decide you want to move forward with that level of intervention. Back in the fall, the original purpose of the observation was to look at overall speech/language skills and the area of difficulty I observed was specifically with production of later developing sounds, with recommendation to keep [the student] on monitor and consider an intervention group at a later time.*
>
> *We spoke briefly regarding social/pragmatic skills earlier this week and we can have further discussion and collaboration on your concerns in this area. I cannot attend the meeting currently scheduled on April 26th due to conflict with a student IEP meeting but can plan to attend further meetings scheduled out.'*

According to the SLP, she had no GEI-related contact with the student beyond the October 2022 observations.

Summary and Conclusions

The SLP conducted two screening observations of the student in October 2022 following an email exchange between the parent and the building principal on October 2, 2022 in which the parent agreed to have the student "checked out." In the email exchange, the principal stated that this would not be a "formal evaluation."

The SLP provided the classroom teacher with a summary regarding her observations to be shared with the parent, noting that the SLP would keep the student on a "watch list" for follow up in April 2023.

The SLP followed up with the parent in April 2023 offering to place the student in a group for "front end interventions" (GEI) to address his articulation errors, but the parent stated in an email to the SLP that she was not "okay" with informal interventions and wanted the student to have a comprehensive evaluation. The student's name was removed from the list of students to be included in the GEI group, and no interventions were provided to the student.

No speech/language-related special education services have been provided to the student. A violation of special education statutes and regulations is ***not*** substantiated on this issue.

Issue Four

> The parent's request for the inclusion of visual supports in the student's IEP was denied without prior written notice.

Parent's Position

The parent asserts that she asked to have visual supports included in the student's December 5, 2022 IEP but was told that they weren't needed because the classroom teacher could provide all necessary accommodations. It is the position of the parent that visual supports were removed

when the IEP was revised, but the district did not provide her with prior written notice of that change.

District's Position

It is the position of the district that the team decision to remove the visual support from the student's December 5, 2022 IEP was made with the full participation of the parent. The district denies that any proposal made by the parent to include a visual schedule in the student's IEP was rejected by the team and asserts that no argument or disagreement between the parent and school team regarding this accommodation occurred during the meeting. The district contends that it was the parent who proposed the removal of a visual support (a picture of hand signing letter "R" on his desk) from the student's IEP as it had not proven to be effective, and the school team agreed.

However, the district stipulates that this change to the IEP was not documented explicitly in the Prior Witten Notice.

Applicable Statutes and Regulations

Parents must be given prior written notice and must provide written consent before a district can make a material change in special education services being provided to their child (K.S.A. 72-3430(b)6)).

The term "Material Change in Services" is defined in Kansas regulation 91-40-1(mm), to mean, "an increase or decrease of 25 percent 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." Accordingly, a removal or addition of any of these services is a material change in services because either a removal or addition of any of these kinds of services is a 100% change in the frequency and the duration of the service.

The term "Supplementary Aids and Services" is defined in Kansas regulation 91-40-1(ttt) to mean, "aids, services, and other supports that are provided in regular education classes, other education-related settings, and extracurricular and nonacademic settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate." This definition encompasses any "accommodations" (a term not used in the IDEA regulations) that are added to an IEP. Thus, a change in the frequency or duration of 25% or more of any of these supplementary aids and services would be a material change in services.

The term "consent" is defined in Kansas regulation 91-40-1(l), in relevant part, to mean that "the parent has been fully informed of all information relevant to the activity for which consent is sought…" and the "parent agrees in writing to the carrying out of the activity for which consent is sought and the consent describes that activity…" This regulation makes it clear that when a parent agrees in writing to a material change in services, that agreement amounts to consent only if the parent has been fully informed of <u>all information relevant to the activity for which consent is sought.</u>

The term "prior written notice" (PWN) is not defined by Kansas law, but the law does specify the required content of a PWN. K.S.A. 72-3432 says each PWN must include a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the described action. Accordingly, a PWN that does not describe the specific action proposed or refused is deficient, as a matter of law.

Investigative Findings

A "visual schedule" first became a part of the student's IEP in February of 2020. The schedule was initially used to "assist with his daily routine and non-preferred activities." For the student's January 21, 2021 IEP, the visual schedule was provided because the student required "visual supports with his daily routine."

The "Supplementary Aids and Services (Accommodations and Modifications)" section of the student's January 12, 2022 IEP states that the student will be provided with a "visual schedule [in his classroom]…to assist with his daily restroom usage…until [the student] is independent with initiating toileting."

The parent and the resource teacher exchanged emails in early August 2022. In that exchange, the parent stressed the importance of the student's visual schedule to assist with toileting reminders. On August 10, 2022 the parent wrote, "He does not initiate going potty in new environments, and he will say he does not have to go. So initially he will need direct commands to try to go, and he can get a sticker if he successfully does, then fade out where he looks at his visual aid and asks to go independently."

The parent states that, at the December 5, 2022 IEP team meeting, she asked to have a visual schedule focusing on toileting include in the student's IEP, but was told that the teacher could provide cues/reminders for the student so the inclusion of a visual schedule was unnecessary; the visual schedule was removed.

The parent was provided with prior written notice of the district's proposal to move the student to "indirect special education services…due to his growth in independence with using the restroom." The notice also states that the district proposed to "update his goals based on his current levels and performance." However, the prior written notice makes no reference to the removal of an accommodation -- the visual schedule.

Summary and Conclusions

An accommodation of "visual schedule" was first listed in the IEP for the student under "supplementary aids and services" beginning in February 12, 2020 and remained in place under the student's January 21, 2021 and January 12, 2022 revision. However, when the student's IEP was revised on December 5, 2022, that accommodation was removed from the student's IEP.

While the parent was given prior written notice of other changes made to the student's IEP at that time, the parent was not provided with prior written notice of the removal of this accommodation, and the consent of the parent for this material change to the student's supplementary aids and

services was not obtained. A violation of special education statutes and regulations *is* substantiated on this issue.

Issue Five

The district failed to provide the parent with progress monitoring reports when the student was in preschool and removed the goals established by the IEP team at that time without explanation when the student was in Kindergarten.

Because this issue alleges violations that occurred more than 12 months prior to the date this complaint was received, the issue was not investigated.

Issue Six

IEP goals have not been met.

Parent's Position

The parent asserts that the student did not meet a number of his annual goals over the years and continues to demonstrate delays in areas that have previously been targeted by those earlier goals.

District's Position

It is the position of the district that the annual goals in the student's IEP were developed as a "projection," not a guarantee of progress. The district asserts that while the central point of the student's IEP goals – appropriate toileting – has remained the same during the 12-month period covered by this complaint, those goals have focused on increasingly enhancing his independence in requesting to leave the classroom to go to the restroom. The district asserts that the student made progress on his goals between January 12, 2021 and December 5, 2022. However, when monitoring showed a lack of progress beginning in January 2023, and after a parent-initiated outside evaluation was completed, the district convened a meeting with the parent to discuss her concerns and the student's lack of progress.

Applicable Statutes and Regulations

A student's IEP shall 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 to enable the child to be involved in and make progress in the general education curriculum and meet each of the child's other educational needs that result from the child's disability. The IEP must also 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 will be provided, such as through the use of quarterly or other periodic reports issued concurrently with general education report cards (K.S.A. 72-3429).

A student's IEP is not a guarantee of progress. The IEP must be reasonably calculated to enable the child to make "progress appropriate in light of the child's circumstances" (*Endrew F. v. Douglas County School District* (137 S. Ct. at 999) and should aim to enable the student to make progress

toward the student's annual IEP goals and in the general education curriculum, but there is no guarantee of progress.

A student's IEP is to be reviewed at least once every 12 months, to determine whether the annual goals for the child are being achieved and to revise the IEP as appropriate. The review and revision of the IEP is to address: (a) any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate; (b) the results of any reevaluation conducted; (c) information about the child provided by the parents; (d) the child's anticipated needs; or (e) other matters. If the student is not making progress or the progress is not sufficient to meet the annual IEP goals and make appropriate progress in the general education curriculum, the IEP team should meet to discuss the lack of progress and consider meeting more frequently than once a year.

Investigative Findings

During the 12-month period covered by this complaint, the student has been provided services under two IEPs, the first dated January 12, 2022 and the second dated December 5, 2022.

The student's January 12, 2022 IEP contains only one goal:

> *"[The student will raise his hand using the restroom signal and wait for the teacher to grant permission with 1 or less prompts on 4/5 opportunities by 1/11/23."*

The "Baseline" statement for this goal states:

> *"When [the student] is told it is time to use the restroom, he complies and gets up and goes. He washes his hands and returns to class without argument. [The student] does not initiate using the bathroom independently."*

Benchmarks for attainment of the goal anticipated that the student would shut off a timer, raise his hand using the restroom signal and wait for the teacher to grant permission with 3, then 2, and then 1 prompt by October 7, 2022. It was anticipated that, by December 16, 2022, the student would no longer be using a timer, but with no more than 2 prompts he would signal the teacher appropriately and wait for permission. By January 11, 2022, it was anticipated that the student would need no more than one prompt and no timer.

Progress toward attainment of the student's goal was monitored on May 16, 2022. At that time, the student was making sufficient progress toward attaining his goal (4). According to his IEP Progress Report, he was responding to his timers set 3 times a day and would raise his hand with the bathroom sign and wait for permission to go. He had asked to use the restroom without prompting on 2 occasions during the quarter.

In an email to the student's classroom teacher on August 12, 2022, the parent wrote, "[The student] told me he had three accidents today…This is something that is difficult for him to initiate in new environments with unfamiliar people and can be prevented…He needs to have schedule times to go (a timer on the iPad) and 1-2 opportunities created by the IEP team to attempt initiating to request to go to the bathroom independently…and maybe having a visual cue on his desk to ask at those two times. He could have a timer set on his iPad and if it goes off, raise his hand…to go to

the bathroom. Whatever sequence you decide to use needs to be explained and practiced with him."

The classroom teacher followed up with the parent via email on August 18, 2022 writing, "He does not seem to need any visual cue reminders, and we are constantly working on having him (and all the other kids in the room) cross his fingers and show me when he has to go…he has done this a couple of times. We use the restroom as a class at 9:00 am, 11:30 am, and one time in the afternoon. Then I have another student that I am working with, so my phone alarm goes off at 9:00, 10:30, Noon, 1:30 and 3:00 to remind both of them to go and use the restroom if needed. We'll eventually try to slowly get rid of the reminders every hour and half." The parent responded, telling the teacher she was "glad he is starting to use the restroom sign…He will probably always need a reminder in the afternoon, or he still needs to 'attempt' then."

On August 24, 2022, the classroom teacher notified the parent via email that the student had soiled himself. The teacher told the parent that her alarm was set for 9:00, 10:30, Noon, 1:30 and 3:00 for bathroom breaks in addition to all-class bathroom breaks "about 3 times during the day." The teacher stated that she had reminded the student to show crossed fingers to be allowed to use the restroom at any other time.

The parent responded via email asking whether someone was "practicing with him using a visual schedule to remind him to initiate raising his fingers to go to the bathroom independently…Having times to go is a great prevention of accidents. He needs to practice initiating the request at certain points, then it will carry over for him to request it when he needs to go…having him check off asking [during various times]. If he as a picture of an activity, he has a visual reminder to ask to go to the bathroom at that time…[such as during snack time, reading time, before lunch]…and if he is able to initiate asking to go to the bathroom those three activities, a more complex goal would be for him to request to go at music, computers or gym class, since those are different people."

In an email to the classroom teacher on August 27, 2022, the parent wrote, "I think the resource teacher providing him visuals can reduce stress in the environment…He really benefits from visuals and it increases his participation significantly when he knows what to expect."

When progress toward attainment of his annual goal was monitored on October 7, 2022, the student had demonstrated "some progress towards achieving" the goal. According to the IEP Progress Report – Annual Goal for that monitoring period, more reminders from the teacher and classroom paraeducator were needed for the student to use the toilet. He was using the whole class schedule and responding to reminders from an alarm on his teacher's watch.

On October 23, 2022, the classroom teacher wrote an email to the parent stating that on the last day of school for the week the student was "really having an 'off' day with some defiant behaviors and non-compliance…I am backing off with my reminders (only doing 2/5), so he might experience some frequent accidents…Can you think of anything that he would like to work for if he has completely accident free (with only 2 reminders) days for a period of time?

In an email to the parent on November 9, 2022, the classroom teacher wrote, "He is doing GREAT…no reminders from me at all for the past 3 weeks!!!"

Progress on the student's goal was again monitored in December 2022. According to the IEP Progress Report – Annual Goal dated December 5, 2022, the student had met his goal (5). According to the report, the student would use his watch to remind him to take a toilet break or would use the restroom at appointed times as did his classmates.

The student's IEP was revised in an IEP team meeting on December 5, 2022. The only Annual Goal included in the student's December 5, 2022 IEP addressed self-advocacy when needing to use the restroom:

> *"[The student] will continue to advocate for himself by raising his hand or showing the restroom signal to use the restroom with 1 or less prompts by December 4, 2023."*

According to the "Baseline" for the goal, the student is able to toilet independently and "goes during times of the day when the whole class goes and/or when he is given a reminder through his watch or adult."

When the student's progress toward attainment of his annual goal was monitored on March 10, 2023, the student was making sufficient progress, but significant behavioral changes began to appear. The student was having more wetting and soiling incidents, and his behavior was increasingly inappropriate. Additionally, a parent-initiated outside evaluation of the student had been completed, and the results of that evaluation were available to be shared by the parent who had submitted a written request for a reevaluation by the district.

The student's IEP team met on April 26, 2023 and determined that a reevaluation should be conducted to gather additional data on the student's toileting as well as other behavioral needs. The parent provided her written consent for the reevaluation on May 2, 2023. The reevaluation is scheduled to be completed within 60 school days of the date of the parent's written consent.

Summary and Conclusions

The district monitored the student's progress toward attainment of the goals established in his January 12, 2022 and December 5, 2022 IEPs. By December 5, 2023, the student had achieved the toileting goal and was using the bathroom without any prompts from his teacher.

A new goal was established by the IEP team at the annual IEP review. That goal focused on maintaining that level of independence in requesting to leave the classroom to use the toilet with 1 or fewer prompts from his teacher. The student was making sufficient progress to achieve that new goal at the time of the first monitoring period, but behavioral changes began to arise. The IEP team met to talk about the student's needs and made the decision to conduct a reevaluation in order to collect more data on the student's needs.

While toileting has been a focus of the student's goals during the 12-month period covered by this complaint, his goals have been directed at making the student progressively more independent in initiating a request to use the bathroom. The student had achieved the goal established in his

January 12, 2022 IEP and appeared to be on track to meet his December 5, 2022 annual goal until late March and April 2023. At that point an IEP team meeting was held to discuss changes in the student's behavior, to provide the parent the opportunity to share the results of an outside evaluation, and to address the parent's request for a reevaluation of the student by the district.

The evidence shows that the student did meet the goal established in his January 12, 2022 IEP and was making progress toward achieving a new goal established by his December 5, 2022 IEP. The district properly held an IEP team meeting to discuss the change in the student's progress that began at the end of March 2023 and determined that the reevaluation requested by the parent should move ahead in order to develop the information needed to make changes to the student's IEP. A violation of special education statutes and regulations is *not* substantiated on this issue.

Issue Seven

The district failed to complete a required triennial re-evaluation.

The parent alleges that the triennial reevaluation of the student, which was due March 3, 2022, was not completed and that no rationale was provided by the district as to why the reevaluation was deferred.

This issue alleges a violation of special education statutes and regulations which occurred more than 12 months prior to the receipt of this complaint on July 18, 2023, and was not investigated. However, the district provided the investigator with a consent for reevaluation to be conducted as a "Review of Existing Data with no formal assessments" signed by the parent on November 11, 2021. The district also provided a copy of an Evaluation Report dated January 12, 2022 signed by the parent.

In a telephone conversation with the investigator on July 28, 2023, the parent acknowledged that she had given consent for a reevaluation using existing data.

Issue Eight

Progress monitoring data was not included when the student's IEP was revised on March 10, 2023. (Note: This date was subsequently amended by the parent in a telephone conversation with the investigator as noted below.)

Parent's Position

In a telephone conversation with the investigator on August 16, 2023, the parent stated that while the district had provided progress monitoring information on the student's goal at the time of the annual review of the student's IEP on December 5, 2022 (amended date), the district did not have additional data available on the student's toileting behavior outside of his first-grade classroom. In the opinion of the parent, the absence of this data limited the district's ability to focus on potential toileting needs outside of the general education classroom.

District's Position

It is the position of the district that the parent has been provided with all progress monitoring information required by special education statutes and regulations.

Applicable Statutes and Regulations

It is the job of the IEP team – which includes the parent – to develop appropriately ambitious and challenging goals for the student when reviewing and revising the student's IEP. Special education statutes and regulations do not specify what type of data a team must collect in order to develop appropriate goals for a given student.

It is up to the team to determine what data or other information it will need to make informed decisions regarding the development of the student's annual goals. Parents, as well as other team members, have a responsibility to participate and provide their input into their child's education.

Once goals have been developed by the IEP team, the district is required to provide periodic reports on the student's attainment of those goals (K.S.A. 72-3429(c)(3); 34 C.F.R. 300.320(a)(3)). Neither statutes nor regulations specify that any additional data be collected or maintained.

Investigative Findings, Summary and Conclusions

The district conducted the required quarterly monitoring of the student's annual goals and provided information on the student's progress to the parent. While it may have proven useful to the IEP team -- at the time of the annual IEP review on December 5, 2022 -- for the district to have collected additional data on the student's behavior outside of the classroom setting, there is no legal requirement in special education statues or regulations that it do so. A violation of special education statutes and regulations is *not* substantiated on this issue.

Issue Nine

The district failed to consider the parent's input when developing his IEP.

Parent's Position

It is the position of the parent that the district failed to listen to her needs when developing the student's December 5, 2022 IEP. In her complaint, the parent specifically references the district's response to her suggestions regarding classroom supports and to her request that an IEP remain in effect for the student pending the completion of a parent-initiated outside evaluation.

District's Position

It is the position of the district that the parent attended the annual IEP team meeting for the student on December 5, 2022 and fully participated in the discussion and development of the student's IEP. The district asserts that specific concerns voiced by the parent during the meeting were included in the IEP.

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 must 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. 91-40-17). IEP team meetings must be scheduled at a mutually agreed-upon time and place. Parents must be provided with notice of meetings that meets established requirements. The parents should be a part of the group of persons who are determining the educational placement for their child (K.A.R. 91-40-21). The parent then has the right to consent, or refuse to consent to, any substantial change in placement of, or material change in services for their child except under special circumstances (K.S.A. 72-3430), which do not apply to this complaint. For example, parental consent is not required if the change is the result of disciplinary actions or if the district has made a reasonable attempt to obtain consent but the parent did not respond. Additionally, a change in the instructional methodology used to provide a service, even if the methodology is specified in an IEP, is not a material change in services. For example, a change to a strategy within a behavior intervention plan is a change in the instructional methodology, not a material change in services and does not require parental consent.

When developing the IEP, the IEP team must consider the concerns of the parents for enhancing the education of their child (K.S.A. 72-3429). That does not mean that every suggestion offered by the parent must be incorporated into the IEP. If the IEP team cannot reach agreement on the content of the IEP, the local education agency (LEA) representative at the meeting has the ultimate authority to make decisions and to then provide parents with appropriate notice and request consent for the proposed action as appropriate.

Investigative Findings

Between November 7, 2022 and November 29, 2022, the parent and the district exchanged a series of emails to determine a mutually agreed upon date and time for the student's annual IEP team meeting. The parent agreed to waive her right to 10-day notice so that the meeting could occur on December 5, 2022 as reflected on a Notice of Meeting dated December 1, 2022.

The parent attended the annual IEP team meeting and participated in the development of the IEP. The "Special Considerations" section of the student's December 5, 2022 IEP included a section entitled "The IEP team has considered the concerns of the parent including the following:"

> *"Mom shared a concern that [the student] is picking a library book that is too difficult for him and is too above his independent reading level. She also shared that she is concerned that with many math strategies taught, it might be difficult for [the student] to be able to independently pick a strategy that works best for him. [The student] has been soiling himself as soon as they get home*

from school or in the car on the way home. Mom's goal for [the student] is for him to empty his bladder at school."

As the parent noted in her complaint, there was discussion regarding the "supports she suggested" for the general education classroom. According to the parent's statement in the complaint, the school was able to provide all the supports she had identified.

In her complaint, the parent also states that she requested that the team "maintain the IEP and let [her] get an outside evaluation…" The team finalized an IEP for the student which included a material change in the special education services for the student, moving the student to indirect support from the special education teacher. The parent was provided prior written notice of that change and provided her written consent on December 5, 2022.

Note: The district also made a material change to the supplemental aids and services provided to the student without first providing prior written notice to the parent and obtaining her consent. That issue is covered above under Issue Four.

Summary and Conclusions

As noted above under Issue Four, the district failed to provide the parent with prior written notice and to obtain the written consent for a change to the supplemental aids and services being provided to the student.

There is, however, ample evidence to show that the district considered the input of the parent when developing his December 5, 2022 IEP. The parent and the district collaborated to arrive at a mutually agreed upon time and place for the student's annual IEP review. The parent attended the meeting and participated actively, voicing her concerns (specifically reflected in the student's IEP), discussing classroom supports, and requesting a continuation of special education services pending the completion of a parent-initiated outside evaluation. The district agreed to continue to provide services to the student under an IEP and provided the parent with prior written notice for a material change in special education services to the student. The parent provided her written consent for the proposed change. Under these circumstances, a violation of special education statutes and regulations is *not* substantiated on this issue.

Issue Ten

The district asked the parent to provide Assistive Technology (AT) equipment needed by the student.

Parent's Position

The parent contends that the first-grade teacher asked her to provide two watches and a weighted blanket for the student. While the parent provided these items, she asserts that providing necessary items to meet the student's AT needs should be the responsibility of the district, not the parent.

District's Position

It is the position of the district that the IEP team (which included the parent) considered the AT needs of the student during the IEP annual review of December 5, 2022 and determined that the student had no AT-related needs.

Applicable Statutes and Regulations

Kansas statues, at K.S.A. 72-3429(d)(8), require a student's IEP team to consider whether the student "requires assistive technology devices or services" when developing the student's IEP. Any needs identified should be reflected in the content of the IEP.

Investigative Findings

The "Special Considerations" section of both the student's January 12, 2022 and December 5, 2022 IEPs state that the student does not require Assistive Technology. The parent participated in the IEP team meetings when both of these documents were developed.

The student's classroom teacher sent an email to the parent on October 20, 2022 writing, " I was wondering if you guys were interested in getting [the student] a watch that could be set to vibrate to remind him of bathroom breaks." The parent responded via email on October 21, 2022 stating she was "researching for a watch."

The parent notified the teacher via email on October 26, 2022 that the student would be wearing a watch set for the teacher's suggested reminder times. On October 28, 2022, the classroom teacher notified the parent via email that the student had lost part of his watch.

The parent subsequently purchased a second watch for the student, but by November 29, 2022, the vibrator on the watch was missing.

In an email to the classroom teacher on March 23, 2023 following an increase in instances of inappropriate behavior on the part of the student, the parent wrote, "…maybe he needs deep sensory input or movement to regulate his body." The classroom teacher responded via email asking, "Does he like any sensory items…weighted toy or fidgets or stress ball?"

In an email on March 24, 2023, the parent writes to the classroom teacher:

> *"We have a weighted blanket at home, he likes, jumping on the trampoline, or doing movements by imitating a video, if you have a bounce and move program video (running in place, balancing during a roller coaster, flying like an airplane) you guys use. At home we do massages, (tactile squeezes on his hands and legs) but that would be similar to a weighted blanket! If you don't have a video program for MVMT let me know and I can send some app/log in websites that are free."*

The classroom teacher responded, "Do you have a little weighted blanket that would just cover his legs? Mine is a big one!" According to the parent, she sent a blanket to school, but it was immediately returned to her.

Summary and Conclusions

The student's IEP team (including the parent) considered the student's AT needs when developing his December 5, 2022 IEP and determined that he did not require assistive technology.

While the general education teacher did reach out to the parent to suggest the purchase of a watch to provide a reminder to the student to take a bathroom break, there is no indication that the watch was something that was required by the student in order to achieve his IEP goals.

The use of a weighted blanket was suggested by the parent. While the parent sent a smaller blanket to school for the student's use, there is, again, no indication that the blanket was required. As noted by the teacher, a larger weighted blanket was available in the classroom for the student's use.

The IEP team considered the AT needs of the student when developing his December 5, 2022 IEP and determined that the student did not require AT aids or services. No evidence was provided by the parent to show that either the watch or weighted blanket provided by the parent were required by the student. 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 substantiated noncompliance with special education statutes and regulations on an issue presented in this complaint. Specifically, a violation has been substantiated with regard to K.S.A. 72-3430(b)6) which requires that parents be given prior written notice of and must provide written consent for the removal or addition of a supplementary aid or service within a student's IEP.

Therefore, USD #233 is directed to take the following actions:

1) Submit to Special Education and Title Services (SETS), within 21 calendar days of the date of this report, a written statement of assurance stating that it will comply with K.S.A. 72-3430(b)6) by
    a. providing parents with prior written notice of any proposal to add or remove a supplementary aid or service within a student's IEP; and
    b. obtaining the written consent of the parent before taking the proposed action.
2) By no later than September 11, 2023, the district shall schedule an IEP team meeting for the student to review the student's need for supplementary aids and services. That meeting should be held no later than September 21, 2023. At that meeting, the team shall determine whether the student needs a visual schedule to assist him in enhancing toileting independence.
    a. If the team determines that a visual schedule is needed, the student's IEP will be amended to include these elements, the district will provide the parent with prior written notice of the proposed change to the student's IEP and her consent for the

addition will be requested. The visual schedule will not be added to the student's IEP unless parental consent is obtained.

b. If the team determines that a visual schedule is not needed, the district will provide the parent with prior written notice of the removal of this accommodation and will seek parental consent for the action. If the parent does not consent to the removal of the accommodation, the student's IEP will be amended to include a visual schedule under the supplementary aids and services listed in the student's IEP.

3) Within 5 school days of the IEP meeting described above under Corrective Action 2, a copy of the relevant prior written notice document will be provided to SETS.
4) By no later than September 11, 2023, USD #233 shall submit to SETS for approval a plan for the training of special education staff in the school building where this student attends school regarding the management of changes to supplementary aids and services in students' IEPs. The training shall be completed no later than October 5, 2023, and within five school-days of completion of the training, USD # 233 shall submit to SETS written confirmation that the training has been completed.
5) Further, USD #233 shall, within 20 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



Diana Durkin
Complaint Investigator

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 20 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f).

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 #349 STAFFORD PUBLIC SCHOOLS
ON AUGUST 18, 2023

DATE OF REPORT SEPTEMBER 18, 2023

This report is in response to a complaint filed with our office on behalf of ---------- by his mother, ----------. In the remainder of the report, ---------- will be referred to as "the student". ----------'s mother is ---------- 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 #349, Stafford Public Schools. In the remainder of the report," the "school," the "district", and the "local education agency (LEA) shall refer to USD #349. Special education services are provided in USD #349 by the South Central Kansas Special Education Cooperative (SCKSEC).

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 18, 2023 and the 30-day timeline ended on September 19, 2023.

Evidence Reviewed

Gwen Beegle, Complaint Investigator, interviewed the parent by telephone on August 21, 2023 in order to clarify the concerns and issues for investigation. The parent listed 11 concerns in the complaint, and these were grouped into four IDEA issues for investigation. Gwen Beegle also spoke with the parent on September 1, 2023 following her meeting with the district to attempt to resolve the complaint and interviewed the parent on September 5, 2023. The following individuals were also interviewed: Rhonda Brown (former Coaching Specialist in the district) on September 8, 2023; Meagan Etheridge (SCKSEC Special Education Director) on September 8, 2023; Ellen McClosky (SCKSEC Assistant Special Education Director) on September 8, 2023; Kim Ghumm, Principal of Stafford Elementary on September 8, 2023, and Tori Alstrom (School Psychologist Contracted by SCKSEC) on September 11, 2023.

The Complaint Investigator also received emails from the parent and USD #349 personnel between August 21, 2023 and September 11, 2023.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the complainant and district. The original complaint included text and email documentation, some of which is noted in the list below. 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

1. IEP Contact Log with entries dated from January 10, 2022 through May 5, 2023.
2. IEP for the student dated January 31, 2022, amended on September 22, 2022.
3. Notice of Meeting dated September 8, 2022 for a meeting on September 8, 2023 and unsigned by the parent with waiver of 10-day notice
4. IEP amendment without a meeting for the student dated September 22, 2022 signed by the parent on the same date
5. Prior Written Notice for additions, changes or modifications to the IEP (other changes to the IEP) dated September 23, 2022 for a meeting on September 8, 2022
6. Prior Written Notice for Reevaluation and Request for Consent dated December 1, 2022 and signed by the parent giving consent on December 8, 2022.
7. Notice of Meeting dated January 26, 2023 for a meeting on January 26, 2023 to review evaluation, determine eligibility, and develop the IEP signed by parent on February 3, 2023 agreeing to waive 10-day notice
8. IEP for the student dated January 26, 2023
9. Prior Written Notice for Identification, Placement, Change in Services, Change of Placement and Request for Consent dated January 26, 2023, amended on February 15, 2023, and signed by the parent on February 15, 2023
10. Prior Written Notice for Identification, Placement, Change in Services, Change of Placement and Request for Consent dated January 26, 2023 and signed by parent giving permission on February 23, 2023
11. Notice of Meeting dated April 20, 2023 for a meeting on April 20, 2023 to discuss changes to the IEP signed by parent on April 21, 2023 agreeing to waive 10-day notice
12. Prior Written Notice for additions, changes or modifications to the IEP (other changes to the IEP) dated April 24, 2023 referring to a meeting on April 20, 2023 and signed with consent by the parent on April 21, 2023
13. Prior Written Notice for additions, changes or modifications to the IEP (other changes to the IEP) [date not provided to investigator] filed on May 17, 2023 referring to a meeting on April 20, 2023 and signed with consent by the parent on May 12, 2023
14. Parental Statement provided to school administrators dated April 26, 2023
15. Prior Written Notice for the district refusing to initiate or change placement or services (refusing Extended School Year - ESY) dated May 17, 2023 referring to a meeting on April 26, 2023 and signed by the parent on May 18, 2023.
16. IEP amendment without a meeting for the student dated May 10, 2023 signed by the parent on the same date

17. Notice of Meeting dated August 3, 2023 for a meeting dated August 15, 2023.
18. Notes provided by the district of the meeting to resolve the complaint dated August 25, 2023
19. The district's response to the complaint allegations dated September 1, 2023
20. The student's IXL Diagnostic Scores and TR CBMR English Scores (fluency) for the 2022-23 school year (Fall, Winter and Spring scores) provided via email to the investigator on September 8 and 9, 2023.
21. Coaching Specialist Log with entries from August 16, 2022 to May 19, 2023.
22. Screenshots of special education administrator visits to the school
23. USD #349 School Calendar, 2022-23

Evidence: Communications

24. Text exchange between parent and Kylie Meyer (Teacher), beginning August 23, 2022 at 5:45 p.m. and continuing through August 24, 2022 at 11:42 a.m.
25. Email exchange between the parent, Rhonda Brown (Coaching Specialist), Meagan Etheridge (SCKSEC Special Education Director), Kim Ghumm (Stafford Elementary Principal), Kylie Meyer, and Bryan Mead (Special Education Teacher) beginning on August 29, 2022 at 3:48 p.m. and ending on August 30, 2022 at 11:05 a.m.
26. Email from the parent to Bryan Mead on September 7, 2022 at 4:41 p.m. and Mead's reply to the parent on September 7, 2022 at 5:21 p.m.
27. Text exchange between the parent and Kylie Meyer on September 8, 2022 at 4:29 p.m.
28. Email from the parent to Bryan Mead on September 13, 2022 at 7:49 p.m. and Mead's reply to the parent on September 13, 2023 at 8:03 p.m.
29. Email exchange between Rhonda Brown and the parent, Kylie Meyer and other unspecified members of the IEP team dated September 23, 2022 beginning at 12:03 p.m. with replies to the group through 4:22 p.m.
30. Text exchange between the parent and Kylie Meyer on September 26, 2022 at 12:33 p.m.
31. Text exchange between the parent and Kylie Meyer on October 5, 2022 at 5:03 p.m.
32. Email exchange between the parent, Bryan Mead and Rhonda Brown beginning on October 5, 2022 at 5:00 p.m. and ending on October 6, 2022 at 2:33 p.m.
33. Text exchanges between the parent and Kylie Meyer on October 7, 2022 at 1:52 p.m. and on October 10, 2022 at an unspecified time.
34. Email exchange between parent and Bryan Mead beginning on November 3, 2022 at 10:20 a.m. and ending on November 16, 2022 at 11:45 a.m.
35. Email from Bryan Mead to the parent on December 5, 2023 at 8:17 a.m. and reply from the parent on December 5, 2023 at 8:59 a.m.

36. Email from Bryan Mead to the parent, Toni Alstrom and Gretchen Spiegel (Speech Language Therapist) on December 5, 2023 at 8:23 a.m. with replies from Alstrom and Spiegel on the same day.
37. Email from the parent to Bryan Mead on December 8, 2023 at 9:12 a.m. with his reply on the same day at 9:16 a.m.
38. Email exchange between the parent and Bryan Mead on January 9, 2023 beginning at 12:52 p.m. and ending at 2:31 p.m.
39. Email exchange between the parent, Bryan Mead and Kim Ghumm beginning on January 18, 2023 12:40 p.m. and ending on January 20, 2023 at 12:50 p.m.
40. Email exchange between the parent, Bryan Mead, Kylie Meyer, Toni Alstrom, and Rhonda Brown on February 17, 2023 from 3:54 p.m. to 6:50 p.m.
41. Email from the parent to Kim Ghumm, Meagan Etheridge, and Traci Becker on April 21, 2023 at 5:42 p.m.
42. Email exchange between the parent, Kim Ghumm, Meagan Etheridge and Tracie Becker (former Superintendent USD#349), beginning April 25, 2023 at 3:07 p.m. and ending on May 5, 2023 at 4:24 p.m.

Background Information

This investigation involves an 8-year-old student enrolled in the third grade at Stafford Elementary in USD #349. The student was first identified as a child with a developmental disability in 2018, when his evaluation revealed significant delays in speech/language and social emotional development. The student was assessed by the University of Kansas Medical Services in November, 2021; this assessment confirmed a prior diagnosis of ADHD. The student exhibited reduced social reciprocity, difficulty with social interactions, and some sensory issues but he did not meet the criteria for Autism Spectrum Disorder. In January, 2023, when he was reevaluated by the district and evaluation team, his eligibility category was changed from Developmental Disabilities to Other Health Impairment (OHI) with a secondary diagnosis of Learning Disabilities (LD), with continued eligibility for speech language therapy. The student's disability affects his ability to do work at grade level, including having difficulty in reading fluency and comprehension, oral and written expression, retaining concepts, and following routines and instructions in the classroom. The IEP notes that his working memory is poor, and his disability affects his ability to answer questions orally. He receives specialized instruction at his level in the general classroom for English Language Arts (ELA), special education support for his classes (math, PE, social studies, science and music), pull out speech-language therapy, and attendant care for transitions to recess and special classes. During his second-grade year (2022-23) his IEP included many accommodations, including extended time to do work, specific teaching methods, extended time, cues before transitions, weekly behavior chart, and the use of sensory breaks and tools among others. His IEP goals continue to address articulation, use of grammar, phonological awareness and reading fluency, but his

goals on peer social interaction and social behavior have been discontinued by the team, citing his progress in those areas.

Issues Investigated

1. ISSUE ONE: The USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP, thereby denying the student a free appropriate public education (FAPE). Specifically, the services, accommodations, and supplementary aids and services were not provided during the 2022-23 school year.
2. ISSUE TWO: The USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), changed the student's placement and made changes to the IEP without providing prior written notice or obtaining parental consent if needed during the 2022-23 school year.
3. ISSUE THREE: The USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond to a parent request for an IEP meeting in a reasonable period of time during the 2022-23 school year.
4. ISSUE FOUR: The USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to safeguard the student's confidential information.

Issue One

The USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP, thereby denying the student a free appropriate public education (FAPE). Specifically, the services, accommodations, and supplementary aids and services were not provided during the 2022-23 school year.

Applicable Law

Federal regulations 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. Federal regulations at CFR 300.320 (a)(4) and state statutes require that a student's IEP include a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general curriculum, and to be educated and participate with children with disabilities and without disabilities. An IEP is to be in effect for each child with a disability at the beginning of each school year, and it must

include a statement of the present levels of academic and functional performance, a statement of measurable annual goals, how progress toward the annual goals will be measured and reported, and a statement of the special education and related services and supplementary aids, based on peer-reviewed research to the extent practicable, and services to be provided to the child, or on behalf of the child, a statement of the program modifications or supports for school personnel that will be provided for the child, testing inclusion and accommodations, and the projected date for the beginning of the services and modifications described in the IEP, along with the anticipated frequency, location, and duration of those services and modifications (K.S.A. 72-3429, CFR 300.320).

Supplementary aids and services are defined at C.F.R. 300.42 and at K.A.R. 91- 40-1(ttt) as aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

Analysis: Findings of Fact

The complainant alleged that there were four types of failures to provide the special education and supplementary aids and services (accommodations and modifications) in the student's IEP. First, the student's IEP required that behavior sheets were to be sent to the parents weekly, and the district failed to send the proper sheets home each week. Secondly, the student was to be offered sensory tools and breaks as much as necessary "until the student is regulated," and the student was not offered adequate tools and breaks as evidenced by his clothing having been extensively chewed during the school day. Third, the student was prevented from receiving a spelling packet and prevented from receiving a permission slip and then access to a class-wide activity during the school year. Finally, accommodated ELA lessons were not provided to the student from the time of the January 26, 2023 IEP meeting through the April 20, 2023 IEP meeting when it came to the attention of the parents during discussion at the meeting.

The district responded that "The staff at SCKSEC have implemented the IEP to the fullest extent. . . The accommodations and modifications were provided by the general education teacher, special education teacher, and paraeducator working with the student. Specialized instruction on the student's level was planned through collaboration with the general education teacher, special education teacher, coaching specialist, and paraeducator. The specialized instruction was also implemented with team input by the general education teacher, coaching specialist, and paraeducator in the general education classroom." The district also responded that they met with the parent to explain how the services were being provided in the classroom when the parents expressed their concern about the in-classroom services. Further, the district responded that the sensory breaks required by the student's IEP were provided both inside and outside of the general education classroom.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #232.

- The student's IEP dated January 31, 2022 and subsequently amended on September 22, 2022 includes 14 supplementary aids and services, including the following accommodations and modifications related to the substance of this complaint: (a) "[the student] will have a weekly behavior chart. These are to be sent home weekly in a folder, every day the child is attending school in all academic settings for the duration of the school day, start date 1/31/22 and end date 1/30/23," (b) "[the student] will be offered sensory tools and breaks every day the child is attending school in all academic settings until [the student] is regulated every day the child is attending school in all academic settings for the duration of the school day, start date 1/31/22 and end date 1/30/23" and (c) [the student] will have accommodated spelling assignments and tests which will include up to 75% fewer words than his general education peers whenever spelling tests and assignments are given in the general education setting, until the assignment or test is completed." These accommodations were continued on the January 26, 2023 IEP.
- The January 31, 2022 IEP includes special education support services for ELA and Math every day the student is attending school in person in the general education setting for 60 minutes, 1/31/22-1/30/23, along with speech therapy 30 minutes twice a week), attendant care at recess, lunch, arrival/dismissal and transitions, and a social emotional curriculum (15 minutes a week). This IEP also includes two goals for the student's social emotional development, two goals for speech and language, one goal for reading and one goal for math.
- The parent and the district agree that a qualified paraeducator was present in the general education classroom to provide special education services in the IEP. The district reported that the paraeducator had necessary experience to serve successfully in this capacity. The district did not provide records of classroom or student specific paraeducator training to the investigator.
- Weekly Behavior Sheets:
    - The parent reported that in August at the beginning of the 2022-23 school year, the school did not provide weekly behavioral sheets on time. The parent reported that she contacted the teacher, who told her that an alternate self-rating system would be sent home instead of the 1-7 rating sheet referred to in the IEP. The parent contacted other members of the IEP team, who affirmed to the teaching team that the 1-7 rating sheet should be sent home weekly. An email August 29, 2023 from the coaching specialist showed that she directed the behavior rating sheet to be sent home weekly. The parent reported and email documentation in August and again in October showed that the school offered for her to pick up the document from school rather than sending the

sheet home. The parent reported that the sheets were late in arriving and text and email documentation showed that she repeatedly asked for the sheets to be sent home each week as late as October 5, 2022.

- Sensory Breaks:
    - The parent reported that the student returned home with chewed clothing and that she contacted the school about this problem beginning on September 8, 2022. The parent provided text and email documents that showed communication regarding the provision of adequate sensory breaks and access to specific sensory tools for chewing between the parent and the school from September 8, 2022-September 23, 2022. In this communication, the teacher indicated that all students received brain breaks and the student received these breaks. The parent reported that this problem was resolved after the September 26, 2022 clarification by the coaching specialist to the special education and general education teachers on the necessity of and how to provide student specific sensory breaks and tools to address the student's sensory needs.
    - The school reported that the student had continual access to sensory tools (in his desk or provided by the para educator) and breaks as needed during this period of time. The school reported that the teacher provided "brain breaks" in her classroom regularly.
- Spelling Packet and Bartering Activity:
    - Spelling packet: The parent reported that she contacted the teacher after the student had forgotten to bring home the weekly spelling packet. The parent reported and provided text documentation on October 5, 2022 that showed that the teacher declined to give the parents the spelling packet, stating that the student should have to work on it over the weekend as a natural consequence for forgetting his work.
    - Bartering Activity: The parent reported and provided text documentation that the teacher had agreed and then refused to provide the parents a copy of a permission slip for an April 12, 2023 bartering activity after the student had forgotten to bring it home from school, stating that he needed to learn responsibility. The parents reported and the school agreed that they acquired the permission slip from another parent, put it and the materials needed for the activity in the student's backpack in time to participate in the activity. The school reported that the student did not get the materials out of the backpack when asked to do so, and therefore he did not participate with the class in the activity. The parents reported, and the school agreed, that the principal reenacted the activity with the student at the end of the school day on April 12, 2023.
- ELA Instruction:

- At the January 26, 2023 annual IEP meeting, the district proposed that the child be pulled out of the general education setting for specialized instruction in ELA. After discussion at the meeting, the parent and team determined that the child would remain in the general education setting for ELA. The January 26, 2023 IEP (amended April 20, 2023) states that the student will receive, under anticipated services, "specialized instruction at the student's current level in ELA every day the student is attending school in person, general education setting, 90 minutes, 1/26/23 to 1/25/24." Other services include speech language therapy (30 minutes twice a week), attendant care for recess and transitions to and from specials, special education services provided by special education staff for Math, P.E., Science, Social Studies and Music.
- The PWN dated January 26, 2023 and signed by parent giving consent on February 23, 2023 states that the district proposed a change in services from the draft it had provided to the parents: "FROM the provision of special education services for ELA every day the student is attending school in person in the special education setting for 60 minutes 1/26/23 to 1/25/24 TO Provide the provion [sic] of para assistance for ELA every day the student is attending school in person in the regular education setting for 90 minutes."
- The January 26, 2023 IEP includes 9 supplementary aids and services, including the following accommodations and modifications related to the substance of this complaint: (a) "[the student] may be provided ELA supports including but not limited to multiple exposures to readings, opportunities to read out loud, choral reading, words broken down into letter sounds, and front loading of comprehension questions whenever the student is working on reading in all academic reading/ELA settings both general and special education for the duration of all reading/ELA assignments/activities, start date 1/26/23 end date 1/25/24,' (b) "[the student] may be provided academic supports including but not limited to work being broken down into chunks or retaught and material being presented in multiple modalities, whenever academic work is presented in all academic settings including general education and special education settings for the duration of all classroom activities and assignments start date 1/26/23 end date 1/25/24," (c) [the student will have extended time on any assignments, tests, and assessments whenever assignments, tests and assessments are given, general and special education room until the assignments, tests and assessments are completed, start date 1/26/23 end date 1/25/24, (d) [the student] will have accommodated spelling assignments and tests which will include up to 75% fewer words than his general education peers start date 1/26/23 end date 1/25/24." These accommodations were continued on the April 20, 2023 IEP amendment, which added two accommodations related to retaking

assessments and assignments if the student scored less than 80%, and on the May 10, 2023 amendment, with the addition that the student's grade would not suffer if he re-took an assessment or re-did an assignment.

- Email exchanges among the school team and the parent in mid-February, 2023 showed that there was confusion by the general and special education teacher about the student's ELA instruction, including that the student's spelling word list was changed to a Kindergarten level and the location of his ELA instruction.
- The parent reported and other IEP team members confirmed that, at the April 20, 2023 IEP meeting, it was disclosed by the student's general and special education teachers that the student's ELA instruction had not occurred as specified in the January 26, 2023 IEP.
- Interviews with district staff supporting the classroom reported concerns with the IEP's implementation.
- The district reported that the instruction had been accommodated and the principal reported that on an unspecified date she witnessed the para educator reteaching an ELA lesson using first grade materials and that there was a quiet location in the classroom for the student and picture cues taped to his desk. An email from the principal dated Friday, May 5, 2023 stated that the student was receiving the accommodations listed on his IEP, "that included extra time, quiet setting in the classroom and chances to do his work." The district asserted that the child's progress on school assessments showed the success of the student's ELA instruction.
- The special education director observed the student's classroom several times during the school year and reported that accommodations were being provided.
- An email exchange on May 8, 2023 between the parent and an itinerant teacher showed that she observed in the classroom on an unspecified date in April, that she made suggestions for the student's ELA instruction at that point, and that the para educator and the general education teacher reported using her suggestions. No evidence suggested that the itinerant teacher supported the classroom's instructional staff prior to April 2023. An interview with another team member indicated this assistance occurred after the April 20, 2023 IEP meeting.
- No documents such as lesson plans, instructional team meeting notes, records of service provision from para to teacher, systematic observation of the student's ELA lessons, service logs, directions to the paraeducator, student specific training for the para educator, grade specific training to the paraeducator, or other documentation showing the implementation of the student's IEP accommodations were provided to the investigator.

In this case, the IEP team did consider and specify in detail the supplementary aids and services to be provided to this student in the general education setting. The team revised these accommodations at each IEP meeting and amended them without a meeting during the school year in question (2022-23). The district put a paraeducator in place to provide services in the general education classroom and reported that the student's accommodations were provided by the paraeducator, the general educator and the special educator. However, there is no evidence that the paraeducator received guidance necessary to implement the many supplementary aids, services and accommodations/modifications listed in the student's IEP. The district was not able to provide examples of instructional plans, team meeting notes, or instructions to the paraeducator that would assure that the student's January 26, 2023 IEP was being carried out in the classroom. Interviews with persons with knowledge of the IEP's implementation in the classroom indicated that they were aware that the IEP was not being followed. Attempts by the district to correct the situation, including the increasing supervision and coaching of the special educator, failed to remedy the instructional problems. General education staff evidenced a lack of awareness of the IEP's requirements and ultimately disclosed that they did not follow the IEP's requirements for instruction and supplementary aids and services.

Based on the reports of school personnel and the documentation provided by both parties, it is likely that some of the student's accommodations were implemented such as extra time, quiet setting in the classroom, and reteaching by the paraeducator. However, the general and special education teachers stated that they did not implement the ELA specialized instruction, further defined in the ELA and spelling related supplementary aids and services/accommodations in the IEP. While the student made progress during the school year, it is unknown if the missed specialized ELA instruction would have provided the instruction necessary for the child not only to progress but to achieve grade level performance.

In addition, early in the school year there was a problem with understanding and implementing sensory breaks and access to tools designed to ameliorate the effects of the student's disability in the classroom, and this was corrected by the end of September, 2022, after the parent's advocacy and the coaching specialist directed the instructional staff to properly implement the accommodation for the child's sensory needs. Another issue arose early in the school year, recording the student's behavior on a specified behavior chart and returning it to the parent. This problem continued from August, 2022 through at least October, 2022, despite intervention and direction from the coaching specialist. Finally, there were two incidents of withholding materials needed for classroom participation because the student had forgotten to take them home in the backpack in order to teach him responsibility through natural consequences, although the parents sought to assist the student through acquiring his schoolwork and working with the student at home.

It is noted that the district brought resources to the classroom in the form of increased supervision by the special education administrator, meetings with the school administrator, a classroom observation and consultation, and instructional coaching by the coaching specialist. It is also noted that the district used human resources to assist in improving employee performance.

Conclusion

Based on the foregoing, according to IDEA and Kansas special education regulations it *is* substantiated that the district failed to implement the IEP, thereby denying the student a free appropriate public education (FAPE). Specifically, the student's supplementary aids and services or accommodations/modifications were not fully provided during the 2022-23 school year.

Issue Two

The USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), changed the student's placement and made changes to the IEP without providing prior written notice or obtaining parental consent if needed during the 2022-23 school year.

Applicable Law

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.

Analysis: Findings of Fact

The complainant alleged that the district changed the student's placement from special education services provided in the general classroom to special education services in a special education classroom. The parent alleged that on December 5, 2022, the special educator requested to initiate a one-week trial period for pullout ELA instruction, to be reviewed at a meeting then scheduled on December 9, 2022 (a period of 5 days). Between December 5,

2022 and January 18, 2023, the parent expressed concern about the pullout instruction to the special educator and the principal. No meeting was held until January 26, 2023 and the student remained in the special education room for ELA instruction during that period. No PWN for a change of placement was provided.

The district responded that "The student's placement was not changed during the implementation of the IEP without written notice or parental consent. . . The school and parents were in communication on a weekly basis discussing any changes that needed to be made to the student's programming." The district reported that the trial period was proposed because the district was proposing that the student be pulled out for ELA instruction and that it lasted only a few days because the parent expressed their concern about the pull out.

The following findings are based upon a review of documentation and interviews with the parent, former staff, and staff in USD #349.

- The findings of Issue One are incorporated herein by reference.
- The contact log showed that a Notice of Meeting was sent home on November 17, 2023 and a Draft IEP was sent home to the parent on December 1, 2022. Copies of these were not available to the investigator.
- The parent reported and the district agreed that the special education teacher acquired verbal permission from the parent to initiate a trial period of pull out ELA instruction on or about December 5, 2023. The district asserted that the trial period was only a few days in length in anticipation of their proposal of pull-out special education for the student's ELA instruction in the upcoming IEP.
- Email documentation showed that the special education teacher acquired the parent's permission on December 5, 2023 in an email exchange. The text of the email asked if the pull-out arrangement could start before the upcoming meeting. No PWN was provided at that time.
- Email documentation showed that an IEP meeting scheduled for December 9, 2022 was not held. An IEP meeting was scheduled for January 26, 2023 so that evaluation could be completed.
- Prior Written Notice to Evaluate dated December 1, 2022 was signed by the parent giving consent on December 8, 2022.
- Email documentation showed that parent expressed concerns about the continued ELA instruction as a pull out occurring in the special education classroom in an email exchange between the parent, teacher and principal on January 18 and 20, 2023.
- Behavior sheet documentation showed that the student's behavior was rated during a 3- minute ELA period in Mr. Mead's room on the following dates: December 5, December 6, and December 8, 2022; January 3, January 5, January 9, January 10, January 12, January 13, January 16, January 19, January 23 and January 26, 2023.

- Behavior sheet documentation showed that the student was in the library during ELA instructional time January 31, February 1, February 2, February 3, 2023; these dates exclude testing days in February. Email exchanges on February 17, 2023 between the parent, teacher, special educator, coaching specialist, and school psychologist showed that the team was continuing to discuss the pull out and that the accommodated instruction was to be conducted in the general education classroom.

In this case, the evidence indicates that the student was removed from the general education classroom for ELA instruction in the special education classroom during the period between December 5, 2022 and January 26, 2023. When corrected by other team members, the general and special educator removed the student to the library for instruction for at least 4 additional days. No documentation was provided to the investigator to document if the number of minutes of service specified in the IEP was maintained during the special education pull out. It cannot be determined if additional days of pull-out instruction occurred.

Conclusion

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), changed the student's placement and made changes to the IEP without providing prior written notice or obtaining parental consent if needed during the 2022-23 school year.

Issue Three

The USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond to a parent request for an IEP meeting in a reasonable period of time during the 2022-23 school year.

Applicable Law

Federal and state statutes and regulations at CFR 300.324(b)(1)(ii)(c) and KSA 72-3429(f) require that the IEP team meets at least annually and that it revises the IEP as appropriate to respond to a parent's request for an IEP meeting to address a lack of progress, evaluation, the child's anticipated needs, information provided to or by the parents, or other matters. In Kansas, a reasonable time to respond to parental requests such as the request for an evaluation or for an IEP meeting is two weeks, or 10 school days.

Analysis: Findings of Fact

The complainant alleged that, after meeting on January 26, 2023 for the annual IEP meeting, the parents requested a meeting to assure those who could not attend the entire IEP meeting were aware of the decisions made. The parent requested a meeting on February 2, 2023 and again on February 6, 2023 and the meeting was scheduled for February 16, 2023 without a set

time of day. The meeting was subsequently rescheduled for February 22, 2023 and then canceled by the school, saying it was not needed.

The district responded: "The IEP team met many times throughout the school year. Each of these meetings included the parents attending with lists of items and discussion points that extended the meeting times up to 5 hours. The IEP meetings would last anywhere from 3-5 hours each time. The suggestions of the educational staff was that providing explanations, discussion, and complaints about almost every service became overwhelming and difficult for the staff to keep up with all of the parent requests. Since this situation, we have implemented additional training on IEP paperwork, meeting notes, and length of meetings. During the formal complaint collaboration meeting, the parents requested quarterly IEP meetings. The district and cooperative both agreed to hold quarterly IEP meetings to review progress and update information."

The following findings are based upon a review of documentation and interviews with the parent, former staff, and staff in USD #349.

- The findings of Issue One and Issue Two are incorporated herein by reference.
- The student's IEP team met on September 8, 2022; January 26, 2023; and April 20, 2023. The student's IEP was amended on September 22, 2022 and April 20, 2023. The student's IEP was amended without a meeting on May 10, 2023.
- On September 8, 2022, the district provided a Notice of Meeting for an IEP meeting on the same date, signed by the parent waiving 10-day notice.
- The parent reported and provided documentation that she requested a meeting on November 3, 2022 and repeated the request formally in writing on November 15, 2022. The parent reported and provided email documentation that she was told that the IEP meeting was scheduled on December 5, 2022 and then postponed until January 26, 2023 to accommodate the student's reevaluation. The contact log and email documentation showed that a Notice of Meeting was sent home to the parent with the child on January 9 (email) or January 10 (contact log), 2023; this Notice of Meeting was not provided to the investigator. A Notice of Meeting dated January 26, 2023 for a meeting dated January 26, 2023 was signed by the parent waiving 10-day notice on February 3, 2023.
- The parent reported and provided documentation that she requested a meeting on February 3, 2023, which was scheduled for February 16, 2023, delayed to February 22, 2023 and then canceled by the district.
- The district reported that it is their policy that parent requests for meetings are responded to within 10 school days to clarify the purpose and begin to schedule the meeting. The district reported that it is the special education teacher's responsibility to respond to meeting requests by parents and notes that the staff in this instance did not follow the policy.

In this case, the parent requested an IEP team meeting on November 3, 2022 and on November 15, 2022, and the special educator indicated that the meeting could be held on December 5, 2022, later changed to December 9, 2022. The contact log notes that a Notice of Meeting was sent home on November 17, 2022. This was occurring at the same time as a draft IEP dated December 1, 2022 was reportedly sent home for parental review, proposing to change the student's ELA instruction to special education pull out. Also, the Prior Written Notice - Evaluation dated December 1, 2022 was signed by the parent giving consent on December 8, 2023. Due to the upcoming required triennial evaluation, an annual IEP meeting to review the evaluation and develop the IEP was scheduled for January 26, 2023. In the end, the special educator communicated with the parent regarding her request for a meeting but did not effectively schedule a meeting based on the parental request; instead the district held the annual IEP when it came due.

In the second example, on February 3, 2023, the parent requested a meeting to assure that all team members understood the requirements of the January 26, 2023 IEP. The special educator received the request, changed the intention of the meeting to include the next year's general education teacher, determined that it was premature to include that teacher, and then canceled the meeting that had been scheduled for February 22, 2023. Thus, in both instances, the parental request for an IEP meeting to discuss her concerns regarding implementation and progress were functionally denied by the district.

It is noted that the district reported their policy is to respond to parental requests in a reasonable period of time by determining the concern and resolving that concern through collaboration, including meeting with parents. Further it is noted that the district reports that in this case, an employee failed to follow the policy.

It is noted that the district has made efforts to resolve this issue with the parents and that offered to meet quarterly with the parents during the upcoming school year. It is also noted that the district has implemented additional training for its staff on IEP meetings.

Conclusion

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond to a parent request for an IEP meeting in a reasonable period of time during the 2022-23 school year.

Issue Four

The USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to safeguard the student's confidential information.

Applicable Law

Federal regulations implementing IDEA at 34 C.F.R. 300.32 state that the term "personally identifiable information" (PII) means information that contains the name of the child, the child's parent, or other family member; the address of the child; a personal identifier, such as the child's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. A student's disability status and any information about a student's IEP services would fall under the definition of PII.

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 party, other than officials of the public agency with a right to know. Federal regulations implementing the IDEA at 34 C.F.R. 300.615 require that If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

Analysis: Findings of Fact

The complainant alleged that the district disclosed their own child's and other children's special education accommodations in two ways. First, the accommodated assignments were identified by the student's initials in the classroom's GoEduStar gradebook during the second and third 9-week period of the school year. These assignments could be seen by all users of the gradebook, including other parents of children in the classroom. Second, the teacher sent home assignment folders at the end of the school year on or about May 16, 2023 that identified other children, their accommodations, and IEP progress reporting on their goals.

The district responded that: "SCKSEC provides confidentiality training for all staff and has all staff sign a confidentiality agreement. Special education teachers are provided with a locking filing cabinet and asked to share only "need to know" information with other staff members to effectively implement the IEP. Accommodations, modifications, programming, and goals are all included in the information shared with general education staff for the implementation of the IEP. Personnel issues that have come up in regards to this situation have been handled by the Human Resource Department and are private employee information that cannot be shared with others. When the administration met with the parents at the formal complaint discussion meeting, the parents requested that the staff member be fired and the IEPs not be shared with anyone except the special education teacher. Suggestions from the administration included that the IEP information be locked up in the general education teacher's classroom, similar to the locking filing cabinets in the special education classroom so that implementation of the programming in the IEP is still accessible for staff working with the special education students. This was agreeable for both parties. . . We will do our best to address the concerns of the parents, while maintaining individual privacy of staff members."

The following findings are based upon a review of documentation and interviews with the parent, former staff, and staff in USD #349.

- The findings of Issue One, Issue Two, and Issue Three are incorporated herein by reference.
- The parent reported, provided documentation, and the district agreed that the teacher posted assignments, which were identified with the student's initials in the electronic gradebook and that could be seen by other parents. The parent reported and the district agreed that the school corrected the error as soon as the parent made the principal aware of it, in the gradebook going forward. The parent reported that the previous assignments were not corrected in this way. The school reported that the teacher misunderstood how the electronic platform displayed information to end users based on the platform's feature that displayed a student's scores only to their own parents. Other informants indicated that the teachers were also end users of the electronic platform as parents in the district and thus understood the parent's view of the gradebook.
- The parent reported, provided documentation, and the district agreed that confidential documents had been sent home with the student and another student in the class. The district reported that the special education teacher had provided the confidential IEP progress reports to the classroom staff to place into the students' backpacks and that the information was mistakenly switched when putting it into the students' backpacks. The documentation provided by the complainant showed that more than one student's confidential information was included on a single document that she received. The progress reports listed the other students by name and included their progress on goals and information such as accommodations in the classroom. The parent reported that a second parent in the classroom also received confidential information for two students other than their own child.

In this case, the evidence shows that the school failed to properly safeguard confidential information of the student in the electronic gradebook and failed to fully correct the problem when it was brought to their attention. Secondly, the school failed to properly safeguard the students' and other student's confidential information by sending information to parents about children who were not their own.

It is noted that the school provides confidentiality training and that employees sign a confidentiality statement each year. It is further noted that the district has reported taking human resources actions related to this issue. The district also offered to resolve this issue with the parents by providing a locked cabinet for general educators in which to store confidential documentation needed by a teacher in order to provide instruction to children with disabilities in their classrooms.

Conclusion

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to safeguard the student's confidential information.

Summary Of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. 300.320 was found based on the findings of fact that the school did not provide the supplementary aids and services in the student's IEP, in two main ways: (a) the special and general education teachers did not follow the IEP's specifications in teaching the student's ELA instruction, and (b) the student's sensory breaks and tools were not provided as needed to regulate the student's sensory needs. Secondarily, the teacher did not attend to the effects of the disability as described in the IEP when she failed to, or failed to direct the paraeducator to, assist the student following instructions related to classroom routines, despite parental advocacy to acquire the items and support the student's participation and academic progress in the general education curriculum. Corrective action is required (as follows):
    a. CORRECTIVE ACTION:
        i. Within 20 days of this report, USD#349 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, which require that the IEP includes supplementary aids and services as defined in 34 C.F.R 300.42, that the IEP is in effect for each student with a disability at the beginning of the school year, and that the IEP specifies the anticipated frequency,
        ii. USD #349 shall provide training to the student's school on the development and implementation of IEPs that emphasizes (a) the responsibilities of general educators to provide supplementary aids and services and other accommodations in the general education classroom, (b) the supervision of paraeducators providing supplementary aids and services specified in student's IEPs, and (c) the documenting supplementary aids and services provided in the classroom. The training must be approved by SETS such as that provided by the Kansas-TASN technical assistance providers or its equivalent. The training must be given to all general and special education teachers and administrators in the building. A copy of the training's content and attendees shall be provided to SETS.location, and duration along with the projected dates to begin and end the IEP services and modifications.

a. Date due for the completion and documentation of training: December 30, 2023

iii. The USD#349 shall offer to the parent compensatory education for specialized ELA instruction required in the January 26, 2023 IEP meeting, for 4680 minutes or 78 hours. The parent can accept none, any or all of the compensatory education. The compensatory education shall be directed toward assisting the student to meet his reading goal and to progress in the general education curriculum toward grade level performance in reading and ELA. The compensatory education must be based on evidence-based teaching strategies and individualized to the student's needs.

1. Date due: The district shall provide evidence of its offer of compensatory services and the parent's response to SETS by October 19, 2023.

2. ISSUE TWO: A violation of Federal and state statutes at 34 CFR 300.503 was found based on findings of fact that the student was removed from the general education classroom and services were provided for a period of time in the special education classroom without providing Prior Written Notice to the parent.
Corrective action is required (as follows):
   a. CORRECTIVE ACTION:
      i. Within 20 days of this report, USD #349 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. 300.503 which require that Prior Written Notice is provided to parents when a change of special education services or placement is made by the district.
      ii. USD #349 shall provide training to the special education staff and school administrators at the student's school on the requirements for providing Prior Written Notice when changing the implementation of services or accommodations in IEPs. USD #349 will provide a copy of the policy, training agenda, dates and names of individuals trained to SETS. This training may be provided to individuals as part of coaching or supervisory meetings.
         1. Date due for the completion and documentation of training: November 1, 2023
3. ISSUE THREE: A violation of 34 C.F.R. 300.324(b)(1)(ii)(c) and KSA 72-3429(f) was found, based on the finding of facts described previously, that the district failed to schedule meetings requested by parents. Corrective action is required (as follows).
   a. CORRECTIVE ACTION:

i. Within 20 days of this report, USD #349 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 300.324(b)(1)(ii)(c) and K.S.A.72-3429(f) on responding to parental requests for IEP meetings.
ii. USD #349 shall provide training to the special education staff and school administrators at the student's school on the requirements to respond to parental requests following the district's policy and practice. USD #349 will provide a copy of the policy, training agenda, dates and names of individuals trained to SETS. This training may be provided to individuals as part of coaching or supervisory meetings.
    1. Date due for providing the policy to SETS: Within 20 days of this report. Date due for providing training: November 1, 2023.

4. ISSUE FOUR: A violation of Federal regulations implementing IDEA at 34 C.F.R. 300.32 and 34 C.F.R. 300.622 was found, based on facts previously described that confidential information was not safeguarded in the building. Corrective action is required, as follows:
    a. CORRECTIVE ACTION:
        i. Within 20 days of this report, USD #349 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. 300.32 and 34 C.F.R. 300.622 to properly safeguard confidential documents of students.
        ii. USD #349 shall provide a copy of their policy and a statement to SETS on how they intend to improve safeguarding confidential information at the student's school, including (a) providing locked cabinets to house confidential documents needed for teaching in the general education classroom, and (b) training to the general and special education staff and school administrators at the student's school on the requirements to maintain confidentiality of students records and information, including on the use of the locked cabinets. USD #349 shall provide the training agenda, dates and names of individuals trained to SETS.
            1. Date due for providing the policy and statement of improvement to SETS: Within 20 days of this report. Date due for providing training: November 1, 2023.

Investigator

Gwen P. Beegle, Ph.D.
Gwen P. Beegle, 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).

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 AUGUST 28, 2023

DATE OF REPORT SEPTEMBER 29, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ---------- ----------by his parents, ---------- and ---------- ----------. In the remainder of the report, ---------- ---------- will be referred to as "the student." ---------- and ---------- ---------- will be referred to as "the complainants" or "the parent(s)."

The complaint is against USD 260. In the remainder of the report, USD 260 will be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date on which it was filed. A complaint is considered filed on the date on which it was received by KSDE. In this case, the KSDE initially received the complaint on August 28, 2023, and the 30-day timeline ends on September 29, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The following documentation and information were used in consideration of the issue(s):

1. Psychological Evaluation for student from JKC Psych with Dates of Assessment June 22, 2021, June 30, 2021, and July 16, 2021.
2. Individualized Education Program dated April 29, 2022
3. 2022-2023 School District Calendar
4. Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated August 29, 2022
5. Individualized Education Program dated October 4, 2022
6. Prior Written Notice dated October 4, 2022
7. Individualized Education Program Clerical Correction dated October 4, 2022
8. Evaluation/Eligibility Team Report dated October 4, 2022
9. Individualized Education Program Amendment Form for Minor Changes Not Requiring a Full IEP Team Meeting dated May 11, 2023
10. Team Meeting Notes dated May 11, 2023
11. Prior Written Notice dated May 11, 2023

12. Individualized Education Program Clerical Correction dated May 11, 2023
13. Emails among School Principal and IEP Team dated May 18, 2023 at 4:58 PM through May 22, 2023 at 1:54 PM
14. Progress Report for 2022-2023 dated October 7, 2022; December 4, 2022; March 3, 2023, and May 15, 2023
15. Social Work Progress Notes dated August 30, 2022 and May 9, 2023
16. Fifth Grade schedule 2022-2023
17. Social Work Schedule 2022-2023
18. Speech Schedule 2022-2023
19. Student Grades for 2022-2023
20. Student Attendance for 2022-2023 dated August 17, 2022 - September 5, 2023
21. District response dated September 14, 2023

Background Information

The Student is enrolled in USD 260 and during the 2022-2023 school year was a fifth grader at an elementary school. His eligibility categories during his reevaluation in October 2023 for special education and related services are Other Health Impairment (primary) and Autism (secondary). He receives speech and language and social work as related services. An additional outside evaluation provided by the parents reported Autism, Specific Learning Disability with impairment in reading, Specific Learning Disability with impairment in written expression, Specific Learning Disability with impairment in math, and ADHD and these disability categories are included in his May 11, 2023 IEP. The student received most of his reading, mathematics and writing instruction in a special education resource setting and science/social studies and specials in the general education classroom with para support during fifth grade. His reading and mathematics instruction included both focused remediation instruction (strategies) and modified grade level content instruction (core). His IEP included a number of accommodations for learning and test performance. His speech and language and social work services were provided during the mathematics or reading core or strategies instruction according to his special education teacher. Some behavior concerns were reported, and two discipline referrals were made, but none of the IEPs indicated a need for a Behavior Interview Plan.

Issues Investigated

1. ISSUE ONE: USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), during revision of the IEP failed to consider information provided by the parent, specifically information contained in the IEE dated between June 22, 2021 and July 16, 2021 regarding placement and functional programming during the 2022-2023 school year.

2. ISSUE TWO: USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP during the past twelve months, specifically, provision of service minutes, services in the appropriate setting, and identified accommodations during the 2022-2023 school year.
3. ISSUE THREE: USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to appropriately respond to a parent request for an accommodation for separate passing periods to avoid conflict when the student is in unstructured environments during the 2022-2023 school year.

Issue One

USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), during revision of the IEP failed to consider information provided by the parent, specifically information contained in the IEE dated between June 22, 2021 and July 16, 2021 regarding placement and functional programming during the 2022-2023 school year.

Applicable Law

Federal regulations at 34 at C.F.R 300.502(c)(1) Parent-initiated evaluations states, if the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child.

Kansas state regulations at K.A.R. 91-40-12(2)(e) Right to independent educational evaluation states, If the parent obtains an independent educational evaluation at public expense or provides the agency with an evaluation obtained at private expense, the results of the evaluation shall be considered by the agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child. The results of this evaluation may be presented as evidence at a due process hearing regarding that child.

Analysis: Findings of Fact

The Parents alleged that they privately paid for an outside Independent Education Evaluation (IEE) from JKC Psych with Dates of Assessment June 22, 2021, June 30, 2021, and July 16, 2021 and the district is disregarding the information contained in this report in planning the student's IEP. They stated it is the most accurate description of their student educationally. The academics the school are teaching to the Student are too advanced for his cognitive ability and the school suggest that he be in a high level functional classroom when he is really functioning at a kindergarten level in problem solving, reasoning, reading fluency, and comprehension. He

does not understand the content even with para support. The student would most benefit from a more contained classroom with supports as recommended in the report they provided.

The District responded that they did consider the outside evaluation as required by regulation. They considered the testing, findings, and recommendations. They stated they agreed with some of the recommendations but disagreed with others.

The IEP dated April 29, 2022 (in effect at the start of the 2022-2023 school year) included the diagnoses reported from the outside evaluation report as well as findings from the report included in the present levels.

The IEP dated October 4, 2022 again referenced the outside evaluation for the findings and in the present levels.

The reevaluation report dated October 4, 2022 referenced the outside evaluation report regarding the testing results, diagnoses, and recommendations.

The May 11, 2023 team meeting notes recorded that the IEP team considered the report recommendation that the student be educated in a categorical classroom with functional programming. It is written, "…[Student] does not meet the qualifications for a functional classroom. Said that [Student] could have functional support without being in a functional classroom."

Conclusion

It is found that the district considered the outside evaluation report provided by the family. Based on the foregoing, it is not substantiated that USD 260 failed to consider information provided by the parent, specifically information contained in the IEE dated between June 22, 2021 and July 16, 2021 regarding placement and functional programming during the 2022-2023 school year.

Issue Two

USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP during the past twelve months, specifically, provision of service minutes, services in the appropriate setting, and identified accommodations during the 2022-2023 school year.

Applicable Law

Federal regulations 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.

Kansas State regulations at K.A.R. 91-40-16(b)(2) requires those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

The family alleged that the Student received instruction for science and history in the 5th grade classroom, but he does not understand the content even with para support. They stated he should be in a functional classroom to be able to understand academic content presented to him. He has been in Curriculum Modified classrooms since kindergarten and his special education minutes have continued to increase. The school district still believes he still should be in general education classes even though he cannot read/write or comprehend above a kindergarten level.

The district responded that they provided the services as outlined in the IEPs in effect during the 2022-2023 school year.

Special Education Services

The IEPs dated April 29, 2022 included 90 minutes of special education services in the 5th grade classroom for reading (30 minutes), mathematics (30 minutes), and social studies/science (30 minutes) five days every week along with 240 minutes of special education services in the special education classroom for reading (120 minutes), mathematics (90 minutes), and writing 30 minutes five days every week.

The October 4, 2022 IEP increased special education services in the special education classroom. The services included 30 minutes of special education services in the 5th grade classroom for social studies/science and five days every week along with special education services in the special education classroom for reading (120 minutes), mathematics (90 minutes), and writing 30 minutes five days every week.

The 5th grade schedule document showed that the student received science/social studies instruction from 11:10 – 12:10 (60 minutes) in the 5th grade classroom with special education support. The special education teacher during interview described that a para was in the classroom to assist each.

The 5th grade schedule document showed that the student received 90 minutes of daily reading instruction from 9:20 – 10:20 and again from 2:45 – 3:15 in the special education classroom with special education support. The special education teacher reported that the final 30 minutes of reading instruction occurred during social studies/science. The 5th grade schedule document showed that the student received 90 minutes of daily math instruction from 10:25 – 10:55 and again from 12:55-1:55 in the special education classroom with special education support. Finally, the 5th grade schedule document showed that the student received 30 minutes of daily writing instruction from 2:15 – 2:45 in the special education

classroom with special education support. The special education teacher during interview described that core instruction time was modified grade level content and the strategies instruction time was for focused skill remediation.

Related Services

Speech. The IEP dated April 29, 2022 in effect at the start of the 2022-2023 school year beginning on August 17, 2022 – October 3, 2022 included 20 minutes of speech service two times per week in the special education room. The October 4, 2022 IEP included 20 minutes of speech service one time per week in the special education room. The Speech Schedule 2022-2023 document showed that the student was scheduled with the District's SLP on Tuesday mornings at 9:20 – 9:40 AM during the reading core in the special education room. The 5th grade schedule document showed that the student had his Reading Core from 9:20-10:20 AM.

Social Work. The IEP dated April 29, 2022 in effect August 17, 2022 – October 3, 2022 included 20 minutes of social work service one time per week. The Social Work Progress Notes documents showed that the social worker scheduled the Student as part of a group on Tuesdays beginning August 30, 2022 – September 27, 2022 (through end of current IEP). The October 4, 2022 and May 11, 2023 IEPs included 20 minutes of social work service two times per week. The Social Work Progress Notes documents showed that the social worker increased the Student for 20 minutes to twice a week beginning on October 17, 2022 – May 9, 2023. The social worker reported he left class first thing in the morning during social emotional time before any core instruction occurred.

Accommodations. The April 29, 2022 IEP showed nine accommodations and the October 4, 2022 and May 11, 2023 IEPs showed eleven accommodations. The special education teacher described how the accommodations were used in the classroom, how she trained the paraeducators and how she met with the general education teachers for social studies and science to ensure the accommodations were used. The social studies and science teachers received copies of the student's IEPs.

Conclusion

Based on the foregoing, it is not substantiated that USD 260 failed to follow the student's IEP during the 2022-2023 school year.

Issue Three

USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to appropriately respond to a parent request for an accommodation for separate passing periods to avoid conflict when the student is in unstructured environments during the 2022-2023 school year.

Applicable Law

Federal regulations at 34 CFR 300.503(a)(1) and 300.503(a)(2) regarding Prior notice by the public agency states (a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

According to state regulations at 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.

Analysis: Findings of Fact

The complainants alleged that the student should have separate passing periods to avoid conflict. They report previous experiences of altercations or confrontations when he is in an unstructured environment. The district responded that the parent's request for a separate passing period was deemed inappropriate during the 2022-2023 school year as the elementary school does not have passing periods. The IEP team discussed alternate passing periods as a possible accommodation for the following (2023-2024 school year when the student enters middle school but as there was nothing added as the district noted the student had no behavior to indicate the accommodation was needed at present.

The May 11, 2023 team notes documented: “Discussed alternate passing schedule. Mom asked if the classes are close together. Concerned that he will not be able to find his class. [School psychologist] said most classes are right by the 6th grade hallway.”

No mention of the accommodation for separate passing periods is made in either the May 11, 2023 Amended IEP nor the May 11, 2023 Prior Written Notice.

KAR 91-40-1(z) defines FAPE as the special education and related services. This accommodation, discussed at the May 11, 2023 IEP meeting, qualified as a related service that required a PWN. Whether or not the provision of special education or related service discussed is Physical Therapy or the accommodation of alternate passing period it would fall under a discussion of “other developmental, corrective or supportive services (KAR 91-40-1(1)(X).

It is noted that the parent's complaint was that the accommodation was not added to the IEP during the May 11, 2023 IEP transition meeting and it was reported by the school psychologist that the accommodation will be added to the IEP at the next annual IEP.

Conclusion

In this case it was found that the accommodation request for alternate passing period discussed an and IEP meeting as recorded in the May 11, 2023 team meeting minutes would qualify as a related services and require either acceptance or rejection in the Prior Written Notice. Based on the foregoing, it is substantiated that USD 260 failed to appropriately respond to a parent request for an accommodation for separate passing periods to avoid conflict when the student is in unstructured environments during the 2022-2023 school year.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 at C.F.R 300.502(c)(1) and K.A.R. 91-40-12(2)(e) was not found, based on review of October 4, 2023 Reevaluation Report, May 11, 2023 IEP team meeting notes. Corrective action is not required.
2. ISSUE TWO: A violation of 34 C.F.R. 300.323(c)(2) and K.A.R. 91-40-16(b)(2) was not found, based on review of IEP services, interview with district staff and documentation of services. Corrective action is not required.
3. ISSUE THREE: A violation of Federal regulations at 34 CFR 300.503(a)(2) and K.S.A 72-3430(b)(2) was found, based on finding that the IEP team decision to reject the accommodation for an alternative passing period should have been recorded on a Prior Written Notice. Corrective action is required (as follows):
    a. CORRECTIVE ACTION:
        i. 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.
        ii. Date due: October 20, 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).

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 # 500
ON AUGUST 28, 2023

DATE OF REPORT OCTOBER 4, 2023

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

Investigation of Complaint

On August 29, 2023, the complaint investigator spoke via telephone with Dr. JaKyta Lawrie, Executive Director of Special Education for the Wyandotte Comprehensive Special Education Cooperative. The investigator spoke by telephone with the parent on September 5, 2023.

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

- Individualized Family Service Plan (IFSP) for the student
- Part C to Part B referral dated November 11, 2022
- Evaluation/Eligibility Report dated April 25, 2023

Background Information

This investigation involves a 3-year old girl who was referred to Part C Infant Toddler (IT) services by her pediatrician due to speech and gross motor concerns. She was evaluated through IT services and was determined to be eligible for that program.

In the fall of 2022, the parent was informed by IT about options available to the student when she turned 3-years of age, including the option of pursuing evaluation of the student by the school district to determine whether or not she would be eligible to receive early childhood special education services.

An IT worker scheduled a transition meeting between the worker, the parent, and a staff member from the early childhood center in the district to which the student would be assigned if eligible for special education services. That transition meeting was held on November 30, 2022. The student would turn 3 years of age on April 28, 2023. The school psychologist who participated on behalf of the district in the transition meeting left the district in December 2022, and the cases she was following were assigned to another school psychologist.

At the November 30, 2022 meeting, the evaluation/eligibility process for district early childhood services was explained, and the parent was asked whether she wanted to pursue the

evaluation of the student by the district. After the parent had responded that she was interested in pursuing the evaluation, the parent reports that she was told that "someone from the district" would reach out to her in the near future to schedule the evaluation.

According to the parent, she was not contacted by anyone from the district until April 18, 2023. In her complaint, the parent writes that she was told by a staff member from the early childhood center (later identified as the school psychologist) that at that time there was not enough manpower to complete the student's evaluation. The parent states that she was told that she could still request that an evaluation be completed, or she could revoke her request for evaluation and apply for the district's general education preschool program. The student could subsequently be referred for evaluation by the preschool program, and an evaluation could be conducted at that time. The parent told the school psychologist that she wanted to discuss her options with her spouse.

The parent reports that she was again contacted by the school psychologist on April 20, 2023 and was told that an eligibility meeting needed to be held. The parent reports that she questioned how an eligibility meeting could be conducted when the student had not yet been evaluated. The parent explained to the psychologist that, based on her experience with another of her children, she did not believe the student would be considered eligible for the general education pre-school and asked the school psychologist to send her the evaluation consent form. She also informed the school psychologist that she would be filing a formal complaint.

The parent was provided an electronic evaluation consent form and provided electronic written consent for the evaluation of the student on April 20, 2023. Later that day she was contacted again by district staff and was told that "they were trying to find other providers in the district to complete the evaluation." The parent was asked to bring the student to the early childhood center on April 24, 2023. The district proposed an 8:00 AM evaluation time, and the parent indicated that she could have the student at the center by 8:30 AM.

On Sunday, April 23, 2023, the parent received a text asking if she was still available at the 8:30 AM time on April 24, 2023. The parent brought the student to the center at the appointed time, and an evaluation was completed. The parent states that she was fearful that the evaluation would be rushed and would not be a "quality" evaluation but "the staff were great. They were pleasant and treated my daughter and me great. I believe the evaluation was done appropriately."

The parent reports that, after the evaluation, she was told that an eligibility determination meeting would need to be held the following day on April 25, 2023. The parent agreed to participate in that meeting via Zoom. At the meeting, the student was not determined to be eligible for early childhood special education services.

Issue

In her complaint, the parent acknowledges that the transition of her child met legal requirements and was completed before the student's third birthday, but she states that she was frustrated by the district's delay in reaching out to her regarding the evaluation until 8 days prior to the student's third birthday. The parent states in her compliant that it appeared to her that the district's decision to timely complete the student's evaluation was the result of the parent's indication that she intended to file a formal complaint.

In a telephone conversation with the investigator on September 5, 2023, the parent stated that it was her concern that other parents who lack her experience with the evaluation/eligibility process or their rights or who may have other barriers such as language might be persuaded to withdraw their request for evaluation and therefore might not be aware that their child was in fact eligible to receive early childhood special education services. In her written complaint and in her conversation with the investigator, the parent stated that she did not consider this "an individual issue." Rather, the parent asserts the following:

> There is a systemic lack of staff required to conduct Part C to Part B transition evaluations and provide services in a timely manner.

Applicable Statutes and Regulations

For children receiving Part C services who may need an initial evaluation to determine eligibility for Part B special education services, the Part C Infant-Toddler Program may make a referral to the school district. The referral is to be made and a transition plan must be developed at least 90 calendar days prior to the child's third birthday. If it is determined that an evaluation will be needed to determine a child's eligibility for Part B Early Childhood Special Education Services, parents must be provided with notice of that evaluation and written parental consent must be obtained before the evaluation can be conducted. The evaluation must be completed within 60 days of the receipt of parental consent or sooner if needed to ensure that an IEP is developed and implemented by the time the child turns three years of age.

Understanding that a child's development changes rapidly during these early years, a local education agency (LEA) may have concerns about the appropriate timing of the initial evaluation and Individualized Education Program (IEP) development. In such a case, the LEA must carefully weigh the benefits and risks of when an eligibility evaluation should be conducted, taking into consideration timeline requirements for completion of the initial evaluation, and if eligible, implementing the IEP by the child's third birthday.

Investigative Findings

Early Childhood Special Education preschool programs are located in four centers in the district. The boundaries for each of these centers are determined by early childhood program staff. School assignments for individual students transitioning from Part C Infant Toddler

programs are based on the needs of the student, the student's residential address, and proximity to centers within the established boundaries.

Evaluations for students being considered for eligibility for early childhood programs are conducted by school psychologists, related services providers, "Academic Teachers/Academic Evaluators," nurses and/or an audiologist. School psychologists and "Academic Teachers/Academic Evaluators" co-facilitate eligibility meetings for transitioning students. "Academic Teachers/Academic Evaluators" are certified special education teachers who are responsible for completing the Assessment, Evaluation, and Programming System for Infants and Children (AEPS) portion of the initial evaluation. These individuals also take the lead for the evaluation team in writing a student's initial IEP, and they facilitate the initial IEP team meeting for an eligible student.

The district has one team of school psychologists and academic evaluators who complete evaluations for all early childhood special education sites. Each site has its own group of related services providers who complete those portions of the evaluation related to their areas of expertise.

Part C IT providers are responsible for the scheduling of transition conferences. Data collected by the district shows that, during the 12-month period covered by this complaint, Part C to Part B transition meetings were sometimes scheduled as early as 180 days before a child's third birthday. The average time between the transition conference and the date when the district obtained consent to evaluate the child has been 60 days. The average time between the date of the transition conference and the date the students have been evaluated has been 90 days.

A total of 71 Part C to Part B transition meetings were held during the 12-month period covered by this complaint. Not all of these transition meetings resulted in a referral to the district for evaluation to determine eligibility for early childhood special education services. Some of those children and their families moved outside of district boundaries. In other instances, contact with the families was lost. Other parents did not want the district to evaluate their child.

According to information provided by the district, a total of 48 students were referred from Part C Infant Toddler to Part B district services during the period of September 1, 2022 to May 31, 2023. Of that total, 34 students were evaluated to determine eligibility for special education services from the district.

An additional 23 students have been referred to the district by Infant Toddler since June 1, 2023; 14 of those students have been evaluated for special education service eligibility. One student is being evaluated as of the date of this report.

The parent did not provide any evidence to show that the evaluation of any student extended beyond the required 60-day timeline between the date written consent for evaluation was obtained and the date that the evaluation was completed.

The parent also did not provide any evidence to show that either an eligibility determination meeting or the initiation of services to any eligible child extended beyond the date of that child's third birthday.

The district reported that the evaluation of one student was conducted 7 days after his third birthday and the eligibility determination meeting for that child was not held until 9 calendar days after that child's third birthday. There were, however, extenuating circumstances. In this case, the parent had initially refused consent for the district's evaluation but subsequently opted to allow the evaluation. The student's third birthday was on April 26, 2023. The parent provided written consent for evaluation on April 13, 2023. The evaluation was completed on May 3, 2023, and the parent was unable to participate in an eligibility meeting until May 5, 2023 when it was determined that the student was ineligible for special education services.

According to the Executive Director of the special education cooperative, while staff may have had conflicts with regard to scheduling an evaluation of the subject student on a given day, the early childhood programs have been fully staffed during the 12-mont period covered by this complaint and there would have been no shortage of staff to conduct this student's evaluation or the evaluation of any other transitioning student.

According to the Executive Director, there were no staff vacancies in the cooperative's early childhood programs between May of 2022 and May of 2023. Coverage has been provided for two teacher vacancies in a location other than the student's assigned program since the start of the 2022-23 school year. There have been no vacancies in any related service staff positions for the early childhood special education programs from May of 2022 to date.

The parent did not provide any evidence to show that other parents were told that they had the option to withdraw their referral for evaluation to determine early childhood eligibility. The district has no record of any other parent being offered such an option and no record to show that any referral/request for evaluation from a parent was withdrawn.

The Executive Director of the special education cooperative has stated that the parent should not have been offered the option of withdrawing her referral for an evaluation to determine early childhood special education eligibility. However, because the school psychologist who is alleged to have offered the parent this option is no longer employed by the district or available, neither the director nor this investigator was able to interview that individual.

Summary and Conclusions

As confirmed by the parent, the evaluation of the student named in this complaint was completed within the timeline established by special education statutes and regulations. This investigation focused only on the parent's concern regarding a potential systemic failure on the part of the district to timely and appropriately manage Part C to Part B transitions for other students.

Evidence examined during this investigation did not reveal the presence of systemic delays with regard to the evaluation and determination of eligibility for early childhood special education preschool services for children transitioning from Part C to Part B services. No evidence was presented by the parent nor was any found by this investigator to show that parents have systematically been encouraged to withdraw either their referral for evaluation or their written consent for evaluation. No evidence was provided by the parent nor was any found by this investigator to show that staff vacancies have delayed the evaluation of children beyond their third birthday. In only one instance did the process of completing an evaluation and determining the eligibility of a child to receive early childhood special education services extend beyond the child's third birthday. In that instance, extenuating circumstances contributed to the delay.

Under the circumstances outlined above, a violation of special education statutes and regulations is not established on the issues presented in this complaint.

Corrective Action

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

Investigator

Diana Durkin
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).

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)

and according to the school's policy for making a referral for an initial evaluation. For additional information about the Part C to Part B referral timeline see, https://ectacenter.org/~pdfs/topics/transition/timeline_flowchart_APR_indicators_09-12_OSEP_approved.pdf; and the Kansas Early Childhood Transition (SPP Indicators C8/B12), Part C to B Frequently Asked Questions at https://www.ksde.org/Portals/0/SES/KIAS/indicators/Ind12-FAQ-KS.pdf.

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT # 229
ON SEPTEMBER 5, 2023

DATE OF REPORT OCTOBER 5, 2023

This report is in response to a complaint filed with our office by --------- on behalf of their daughter, ---------. For the remainder of this report, --------- will be referred to as "the student." --------- will be referred to as "the parents." --------- will be referred to as "the student's mother" or "the parent." USD #229 will be referred to as "the district."

Investigation of Complaint

On September 13, 2023, the complaint investigator spoke via telephone with Dr. Mark Schmidt, the Assistant Superintendent of Special Education for the district. The investigator spoke by telephone with the student's mother on September 19 and 20, 2023.

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

- IEP for the student dated November 15, 2022
- Email exchange between the building principal and the student's mother over the period of August 15 – 18, 2023
- Email exchange on August 24, 2023 between the special education teacher and the student's mother
- Email exchange dated August 29, 2023 between the student's general education classroom teacher and the student's mother
- Email exchange on August 30, 2023 between the district Elementary Student Services Consultant and the parents
- Individualized Education Program Amendment dated August 30, 2023
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated August 31, 2023
- Individualized Education Program Amendment dated August 30, 2023 with "Additional notes" dated August 22, 2023
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated September 9, 2023
- Email dated September 11, 2023 from the special education teacher to the student's mother
- Email dated September 12, 2023 from the student's mother to a special education administrator

- Email dated September 12, 2023 from a special education administrator to the student's case manager and the building principal
- Email dated September 13, 2023 from a special education administrator to the student's mother
- Online calendar for the district
- Teaching license for the student's special education teacher/case manager
- College transcript for the student's special education teacher/case manager

Background Information

This investigation involves an 8-year old girl who is enrolled in the 3rd grade in a district elementary school. She has been diagnosed with both ADHD and Dyslexia.

Issues

In their complaint, the parents identified three issues. An additional issue was included under Issue One and was, with the consent of both parties, investigated separately.

Issue One

The district did not provide Special Education services from August 16 - 31, 2023, as required in the student's Individualized Education Program (IEP). As a result, the student has missed out on time and opportunity to advance appropriately toward attaining her IEP goals or to appropriately access the general education setting.

Parent's Position

The parent asserts that, during the period of August 16 – 31, 2023, the district failed to provide the student with special education services as specified in her November 15, 2022 IEP.

District's Position

The District concedes that special education services were not provided to the student on August 21, 24 and 25. In email correspondence and during an IEP meeting on August 22, 2023, the student's mother had expressed concerns and dissatisfaction regarding the special education teacher's qualifications. As a result, the special education teacher was under the belief that the parents did not want her to provide services to the student.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. The regulations,

at 34 C.F.R. 300.17, define FAPE, in part, as special education and related services provided in conformity with an IEP.

Investigative Findings

The "Statement of Special Education/Related Services" section of the student's November 15, 2022 IEP states that the student is to receive 30 minutes of direct special education services in a special education classroom five days a week.

Under the "Description of Specially Designed Instruction and Related Service," is the following statement:

> *"[The student] will receive targeted individualized, specialized, structured literacy instruction in the special education setting for 30 minutes 5 days per week. Instruction will target skill acquisition and mastery of reading and spelling non-decodable sight words, as well as alphabetical skills. During [the student's] direct instruction time she will receive instruction in the following things: handwriting, letter identification, letter sound correspondence, phonemic awareness, blending drill, reading words, reading phrases, reading sentences, spelling words, spelling phrases, spelling sentences, red word instruction, and controlled text reading."*

The "Statement of Special Education/Related Services" section of the student's November 2022 IEP also contains the following statement:

> *"The IEP Team has determined that for this student to have opportunities to participate with non-identified peers in extracurricular and nonacademic activities, regularly-scheduled special education and related services may not occur when their delivery would prevent the child from participating in activities such as field trips, assemblies, special events for the general education classroom or school* ***(such as school year startup/orientation activities) and state or district assessments*** *(emphasis added). When provision of the regularly scheduled special education and related services is not possible due to events that are beyond the control of the school such as school closure due to weather or other emergencies, emergency drills, or when the child is absent from school, compensatory services will not be provided. Special education services will not be provided when school is not in session according to the school district calendar.*

The first day of school for the district for the 2023-24 school year was August 16, 2023. According to the district, it is common for elementary students – including exceptional students – to engage in fun "get-to-know-you" activities during the first few days of school. In order to allow this student to experience startup/orientation experiences in the least restrictive environment along with her general education peers, she was not removed from the general education classroom to receive special education services during the first 3 days of school on August 16, 17, or 18, 2023.

As noted above under the "District's Position," no services were provided to the student on August 21, 2023.

On August 22 and 23, 2023, the student was – along with her general education classmates – engaged in taking the district's iReady Diagnostic test at the time her special education services were scheduled, so she would have been unavailable to receive services.

No services were provided to the student on August 24 or 25, 2023. On August 25, 2023, the special education teacher informed the building principal that she had not been providing services to the student; the principal directed the teacher to initiate services to the student beginning the week of August 28, 2023.

Special education instruction and benchmarking occurred on August 28, 29, 30, and 31, 2023. During these days, instruction was planned and delivered by the student's licensed special education teacher or by a paraprofessional under the supervision and direction of the special education teacher.

Services to the student were initiated on August 28, 2023 and have continued since that date, although the parents contend that additional services have been missed because the student's special education teacher has been out of the building for scheduled training. (See Issue Two below.)

Per the parents' formal complaint, the building principal sent the student's mother an email on August 30, 2023 offering a meeting with himself and a special education administrator to discuss the parents' concerns regarding missed services. Per the formal complaint, the student's mother declined the meeting and stated, "It looks like we may need to move to mediation or a formal complaint at this point…"

The district asserts that compensatory services are not legally required because the parents presented no evidence that the few missed services caused any educational harm to the student. Nonetheless, on September 11, 2023, a district special education administrator emailed the parents prior written notice of a proposal for compensatory services. The "Description of the Action(s) Proposed or Refused" section of the document contained the following statement:

> *"The district has reflected on [the student's] special education services during the time of August 16-31, 2023 and September 1st and 6th. They have determined that [the student] did miss special education services for 30 minutes each day on the dates of 8/21/23, 8/24/23 and 8/25/23. The district will ensure that these 90 minutes of direct instruction in the special education setting with a certified special education teacher with training in structured literacy will be made up before [the student's] upcoming IEP Meeting in November 2023.*
>
> *In addition, special education services were not provided during the first week of school (August 16, 17, and 18) as [the student] was participating in general education start of school orientation. The IEP specifically states that special education services should not take place*

> *during such activities. Special Education services also were not provided when [the student] was engaged in taking the district assessments of iReady Diagnostic on 8/22 and 8/23. To allow [the student] to participate in general education testing, the IEP specifically says the school should not provide IEP services during district or building testing.*

In the "Explanation of Why the Action(s) Is/Are Proposed or Refused" section of the prior written notice, the district offered the following:

> *"The district will provide the compensatory services of 90 minutes of direct special education instruction in the special education setting. Per [the student's] IEP, she should receive these services that were missed.*
>
> *The district does not believe that the other dates outlined by [the parents] are owed compensatory services. The Statement of Special Education/Related Services section of [the student's] IEP, states that for [the student] 'to have opportunities to participate with non-identified peers in extracurricular and nonacademic activities, regularly-scheduled special education and related services may not occur when their delivery would prevent the child from participating in activities such as field trips, assemblies, special events for the general education classroom or school (such as school year startup/orientation activities) and state or district assessments." It is the [district's] understanding that this type of orientation to the class routines occurred during the first week on August 16, 17, and 18. In addition, [the student] was engaged in taking the iReady Diagnostic on 8/22 and 8/23. Special education instruction and benchmarking occurred on 8/28, 8/29, 8/30, 8/31, 9/1, and 9/6. On these days, the para delivered instruction that were planned by [the special education teacher] and [reading specialist] while [the special education teacher] was in training. A licensed teacher was also in the room during this instruction.*

At the time of the writing of this report, the parents had not responded to the district's proposal.

Summary and Conclusions

Between August 16 and 31, 2023, there were a total of 8 days when special education services were not provided to the student. On 5 of those days, the student was engaged in activities which her November 15, 2022 IEP states could result in the student missing special education services. Specifically, the student was engaged in startup/orientation activities for the first three days of the school year and participated in district testing on two days.

However, the district acknowledges that the special education teacher did not pull the student for service on three days because the special education teacher did not believe the parents wanted her to work with the student.

Because the district failed to provide these three thirty-minute sessions of special education services (90 minutes total), a violation of special education statutes and regulations ***is substantiated*** on this issue.

Note: An additional day of alleged missed services during the period of August 16 – 31, 2023 will be addressed below under Issue Two.

Issue Two

The special education teacher assigned to provide services to the student will be out of the building various days over the next five weeks in order to receive training on structured literacy from the district's Dyslexia Coordinator. There is no plan in place for a special education teacher with training in structured literacy, science of reading, to see the student for her IEP service minutes until the assigned teacher is trained. As a result, the student will miss out on time and opportunity to advance toward attaining her IEP goals or appropriately access the general education setting.

Parent's Position

It is the position of the parents that all special education instruction provided to the student must – as established in the student's IEP – be delivered by someone who is trained in structured literacy. The parents assert that when the student's assigned special education teacher is away from the building, the student's instruction will be provided by individuals who lack sufficient training to be able to effectively teach the student.

District's Position

The district asserts that in the absence of the student's special education teacher, the delivery of services to any special education student can properly and effectively be delivered by trained and supervised paraeducators and by certified substitute teachers.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. The regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special education and related services provided in conformity with an IEP.

Each school district must ensure that all personnel necessary to carry out the requirements of IDEA are appropriately and adequately prepared and trained. All special education personnel, as appropriate, shall have the content knowledge and skills to serve children with exceptionalities. This includes special education teachers, related services personnel and paraeducators. School districts must take steps to actively recruit, hire, train, and retain

qualified personnel to provide special education and related services to children with disabilities (34 C.F.R. 300.156; 34 C.F.R. 300.207).

The Kansas State Department of Education has widely recognized that paraprofessionals are utilized in the delivery of specially designed instruction under the supervision and direction of a special education teacher. (See KSDE: *Considerations for the Effective Use of Paraprofessionals in Schools*, pg. 4.)

> *"One of the most common uses of paraprofessionals in K-12 public education is assisting in the education or instruction of a student with a disability under the Individuals with Disabilities Education Act (IDEA, 2004). Paraprofessionals were formally identified in federal legislation with the 1997 Amendments to the IDEA (P.L. 105-17). The term paraprofessionals continued in the 2004 reauthorization of IDEA. 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, in meeting the requirements of this part 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."*

The Individuals with Disabilities Education Act (IDEA) does not establish requirements for special education paraprofessionals, however, the district does require paraeducators to complete 10 – 20 hours of in-service training annually.

Investigative Findings

The "Statement of Special Education/Related Services" section of the student's amended November 10, 2022 IEP includes the following:

> *"[The student] will receive targeted individualized, specialized, structured literacy instruction in the special education setting for 30 minutes 5 days per week. Instruction will target skill acquisition and mastery of reading and spelling non-decodable sight words, as well as alphabetical skills. During [the student's] direct instruction time she will receive instruction in the following things: handwriting, letter identification, letter sound correspondence, phonemic awareness, blending drill, reading words, reading phrases, reading sentences, spelling words, spelling phrases, spelling sentences, red word instruction, and controlled text reading."*

The "Other Considerations" section of the student's November 15, 2022 IEP contains the *following question:*

> *"Is special training required for a student's teacher and/or other staff member(s) that is directly targeted on assisting the teacher and/or staff to meet a unique and specific need of the student related to 1) student's progress toward attaining the measurable annual goals*

> *and 2) involvement and progress in the general curriculum and participation in extracurricular and other non-academic activities?"*

In explaining why that question was answered "Yes," the IEP states:

> *"Special training is needed in an evidence-based multi-sensory structured literacy program based on the science of reading to address [the student's] needs in the area of reading."*

The student's special education teacher – who has previously been trained in the area of structured literacy (see Issue Three) - has also been scheduled to receive additional district-sponsored training in structured literacy. That training would take her away from the classroom over a period of five school days (August 30, September 6 and 20, and October 4 and 11, 2023).

According to the district, when the special education teacher is away from her class, a certified substitute teacher or a paraeducator will use lesson plans created and directed by the special education teacher and materials provided by the special education teacher to deliver specially designed instruction to the student. As will be discussed below under Issue Three, the special education teacher assigned to work with the student meets state and district requirements with regard to licensure, certification, preparation and training and is, therefore, qualified to develop instruction for the student.

When the special education teacher was absent from the building on August 30, 2023, 30 minutes of special education services were provided by a certified substitute teacher and a paraeducator using materials developed by the special education teacher. On that date, the student completed baseline assessment activities related to her IEP.

On September 6, 2023, those services were provided by a certified substitute teacher again using materials developed and provided by the special education teacher which included "red word instruction" – an area specified in the student's IEP.

On September 11, 2023, the district provided the parents with prior written notice of a proposal for the provision of compensatory services. (See Issue One above.) Included in that prior written notice was the following statement:

> *"[The student] was involved in special education orientation, instruction, and/or benchmarking on [the school days between August 25 and 31, 2023 including August 30, 2023]. These activities were planned by a certified special education teacher who has been trained in the structured literacy required on [the student's] IEP. The orientation, instruction, and benchmarking were carried out by the licensed special education teacher, a licensed substitute teacher, or a paraprofessional who had received instruction on what activities to carry out in the special education teacher's absence."*

The district confirmed that the paraeducator has completed the in-service training hours required by the district.

Summary and Conclusions

The student's November 15, 2023 IEP notes that the student's teachers need

> *"Special training is needed in an evidence-based multi-sensory structured literacy program based on the science of reading to address [the student's] needs in the area of reading."*

The student's special education teacher received such training through her Master's level training program (as will be discussed further under Issue Three) and is receiving additional district-sponsored training during the fall semester of the 2023-24 school year. The special education teacher is therefore qualified to design, deliver, or supervise the delivery of instruction specified under the "Statement of Special Education/Related Services" section of the student's amended November 10, 2022 IEP.

During those occasions when the student's special education teacher is out of the building receiving required training in structured literacy as required by the student's IEP, the district will utilize qualified substitute teaching and paraeducator staff to deliver the student's thirty minutes of special education services using plans and materials developed by the special education teacher.

At the time this complaint was filed, the student's special education teacher had been absent from the building for only one day of training, August 30, 2023. The student's thirty minutes of special education services were delivered that day by a certified substitute teacher and a qualified paraeducator using plans developed by the special education teacher who meets state and district requirements with regard to licensure, certification, preparation and training. No evidence has been provided by the parent to dispute this. A violation of special education statutes and regulations *is not substantiated* on this issue.

Issue Three

> For the 2023-24 school year the district has failed to provide a qualified special education teacher who understands the student's unique needs and diagnosed disability to be responsible for the IEP implementation. As a result, the student missed out on time and opportunity to advance appropriately toward attaining her IEP goals or appropriately access the general education setting.

Parents' Position

It is the position of the parents that the special education teacher assigned to provide services to the student for the 2023-24 school year lacks the training to provide the instruction required to properly implement the student's IEP. The parents contend that the teacher has been required to participate in district-sponsored Orton-Gillingham specific training – an acknowledgement on the part of the district of the teacher's inadequate training.

District's Position

It is the position of the district that the special education teacher assigned to work with the student is appropriately trained and certified to implement the student's IEP.

Applicable Statutes and Regulations

As stated above under Issue Two, each school district must ensure that all personnel necessary to carry out the requirements of IDEA are appropriately and adequately prepared and trained. All special education personnel, as appropriate, shall have the content knowledge and skills to serve children with exceptionalities. This includes special education teachers, related services personnel and paraeducators. School districts must take steps to actively recruit, hire, train, and retain qualified personnel to provide special education and related services to children with disabilities (34 C.F.R. 300.156; 34 C.F.R. 300.207).

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

Regarding instructional methodology, the Office of Special Education Programs (OSEP), which is the office within the United States Department of Education that writes and enforces the federal regulations implementing the IDEA has stated that "the courts have indicated they will not substitute a parentally-preferred methodology for sound educational programs developed by school personnel in accordance with the procedural requirements of the IDEA to meet the educational needs of an individual child with a disability." See Federal Register, Vol. 64, p. 12552, March 12, 1999.

Further, in Hendrick Hudson Dist. Bd. Of Ed. v. Rowley, 458 U.S. 176, 102 S.Ct. 3034, 553 IDELR 656 (1982), the Supreme Court held that the primary responsibility for choosing instructional methodology is left with the local school district.

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

No new regulations – special education or otherwise – were passed by the State Board in November 2019 with regard to dyslexia. The approved recommendations mentioned above

involve a number of actions that will take place based on established timelines beginning in July of 2020 with implementation into 2024. The Legislative Task Force on Dyslexia and the Kansas State Board of Education have required that schools provide annual professional development on structured literacy and/or dyslexia. The training should be hands-on, with evidence-based practices, on the nature of dyslexia, procedures to identify students who are struggling in reading, intervention strategies and procedures, tiered intervention practices, or progress monitoring.

Investigative Findings

The special education teacher who has been assigned by the district to provide direct special education services to the student is licensed to teach high incidence special education in Kansas. In order to obtain her special education license, the teacher has received required training in structured literacy, a three-credit hour course entitled "Teaching Reading in Special Education" as a part of a Masters level program at a state university.

The special education teacher has met state and district requirements with regard to licensure, certification, preparation and training. The parent has provided no evidence to show that these facts are in dispute.

The district is currently providing the special education teacher with additional training in the Orton-Gillingham approach to the teaching of reading. The district routinely provides advanced training to teachers and other staff members as a part of its staff development program. This training complies with requirements established by the Legislative Task Force on Dyslexia and the Kansas State Board of Education which have required that schools conduct annual professional development on structured literacy and/or dyslexia.

The Orton-Gillingham approach is, as shown on its website, "a direct, explicit, multisensory, structured, sequential, diagnostic, and prescriptive way to teach literacy when reading, writing, and spelling does not come easily to individuals, such as those with dyslexia."

Summary and Conclusions

This investigation has determined that the special education teacher assigned by the district to provide special education services to the student meets state and district requirements with regard to licensure, certification, preparation and training. No evidence has been provided by the parent to dispute this.

Additionally, while a parent may allege a failure on the part of a district, special education statutes and regulations do not grant parents the right to dictate either the personnel designated to deliver special education services or the methodology or materials that will be used in the instruction of the students.

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

Issue Four

The district failed to adhere to the procedures outlined in the Individuals with Disabilities Education Act (IDEA) for providing necessary paperwork to parents.

Parents' Position

The parents assert that they were not provided with notice of an IEP team meeting held on August 23, 2023. The parents also contend that the district did not in a timely manner provide them with a copy of the amended IEP developed as a result of that meeting.

District's Position Regarding Notice of an IEP Team Meeting

The district contends that the purpose of the August 23, 2023 meeting was to address general concerns raised by the parents. It is the position of the district that because the meeting was ***not*** convened to discuss the student's eligibility, evaluation, reevaluation, or to form an IEP, no Notice of Meeting was required. The district asserts that it would be inefficient and nearly impossible to timely address parent concerns if the law required schools to send a ten-day written notice of every meeting held to discuss student academic affairs of school related matters with parents.

Applicable Statutes and Regulations Regarding Notice of an IEP Team Meeting

Schools must afford parents the opportunity to be members of any decision-making team for their child. In order to allow parents meaningful participation in the IEP process, schools must provide parents written notice of any initial IEP Team meeting or any subsequent IEP meeting held to discuss eligibility, evaluation, reevaluation, IEP development, the provision of a free appropriate public education (FAPE) for their child and educational placement decisions. That notice must be provided at least ten days in advance of the meeting (K.A.R. 91-40-17(a)(1) and (2)). The notice shall indicate the purpose, time, and location of the IEP Team meeting and the titles or positions of the persons who will attend on behalf of the agency, including, if appropriate, any other agency invited to send a representative to discuss needed transition services. K.A.R. 91-40-17.

A child's teacher, other school staff, or the parents of a child with an exceptionality have the right to request an IEP meeting at any time to address any lack of expected progress toward the attainment of goals, information provided by the parents, the child's anticipated needs or other matters (K.S.A. 72-3429(f)). A parent may choose to waive the right to 10-day notice of an IEP team meeting in order to expedite the scheduling of that meeting.

Not every meeting between school officials and the parents/guardians of a student with an IEP constitutes an IEP Team meeting for which notice is required. For instance, minor changes to a child's IEP can be made following the annual IEP meeting (34 CFR 300.324(a)(4)(i)). A parent of

an exceptional child and the public agency may develop a written document to amend or modify the child's IEP without convening an IEP Team meeting.

Investigative Findings Regarding Notice of an IEP Team Meeting

As noted above under Issue One, the first day of school for the district for the 2023-24 school year was August 16, 2023.

Before the start of the year, on August 15, 2023, the student's mother sent an email to the student's special education case manager and the building principal proposing a meeting to discuss a number of issues related to the provision of special education services to the student. In her email, the parent identified concerns regarding the following:

- "the plan when services are missed" when the case manager/special education services provider is participating in training on the Orton-Gillingham method of reading instruction;
- the use of the "Dyslexia Coordinator" for the district in providing services to the student during the upcoming school year;
- the role of the building's "reading interventionist" in providing services to the student; and
- the implementation of an element of the student's IEP with regard to the conferencing of the student's classroom teacher with general and special education staff.

The "Statement of Special Education/Related Services" section of the student's November 15, 2022 IEP states that she is to receive 15 minutes of indirect services from the special education teacher 5 times a week. That service was explained in the "Description of Specially Designed Instruction and Related Service" portion of that same section as follows:

> *"[The student's] classroom teacher will confer **regularly** (emphasis added) with the special education teacher, as well as district reading specialists trained in the science of reading to implement strategies to better facilitate instruction as needed."*

In her August 15, 2023 email, the student's mother cited the above phrasing regard these indirect services and noted that the student's IEP was due for review in November 2023 but stated that she wanted to discuss her issues and "problem solve with the IEP team before that date."

The building principal replied to the parent via email late in the afternoon of August 16, 2023, providing responses to questions posed by the parent in her email. The parent wrote back to the principal later in the evening of August 16, 2023 stating that she had requested an IEP team meeting to discuss her previously stated concerns.

On August 17, 2023, the principal sent an email to the student's mother proposing August 22, 2023 as a possible date for the requested meeting and asked about the parent's availability. On August 17, 2023, the student's mother wrote back to the principal stating that she would be

available "after 1 pm on 8-22-23." The parent also noted that she wanted to invite the student's outside tutor to the meeting. On August 18, 2023, the principal wrote again to the student's mother stating:

> *"…we could get almost everyone together at 2:30 on 8/22 at [the student's school]…Unfortunately, [the reading specialist] is not available at that time, but we will take notes and relay information back to her…"*

An IEP team meeting was convened on August 22, 2023 to discuss the parents' concerns. In attendance in addition to the student's mother were the building principal, a special education administrator, the student's special education case manager and special education service provider, the student's general education teacher, the school psychologist, and the student's private tutor.

According to the student's mother, she had not been provided with notice of the meeting, so she asked whether "this was a formal IEP meeting." The parent reports that she was told that it was.

Summary and Conclusions Regarding Notice of an IEP Team Meeting

The student's mother sent an email to the student's case manager and the building principal on August 15, 2023 – the day before the start of the 2023-24 school year - expressing concern regarding the delivery of special education services and requesting a meeting with the IEP team. The parent reiterated her request for an IEP team meeting in an email to the principal on August 16, 2023. A meeting was scheduled for August 22, 2023.

At the meeting, the parent asked the assembled group whether the meeting was an IEP team meeting; she was told that it was. The parent and the student's private tutor were present as were required members of an IEP team including the building principal, the student's general education teacher, the student's case manager/special education teacher, and a school psychologist. The team discussed concerns expressed by the parent including amendments to the student's IEP. The parent was not provided 10-day notice of the IEP team meeting and was not asked to waive that required notice.

It is clear that the student's mother exercised her right to request an IEP team meeting to discuss concerns regarding the implementation of the student's IEP. A properly constituted IEP team – which included the student's mother – was present at the meeting on August 22, 2023 where decisions were made regarding an amendment to the student's IEP. Because the parent had requested the IEP team meeting and wanted that meeting expedited, she would likely have waived her 10-day notice of the meeting, but the district did not seek that waiver and failed to provide notice of the meeting to the parent. For that reason, a procedural violation of special education statutes and regulations ***is substantiated*** on this aspect of this issue.

District's Position Regarding the Provision of Documents to Parents

It is the position of the district that the parents were timely provided with prior written notice (PWN) of proposed amendments to the student's IEP as well as a copy of the student's amended IEP.

Applicable Statutes and Regulations Regarding Provision of Documents to Parents

One of the procedural safeguards afforded to parents is the required PWN of certain proposed special education actions. This notice must be provided to parents if the school proposes to initiate or change, or denies a request to change, the identification, evaluation, educational placement of their child, or provision of special education and related services (FAPE) to their child (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.503(a)(2)). Parents must also be provided a final copy of the IEP at no cost to the parent (K.A.R. 91-40-18(d); 34 C.F.R. 300.322(f)).

KSDE has determined that unless there is an unusual circumstance, districts must provide parents with a PWN within fifteen school days in response to any parent request regarding identification, evaluation, placement or the provision of a FAPE. See KSDE Memo "*Reasonable Time" to respond to parent request for evaluation*, January 8, 2002. This timeline also applies to the provision of a final copy of a student's IEP.

Investigative Findings Regarding the Provision of Documents to Parents

At the IEP team meeting on August 22, 2023, the student's mother expressed concern with regard to the measurement of the term "regularly" as applied to the student's indirect services. The special education administrator in attendance at the meeting told the parent that an amendment to the student's then current IEP would be completed to define "regularly" in the IEP as "bi-weekly."

On August 31, 2023 (7 school days after the August 22, 2023 IEP team meeting), prior written notice of the proposed change to the student's IEP was posted on "Synergy," the district's student information system. According to the prior written notice form, it was proposed that the student's special educator teacher would collaborate with the District Dyslexia Coordinator bi-weekly for 20 minutes to discuss progress and instruction. It was also proposed that the special education teacher and general education teacher will collaborate weekly to meet the student's needs in the general education setting. A copy of an IEP Amendment was posted along with the prior written notice form.

The parents were familiar with the student information system and had received special education documents through that system in the past. However, due to technical problems, the parents were unable to access the documents through Synergy.

The student's mother notified the district on September 9, 2023 (11 school days after the August 22, 2023 IEP team meeting), that she could not access the documents. The assistant superintendent for special education spoke with the student's mother by telephone to resolve the parent's access issues.

A special education administrator sent the following documents to the parents via email on September 11, 2023 (13 school days after the August 22, 2023 IEP team meeting):

- Prior written notice of a proposed re-evaluation of the student;
- the amended IEP for the student;
- prior written notice regarding the amended IEP; and
- prior written notice regarding the concerns of the parents as expressed during the August 22, 2023 IEP team meeting.

In her email, the special education administrator asked how the parent would like to receive hard copies of all the above documents; the student's mother responded via email on September 12, 2023 that she wanted the district to "send hard copies home with [the student] for us to review." The administrator then sent an email to the student's case manager and the building principal asking them to print off the forms and "send home with [the student] today."

Upon receipt of the documents on September 12, 2023 (14 days after the August 22, 2023 IEP team meeting), the student's mother notified the district that the amended IEP which she had been provided was not consistent with the prior written notice form and continued to include the term "regularly" rather than the expanded explanation outlined in the prior written notice form.

Accordingly, the district revised the amended IEP and, via email on September 13, 2023 (15 school days after the August 22, 2023 IEP team meeting) sent the parents a revision that included the following statements:

> **Amendment 8/22/23 Definition to the term "Regularly" from 2nd paragraph: [The student's] special educator teacher will collaborate with the District Dyslexia Coordinator bi-weekly for 20 minutes to discuss current interventions needed. [The student's] special education teacher and general education teacher will collaborate weekly to meet [the student's] needs in the general education setting.*
>
> **Amendment 8/22/23 [the student] will be given a supplemental RAN assessment quarterly.*

In the September 13, 2023 email to the student's mother, the special education administrator also outlined other changes that had been made to the document as follows:

- The names of the reading specialist and the student's tutor were added to the cover attendance page; and
- a statement regarding the changes to define "regularly" were added to the cover page of the IEP.

The special education administrator also pointed out that the definition of "regularly" had been included on page 7 of the copy of the amendment previously sent to the parent on September 13, 2023 and remained in this newer version of the document.

Summary and Conclusions Regarding the Provision of Documents to Parents

The district posted copies of prior written notice regarding proposed changes to the student's IEP on the district's online communication system 7 school days after the IEP team meeting on August 22, 2023. However, because of technical difficulties, the parents were not able to view those documents and notified the district about their access problems 11 school days after the IEP team meeting.

The district provided copies of the documents via email two days after being notified of the technical problem, but the parent notified the district that the amended IEP and the prior written notice document were inconsistent. Fifteen school days after the IEP team meeting, the parents were provided with both electronic and hard copies of the corrected version of the amended IEP.

Because the parents were provided with copies of both the student's amended IEP and the prior written notice document within 15 school days of the August 22, 2023 IEP team meeting, a violation of special education statutes and regulations *is not substantiated* on this aspect of this issue.

Corrective Action

Information gathered in the course of this investigation *has substantiated* noncompliance with special education statutes and regulations on two of the issues presented in this complaint. Specifically, a violation has been substantiated with regard to

- 34 C.F.R. 300.17(d) which requires that a free appropriate public education be provided to a special education student in conformity with his/her IEP; and
- K.A.R. 91-40-17(a)(1) and (2) which requires that parents be provided with 10-day prior notice of an IEP team meeting.

Therefore, USD #229 is directed to take the following actions:

1. Submit to Special Education and Title Services (SETS) within 21 calendar days of the date of this report, a written statement of assurance stating that it will comply with

- 34 C.F.R. 300.101(a) and 34 C.F.R. 300.17(d) by implementing this student's IEP as written; and with
- K.A.R. 91-40-17(a)(1) and (2) by providing parents 10-day prior notice of an IEP team meeting including those IEP team meetings requested by parents. (If the parents have requested an expedited meeting, parents must agree to waive 10-day prior notice if the meeting is to be held before the 10-day period is up.)

2. Submit to SETS within 21 calendar days of the date of this report, a plan for the provision of 90 minutes of compensatory special education services in the special education setting.
3. Within 5 school days of receipt of SETS approval of the plan identified under Corrective Action 2 above, the district shall schedule a meeting with the parents to present the plan.
    a. The parents shall have the option of accepting or rejecting the 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.
4. By no later than November 5, 2023, provide to SETS verification that administrative and special education staff at the student's school have been provided training regarding the proper response to a parental request for an IEP team meeting. Training should specifically address the provision of 10-day notice of the meeting and how to deal with a request that an expedited IEP team meeting be held at a time that does not allow for 10-day notice.
5. Further, USD #229 shall, within 20 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

Diana Durkin
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).

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 # 265
ON SEPTEMBER 11, 2023

DATE OF REPORT OCTOBER 9, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of --------- by his mother, ---------. In the remainder of the report, --------- will be referred to as "the student." --------- will be referred to as "the complainant" or "the parent." --------- is the student's father and in the remainder of the report will be referred to as "the father." Together, --------- and --------- will be referred to as "the parents."

The complaint is against USD #265, Goddard Public Schools. In the remainder of the report, USD #265 will be referred to as "the district", "the local education agency (LEA)", or "the school."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on September 11, 2023 and the 30-day timeline ended with this report on October 9, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Gwen Beegle, spoke with the parent on September 27, 2023 to clarify the complaint and reviewed all evidence and documentation that was provided by both the district and the complainant.

The following persons were interviewed: Jordan Funk (Principal Discovery Intermediate School) on October 2, 2023: Jess Herbig (Special Education Director, Goddard Special Education Cooperative) on October 2, 2023; the parent on October 3, 2023. Mike Gibson (Special Education Teacher, Discovery Intermediate School) on October 2, 2023 and the parent on October 3, 2023. A person recommended by the parent responded to a question by email but declined to be interviewed.

In addition to the interviews listed above, the following documentation and information were used in consideration of the issue(s):

1. Messenger exchange between the parent and Stephanie Brown-Miller (former district employee) dated February 17, 2023 at 12:46 to 1:00 p.m.
2. Folder "Records given to [student initials] parent" containing 73 student special education school records dated from February 24, 2017 to May 15, 2023

3. Letter and Formal Complaint 23FC265-001 from Brian Dempsey (Assistant Director Special Education and Title Services, KSDE) to the parents, Jess Herbig (Special Education Director, Goddard Special Education Cooperative) dated March 20, 2023.
4. Letter from Jess Herbig to Brian Dempsey co-signed by the parents dated March 22, 2023.
5. Email from Jordan Funk to father dated March 24, 2023 at 10:18 a.m.
6. Email from Jordan Funk to Jess Herbig, dated March 24, 2023 at 10:21 a.m.
7. Email exchange between the parent, Tiffany Spradling (Administrative Assistant Discovery Intermediate School) and Jordan Funk (Principal Discovery Intermediate School) with entries beginning March 29, 2023 at 10:17 a.m. and ending March 29, 2023 at 4:11 p.m.
8. Personal notes of staff interviews, dated March 29, 2023; April 18, 2023; and May 3, 2023.
9. Slideshow "Discovery PD Covering FERPA and Confidential" and professional development agenda dated April 10, 2023
10. The student's IEP dated April 25, 2023 and amended on May 15, 2023
11. Email exchange between the parent and Tiffany Spradling dated July 27, 2023 at 12:16. and 12:58 p.m.
12. Authorization from St. Mark's School to release records sent to the district and signed by the parent on July 31, 2023
13. Slideshow "Welcome Back District Orientation Goddard Public Schools" dated August 11, 2023
14. Email exchange between the parent, Jess Herbig and Melissa Owen (Records Clerk) dated August 11, 2023 at 3:38 p.m. through August 11, 2023 at 3:55 p.m.
15. Email from the parent and Melissa Owen dated August 11, 2023 at 4:42
16. The parent's request to the Goddard Special Education Cooperative for student records dated August 11, 2023
17. Email exchange between Melissa Owen and the parent dated August 21, 2023 at 8:45 a.m. and 8:54 a.m.
18. Email exchange between Melissa Owen and the parent dated August 25, 2023 at 8:18 a.m. to 8:38 a.m.
19. Email from the parent to Jess Herbig and Melissa Owen dated August 27, 2023 at 11:26 a.m. and Jess Herbig's reply to the parent dated August 28, 2023 at 8:21 a.m.
20. Email from Goddard Human Resources Department to employees entitled Required Employment Videos Frontline dated September 4, 2023
21. Screenshot of FERPA-HIPPA training provided to staff, undated
22. Goddard School District Student Privacy Policy undated
23. The district's response to the allegations dated September 28, 2023

Background Information

The student attended USD #265 from fall, 2017 through spring, 2023 and has since moved out of the district. The student is an 11-year-old boy who has been in special education since early childhood, first in noncategorical special education with a secondary speech language disability in another state. During the 2022-23 school year, he was identified as a student with autism and speech language disorder, and the effect of his disability was described as "social affective stereotypic behavior with accompanying cognitive disabilities that cause him to have difficulty functionally acquiring and socially appropriately using grade-level concepts within text, reading, and ELA content within the large general education curriculum setting without environmental/instructional support and adult assistance with cueing." His IEP included speech language therapy, special education support in general education science, social studies, field trip, music classes and physical education (partial), with special education classroom services in ELA and math. His goals targeted speech, oral reading with retelling, oral reading fluency, reading comprehension, writing, solving word problems in math, and social interaction.

Issues Investigated

Issue One: The USD #265 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to safeguard confidential information, specifically that the teacher shared confidential information regarding the student to persons who were not on the student's team. (Page 4)

Issue Two: The USD #265 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent access to documents, specifically the testing and progress monitoring documents following a parental request for all school records. (Page 6)

Issue One

> The USD #265 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to safeguard confidential information, specifically that the teacher shared confidential information regarding the student to persons who were not on the student's team.

Applicable Law

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 party, other than officials of the public agency with a right to know. Further, all persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures on safeguards (34 C.F.R. 300.623(c)).

Federal regulations implementing IDEA at 34 C.F.R. 300.32 state that the term "personally identifiable information" (PII) means information that contains the name of the child, the child's parent, or other family member; the address of the child; a personal identifier, such as the child's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. A student's disability status and any information about a student's IEP services would fall under the definition of PII.

Analysis: Findings Of Fact

The complainant alleged that during the 2022-23 school year, the student's special education teacher sought to change the child's placement to a different special education classroom. In doing so, the complainant alleged that the teacher spoke with several members of the school staff who were not on the student's team. The complainant also alleged that the teacher informed other members of the school staff that the parent filed a formal complaint as well as the substance of the complaint. The parent named teachers and paraeducators who spoke with her at the time regarding the teacher's efforts to move the student's classroom. In August, 2023, in a conversation with a paraeducator formerly at the student's school, the parent was allegedly informed that the student's teacher disclosed confidential information in an effort to have the student's placement altered during the 2022-23 school year.

The district responded that the district had investigated the substance of the parent's prior formal complaint, offering a resolution that was accepted by the parent in this matter. The resolution was filed with the KSDE and the complaint was withdrawn. The district also responded that its investigation found only the parent disclosed information about the formal complaint improperly when she spoke of it within earshot of other children. The district responded that the principal moved the student out of the teacher's classroom at the parent's request and held professional development on confidentiality with all building staff.

Findings of the investigation, based on interviews and documents reviewed are:

- The parent filed a formal complaint with KSDE-SETS which was later withdrawn after reaching a resolution with the district, as documented in a letter co-signed by the parents and the district and sent to KSDE-SETS, dated March 22, 2023. To resolve the complaint with the parent, the district agreed to change the student's special education teacher and classified staff for the remainder of the 2022-23 school year, to hold professional development on confidentiality for the school building, and to meet about confidentiality with staff listed in the complaint. The district reported and provided documentation that the schedule change and professional development was completed. The district reported that one-to-one meetings were held with relevant staff and provided personal notes of each meeting.
- The district reported and provided documentation that during the spring, 2023 semester four staff persons were interviewed regarding failure to safeguard

confidentiality. The district reported and provided personal interview notes to show that the interviews did not find evidence of confidentiality violations that occurred during the 2022-23 school year.

- The parent reported that a paraeducator said that one of the individuals who were interviewed by the district stated their awareness of the issue in the complaint. The district reported that this was countered by direct interview with that person.
- The parent reported that another teacher in the building spoke with her regarding the allegations of confidentiality violations in the building. During an interview with the complaint investigator, the teacher stated that they had no recollection of the discussions related to the complaint.
- The district reported that when a teacher has a concern about a special education student in the building, it is policy and practice that the case would be brought before the Child Study Team. In this case, the student's case was reviewed by the Child Study Team, and the district reported and provided that Child Study Team's report to the parent on April 6, 2023. The parent affirmed that she received it.
- The parent reported that in August, 2023 a person formerly employed as a special education paraeducator in the student's school informed the parent that the violations of confidentiality which had been investigated by the district in the 2022-23 school year had occurred. This person, when contacted by the complaint investigator, reported no knowledge of the issue and declined to be interviewed further.

In this case, there is no available evidence to support that the violations of the student's confidentiality alleged by the complainant occurred during the 2022-23. The district reached a resolution agreement with the parent on March 22, 2023 which led the parent to withdraw the prior complaint without an investigation by KSDE-SETS. The district showed that it conducted an internal investigation that found no evidence of confidentiality violations. The district provided professional development on FERPA and confidentiality for the school staff April 10, 2023, which was in addition to the regular yearly training required of staff members in the district. The district changed the student's schedule at the parent's request so that the student could receive special education services from staff persons not involved in the parent's concerns regarding confidentiality. The district reported that the child study team process was used to provide problem solving and support to the student's team during the 2022-23 school year, and that the parent was provided a copy of the child study team report.

Conclusion

Based on the foregoing, it *is not substantiated* that USD#265 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to safeguard confidential information, specifically that the teacher shared confidential information regarding the student to persons who were not on the student's team.

Issue Two

The USD #265 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent access to documents, specifically the testing and progress monitoring documents following a parental request for all school records.

Applicable Law

Federal statutes and regulations at 34 C.F.R. 300.613 and state regulations at 91-40-50(b) state that the district must permit parents to inspect and review any educational records related to the student that are collected, maintained, or used by the district under Part B of IDEA and state law. This includes the parent's right to request copies of the records and the district's obligation to respond without unnecessary delay, in no case more than 45 days.

Analysis: Findings Of Fact

The complainant alleged in the written complaint that she requested all of the student's school records from the district and that she had not received all of them, specifically testing and progress report data. The complainant alleged that she received only the IEPs from the district. The complainant alleged that the student's K-2 records were not made available to her from the student's school of attendance during that period of time.

The district responded that the parent requested the student's records from the student's school on July 27, 2023 and that these were provided on that same day. The district responded that the parent requested the student's records to the district office and the special education department on August 11, 2023 and the records were copied and provided to the parent on August 25, 2023, 14 days after the parent's request. Following that, the district reported that the parent reported that she wanted all the students' records and that the package provided only included IEPs but not all the student's testing, grades, and other information. The district responded that they directed the parent to the school buildings for records other than those held by special education. In each instance of the parent's request for records, the district personnel invited the parent to contact them if further assistance was needed.

Findings of the investigation, based on interviews and documents reviewed are:

- The district reported that it provided the student's special education records from the beginning to ending of the student's attendance in the district, a total of 75 documents. The parent and the district agreed that the records were provided in hard copy and the parent picked them up at the district office on or around August 25, 2023.
- The investigator provided a list of these 75 documents to the parent, who confirmed she received 25 of them and that these records included current and past records

dating from 2017, the first year the student attended the district, to 2023 when the student left the district.

- The district reported and the parent agreed that she received the general education records from the student's elementary and intermediate school history, grades 3-5.
- The parent reported that she did not receive the student's general education records from the building that the student attended during K-2.

In this case, it is found that the district received a request for the student's special education records and that it provided records to the parent within 14 days of the parent's request. The parent confirmed receipt of records, which she categorized as "only IEPs" but upon further examination also included other documents related to the student's special education in the district. However, the parent did not confirm that she received each of the records that the district reported to provide. While it cannot be completely confirmed by the investigator, it is likely that the parent received some but not all the documents on the district's list of the student's special education records. It is noted that the district intended to provide all the documents to the parent and that the administration believed it had done so. It is further noted that, prior to the complaint, the district personnel offered to assist the parent to receive any documents that she believed were missing.

The parent's request for the student's K-2 grades and other records held by the general education administration is outside the authority of this IDEA complaint investigation.

Conclusion

Based on the foregoing, it *is substantiated* that USD #265 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent access to documents following a parental request for all school records.

Summary Of Conclusions/Corrective Action

Issue One: A violation of 34 C.F.R. 300.622 was not found, based on the previously stated facts. Corrective action is not required.

Issue Two: A violation of 34 C.F.R. 300.613 was found, based on previously stated facts. Corrective action is required.

CORRECTIVE ACTION:

a. Within 21 days of this report, USD #265 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. 300.613.
b. Within 21 days of this report, USD #265 shall provide to the parent a hard copy of each of the Part B IDEA documents listed as evidence in this complaint investigation.
c. CORRECTIVE ACTIONS: Due by October 30, 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).

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. 265
Goddard Public Schools: 24FC265-001

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on September 11, 2024, by -----, on behalf of her child, -----. In the remainder of the decision, ----- will be referred to as "the parent", and ----- will be referred to as "the student". An investigation of the complaint was undertaken by complaint investigator, Gwen Beegle, 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 October 9, 2024. That Complaint Report concluded that there was a violation of special education laws 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 parent's appeal and supporting documents, the original complaint filed by the parent, the complaint report, and the district's response 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.

Parents' Appeal

The parent argues the following two issues in the appeal:

First, the parent argues that there is no evidence to support the investigator's finding that the district did not violate state and federal special education laws by sharing the student's confidential information with persons who were not on the student's team.

Second, the parent argues that the student was denied access to homework when the student failed to complete work in class and the teacher wrote "refused" on [an assignment] instead of sending it home for homework". The parent further argues that there is not a "school policy stating that the administration can pick and choose who can have homework or not."

In this case, the parent presents an argument about the school's failure to provide homework. Unless homework is specifically addressed in a student's IEP, whether a student is given homework is a local control issue and would not fall under the jurisdiction of this Committee. In this case, there is no indication that the issue argued by the parent has any connection to the student's IEP. Regardless, even if homework was addressed in the student's IEP, the original complaint does not address this issue, and therefore the Appeal Committee will not address it now.

The following issue in this complaint has been addressed by the Appeal Committee:

Issue

> USD #265, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to safeguard confidential information, specifically that the teacher shared confidential information regarding the student to persons who were not on the student's team.

In the appeal, the parent argues "there is no evidence in regard to Sherry Poe sharing information", and offers a screenshot of a social networking site's message board, dated February 17 (year unknown), in which the parent asks a former district employee if she (the former employee), "ever ask(ed) the Mixed abilities teachers if Sherry is trying to push [the student] into their class." In response the former employee stated, "She (person unknown) said they were, and she doesn't think [the student] belongs there either." Finally, the parent argues that in the report, the investigator found the parent had shared information with others, not Sherry Poe, which the parent claims is "not true".

In the report, the investigator lists the social media message exchange between the former district employee and the parent as part of the evidence reviewed and notes that attempts to interview the former employee were unsuccessful, except that the former employee did report "no knowledge of the issue".

In response to the appeal, the district provided documentation indicating that even before the original complaint was investigated, the district had instituted corrective action that 1) ensured all staff at the student's school were trained on confidentiality and FERPA issues, 2) conducted a

formal investigation of all staff members alleged to have violated the student's right to confidentiality, and 3) conducted one-on-one meetings with staff members the parent alleged had violated confidentiality laws.

Documents, submitted by the district, include notes from the one-on-one meetings. In those documents, dated April 26th, the district recorded comments from the student's 5th grade teacher and homeroom teacher pertaining to conversations between themselves and Sherry Poe. The documents indicate that neither teacher had conversations regarding the student in front of other students or with other teachers. The homeroom teacher, who is a member of the student's IEP team, did indicate that she had conversations with Ms. Poe (also a member of the student's IEP team), behind closed doors, regarding data pertaining to the student and what could be done to "help with [the student's] needs." The Committee notes that this is not a violation of confidentiality, but rather team members discussing the needs of the student based on the student's IEP. Ultimately, the district claims to have found no violation of confidentiality laws during its formal investigation. This finding was confirmed by the investigator, who noted in the complaint report that there was "no available evidence to support that the violations of the student's confidentially alleged by the complainant occurred during 2022-23."

The district claims to have also taken steps to move the student to a different special education classroom and ensure all classified staff, who were working with the student prior to the formal complaint, were not the same individuals working with the student moving forward. Conversations with the investigator and the district confirmed that the district changed the student's schedule (not IEP) to avoid the specific teacher the parent felt was talking to others in the building.

Regarding the homework issue, the district acknowledged the parents' complaint but stated that it was dealt with at the building level. As stated above, local policy dictates homework procedures unless a student's IEP specifically addresses the issue. In this case, the Committee finds that the IEP does not contain any provision related to homework.

Under 34 C.F.R. 300.622, parental consent must be obtained before personally identifiable information is disclose to any party, other than officials of the public agency with a right to know. In this situation, the parent argues that Ms. Poe was attempting to move the student out of the Mixed abilities class, and in doing so shared the student's confidential information. However, the only evidence presented by the parent to confirm this conclusion is a screenshot of a social media message between the parent and a former employee. When the investigator asked the former employee, the former employee's response was that she had "no knowledge" of the issue. Furthermore, the only conversations that the Committee did find evidence of, occurred behind closed doors and between members of the students IEP team.

Therefore, due to the lack of evidence to show that the district violated confidentiality laws, the Appeal Committee affirms the complaint investigators' finding that the district did not violate state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by

failing to safeguard confidential information, specifically that the teacher shared confidential information regarding the student to persons who were not on the student's team.

Conclusion

The Appeal Committee *affirms the investigator's finding* of no violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to safeguard confidential information, specifically that the teacher shared confidential information regarding the student to persons who were not on the student's team. No corrective action required.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 9TH day of November 2024.

Appeal Committee

Brian Dempsey: Assistant Director of Early Childhood, Special Education and Title Services,

Ashley Niedzwiecki: Attorney, Special Education and Title Services,

Dr. Crista Grimwood: Dispute Resolution Coordinator

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #475
ON SEPTEMBER 1, 2023

DATE OF REPORT OCTOBER 8, 2023

This report is in response to a Department of Labor complaint filed with the Kansas Department of Labor Industrial Safety and Health Division which was forwarded to the Kansas State Department of Education about a Behavior Support Classroom (BSC) at Spring Vallely Elementary in USD #475. In the remainder of the report, each student in the classroom will be provided an alphabetical assignment and referred to as "student A, student B, etc." ----------, a former employee in the classroom and district is the complainant and will be referred to as "the complainant."

The complaint is against USD #475. In the remainder of the report, USD #475 will be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint from the Kansas Department of Labor Industrial Safety and Health Division on September 1, 2023 and the 30-day timeline ends on October 1, 2023. The Complaint Investigator later requested and was granted a one-week extension with the timeline ending October 8, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham reviewed documentation provided by the district and interviewed district staff. Six attempts were made to clarify issues and gather information from the complainant via email, phone, and text, however the complainant did not respond. The Complaint Investigator additionally emailed all the parents in the classroom informing the parents of a complaint. The following documentation and information were used in consideration of the issue(s):

1. Individualized Education Plan Student A
2. Individualized Education Plan Student B
3. Individualized Education Plan Student C
4. Individualized Education Plan Student D
5. Individualized Education Plan Student E
6. The Wildcat Way Information Guide 2023-24, Revised August 1, 2023
7. USD 475 Paraeducators Presentation dated August 6, 2023

8. Email from Principal to complainant dated August 9, 2023 at 10:34 PM.
9. Email exchange between Complainant and Sierra Jackson, Principal, Spring Valley Elementary dated August 14, 2023 between 4:26 PM and 6:53 PM.
10. Badge Reader Adjustment Slip for Complainant dated August 17, 2023
11. U.S. Department Labor Complaint/Apparent Violation Form dated August 18, 2023.
12. District Response dated September 13, 2023
13. 2023-2024 Geary County USD 475 Classified Employee Handbook Effective: 01 July 2022
14. Memo from Tim Winter, Executive Director of Personnel Services to Building Principals/Supervisors dated June 2023 regarding Classified Employees Work Schedule for 2023-2024 School Year
15. Classified New Employee in Processing Dates for the 2023-2024 School Year
16. Paraeducators assigned to Spring Valley Elementary document, undated.
17. Spring Valley Teacher Handbook, excerpted, for Complaint Issues
18. Structured Teaching Daily Schedule (Teacher, Paraeducator, Students)
19. Spring Valley Bus/Van Procedures
20. Spring Valley Elementary Staff Information 2023-2024
21. Sample Student Visual Schedule

Background Information

This complaint was made by a former employee who was employed for 4 full days and two half days this school year. Because the complainant did not make herself available to clarify the issues the complaint investigator determined to focus the investigation on the classroom and students to which the former employee had been assigned. Further, the complaint was generally focused on school routines and general student treatment. As such, the complaint investigator made the following decisions to conduct and investigate the IDEA allegations.

1. Interview school staff and examine documents about district, school, and classroom practices to determine if they were consistent related to student arrivals, breakfast, breaks, and reading instruction in the classroom.
2. Examine documents about staff training and staff assignments to determine if the practices were consistent.
3. Examine student IEPs to determine if the schedules and practices were consistent.
4. Contact parents of students in the classroom to inquire if they had any information to provide about the investigation.

The classroom included five first and second grade students enrolled in a multi-age classroom for behavior. It was staffed by a teacher who has been in her current position for four years but a teacher for seven years. Two paraeducators were assigned to this classroom, however additional staff coverage was available during bus departure and supervision in the hallways

during transitions. The teacher reported that she models her classroom on the principles and practices of Project TEACCH™ from University of North Carolina. She stated she was trained in the principles of Applied Behavior Analysis and is completing training as a Board Certified Behavior Analyst.

Issues Investigated

1. ISSUE ONE: USD #475, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the special education and related services for students who were assigned to classrooms where the complainant worked during the 2023-2024 school year, specifically students were denied breakfast or breaks until compliance or daily tasks were completed, students faced the wall a good portion of the school day with no instruction, students were engaged in silent reading without accessible reading materials, and students were not supervised when disembarking the bus in the morning to classrooms.
2. ISSUE TWO: USD #475, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to adequately train paraeducators regarding their duties and did not provide relevant health information regarding the students assigned to classrooms where the complainant worked during the 2023-2024 school year.
3. ISSUE THREE: USD #475, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), allowed paraeducators to provide direct instruction to students without teacher supervision during the 2023-24 school year.

Issue One

USD #475, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the special education and related services for students who were assigned to classrooms where the complainant worked during the 2023-2024 school year, specifically students were denied breakfast or breaks until compliance or daily tasks were completed, students faced the wall a good portion of the school day with no instruction, students were engaged in silent reading without accessible reading materials, and students were not supervised when disembarking the bus in the morning to classrooms.

Applicable Law

Federal regulations 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.

Kansas State regulations at K.A.R. 91-40-16(b)(2) requires those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

Breakfast delayed or denied until compliance or tasks completed. The classroom teacher stated that students may eat breakfast at school prior to instruction. The Spring Valley Information Guide dated 2023-2024 describes the Breakfast Program as follows:

> Breakfast is served daily. Students eating breakfast should use the main entrance, door #19, near the flagpole, not through their grade level entrance. As outlined in the Geary County Elementary Schools Family Handbook, "children will eat the school breakfast if they come through the line. They cannot bring an outside breakfast to eat." The breakfast program is scheduled from 7:45 to 8:00. If your child is late to breakfast they will not be able to eat at that time. Spring Valley offers a Second Chance Breakfast for students who did not arrive on time for breakfast at school. They will have the opportunity to purchase a breakfast on a schedule 8:45- 9:15 and take it to their class. Please notify the office if you would not like your child to participate in Second Chance Breakfast.

Interview with the teacher found that her students participated in this program although they ate in the classroom rather than the lunchroom to avoid the overstimulating cafeteria. She reported that the routine was that once students got off the bus or were dropped off by parents, they were escorted to their classroom to drop their belongings. The students then were escorted to the cafeteria in a group of 2 or individually depending on their para assignment to pick up their breakfast tray and return to their classroom for breakfast. Students were assigned in groups of 1 – 2 to a para or teacher for the day and the staff person was the person responsible for accompanying the student to and from the lunchroom and then supervised the students while eating. Students ate at a large table in the classroom and once they finished, they began their morning schedule. The student visual schedules showed breakfast was the first activity of the day. The teacher reported that breakfast was not delayed in the morning because the lunch trays needed to be returned to the cafeteria and the large table needed to be cleared so the daily schedule could start.

Breaks delayed or denied until compliance or tasks completed. The teacher reported that students were individually assigned breaks throughout the school day based on the student's individual needs and IEPs. She reported that she met on Tuesdays to review individual student programs to ensure all staff were working with the students in a consistent manner and implementing the IEPs. In reviewing the individual student IEPs, it was found that Students A had an accommodation for multiple or frequent breaks and a goal to learn to request a break. Student B had a Behavior Intervention Plan listing non contingent breaks for direct attention.

Student C had scheduled breaks or choice times for 5-10 minutes as an accommodation and in the Behavior Intervention Plan. Student D had a Behavior Intervention Plan that lists that the student should request a break and had scheduled movement breaks. Student E had movement breaks as an accommodation. The classroom teacher denied that student breaks were contingent on compliance or completing tasks.

Students faced walls for extended periods of time. The teacher reported that some student's workstation may be placed face toward the wall if they needed to be oriented away from distractions, but students have individual or small group instruction provided throughout the day or brain breaks according to individual student schedules. She reported that students' work activities were no longer than 15 minutes, but students seldom worked that long before taking a brain or movement break. The staff person assigned to the student made that decision based on observation and guidance from the teacher.

Students engaged in silent reading without accessible reading materials. The teacher stated that all students were engaged in reading activities based on their grade level. Students were in groups of two or individual based on para and teacher assignments. Student visual schedules showed short periods of instruction. Four students in the classroom had an individual IEP goals for reading and only one student had an accommodation for augmenting prereading activities with manipulatives as below:

	Student A	Student B	Student C	Student D	Student E
Reading Goal	Using manipulatives or visual cues student will state the primary sound of a consonant or vowel	None testing found student reading exceeded grade level	Share knowledge of 2nd grade reading passage or higher using variety of strategies (orally, drawing, diorama, retell, etc.)	Understanding of spoken words, syllables, and phonemes, produce single-syllable words by blending sounds, isolate and pronounce initial, medial vowel and final sounds and increase phonemic awareness by blending single phonemes of words with up to 5 phonemes	Prereading goals
Accessible Reading accommodation	None	None	None	None	Hand on activities with manipulatives

Bus Supervision when disembarking the bus in the morning to classrooms. Spring Valley Bus/Van Procedures for 2023-2024 documented that students riding the general education buses (Students B, C, and E) would be met at the bus by staff. Students would enter through the gym entrance door (#13) and sit in the gym on their assigned spots until all students entered the building. Breakfast students would walk up the gym ramp and non-breakfast students would walk up the hall ramp to class at 7:45. Students riding special transportation buses (Students A and D) would be met at the bus and walked to the Behavior Support Classroom. No students had Supplementary Aids and Services and Other Supports for School Personnel in their IEPs. Finally, the Classroom teacher described that each morning the paras were assigned to meet specific students. If the student was dropped off the paras went to the parent drop off lane to meet the students. She stated the students were supervised from the time they got off the bus until they walk to the room first thing in the morning to drop off personal belongings.

Conclusion

Three parents (or their representative) responded to the Complaint Investigator notifying the parents of the complaint, but stated they did not have information to contribute to the issue. Based on the foregoing, it is *not substantiated* that USD #475 failed to implement the special education and related services for students who were assigned to classrooms where the complainant worked during the 2023-2024 school year.

Issue Two

USD #475, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to adequately train paraeducators regarding their duties and did not provide relevant health information regarding the students assigned to classrooms where the complainant worked during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.119 Technical assistance and training activities, states that each SEA must carry out activities to ensure that teachers and administrators in all public agencies.

(a) Are fully informed about their responsibilities for implementing 34 C.F.R. 300.114; and
(b) Are provided with technical assistance and training necessary to assist them in this effort.

Analysis: Findings of Fact

Documents showed that all paraeducators were provided training prior to students attending school. Documentation showed that the complainant attended training with the exception of

leaving August 17, 2023 at 2:30 PM. The PowerPoint used during the paraeducator training showed topics included:

- Know and understand your role as a paraeducator.
- Become more knowledgeable in the area of special education.
- State Required Information
- Special Education Basics
- De-escalation

Emails between the complainant and the school principal showed that the complainant's understanding of work hours and training with classroom teacher differed from what she was told on hiring.

Document review showed two students had health care plans. The health care plan for Student E listed a peanut and peanut butter allergy. A nurse is on staff and has an office at the school and was aware of the allergy. The teacher reported that each student had a file in a file drawer in the classroom with a divider to contain the Health Plan. During training the teacher pointed out where the student information was stored and how to locate student files.

The teacher reported that it was posted outside her classroom that her classroom was peanut free. The teacher reported that the principal sent a note to parents prior to the school year about peanut allergies and areas of the school designated peanut free.

The Spring Valley Information guide for parents stated, "No food or candy will be accepted from parents, this also includes student birthdays. However, non-food favors/trinkets are allowed. Teachers should not bring home-baked goods and should follow allergy guidelines."

The classroom teacher described the incident about hives in the complaint as the student had a raised bump that the student was scratching. The student was sent to the nurse who treated it according to district guidelines with a topical cream.

Conclusion

Three parents (or their representative) responded to the Complaint Investigator notifying the parents of the complaint, but stated they did not have information to contribute to the issue. Based on the foregoing, it is ***not substantiated*** that USD #475 failed to adequately train paraeducators regarding their duties and did not provide relevant health information regarding the students assigned to classrooms where the complaint worked during the 2023-2024 school year.

Issue Three

USD #475, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), allowed paraeducators to provide direct instruction to students without teacher supervision during the 2023-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.156(b)(1), Personnel Qualifications, related services personnel and paraprofessionals states, The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that—

(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services.

The Special Education Reimbursement Guide State Categorical Aid for School Year 2023-24 outlines Paraeducator Duties as: Paraeducators provide instructional or related services under the supervision of licensed or certified special education professionals in an accredited or approved special education program. Examples of allowable activities include:

- instructional support under the supervision of a professional;
- participation in IEP meetings;
- parent-teacher conferences;
- staff development; and
- student data collection and record-keeping, such as maintaining observational and anecdotal records;
- assisting the special teacher with paperwork related to support provided to students with exceptionalities for whom the para is responsible;
- supporting students with exceptionalities in a general education program if the paraeducator is supervised by a special teacher.

Analysis: Findings of Fact

The PowerPoint, titled, Paraeducator Training 2023-2024 school year presented to the complainant prior to the start of the school year showed:

Paraprofessionals are school employees who can increase learning opportunities by:

- giving students opportunities to practice skills;
- providing students with more individualized instruction;
- Supporting Behavior Intervention Plans (BIP)
- All of this is done under the supervision of a licensed/certified professional.
- Another slide stated:

- Paraeducators provide instructional or related services under the supervision of licensed or certified special education professionals in an accredited or approved special education program.
- Paraeducators provide specially designed instruction (change in content, methodology, delivery of instruction) under the supervision of the case manager/special education teacher or service provider.

The classroom teacher stated she met with the staff on Tuesdays to go over student instruction and in the classroom reviewed her role and the para roles. The attendance sheets showed the complainant attended the trainings before working with students and one Tuesday (August 15m 2023) prior to resigning.

Attendance from the principal showed the complainant was with students in the afternoon of August 10, worked full days on August 11, 14, 15, 16 and the morning of August 17, 2023.

Conclusion

All parents (or their representative) responded to the Complaint Investigator notifying the parents of the complaint, but stated they did not have information to contribute to the issue. Three parents (or their representative) responded to the Complaint Investigator notifying the parents of the complaint, but stated they did not have information to contribute to the issue. Based on the foregoing, it is *not substantiated* that USD #475 allowed paraeducators to provide direct instruction to students without teacher supervision during the 2023-24 school year.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. 300.323(c)(2) and K.A.R. 91-40-16(b)(2) was not found, based on review of documentation and interview with district. Corrective action is not required.
2. ISSUE TWO: A violation of 34 C.F.R. 300.119 was not found, based on review of documentation and interview with district. Corrective action is not required.
3. ISSUE THREE: A violation of 34 C.F.R. 300.156(b)(1) and requirements outlined in the Kansas "Special Education Reimbursement Guide State Categorical Aid," were not found, based on review of documentation and interview with district. Corrective action is not required.

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).

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 #382
ON SEPTEMBER 7, 2023

DATE OF REPORT OCTOBER 7, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ---------- by his mother, ----------. In the remainder of the report ---------- will be referred to as "the student." ---------- will be referred to as "the complainant", "the mother", or "the parent".

The complaint is against USD #382 (Pratt Public Schools) which contracts with the South Central Kansas Special Education Cooperative (SCKSEC) to provide special education and related services to students with disabilities. In the remainder of the report, these two responsible public agencies will be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on September 7, 2023 and the 30-day timeline ends on October 7, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation, which was provided by both the district and the complainant. The following documentation and information were used in consideration of the issue(s):

1. Formal Complaint Request Form signed by the complainant on August 27, 2023
2. Response to the Allegations dated September 17, 2023 written by Dr. Meagan Etheridge, Director of SCKSEC
3. Response to the Allegations dated September 25, 2023 written by Dr. Etheridge
4. Psycho-Educational Reevaluation Report dated March 1, 2021
5. Individualized Education Program (IEP) for the student dated March 1, 2021
6. Manifestation Determination Review dated April 6, 2021
7. Manifestation Determination Review (MDR) Meeting Notes dated April 6, 2021
8. IEP dated March 1, 2021 and amended on April 6, 2021
9. Prior Written Notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent April 6, 2021 and signed by the parent on that same date

10. Developmental Evaluation completed by Wesley Pediatric Specialists on July 7, 2021
11. PWN dated August 24, 2021
12. IEP for the student dated February 23, 2022
13. PWN dated February 24, 2022
14. IEP for the student dated February 23, 2022 and amended on May 11, 2022
15. PWN dated May 11, 2022
16. IEP for the student dated December 9, 2022
17. PWN dated December 9, 2022
18. IEP Goal Progress Reports for the 2022-23 school year
19. Notes from Monthly Check-in Meetings dated between September 21, 2021 and April 12, 2023
20. IEP Team Meeting Notes dated August 8, 2023 recorded by school staff
21. PWN dated August 8, 2023
22. Notes from the parent meeting held on September 14, 2023 to discuss the child complaint concerns
23. Interview with Kayla Jones, the student's former special education teacher, on September 26, 2023
24. Interview with the complainant on September 28, 2023
25. Interview with Dr. Etheridge and Tony Helfrinch, Superintendent of USD #382, on September 29, 2023
26. Written response to Interview questions dated October 4, 2023 written by Dr. Etheridge

Background Information

The student is currently enrolled in the fourth grade in USD #382. He attends the Haskins Learning Center, a behavior day school, and receives special education and related services. The student was most recently reevaluated on March 1, 2021 and was found eligible for these services under the exceptionality category of Autism. It is noted that the student is currently being reevaluated with additional assessments.

The student began receiving early childhood special education services at age three in USD #382. He continued to receive special education services including paraeducator support when he transitioned to kindergarten at Southwest Elementary School during the 2019-20 school year. At the end of the first grade, the student was placed in a 45 day interim alternative educational setting (IAES) at Haskins Learning Center as a result of physical aggression towards a staff member.

On August 24, 2021, the district provided the parent with PWN to change the student's placement to the separate day school for the second grade and the parent signed consent for this change in services and placement. Both the parent and district staff reported that transitions back to Southwest Elementary School were attempted but these have not been

successful so the student primarily attended Haskins Learning Center during the second, third, and fourth grades where he has received specialized instruction, speech therapy, paraeducator support, counseling, occupational therapy and autism support services.

Issues Investigated

1. ISSUE ONE: USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide extended school year (ESY) services to the student during the past 12 months.
2. ISSUE TWO: USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to review and revise the student's IEP in response to bullying during the past 12 months.
3. ISSUE THREE: USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate disciplinary procedures during the past 12 months.
4. ISSUE FOUR: USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide ABA therapy and one-to-one paraprofessional support to the student during the past 12 months.
5. ISSUE FIVE: USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by not providing homework on Fridays during the 23-24 school year.

Issue One

USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide extended school year (ESY) services to the student during the past 12 months.

Applicable Law

Federal regulations at 34 C.F.R. 300.106 requires that each public agency must ensure that extended school year services (ESY) are available as necessary to provide a free appropriate public education (FAPE). ESY services must be provided only if the student's IEP determines, on an individual basis, that the services are necessary for the provision of FAPE to the child. ESY services cannot be limited to particular categories of disability or limit the type, amount, or duration of those services. ESY services must be provided to the student beyond the normal school year of the public agency, in accordance with the student's IEP, and at no cost to the parents of the student.

Johnson v. Independent School District No. 4 of Bixby, 921 F.2d 1022 (10th Cir. 1990) directs schools districts to first consider "whether the benefits accrued to the child during the regular school year will be significantly jeopardized if [the child] is not provided an educational program during the summer months. . . . The analysis of whether the child's level of

achievement would be jeopardized by a summer break in his or her structured educational programming should proceed by applying not only retrospective data, such as past regression and rate of recoupment, but also should include predictive data, based on the opinion of professionals in consultation with the child's parents as well as circumstantial considerations of the child's individual situation at home and in his or her neighborhood and community." Kansas is within the 10th Circuit and is bound by the decisions of the 10th Circuit Court of Appeals.

In Chapter 5, Section F: Extended School Year / Day Services, the Kansas Special Education Process Handbook states that IEP teams cannot just stop after a regression-recoupment analysis. IEP teams must also consider:

1. The degree of impairment,
2. The degree of regression suffered by the child,
3. The recovery time from this regression,
4. The ability of the child's parents to provide the educational structure at home,
5. The child's rate of progress,
6. The child's behavioral and physical problems,
7. The availability of alternative resources,
8. The ability of the child to interact with [nondisabled] children,
9. The areas of the child's curriculum which need continuous attention,
10. The child's vocational needs, and
11. Whether the requested services are extraordinary for the child's condition, as opposed to an integral part of a program for those with the child's condition.

Federal regulations at 34 C.F.R. 300.503(a) requires school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, educational placement, or the provision of FAPE to the student.

Analysis: Findings of Fact

The parent alleges that USD #382 failed to consider the provision of extended school year services to the student during the summer of 2023. She indicated that she has requested ESY services on multiple occasions and the district has always refused to provide these services because the student does not show regression over periods when special education and related services are not provided.

The district acknowledged that the student has never been eligible for ESY services during his school career because IEP goal data shows the student does not show significant regression / recoupment of skills during school breaks when special education and related services are not provided.

Dr. Etheridge reported that the team reviewed regression/recoupment data at the annual IEP team meeting held on December 9, 2022 to consider the need for ESY services. She indicated

that the team, including the parent, agreed that the student does not show significant regression and require significant time to recoup learning loss over periods of school breaks and does not need ESY services.

The December 9, 2022 IEP documents that ESY services were discussed at the IEP team meeting and a determination was made that there were no predictive or circumstantial factors considered by the IEP team that would indicate a need for ESY services. The PWN dated December 9, 2022 does not address ESY services. Dr. Etheridge indicated that was because the parent and the team were in agreement that ESY services were not necessary to provide FAPE to the student.

The parent acknowledged that ESY services were discussed at this IEP team meeting but indicated she was not in agreement. Kayla Jones, the student's third grade special education teacher at Haskins Learning Center, reported that she spoke to the school psychologist, Todd Blackwell, and Haskins school principal, Laurie Harwood, regarding the need to reconsider ESY services for the student. However, she was told by Mr. Blackwell that the student's data did not show any concerns with significant regression/recoupment of skills. Ms. Jones stated that she spoke to the parent in April 2023 about the possibility of conducting another IEP team meeting to discuss ESY services but the parent did not request such a meeting be held.

Another IEP team meeting was held on August 8, 2023 to review and revise the student's IEP, if necessary, prior to the start of fourth grade during the 2023-24 school year. At that meeting, the parent questioned why the student was not provided with ESY services even though he is behind his peers academically. The PWN dated August 8, 2023 states, "Extended School Year services was not an option due to lack of data showing that he qualifies for this service".

Conclusion

Based on the foregoing, it is not substantiated that USD #382 failed to provide extended school year (ESY) services to the student during the past 12 months because interviews and documentation show the student's IEP team discussed and considered ESY services for the student at the December 9, 2022 and August 8, 2023 IEP team meetings based on both regression/recoupment data and a determination that "there were no predictive or circumstantial factors considered by the IEP team that would indicate a need for ESY services".

USD #382 provided PWN following both IEP team meetings and the PWN dated August 8, 2023 specifically addresses ESY services. However, ESY services were not addressed in the December 9, 2022 PWN because district staff were under the impression that the parent was in agreement with the determination that the student was not eligible for such services. IDEA requires that parents be provided with PWN prior to the refusal of services necessary for the provision of FAPE.

Based on the foregoing, a finding of noncompliance ***is substantiated*** against USD #382 for failing to provide the parent with appropriate PWN refusing to provide ESY services during the

2022-23 school year. Failure to provide this notice resulted in the parent being unaware of her due process rights if she was in disagreement with the district's offer of FAPE.

Issue Two

USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to review and revise the student's IEP in response to bullying during the past 12 months.

Applicable Law

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 past twelve months.

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.

Any acts of bullying which were impacting the student's progress towards his IEP goals would certainly be a reason for the IEP team to meet again to review the student's IEP and to revise, if necessary.

Analysis: Findings of Fact

The findings of Issue One are incorporated herein by reference.

The parent reported that she believes that the student was bullied in the special education classroom at Haskins Learning Center during the past 12 months. She indicated that she had spoken to the special education teacher on multiple occasions regarding inappropriate behavior in the school setting and believed these instances were as a result of some type of bullying from the student's peers.

The student's third grade special education teacher, Kayla Jones, reported there were six students assigned to her classroom during the 2022 school year. Between October and February, the student was targeted by one particular peer and, in these situations, the plan was to move the student to another special education classroom within Haskins Learning Center for safety reasons. Dr. Etheridge, the Director of the SCKSEC, stated that this was considered a temporary change in the student's classroom assignment but that all special education and related services continued to be provided as required by the student's IEP.

Ms. Jones also reported that between February and May another peer refused to play with the student and repeatedly told him that they could not be friends. She indicated this hurt the student's feelings and caused him to become dysregulated and display inappropriate

behaviors. The plan was for the student to move to the sensory room in order to use strategies and tools to become regulated and rejoin the class. Dr. Etheridge noted the student has goals on his IEP for behavior and a Behavior Intervention Plan to address behavior in the school setting which include use of strategies and sensory tools.

The IEP in effect beginning on September 7, 2022 was dated February 23, 2022 and amended on May 11, 2022. This IEP included five goals related to reading, speech, math, and two behavioral goals as noted below:

When given individual and/or small group instruction with the Social Worker in regards to self-awareness and self-regulation, the student will accurately identify his body state and appropriate regulation strategies in 3 out of 4 opportunities given, by the end of the IEP year.

By the end of the IEP year, the student will be able to advocate for himself when he is overwhelmed, by asking for a break 80% of the time on 4 out of 5 trials.

The current IEP is dated December 9, 2022 and includes six goals related to reading, math, and speech as well as the following behavioral goal:

By the end of the IEP year, when frustrated, the student will communicate his needs prior to escalation 90% of the time in three out of four trials.

Both IEPs in effect during the 2022-23 school year also included three accommodations/modifications related to behavior management. First, the student may have access to sensory tools as needed; second, the student is allowed to leave the classroom in order to de-escalate; and third, the student will be assigned to a separate, quiet location so that the student will know where to go in any crisis situation.

IEP goal progress reports for the 2022-23 school year show the student made progress towards meeting the majority of his academic and social / behavioral goals during most reporting periods.

Documentation shows the student's team from Haskins Learning Center and Southwest Elementary School met about once a month to review the student's progress beginning with his placement at the Haskins Learning Center on April 6, 2021. Notes from these meetings held during the 2022-23 school year reflect the student generally being successful in this placement.

Conclusion

Based on the foregoing, it is ***not substantiated*** that USD #382 failed to review and revise the IEP, as necessary, in response to lack of progress towards his IEP goals caused by reports of bullying during the 2022-23 school year.

Issue Three

USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate disciplinary procedures during the past 12 months.

Applicable Law

The IDEA at 34 C.F.R. 300.530 allows school officials to discipline students with disabilities for violations of the student code of conduct and requires that specific procedures are followed whenever a student with a disability is subject to a disciplinary change of placement.

Federal regulations implementing the IDEA at 34 C.F.R. 300.536 states 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 and state regulations implementing the IDEA at 34 C.F.R. 300.153(c) and K.A.R. 91-40-51(b)(1) provide the Kansas Department of Education (KSDE) with the 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.

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.

Analysis: Findings of Fact

The parent acknowledged and the district confirmed that the student had not been removed from his current placement at Haskins Learning Center for violations of the student code of conduct during the past 12 months.

The parent's disciplinary concern stems from the student being removed from his first grade classroom to Haskins Learning Center at the end of the 2020-21 school year due to physical aggression. The parent is upset that the student has remained at the Haskins Learning Center

for almost three school years because of this disciplinary incident even though he was only supposed to be placed there for 45 school days.

USD #382 acknowledged the student displayed physical aggression towards a school staff member in April 2021 and was placed at the Haskins Learning Center as an interim alternative educational setting for 45 school days following a manifestation determination review (MDR) meeting held on April 6, 2021. The parent was provided with prior written notice of the 45 day interim alternative educational placement and provided written consent on April 6, 2021.

The parent was again provided with a PWN and gave written consent for a significant change of placement and material change in services on August 24, 2021. The PWN proposed the following action:

Due to the student's need of a more restrictive setting, the team considered returning the student to his general education school; however, it was decided to re-evaluate in 30 days. The 45th day of his placement is 09/01/21 and there will be a meeting on 10/12/2021 to re-evaluate with data collected by the resource teacher.

Dr. Etheridge reported the IEP team reviewed the classroom behavioral data and the July 7, 2021 developmental evaluation from Wesley Pediatric Specialists and determined that continued placement in the separate day school setting was the most appropriate for the students at that time. However, Dr. Etheridge acknowledged that no documentation of that review and determination by the IEP team could be located and was not provided.

An IEP team meeting was held on February 23, 2022 with the parent in attendance. A PWN was provided to the parent on February 24, 2022 proposing that the student begin to transition back to Southwest Elementary School from Haskins Learning Center. Documentation reflects that the parent provided written consent for this significant change of placement on March 3, 2022.

Another IEP team meeting was held on May 11, 2022 to review and revise the February 23, 2022 IEP with the parent in attendance. USD #382 provided the parent with PWN proposing to end the transition back to the general education setting and to return to the Haskins Learning Center for educational services. The PWN stated the reason for this action was "Removal of his transition to Southwest was proposed due to dysregulation. The team agreed that pausing his transition would be best for his success". The parent provided written consent for this significant change of placement on May 12, 2022.

Conclusion

In this case, it appears that USD #382 met with parents multiple times regarding the end of the 45 day interim alternative educational placement on September 1, 2021. The district proposed and the parent consented to a reevaluation based on continued services being provided at the Haskins Learning Center on August 24, 2021. This reevaluation was to be reviewed and a

determination of services and placement was to occur by October 12, 2021; however, USD #382 was unable to locate any documentation of the meeting being held.

The IEP team, including the parent, met on February 23, 2022 to review and revise the student's IEP to start transitioning him back to the general education setting. The parent provided written consent to begin a transition back to Southwest Elementary School on March 3, 2022. The February 23, 2022 IEP was amended on May 11, 2022 to end the transition and the parent gave written consent for this significant change of placement on May 12, 2022.

While the district failed to obtain written consent for continued placement at Haskins Learning Center in October 2021, this noncompliance occurred more than 12 months beyond the filing of the September 7, 2023 complaint with the KSDE.

However, subsequent PWNs proposing significant change of placements both transitioning the student back to Southwest Elementary School and then ending that transition were provided to the parent. Documentation shows the parent provided written consent for each of these proposed actions. Based on the foregoing, it is *not substantiated* that the district failed to obtain parent consent for the student's significant change of placements following the end of the 45 day interim alternative educational placement.

Issue Four

USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide ABA therapy and one-to-one paraprofessional support to the student during the past 12 months.

Applicable Law

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) requires 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.

Federal and state regulations implementing the IDEA at 34 C.F.R. 300.153(c) and K.A.R. 91-40-51(b)(1) provide the Kansas Department of Education (KSDE) with the 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.

Analysis: Findings of Fact

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

The parent reported that she requested the student receive applied behavioral analysis (ABA) therapy and even offered to privately pay for a 1-1 paraprofessional to work with the student at the IEP team meeting held in February 2022. She indicated the district refused to provide the ABA therapy and would not allow a privately paid paraprofessional to accompany the student to school for additional support. In this case, the alleged noncompliance occurred

more than 12 months before September 7, 2023 and will therefore not be investigated as there is no jurisdiction provided under the IDEA for such an investigation.

The IEPs in effect during the 2022-23 school dated February 23, 2022 and amended on May 11, 2022 as well as the and December 9, 2022 do not include ABA therapy. Both of these IEPs include "attendant care" during the lunch period but no other paraprofessional or paraeducator minutes are required. USD #382 staff confirmed the student receives extra support during the lunch period.

The IEP team meeting notes from the past 12 months dated December 9, 2022 and August 8, 2023 do not reflect the parent requesting nor the IEP team discussing ABA therapy or a privately paid paraprofessional.

Conclusion

Based on the foregoing, it is ***not substantiated*** that USD #382 failed to implement the student's IEP, specifically regarding the provision of ABA therapy and a 1-1 paraprofessional as these services are not required by the two IEPs which have been in effect during the past 12 months.

Issue Five

USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by not providing homework on Fridays during the 23-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) requires 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.

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) requires 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 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.

Analysis: Findings of Fact

The parent reported the district went to a four-day school week during the 2023-24 school year and that no special education and related services are provided to any students on Fridays. The parent indicated that she is concerned that the student will fall even further behind academically with no school on Fridays so she requested the district provide homework for the student to complete on Fridays.

The district acknowledged that the 2023-24 school calendar for USD #382 uses a four-day school week model with no specialized instruction or related services being provided on Fridays each week. The director of the SCKSEC, Dr. Eldridge indicated the parent made the request for homework during the August 8, 2023 IEP team meeting because the student is reading three grade levels below his peers.

The PWN dated August 8, 2023 states that multiple concerns were discussed at the IEP meeting but that no changes were made to the student's IEP. The PWN states that the mother wants learning materials to use on days when school is not in session due to the 4-day school week and that the student's teacher will provide access to some learning materials.

The additional Friday work was discussed and clarified at the September 14, 2023 parent meeting which was held to discuss the child complaint filed by the parent. The notes from that meeting reflect that the parent "hated" the new schooling model and that she was again requesting additional work on Fridays to help him get him caught up. The district again agreed to send work home and agreed to grade that work / provide feedback when it was returned to school.

The mother acknowledged that USD #382 has been providing additional work that the student can complete on Fridays.

Conclusion

Based on the foregoing, it is ***not substantiated*** that USD #382 failed to implement federal regulations at 34 C.F.R. 300. 300.323(c)(2) because the student's IEP did not include a requirement regarding the provision of homework on Fridays during the 2023-24 school year.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of federal regulations at 34 C.F.R. 300.503(a) was found, based on the fact that USD #382 failed to provide the parent with prior written notice a reasonable time before they refused to change the provision of FAPE to the student by not providing ESY services following the December 9, 2022 IEP team meeting. Failure to provide this notice resulted in the parent being unaware of her due process rights if she was in disagreement with the district's offer of FAPE. Corrective action is required as follows:
    a. CORRECTIVE ACTION:
        i. USD #382 and the SCKSEC shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will provide appropriate prior written notice each time it refuses to change the provision of FAPE to a student.
            1. No later than November 7, 2023
        ii. ii. The SCKSEC will provide training to all special education staff and administrators at Haskins Learning Center regarding the requirement to provide PWN to parents whenever services are considered or refused that makes changes to the provision of FAPE. At a minimum, this training must include a review of the requirements related to PWN and provide these staff with instructions for completing the PWN documentation. USD #382 will provide documentation to SETS of the name and position of the SCKSEC staff member who conducted the training, the date and content of the training as well as a sign-in sheet signed by all individuals who attended the training.
            1. No later than December 1, 2023
2. ISSUE TWO: A violation of 34 C.F.R. 300.324(b)(1) was not found based on the fact that despite reports of bullying by peers at Haskins Learning Center, the student made progress towards his IEP goals during the 2022-23 school year. USD #382 did not have a reason to suspect the alleged bullying behavior was keeping the student from receiving FAPE so was not required to reconvene the IEP team in order to review, and revise the IEP, if necessary, to address the allegations of bullying. Based on the foregoing, no Corrective Action is required
3. ISSUE THREE: A violation of 34 C.F.R. 300.530 was not found for failing to follow appropriate disciplinary procedures during the past 12 months as no disciplinary actions have been imposed during that time frame. In addition, a violation of 34 C.F.R. 300.503(a) and K.A.R. 91-40-27(a)(3) was not substantiated for failing to provide PWN and obtain consent for the student's continued placement at Haskins Learning Center because documentation shows the parent provided written consent for this placement on May 12, 2022. Based on the foregoing, no corrective action is required. However, it

is suggested that the district review its procedures and practices for maintaining student records.

4. ISSUE FOUR: A violation of federal regulations at 34 C.F.R. 300. 300.323(c)(2) is not substantiated because the student's IEPs in effect during the past 12 months do not require the student to be provided with ABA therapy or a 1-1 paraprofessional. Based on the foregoing, no corrective action is required.
5. ISSUE FIVE: A violation of federal regulations at 34 C.F.R. 300. 300.323(c)(2) is not substantiated because the student's IEPs in effect during the 2023-24 school does not require the student to be provided with homework on Fridays when school is not in session. Documentation reflects that the IEP team considered the parents request at the August 8, , 2023 IEP team meeting and provided the parent with appropriate PWN refusing to make changes to the student's current IEP. Based on the foregoing, no corrective action is required.

Investigator

Nancy Thomas

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).

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 OCTOBER 4, 2023

DATE OF REPORT OCTOBER 13, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ----------, by her father, ----------. In the remainder of the report, ---------- will be referred to as "the student." ---------- will be referred to as "the complainant" or "the parent" or "the father." ---------- will be referred to as "the mother." Together, ---------- and ---------- will be referred to as "the parents."

The complaint is against USD #260. In the remainder of the report, USD #260 will be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on October 4, 2023 and the investigation ends with the distribution of this report.

Evidence Reviewed

During the investigation, the complaint investigator, Gwen Beegle, reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The complaint investigator spoke with the complainant to clarify the concerns and issue for the complaint on October 5, 2023. The following persons were interviewed: Dr. Dawn Gresham (Special Education Director - USD #260) on October 10, 2023; June Henkelman (Assistant Special Education Director - USD #260) on October 10, 2023; and Emma Alderson (former Sports Para) on October 9, 2023. The complaint investigator received emails from the district from October 5, 2023 to October 6, 2023.

The following documentation and information were used in consideration of the issue(s):

1. Student's IEP dated October 12, 2022
2. PWN for Identification, Special Education and Related Services, Educational Placement dated October 12, 2022 for a meeting on October 12, 2022.
3. Notice of meeting dated January 9, 2023 for a meeting on January 9, 2023 signed by the parent waiving 10-day notice on January 9, 2023
4. IEP amendment dated January 9, 2023, signed by the parent giving consent on January 9, 2023

5. Prior Written Notice for a material change to the IEP dated January 9, 2023 for a meeting on January 9, 2023 signed by the parent giving consent on January 9, 2023
6. IEP amendment dated March 7, 2023
7. Prior Written Notice for a material change in services and other changes to the IEP dated March 7, 2023 for a meeting on March 7, 2023 signed by the parent on March 7, 2023
8. IEP meeting notes dated April 27, 2023
9. IEP at a Glance for the student for October 12, 2022 IEP updated April 27, 2023
10. IEP amendment dated August 24, 2023
11. Prior Written Notice for changes to the IEP dated August 24, 2023
12. Email exchange between the parent and Dawn Gresham dated September 28, 2023 at 4:09 p.m. , 4:19 p.m., and 4:54 p.m.
13. Undated text exchange between parent and Emma Alderson
14. District Response to the Allegations, dated October 5, 2023

Background Information

The student is a 16 year old who attends 11th grade at Derby High School in USD #260. The student was reevaluated in October 2022, and she continued to be eligible for special education services as a student with learning disability. Her special education services include pull out special education services for homeroom and math classes, special education support for English, science and social studies classes, and social work services once per week. Her services include having a staff member available for extracurricular activities including sports participation. The student is on track to graduate with a general education diploma in May 2025.

The student does not have a Behavior Intervention Plan; however, many accommodations/ supplementary aids and services and special considerations are written in her IEP to support her behavior as well as her academic learning. Her goals include socially appropriate coping skills and strategies, accurately completing reading and written language assignments in English classes, and accurately completing math assignments. Her IEP case manager is on the PBIS team in the building.

Issue Investigated

Issue One: The USD #260 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the parent the opportunity to participate in a meeting held with regard to the IEP of the student.

Issue One

The USD #260 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the parent the opportunity to participate in a meeting held with regard to the IEP of the student.

Applicable Law

According to federal regulations at 34 C.F.R. 300.322 (a) and state regulations at K.A.R.91-40-17 (a), each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including notifying the parents of the meeting and scheduling the meeting at a mutually agreeable time. The agency must also invite the student after the student reaches 16 years of age (34 C.F.R. 300.322 (b)(2)(i)(B)).

Analysis: Findings of Fact

The complainant alleged that, sometime in May, 2023, a meeting was held by the district which included the sports para who supported the student during the student's extracurricular sports participation. The complainant alleged that during this meeting, the student's sports participation was discussed and that he was not included in this discussion. The parent raised other concerns regarding the soccer coach that are not part of this investigation.

The district responded that the complainant "contends the district violated state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) when we failed to allow the parent to participate in a meeting about the IEP of the student. The meeting in question surrounded a personnel matter with the para assigned to accompany his student to extracurricular activities, such as basketball and soccer. Parents are not invited to or involved in personnel-related discussions. The discussion surrounded the expectations of the para during extracurricular activities, games, and practices. No agenda was kept for the meeting."

Findings of the investigation upon review of the evidence and conducting the interviews listed above include:

- The student's IEP was amended on January 9, 2023. The PWN associated with that material change to services states: "[The student] will have a staff member available for extracurricular activities such as soccer or basketball daily for the duration of the activity in all extracurricular activities."
- The district and the parent agreed that a special education staff member called a sports para was available during the student's sports participation beginning in January, 2023 for basketball season and continuing through soccer season which ended during May, 2023. The sports para was responsible for providing access to written plays, participation in team sports, and to support the student's behavior. Her position was

supervised by the Assistant Special Education Director. The district and the former sports para agreed that a sports para was not a coaching position.

- The district and the former sports para agreed that the sports para was trained in January, 2023, by the PBIS teacher - IEP case manager on work expectations, including confidentiality and how to support the student according to the student's IEP at a glance.
- The district provided documentation that the student's sports participation was discussed in an IEP meeting attended by the parent on April 27, 2023.
- The district and the former sports para agreed that the special education director met with the sports para and revised the work expectations in around the time of the April 27, 2023 IEP meeting or in early May, 2023.
- The parent reported that the meeting was about the student and issues about the student's participation in sports. The district reported that the meeting was about personnel issues.
- The district and the former sports para agree that implementation of, changes to or progress monitoring of student's IEP were not discussed at this meeting. The district, the parent, and the former para agree that the student's IEP services were not changed as a result of this meeting.

In this case, the student's IEP required that a staff person be available to support extracurricular participation, and that support began in January 2023 during the student's basketball season and continued through the semester with soccer season. In late April or early May, there was a meeting between the special education director and the sports para. At that meeting, the manner in which the sports para was to conduct her job changed from the initial general "team para" approach aimed at mitigating possible stigma associated with provision of special education support to a student specific and directed support method. The meeting held between the special education director and the sports para was not an IEP meeting, and therefore, parental attendance was not required per 34 C.F.R.300.323(a) and K.A.R. 91-40-17(a).

Conclusion

Based on the foregoing, it is *not substantiated* that the USD #260 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the parent the opportunity to participate in a meeting held with regard to the IEP of the student.

Summary of Conclusions/Corrective Action

A violation of federal regulations at C.F.R. 300.323(a) and state regulations at K.A.R. 91-40-17(a) was not found based on the facts above. Corrective action is not required.

CORRECTIVE ACTION: Not Required

Right to Appeal

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For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f).

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

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

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

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(A) The issuance of an accreditation deficiency advisement;
(B) the withholding of state or federal funds otherwise available to the agency;
(C) the award of monetary reimbursement to the complainant; or
(D) any combination of the actions specified in paragraph (f)(2)

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 260
Derby Public Schools: 24FC260-003

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on October 4, 2024, by -----, on behalf of his child, -----. In the remainder of the decision, ----- will be referred to as "the parent", and ----- will be referred to as "the student". An investigation of the complaint was undertaken by complaint investigator, Gwen Beegle, 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 October 13, 2024. That Complaint Report concluded that there was not a violation of special education laws 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 parent's appeal and any supporting documents, the original complaint filed by the parent, the complaint report, and the district's response and any 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.

Parents' Appeal

In the appeal the parent argues:

1. Dr. Gresham is employed by USD 260 as the Director of Special Education and not the Human Resource Director.

2. A meeting between the soccer coaches and Dr. Gresham in May of 2023 was not a personnel issue, as reported by Dr. Gresham, but rather an IEP meeting pertaining to the student.
3. The above-mentioned meeting "was hidden from [the student] and [the complainant]".
4. If the above-mentioned meeting was a personnel issue, it should have been "reported directly to the HR director of USD 260 it was not referred to the proper department it was instead conducted by the direct[or] of special services of USD 260 thereby it was an illegal IEP meeting."

The following issue in this complaint has been addressed by the Appeal Committee:

Issue

The USD #260 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the parent the opportunity to participate in a meeting held with regard to the IEP of the student.

As noted by the investigator, under both state and federal law, each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or afforded the opportunity to participate, including notifying the parents of the IEP team meeting and scheduling the IEP team meeting at a mutually agreeable time. (34 C.F.R. 300.322(a); K.A.R. 91-40-17(a)). Under K.A.R. 91-40-25(a) an agency shall allow the parents of an exceptional child an opportunity to participate in any meeting concerning their child with respect to the identification, evaluation, or education placement of the child, and any meeting on the provision of FAPE to the child.

However, a meeting, shall not include:

(1) Informal or unscheduled conversations involving agency personnel and conversations on issues including teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP; and
(2) preparatory activities that agency personnel engage in to develop a proposal or response to a parent's proposal that will be discussed at a later meeting. (K.A.R. 91-40-25(e)).
(3) In the appeal, the parent states that a meeting was held in May 2023, between the soccer coaches and Dr. Gresham regarding the sports para assigned to the student. The parent claims 1) the meeting was held to discuss the student, 2) this meeting was an IEP meeting, and 3) the parent and the student should have been involved. The parent points to the lack of involvement by the Human Resources Department as evidence that the meeting was an IEP meeting and not a personnel issue. Specifically, the parent argues that if this were a personnel issue, as the district claims, then HR would have conducted the meeting, and not the Director of Special Education. The parent offers no other evidence to support his conclusion.

In response, the district provides documentation of school's policy regarding complaints, specifically, that district policy states "the board encourages all complaints regarding the district to be resolved at the lowest possible administrative level." In an email to the parent, dated February 11, 2023, Dr. Gresham states, that the parent should direct all concerns related to an OCR complaint to Dr. Gresham, and says "We obviously are able and willing to discuss any other matters associated with [the student] at your request." While an OCR complaint is outside the scope of this appeal, and will not be discussed, the email does indicate that Dr. Gresham is the point of contact for the parent's concerns. In this case the Committee finds that Dr. Gresham was the appropriate person to handle a concern, brought to the district's attention by the parent in relation to the student, and that the exclusion of Human Resources does not, on its own, suggest that the meeting was an IEP meeting.

Further, emails provided by the district show that the parent did bring numerous concerns to Dr. Gresham regarding the student, the sports para, and the coaches. Most of these emails specifically address an OCR complaint, and as such are outside the scope of this appeal and will not be considered. However, in an email, dated April 18, 2023, sent from the parent to Dr. Gresham, the parent states "Tonight after game [the sports para] be informed [the student] why she is not playing on varsity as Paul is punishing her for me." Dr. Gresham responds, "As always I will investigate." The district provides further context regarding the email in their response to the appeal, stating, "During the concerns [the parent] submitted via email, entitled "Paul Burke Email", a matter was discovered that required me [Dr. Gresham] to address the behavior of the "sports para". The district also notes that the "meeting" in question is individual meetings held between Dr. Gresham, the coaches, and the sports para regarding the sports para's behavior and job expectations.

In an email, dated September 28, 2023, sent from the parent to Dr. Gresham, the parent states, in part; "Dawn there was a meeting I did not know about! The panther award? Ring a bell? You went and told [the sports para] at DNMS as she was leaving to go to the last JV game!" In response Dr. Gresham states, "As I said on the phone, I cannot discuss personnel matters." The parent responded, in part, "Fair enough". It is unclear from either the parent's appeal, or the district's response, as to whether the meeting the parent "did not know about" is in reference to the May meeting(s) in question. However, the email does provide support for the district's assertion that meetings were being held, between the sports para, the coaches, and Dr. Gresham, that were related to personnel issues, not the student's IEP. The email also supports the district's claim that the parent knew this and understood that these were personnel issues.

The Committee also notes that the investigator found, "the district and the former sports para agreed that the Special Education Director met with the sports para and revised the work expectations" of the para, and that, "the district and the former sports para agree that implementation of, changes to, or progress monitoring of the student's IEP were not discussed at

this meeting". According to the investigator, and the district's response to the appeal, this meeting was to discuss the sport para's job expectations and her behavior. Specifically, the investigator found that the meeting pertained to a "change from the initial general "team para" approach aimed at mitigating possible stigma associated with provision of special education support to a student specific and directed support method." The district further asserts, "As part of the investigation that [the parent] initiated, I [Dr. Gresham] spoke with the athletic director, Mr. Russell Baldwin, the soccer team coach, Mr. Paul Burke, and the sports para, Ms. Emma Alderson."

Under K.A.R. 91-40-25(e), an IEP meeting does not include, "informal or unscheduled conversations involving agency personnel." In this situation, the Committee finds that the meetings between Dr. Gresham, the coaches, and the sports para were informal meetings, conducted because of Dr. Gresham's investigation into a concern, communicated by the parent to Dr. Gresham, and related to personnel issues, not the student's IEP.

Therefore, because these meetings were not IEP meetings, the Appeal Committee affirms the complaint investigator's finding that the district did not violate state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to afford the parent the opportunity to participate in a meeting held with regard to the IEP of the student.

Conclusion

The Appeal Committee *affirms the investigator's finding* of no violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to afford the parent the opportunity to participate in a meeting held with regard to the IEP of the student.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 9th day of November 2024.

Appeal Committee

Brian Dempsey: Assistant Director of Early Childhood, Special Education and Title Services,

Ashley Niedzwiecki: Attorney, Special Education and Title Services,

Dr. Crista Grimwood, Dispute Resolution Coordinator

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT # 233
ON SEPTEMBER 19, 2023

DATE OF REPORT OCTOBER 18, 2023

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

Investigation of Complaint

On September 21, 22, and 25, 2023, the investigator spoke via telephone with Deb Chappell, Assistant Director of Special Services for USD #233. On October 5, 2023, the investigator spoke by telephone with Dr. Kim Hawkins, Principal of Harmony Early Childhood Center and Director of Early Childhood. The investigator also spoke on October 5, 2023 with Sarah Spurlock, Special Services Coordinator for the district. On September 28, 2023, the investigator spoke by telephone with the parent.

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

- Occupational Therapy Evaluation from Children's Therapy Services (CTS) dated October 13, 2022
- Speech and Language Evaluation from CTS dated October 5, 2022
- Student in the Evaluation Process Form completed December 9, 2022
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated December 9, 2022
- HIPAA Compliant Authorization for Exchange of Health and Education Information for Children's Therapy Services dated December 9, 2023
- AAC (augmentative and assistive communication) Evaluation for an SGD (speech generating device) dated February 15, 2023
- Notice of Meeting dated March 10, 2023
- Evaluation Report dated March 23, 2023
- Eligibility worksheet for Developmental Delay dated March 23, 2023
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated March 23, 2023
- Individualized Education Program (IEP) dated March 23, 2023
- Email dated March 23, 2023 from the speech/language pathologist to the parent
- Email dated March 23, 2023 from the parent to the speech/language pathologist

- Email dated March 24, 2023 from the parent to the speech/language pathologist
- Email dated March 24, 2023 from the speech/language pathologist to the parent
- Email dated March 26, 2023 from the parent to the director of special services
- Email dated March 26, 2023 from the director of early childhood to the executive director of special services and the assistant director of special services
- Notice of Meeting dated March 28, 2023
- Email dated April 10, 2023 from the parent to the special services coordinator
- Email dated April 11, 2023 from the special services coordinator to the parent
- Letter dated April 11, 2023 from the special services coordinator to the parent
- Report of evaluation obtained by the parent dated September 26, 2023

Background Information

This investigation involves a 4-year old girl who has, by report of the parent, been diagnosed with global developmental delay and autism at a hospital outside her current city of residence.

At age 3, the student participated in an early childhood screening at a district early childhood center on November 11, 2022 and was subsequently referred for an initial evaluation of her communication, fine motor, cognitive, and social skills. Consent for that evaluation was provided by the parent on December 9, 2022. The student began attending an Early Childhood Special Education classroom at a district early childhood center one day a week between January 10 and February 21, 2023 for a classroom-based evaluation.

At the time of the evaluation, the student was also participating in a private preschool program at a local temple for four and a half hours a day, four days a week. She first attended that program in September of 2022. At the preschool, the student was provided with one-to-one adult support throughout the school day.

The student began receiving private speech/language and occupational therapy services at age two through a local hospital center. At the time of the district's evaluation, she was receiving occupational therapy for one hour per week and speech/language therapy for 30 minutes a week.

At the time of the district's evaluation, the use of a communication device was being explored through her outside speech/language therapy. A February 2023 private assessment determined that the majority of the student's daily functional communication needs could not be met with natural speech and/or low-tech communication devices. A speech generating device to achieve and/or maintain functional communication abilities in activities of daily living was recommended.

An evaluation/eligibility meeting regarding the student was held on March 23, 2023. Both parents participated in the meeting as did an early childhood special education teacher, the special services coordinator, an occupational therapist, a school psychologist, and a speech

language pathologist. At the meeting, the team determined that the student met the disability criteria for "developmental delay" (see Issue Two) and needed special education and related services. At the March 23, 2023 meeting, the district proposed an IEP for the student.

While the student's father gave written consent for the district's proposed services, the student's mother (the parent in this complaint) objected to the district's proposal. The parents ultimately decided not to enroll the student in the district, and no special education services have been provided.

Issues

In her written complaint, the parent identified three issues:

Issue One

> The district's failure to provide the student with one-on-one paraprofessional support during the period she was being evaluated to determine her eligibility for special education support resulted in an injury to the student's arm.

Parent's Position

According to the parent, the student's arm was injured while she was participating in an extended on-site evaluation through a district early childhood special education program. The parent asserts that she advised the district that her daughter required 1:1 adult support for her safety and support, but the district told her that staff was specially trained to manage the student and that having 1:1 support would inhibit the student's socialization during the evaluation process. The parent contends that her daughter was not safe without 1:1 support but "against her better judgement" allowed the evaluation to proceed. The parent asserts that the district's reason for refusing to provide one-to-one adult supervision was to "save money."

District's Position

The district asserts that a one-to-one paraeducator was not required under the evaluation plan consented to by both parents. The district states that cost played no part in determining whether a one-to-one paraeducator was assigned to the student during the evaluation. It is the position of the district that the team wanted the student to be allowed to be independent in the classroom whenever possible and felt that a 1:3 ratio of staff to students could provide the support the student needed.

Applicable Statutes and Regulations

A formal complaint must allege that 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)). Special education statutes and

regulations do not address the injury of a student. Therefore, the investigator does not have the authority to investigate that aspect of this issue.

Whenever a child has been referred for an evaluation, the school must provide Prior Written Notice to the parents that describe any evaluation procedures the school proposes to conduct (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.304(a)). In addition, there are standard components of content the notice must contain. The purpose of providing notice to the parents is so they understand what action the public agency is proposing (in this case, to conduct an initial evaluation) and the basis used for determining the action is necessary. The Prior Written Notice must include:

1) A description of the action proposed by the agency;
2) An explanation of why the agency proposes the action;
3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed action (K.S.A. 72-3428(b); K.A.R. 91-40-27(b); 34 C.F.R. 300.304(a)(1));
4) A statement that the parents have protection under the procedural safeguards and how a copy of the procedural safeguards can be obtained;
5) Sources for parents to contact to obtain assistance in understanding their procedural safeguards; and
6) A description of other options considered and the reasons why those options were rejected; and, a description of other factors that is relevant to the agency's proposal. (K.S.A. 72-3432, 34 C.F.R. 300.503(b)).

The notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the Local Education Agency (LEA) must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication, so that the parent understands the content of the notice. The school must have written evidence that this has been done (K.A.R. 91-40-26(b), (c); 34 C.F.R. 300.503(c)).

Investigative Findings

The student participated in a district early childhood screening on November 11, 2022 and was referred for an initial evaluation of communication, fine motor, cognitive, and social skills.

On December 9, 2022, both parents provided written consent for a district evaluation of the student. The prior written notice of evaluation developed by the district contained all elements required by special education statutes and regulations. The prior written notice did not require the presence of a one-to-one paraeducator for the student for the evaluation process.

The student began her on-site evaluation on January 10, 2023. The evaluation extended through February 21, 2023 with the student coming to the district's early childhood center one day a week. No evidence was presented to show that, prior to February 21, 2023, the parent objected to the absence of a one-to-one paraeducator during the period of time the student participated in the evaluation.

At the time of the evaluation, there was one early childhood special education teacher in the classroom along with two paraeducators. There were 9 students in the classroom, 3 of which were non-identified peers.

While district staff did not observe any injury to the student, the parent reports that upon arriving home from school on February 21, 2023 the student complained of arm pain which was, by parent report, subsequently diagnosed as a possible sprain. The parent opted not to send the student back to the preschool following the injury in order to complete the evaluation.

Following the IEP team meeting of March 23, 2023, the parent, on March 24, 2023, sent the speech pathologist the following email:

> *"After consultation with a parent advocate I have been advised the reason for denial of a one on one aide for [the student] on Tuesday's was financial to save the district the money in paying for that when they provide services. I was told saying it's for [the student's] "social needs" was a tactic used to get a parent to back off on the request. I believe there are safety concerns necessitating that level of supervision. [The student's] private preschool prioritizes safety and socialization. [The student] still socializes and does incredibly well with adequate supervision. I have pictures of her playing and interacting one on one with her peers. Given the injury she incurred without one on one supervision during the evaluation my request is justified. The injury was well documented and I cannot worry about my child's safety in order for her to receive services she qualifies for with the state."*

No evidence was provided by the parent to support the contention that cost played any role in determining whether a one-on-one adult should have been provided for the student during her evaluation.

Summary and Conclusions

The evaluation of the student was conducted in compliance with a properly developed prior written notice of evaluation. Both of the student's parents provided written consent for the evaluation of the student. The prior written notice form contains no reference to the need for one-on-one adult supervision for the student during the evaluation process. While the parent states that she was not comfortable with having the student participate in the evaluation without a one-to-one paraeducator, she acknowledges that she agreed to allow the evaluation "against her better judgement."

No evidence was provided in support of the parent's contention that the district opted not to provide on-to-one adult supervision for the student during the evaluation in order to save money.

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

Issue Two

The district failed to consider the student's autism diagnosis when considering her eligibility for special education services.

Parent's Position

The parent asserts that the district referenced the student's autism on the proposed IEP but failed to fully consider her diagnosis and failed to determine her eligibility for special education services under the category of autism. According to the parent, the district then developed a "cookie cutter" IEP which did not address the student's autism-related needs.

District's Position

The district asserts that the student met eligibility criteria under the category of Developmental Delay, and the proposed IEP was based on the student's needs as revealed through the evaluation process. Additionally, the district asserts that it was responsive to concerns raised by the parent and attempted to schedule a second IEP team meeting to discuss those concerns, but the parent made the decision not to enroll the student.

Applicable Statutes and Regulations

When making an eligibility determination, an IEP team must ensure (1) that the child meets the definition of one of the categories of exceptionality and, (2) as a result of that exceptionality, needs special education and related services (KAR 91-40-1(k)(w); 34 CFR 300.8).

Once a child is identified as a child with a disability, determination of services to be provided is based on the child's needs, functional performance, and the impact of the exceptionality on the child's ability to access and progress in the general education curriculum – not on the child's disability category. A diagnosis of autism does not mandate the development of an autism-specific IEP.

At K.A.R. 91-40-1(q), Kansas regulations define "Developmental Delay" for children age 9 and younger as a deviation from average development in one or more of the following developmental areas to the degree that special education and related services are required:

(A) Physical;
(B) cognitive;
(C) adaptive behavior;
(D) communication; or,

(E) social or emotional development.

Investigative Findings

An evaluation/eligibility meeting was conducted on March 23, 2023. At the meeting, the parents reported that the student had been diagnosed with global developmental delay and autism through an outside evaluation. No diagnostic report from that evaluation had been provided to the district by either parent at the time of the March 23, 2023 meeting.

The report of an outside evaluation conducted in September 2023 was provided to the investigator by the parent. That report states that the parents were at that time seeking "a formal evaluation to support [the diagnosis of autism]" since the previous evaluation did not include a diagnostic assessment, and the parents did not have a report to support the diagnosis.

The district's evaluation determined that the student had delays in communication skills, cognitive skills, personal-social skills, and motor skills. The team determined that the student met the criteria to be determined to have an exceptionality under the category of Developmental Delay and needed special education services. The district did not consider eligibility for the student under the category of Autism.

Because the student had been determined to meet a categorical definition of an exceptionality and had been found to need special education services, the team proposed an IEP designed to address the educational needs of the student as determined through the evaluation process. Annual Goals were proposed for the student in the following areas:

- Fine motor skills (bead stringing, inset puzzle completion, using a pincher grasp, and tearing paper);
- self-help (zipping and unzipping, donning and doffing a jacket);
- social skills (engaging with new toys/materials with minimal cuing or prompting);
- cognitive (imitating adult directives and engaging with objects with minimal prompts/cues);
- communication (using simple gestures, words, or pictures to communicate wants and needs); and
- language (expanding receptive and expressive vocabulary).

The school psychologist sent both parents copies of the evaluation report and proposed IEP via DocuSign on March 23, 2023. the district provided both parents with prior written notice of proposed services. As stated in the prior written notice form:

> *"The team proposes to identify [the student] as a child with a Developmental Delay and implement the IEP developed on 3/23/2023 to address her delays in communication, cognition, social skills, fine motor skills, and student independence. Specifically, [the student] will attend an Early Childhood Special Education Classroom four half days per week. While*

> *attending the classroom she will receive speech and language therapy 20 minutes twice per week. [The student] will receive occupational therapy 20 minutes twice per week and indirect occupational therapy 20 minutes per quarter.*
>
> *While [the student's] parents agree with the IEP proposed by the team, they have notified the team they intend to access most of her services privately and will partially enroll her for her to attend one session per week to receive ECSE services until 05/24/2023 (the remainder of the 22-23 school year). [The student] will fully enroll with the [district] and will be available to access all services outlined in the IEP developed 03/23/2023 for extended school year and for the 2023-2024 school year.*
>
> *Evaluation data indicates that [the student] demonstrates significant delays in communication, cognitive, social and fine motor development and also demonstrates a need for the proposed special education and related services.*
>
> *Parents unilaterally decided to provide most of [the student's] services privately and to partially enroll in the [district] for the remainder of the 2022-2023 school year.*
>
> *[The student] will receive 190 minutes of early childhood special education 1x per week while partially enrolled. Services will resume as outlined in the IEP proposed on 03/23/2023 at any point that [the student's] family chooses to fully enroll her in the district.*

On March 24, 2023, the parent sent the speech pathologist the following email:

> *I would like to respectfully request the one on one aide for Tuesday be written into the IEP. For [the student] to attend safely on Tuesday's and receive services this is necessary and my request is reasonable and with my child's best interests in mind. I will need this updated version of the IEP sent to [a parent advocate] for review."*

The speech/language pathologist responded to the parent via email on March 24, 2023 writing:

> *"I noticed you specifically mentioned Harmony [in your March 23, 2023 email]. The IEP specifies [the student] would receive her services in a reverse mainstream early childhood special education classroom, but the location of the classroom is not specified in the IEP. [The student] only accessing services on Tuesdays is spelled out on the Prior Written Notice on page three, but her IEP will continue to document all the services she is eligible to access even though you would only like to access services for one session (190 minutes) at this time. I am going to copy our building administrator and special services coordinator on this message as they would be able to help you with the location for [the student] to receive her services after we have consent to implement the IEP."*
>
> *I also forwarded your [March 24, 2023] email requesting a one-on-one aide to [the director of early childhood] and [the special services coordinator] and we will get back to you regarding that."*

At 12:55 PM on March 24, 2023 – after receiving the forwarded emails from the parent – the special services coordinator sent the following email to both parents:

> *"Thank you for your email and sharing your concerns. As [the speech/language pathologist] mentioned, she also shared your email about additional para support being added to the IEP. Any changes to the IEP will need to be made with the IEP team. If you'd like to continue the discussion of additional para support for [the student] we will need to meet again as a team. [The speech/language pathologist] can work with you on setting that up.*
>
> *Regarding location, I am happy to work with you on a location that is more convenient for you to transport [the student] to/from once we have consent for services.*
>
> *I have added [the student's father] so he is aware we may be meeting again"*

The parent responded via email to the special services coordinator at 1:23 PM on March 24, 2023 stating:

> *"I have decided against signing the IEP and proceeding. I will be adding a day of CTS/private services on Tuesday, which will result in 1.5 hours of additional service for [the student]. CTS has stated that they can add services to meet all of [the student's] needs. I don't think the best interests of my child were considered and the focus was on money and cost. I am appreciative of the evaluation and time given, but I will be moving forward in maintaining what is best for [the student] and ensuring her needs are met. In the future if I change my mind I will let you know and pursue services for her through the IEP."*

The parent sent an email to the executive director of special services on March 26, 2023 outlining issues she had encountered during the evaluation of the student. The executive director then reached out to the director of early childhood, both assistant directors of special services, and a special services coordinator on March 27, 2023 to arrange for a meeting with her staff to collect additional information on the situation.

The director of early childhood responded to the executive director via email on March 28, 2023 writing:

> *"I had the opportunity to visit with this parent [by telephone] today. Mom would like to reconvene the IEP team to discuss adult support and behavior consultant support for ---------- (she referenced a BCBA for students with autism). We don't have written documentation of an autism diagnosis, so I asked mom to provide that. As an update, [the student's] father has consented to the IEP."*

Notice of an April 13, 2023 IEP team meeting was emailed to the parent on March 28, 2023.

The parent sent an email to school staff on March 29, 2023 writing:

> *"I would also like to advise that you will need to be prepared to complete an autism evaluation related to [the student's] autism diagnosis and provide related services.*

> *In addition, this will require a new and appropriate IEP to be signed and implemented, so it is probably best for [the student's father] to revoke his consent and sign the new IEP after our meeting. I am confident once we meet on 4/13/23 we will have a plan for the provision of special services that is in [the student's] best interests, can be executed by the residential parent (myself) and is legally meeting state guidelines for services.*
>
> *I have included…my parent advocate, on this email. I just completed faxing a release form to you for [the parent advocate]."*

Later in the evening of March 29, 2023, the parent advocate sent an email to the student's parents, the director of early childhood, the special services coordinator, and the speech pathologist. The advocate wrote:

> *"After having the pleasure of reviewing the district's evaluation report, I've advised the parent of her parental rights to request an IEE and informed her of the varied due process remedies available to her should she disagree with the identification and or determination of the team…*
>
> *After reading the entire ER and realizing the eligibility determination of Developmental Delay, I asked if the team discussed the eligibility indicators of Autism and was told, "no". I noted the team documented [the student's] autism dx in medical; however, it appears the team did not reach out to McPherson as requested with HIPAA releases signed by parents in order to consider that important information necessary for appropriate identification. The ER does reference outside clinical input provided by parents and conducted by Children's Therapy Services in October of 2022: "She demonstrated a severe expressive language delay secondary to Autism spectrum disorder. " And yet the ER lacks autism specific scales/assessments. I also asked if the team included a district Autism Consultant or BCBA in the evaluation process and was informed, "no." Please note:*
>
> *KAR 91-40-1 (f) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three but not necessarily so, that adversely affects a child's educational performance…*
>
> *I've learned that [the student's] outside Feb 2023 AAC [assistive and augmentative communication] evaluation recommends a high tech AAC device in order for her to functionally communicate; however, I didn't note any district AT eval or any data relating to use of this modality of communication. I did see a check for AT, but no additional supports relating to its training, goals, or use.*
>
> *Thank you for considering and noting the DAYC-2 and Sensory Profile completed by Children's Therapy Services. Considering the DAYC and the AEPS show cognition in 1% ile, team should consider additional cognitive testing such as a (WPPSI-IV) just a suggestion…to determine if there's a discrepancy in her verbal vs nonverbal IQ in order to guide her programming.*

> *While I understand [the student's father] agreed to the eligibility determination and IEP placement/related services and specially designed instruction, I'm not certain if he was aware of the information I've disclosed at the time of his agreement. We haven't had the pleasure of meeting. Now that he's more informed of his daughter's and parental rights, I do hope he reconsiders his agreement so his daughter can be appropriately identified as a student with the disability of autism and requests the team to conduct a thorough evaluation in order to develop an individualized education program with explicit goals written with her precise needs addressed using modalities of instruction and communication that she can access.*
>
> *I'm not advising the team of any expectation for our future meeting; however, as a collaborative advocate asked to participate in this important process, I'm asking the team to consider the request to either reopen the evaluation to completely address the parent's concerns and add McPherson's input regarding manifestations of their daughter's disability of autism impacting her development and learning progress, or grant an IEE to include AT/Autism assessment via qualified Psychologist/ Cognitive Testing…While I wasn't involved in previous meetings, I am not sure if other placements were considered in the continuum of placement other than [the proposed district early childhood special education] reverse mainstream classroom/private preschool with related services at [the designated early childhood classroom] once a week. I'd like the team to consider/ discuss those other placements on the continuum that may provide the specially designed instruction and related services needed for her to make meaningful progress in light of her unique circumstances. Again, thank you for including me in this important process. I personally appreciate all of the work completed by the team thus far! Looking forward to working with you all soon."*

On March 30, 2023, the speech/language pathologist responded to both of the student's parents and to the parent advocate via email as follows:

> *"I would be happy to request records that would include [the student's] evaluation and medical diagnosis of Autism from McPherson so that our team can review that information prior to our next meeting. We do not currently have a HIPAA release for that medical provider or the neurologist that evaluated her and diagnosed her with Global Developmental Delay. The first we learned of [the student's] diagnoses was reading the reports from Children's Therapy Services that we received on March 6th followed by confirmation from parents at our last meeting. Information pertaining to those diagnoses or evaluations was not included on the health intake, family reports, or during our intake interview with parents. [To the parents], I have attached a blank release if you would like to complete and return that. I am happy to send that to you in DocuSign for electronic signatures if you can provide me the names and contact information for the medical provider(s). You are also welcome to share copies of any reports you have directly. Sometimes getting a copy of reports from parents is more efficient*

> *than requesting records from medical providers. We would be happy to review additional medical reports. Please let me know how you would like to proceed."*

The parent responded via email on March 30, 2023:

> *"I will be requesting records from McPherson hospital today. I will provide them upon receipt. Also, the records from CTS [Children's Therapy Services] were not requested until March 3, 2023. I signed a release in December, so therefore this further supports a lack of intention in completing a thorough and comprehensive evaluation. If you needed more time to complete further evaluation measures after receipt of the CTS records then you could have requested an evaluation extension and I would have granted it rather than coming to IEP and pushing a "cookie cutter" and non individualized plan.*
>
> *During the initial evaluation I advised [the early childhood center] of the autism diagnosis, so apparently there was a lack of communication."*

On April 10, 2023, the parent sent the following email to the special services coordinator:

> *"We had court this morning and it was determined that since [the student] is not enrolled in the [district] and already participating in a school program that adequately and appropriately meets her needs there is no point or purpose in continuing with the [district]. It was determined that a private autism evaluation will be completed by an objective 3rd party and services will be determined from there. In light of this it appears that there is no reason to continue with the [district] for anything. [The student] is not enrolled in any programs and not receiving services so we will maintain the status quo. I appreciate everyone's time and efforts, but we will not proceed with the district moving forward.*
>
> *There is no need for the meeting April 13th due to [the student] is not considered enrolled in the [district]."*

Summary and Conclusions

The district conducted an evaluation of the student and determined the student to be eligible to receive special education services under the disability category of Developmental Delay. While the parents had reported during the evaluation/eligibility team meeting that the student had been diagnosed with both a global developmental delay and autism, at the time of the meeting, no diagnostic report was made available to the district by the parents.

The district proposed an IEP for the student. Individualized annual goals were developed for the student – based not upon the category of her eligibility (Developmental Delay) but upon educational needs that had been identified through the evaluation process. Those goals targeted six different areas and were established using baseline skills exhibited by the student.

After the parent was presented with the proposed IEP, she requested that a number of changes be made to the document and requested that the student be further evaluated in the area of autism.

No evidence was presented by the parent to show that the district had refused her requests. There is, however, ample evidence of the district's continued attempts at collaboration with the parent. The district scheduled another IEP team meeting to discuss the parents requests and the district asked for the parent's consent to obtain medical records related to the student's previous evaluation.

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

Issue Three

The district obtained the student's father's consent for placement and services so that the student's mother's consent would not be needed.

Parent's Position

The parent contends that the district intended to force her into agreeing to allow "irreparable harm" to come to the student through the provision of special education services under a "cookie cutter IEP."

District's Position

It is the position of the district that even after receiving the consent of the student's father for the provision of early childhood special education services to the student, the district continued to communicate with the parent and proposed an additional IEP team meeting to facilitate further discussion of the parent's concerns.

Applicable Statutes and Regulations

The Individualized Education Program (IEP) is defined as 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. The Individualized Education Program (IEP) team is a group of people, knowledgeable about the child, who come together at an IEP meeting in order to develop or review and revise a child's IEP. Decisions regarding the development of a student's initial IEP are made by the IEP team; any proposed changes to the initial IEP should be discussed through the IEP team process. After final decisions are made regarding the content of the IEP, parents must be provided with prior written notice of the district's plan for the delivery of services to the student.

If parents are divorced, regardless of which parent has primary custody, the school must provide Prior Written Notice of any special education action to both parents, even if only one parent has the right to consent, unless a court order precludes this from happening. This applies to all special education notice requirements including notice of an IEP meeting.

Consent from one parent is sufficient. In the event that the school receives consent forms from both parents, with one parent providing consent for the action and the other denying consent, the school is deemed to have received consent and must fulfill its obligation to

provide FAPE to the student. The parent who denies consent has the right to request mediation or file for due process.

Investigative Findings

At the time of the evaluation/eligibility meeting and subsequent IEP team meeting on March 23, 2023, the parents were in the process of obtaining a divorce. As required by special education statutes and regulations, the district provided both parents with prior written notice of the district's proposal to provide special education services to the student. Documents were sent to both parents via DocuSign on March 23, 2023.

On March 23, 2023, the parent sent the speech/language pathologist the following email:

> *"I appreciate this and will wait for [a parent advocate] to review before I sign.*
>
> *Also, just want to make sure the addendum is put in that we will only do Tuesday at Harmony until summer. I will see how things go on Tuesday's before agreeing to summer and beyond."*

On March 24, 2023, the parent sent the speech/language pathologist another email writing:

> *I would like to respectfully request the one on one aide for Tuesday be written into the IEP. For [the student] to attend safely on Tuesday's and receive services this is necessary and my request is reasonable and with my child's best interests in mind. I will need this updated version of the IEP sent to [a parent advocate] for review."*

The speech/language pathologist responded to the parent via email on March 24, 2023 writing:

> *"I noticed you specifically mentioned Harmony [in your March 23, 2023 email]. The IEP specifies [the student] would receive her services in a reverse mainstream early childhood special education classroom, but the location of the classroom is not specified in the IEP. [The student] only accessing services on Tuesdays is spelled out on the Prior Written Notice on page three, but her IEP will continue to document all the services she is eligible to access even though you would only like to access services for one session (190 minutes) at this time. I am going to copy our building administrator and special services coordinator on this message as they would be able to help you with the location for [the student] to receive her services after we have consent to implement the IEP."*
>
> *I also forwarded your [March 24, 2023] email requesting a one-on-one aide to [the director of early childhood] and [the special services coordinator] and we will get back to you regarding that."*

At 12:55 PM on March 24, 2023 – after receiving the forwarded emails from the parent – the special services coordinator sent the following email to both parents:

> *"Thank you for your email and sharing your concerns. As [the speech/language pathologist] mentioned, she also shared your email about additional para support being added to the*

> *IEP. Any changes to the IEP will need to be made with the IEP team. If you'd like to continue the discussion of additional para support for [the student] we will need to meet again as a team. [The speech/language pathologist] can work with you on setting that up.*
>
> *Regarding location, I am happy to work with you on a location that is more convenient for you to transport [the student] to/from once we have consent for services.*
>
> *I have added [the student's father] so he is aware we may be meeting again"*

The parent responded via email to the special services coordinator at 1:23 PM on March 24, 2023 stating:

> *"I have decided against signing the IEP and proceeding. I will be adding a day of [private services] on Tuesday, which will result in 1.5 hours of additional service for [the student]. [The private provider] has stated that they can add services to meet all of [the student's] needs. I don't think the best interests of my child were considered and the focus was on money and cost. I am appreciative of the evaluation and time given, but I will be moving forward in maintaining what is best for [the student] and ensuring her needs are met. In the future if I change my mind I will let you know and pursue services for her through the IEP."*

As noted above under Issue Two, the executive director then reached out to the director of early childhood, both assistant directors of special services, and a special education coordinator on March 27, 2023 to arrange for a meeting with her staff to collect additional information concerns expressed in the parent'sl email of March 26, 2023.

The director of early childhood responded to the executive director via email on March 28, 2023 writing noting that the parent wanted to reconvene the IEP team to discuss adult support and behavior consultant support for [the student]. The director of early childhood also reported that the student's father had, on March 28, 202, consented to the district's proposed IEP.

Notice of an April 13, 2023 IEP team meeting was sent to both parents on March 28, 2023.

As noted above under Issue Two, the parent sent an email to school staff on March 29, 2023 advising them that the team should be prepared to complete an evaluation of the student with regard to autism and to develop a new IEP based on the information obtained during that evaluation, noting that she was confident that after the April 13, 2023 IEP team meeting there would be a plan for the provision of special services to the student.

Later in the evening of March 29, 2023, the parent advocate sent an email to the student's parents, the director of early childhood, the special services coordinator, and the speech pathologist. As noted under Issue Two, the advocate asked to have additional staff included in the IEP team, mentioned the need for an AAC device and related goals for the student, suggested the team consider administering additional cognitive testing, requested explicit

goals related to autism, and asked for the district to consider additional placement options for the student.

On March 30, 2023 the speech/language pathologist sent an email to the student's parents and to the parent advocate via email seeking a release to access records from the outside evaluation. The parent responded via email on March 30, 2023 that she would obtain the records herself. (See Issue Two.)

On April 10, 2023, the parent sent an email to the special services coordinator informing her that a third party would be completing an autism assessment on the student and noting that since the student would not be enrolled in the district, there would be no need to "continue with the district for anything, including the April 13, 2023 IEP team meeting."

On April 11, 2023, the special services coordinator sent an email to both parents writing:

> *"Thank you for your emailing and letting us know your plans for [the student]. I've attached a letter regarding your decision to not enroll [the student] in the [district] as well as another copy of your parent rights in special education. Please contact me with any questions. We wish the best for [the student] and your family!"*

The attached letter to both parents, also dated April 11, 2023, states:

> *"Your daughter…participated in an initial evaluation for special education services with the [district]. She was determined eligible for special education and related services on March 23, 2023. [The student's father] signed consent for the IEP on 03/26/2023. On April 10, 2023, [the student's mother] informed the [school] staff, via email, that [the student] would not be enrolling in [the district] and that the family will continue to provide services privately for [the student].*
>
> *[The student] is eligible for special education and related services through her IEP. The [district] is ready, willing and able to provide all services in [the student's] IEP should you decide to enroll her in the district. We are happy to reconvene the IEP team to discuss any concerns that you might have regarding the provision of services in the [district]."*

While there is no evidence to show that the student's father rescinded his consent for the provision of special education services, there is also no evidence to suggest that he wanted to pursue district services after the parent objected. The student's father did not respond to the district's April 11, 2023 offer to provide services to the student.

Summary and Conclusions

Prior written notice of the district's proposed plan for the provision of special education services was provided to both parents who were at the time obtaining a divorce. The student's father provided his written consent for the services, but the student's mother proposed changes to the plan with regard to service location and the provision of one-on-one support.

The district provided both parents with notice of a second IEP team meeting to discuss these proposed changes. The student's mother initially declined the offer of the meeting, then agreed to reconvene but raised additional issues regarding further assessment of the student in the area of autism and the inclusion of additional staff (a BCBA) in the planning process. An advocate for the parent also contacted the district and raised the issue of assistive technology support for the student as well as proposing that the team consider other placement options for the student.

On April 10, 2023, prior to the scheduled April 13, 2023 IEP meeting, the parent notified the district that the student would not be enrolled in the district for services.

The district provided prior written notice of a proposed plan for services for the student to both parents as required by special education statutes and regulations. The student's father provided written consent for the district's proposed actions. There is evidence of additional on-going communication with the parent and her advocate as well as the student's father regarding potential changes to the IEP proposed by the district. Both parent were given notice of an IEP team meeting which had been scheduled to occur within 12 days of the date the parent first raised issues about the student's IEP.

Even though the student's father had provided written consent for the district's provision of special education services, no services were implemented pending the outcome of the second IEP meeting. The district received no communication from the student's father in response to the district's April 11, 2023 letter offering services if the parents opted to enroll the student in the district.

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

Corrective Action

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

Investigator

Diana Durkin
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).

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 #361
ON SEPTEMBER 21, 2023

DATE OF REPORT OCTOBER 21, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of --------- by his mother, ---------. 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."

The complaint is against USD #361. In the remainder of the report, USD #361 will be referred to as "the district".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date on which it was filed. A complaint is considered filed on the date on which it was received by KSDE. In this case, the KSDE initially received the complaint on September 21, 2023 and the 30-day timeline ends on October 21, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham reviewed all evidence provided by the district and the complainant(s). Additionally, the Complaint Investigator interviewed ---------, Mother, Ms. Eryn Guy, Principal, Ms. Amber Zwierzychowski, Special Education Teacher, Ms. Theresa Ricke, ESL Para Educator, and Mr. Randy Lemon, Horticulture Teacher. The following documentation and information were used in consideration of the issue(s):

1. IEP Snapshot for IEP dated September 9, 2022
2. *Email from Special Education Teacher to Teachers dated August 3, 2023 at 8:21 AM*
3. Email from Horticulture Teacher to Special Education Teacher dated August 30, 2023 at 3:16 PM
4. *Handwritten teacher note dated* between September 4 and September 11, 2023
5. *Handwritten teacher note dated* September 15, 2023
6. *Handwritten teacher note dated* September 16, 2023
7. *Handwritten teacher note dated between* September 18, 2023
8. District response dated October 5, 2023
9. Email exchange between the Complaint Investigator and Parent dated October 10 *between 9:59 AM and 11:51 AM*

10. *Email exchange between Complaint Investigator and Superintendent dated between October 10, 2023 at 10:11 AM and October 11, 2023 at 10:34 AM*
11. USD 361Employee Handbook
12. IBH-IKCA Student, Community, Curriculum document
13. Kansas Educator Code of Conduct

Background Information

The student attends the district's high school as a twelfth grader. He is eligible for special education under the eligibility category of specific learning disability and has received special education and related services since Kindergarten. The student attends general education classes with special education staff support each day during classroom instruction for Math, ELA, Social Studies and Science for the same frequency and duration as general education peers. He has goals related to reading comprehension and exploring careers and receives accommodations related to learning and testing.

Issue Investigated

Issue One

USD #361, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to maintain confidentiality about a student's special education program during the 2023 school year.

Applicable Law

Federal/State statutes and regulations at 34 C.F.R. § 300.323(d)(1) and K.A.R. 91-40-16(4) state, each public agency must ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation.

Further, 34 C.F.R. § 99.31(a)(1), states an educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure meets one or more of the following conditions: (A) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

Analysis: Findings of Fact

The Parent alleged that on Wednesday, September 13, 2023 the Student was in the Teacher's classroom taking notes with a laptop. The Teacher called the Student to the Teacher's desk and read the modifications from the Student's IEP aloud, stating that taking notes with a laptop was not one of the IEP modifications. The Parent stated that she did not find out about this situation until the Student's sibling told the Mother on Friday, September 15, 2023. The Mother

clarified the situation with the Student and subsequently contacted the Student's Special Education Teacher who in turn contacted the Principal. The Principal set up a meeting with the Parent on September 18, 2023. The Parent stated that the Principal agreed what the Teacher did was wrong. The Parent additionally requested that following the incident she would like the Student moved out of that class so there would not be another incident. Initially the request was declined, but after reconsideration the Student was moved to a different class.

The District acknowledged in their response dated October 5, 2023 that the Teacher called the Student to the Teacher's desk to review the IEP. They further stated that the high school administration was made aware of the parent concern on September 16, 2023 and request for a class change on September 18, 2023. While the request for a change of classroom was initially denied the Student was allowed to transfer to a different classroom. A conversation regarding special education and IEP confidentiality did take place between the Teacher and the Principal the week of September 18, 2023.

The Special Education teacher reported during interview and documentation showed that the Student's IEP Snapshot was sent to the Teacher in an email dated August 30, 2023 at 8:21 AM. And stated,

> Good Morning! I am reaching out to you with information about senior [Student] who I will be serving as an IEP case manager this school year. My records show that [Student] will be in your classroom this year. Here is some information you will find in sic [Student] Snapshot IEP. [Student] Disability category is Specific Learning Disability. The attached information contains the minimum accommodations and modifications legally guaranteed to [Student] in [Student] IEP. You may add more supports in your classroom if you think they are necessary and will assist [Student] in being successful in your classroom. If you choose to print the information, please keep it in a locked file cabinet or drawer…Also, please do not share the digital copies with anyone, including other staff. This information is need to know.

Documentation showed that the Teacher responded to the Special Education teacher's email in a reply on Aug 30 at 3:16 PM.

The District stated in their October 5, 2023 response, "As IEP notes or content are shared with teachers, a confidentiality reminder is consistently implemented. This same confidentiality topic is reviewed during IEP meetings as well."

A teacher note provided by the Special Education Teacher recorded that the Teacher had approached her sometime between September 4, 2023 and September 11, 2023 and discussed alternate ways for students to write notes after the Teacher expressed his opinion that written student notes were important.

The Teacher who was the subject of the complaint stated during an interview on October 9, 2023 that on Wednesday, September 13, 2023 students in the classroom were completing

independent paper and pencil seatwork when the teacher noticed the Student on his laptop and prompted the Student to complete the assigned work, because it was possible the Student was not working on the assignment. The Student responded that he was working on his assignment and stated he can use his laptop to type his responses because he has an IEP. In response the teacher asked the Student to come to the teacher's desk and electronically accessed the IEP with the Student. The teacher stated he was aware the information was confidential and for that reason called the student over to his desk for a private conversation rather than continue the interaction in a large group. The teacher stated his goal in this exchange was to review the Student's accommodations together. The teacher reported that the Student was in the class two additional days after the September 13, 2023 incident and the student did not express any concerns about the interaction.

One additional staff member was in the classroom during the incident on September 13, 2023 and during an interview on October 9, 2023 stated she did not know the teacher and student were discussing the Student's IEP. She stated that she was unable to hear what the Teacher and Student were discussing and surmised she was present during the incident afterward because of her knowledge that the student had an IEP with accommodations. She stated that there were five students and no other staff in the classroom at the time of the incident and they were equally distant from the Teacher and Student incident. She further stated she had not heard of any other incidents and in fact did not know about the incident in spite of being in the classroom at the time when it was occurring.

The Student's annual IEP meeting was held Friday morning, September 15, 2023 with the Student, Parent, and Teacher in attendance and the incident was not brought up.

The Special Education Teacher reported that she was observing students in the Teacher's class on Friday, September 15, 2023 during 3rd period and was present in the classroom with the Teacher and Student and observed,

> "[Teacher] approached [Student] and [another student] table and told [Student] that he was fine with him typing his notes and would talk to his Mom anytime she wanted. Next, he approached and asked each of the other students if it was okay if they did their notes differently. After that he rotated around the room checking in with the other students and answered questions as they arose."

The Parent stated she learned of the incident on Friday evening, September 15, 2023 from the Student's sibling who was not present during the incident but learned of it from the Student during discussion between Wednesday and Friday.

The Parent stated she contacted the Student's Special Education Teacher about the incident on Friday, September 15, 2023 but reached her on Saturday (September 16, 2023) by phone. The Parent and Special Education Teacher agreed that they spoke, and the Special Education Teacher spoke with the Student as well.

The Special Education Teacher stated during the interview on October 9, 2023 that she contacted the Principal on Saturday, September 16, 2023 about the incident.

The Principal during the October 9, 2023 interview stated she learned of the complaint on the Saturday, September 16, 2023 from the Special education Teacher. During interview she stated she called the Teacher in the following Monday and spoke about confidentiality with special education documents and reached out to the Special Education Cooperative serving this District to learn if there was additional training.

The USD 361Employee Handbook documented, " As a district we adhere to the Kansas Educator Code of Conduct found here." [hyperlink to the pdf document]

The Kansas Educator Code of Conduct includes the following:

> "Inappropriate conduct includes, but is not limited to the following: Sharing confidential information concerning student academic and disciplinary records, health and medical information, family status/income and assessment/testing results unless disclosure is required or permitted by law."

District staff reported during interviews that they follow the Kansas Educator Code of Conduct regarding student confidentiality. All district staff further reported they were aware that student special education records are confidential and are shared on a need-to-know basis and if existing in paper form should be kept locked.

Conclusion

The District acknowledged that a Teacher incorrectly read the Student's accommodations aloud in the classroom where another staff person and other students were present. During separate interviews with the two staff persons who were present in the classroom at the time of the incident both stated that other students did not hear anything and further were not aware of the incident. The Teacher stated that the incident occurred in response to the Student saying aloud in the classroom that he had an accommodation in his IEP. The Teacher described during the interview that he was aware of IEP confidentiality of special education documents and that is why he asked the Student to come to his desk to review the IEP accommodations.

No staff interviewed whether present or not present for the incident stated any other students had confidential special education information incorrectly shared. Document review showed that the District has procedures in place and trains staff to protect confidential special education materials. Documentation further shows that the special education teacher includes reminders of the confidential nature of the special education records when distributing them to general education teachers who provide instruction to eligible students. The District addressed confidentiality for students who qualify for special education services with the

Teacher within one week of the incident demonstrating that they take confidentiality of special education records and documents seriously.

Based on the regulation stating that the general education teacher had a right to access the confidential records (34 C.F.R. § 300.323(d)(1) and K.A.R. 91-40-16(4)), the materials had been shared reminding the teacher of the confidentiality of the records and that the teacher stated he called the student to his desk in response to the student stating he had an IEP to discuss is privately it is not substantiated that USD #361 failed to maintain confidentiality about a student's special education program during the 2023 school year. Finally, the district immediately acted to respond to the allegation with training and conversation with the Parent rather than conduct a full investigation demonstrates that the district treats student confidentiality consistent with their district procedures.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R § 300.323(a)(1), K.A.R. 01-40-16(4) and 34 C.F.R § 99.31(a)(1) was not found, based on the documentation, interviews, and review of the federal and state regulations.

   It is noted that the District proactively addressed confidentiality of special education documentation and any corrective action that would have been considered has already been implemented by the District.

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).

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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(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 #475
ON SEPTEMBER 26, 2023

DATE OF REPORT OCTOBER 25, 2023

This report is in response to a complaint filed with our office by USD 475 Parent, ---------, on behalf of her daughter, ---------, 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 parent," "the complainant," or "the teacher."

Investigation of Complaint

Doug Tressler, Complaint Investigator, spoke by telephone with the complainant on Oct 4, 2023.

On Oct 4, 2023, the investigator spoke via video-conference with Dr. Nelson

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

1. The district's response to the allegations,
2. Copies of all IEPs, IEP amendments, Prior Written Notices in effect during August 1, 2023 – current
3. Copy of the initial evaluation or most recent re-evaluation whichever is most current,
4. Copies of the most recent Functional Behavioral Analysis,
5. Copies of any Behavior Intervention Plan,
6. Copies of any additional documentation you would like to have considered during the investigation
    a. Release of information signed by the parent 9/27/2023.

Background Information

The student is preschool age and identified as developmentally delayed requiring speech language services only.

Issue One

The USD #475, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly assess the student as required under K.A.R 91-40-9(B) and 34 C.F.R. 300.304(c).

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.304(b)(1) requires that an agency "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent." Additionally, an agency is not to "use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program." (34 C.F.R. 300.304(b)(2)).

Complainant's Position

In her complaint, the parent alleges the following:

The district demanded a diagnosis to provide services for the student.

District's Position

The district denies requiring a diagnosis from a physician as a requirement for any services connected to the student's Individual Educational Plan.

The district documented in its response that while the mother did provide medical records on 9/8/2023, this communication of records occurred well after the student's evaluation and eligibility determination which had been completed in May of 2021. That communication occurred in relation to an SSA report the parent was attempting to file.

Investigative Findings

During the investigation of the documents submitted, there was no error noted in the evaluation process. Documents show that the district used a variety of assessments and did not require a specific diagnosis or rely solely on one assessment during the evaluation. Furthermore, there is no indication that the district requested a medical diagnosis in order to proceed with the evaluation.

During the interview both the parent and the school stated that the school did not make a requirement of a medical diagnosis for any part of the IEP. This includes the evaluation process and the development of the individual educational plan including special education and related services.

However, documents provided by the district confirm that the parent had submitted paperwork from the Social Security Administration (SSA) to the school in the process of filling out this SSA application. During this process the school nurse did ask about a diagnosis.

However, the SSA process is not a part of the Individuals with Disabilities Education Act and is outside the scope of this investigation.

In conclusion, based on the information above, USD #475 ***did not*** violate state or federal special education laws by requesting a formal diagnosis before or during the evaluation process.

Issue Two

The USD #¬¬¬475, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to comply with 34 C.F.R. 300.613 and K.S.A 72-6310(c) by failing to provide the parent with behavioral reports, a physician behavioral reports, and a DCF report filed by the district.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.613 state "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". Additionally, "the agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507 or §§ 300.530 through 300.532, or resolution session pursuant to § 300.510, and in no case more than 45 days after the request has been made"

The right to inspect and review education records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
(3) The right to have a representative of the parent inspect and review the records." (34 C.F.R. 300.613(b)(1)-(3)).

Furthermore, K.S.A 72-6310(c) states, "school records of each pupil are the property of the pupil and shall not be withheld by any school district. Upon request of a pupil or the parent of a pupil, the school records of the pupil shall be given to such pupil or parent, or, upon transfer of the pupil to another school district or to a nonpublic school, shall be forwarded to such school district or nonpublic school."

Complainant's Position

In the complaint, the parent alleges that behavioral records and a DCF report were not provided to the parent upon request. The parent also alleges that the district failed to provide behavioral reports to the student's physician upon request.

District's Position

The district stated that they did provide provided all educational records, required under federal and state law, to the parent upon request. The district also states that they provided the student's physician the student's educational records upon request and receipt of consent to release the records from the parents. The district states that the request for records to be sent to the student's physician was completed within seven school days following receipt of a signed release of information notice from the parent.

Investigative Findings

During the investigation, there was no error noted in the provision of records.

Requested Behavioral Records to the parent:

During separate testimonies given to the investigator both the school and the parent substantiated that all records requested by the parent were provided to the parent within a reasonable time. As such, it is found that the district did not violate state or federal laws by failing to provide the parent with the student's educational records upon request or within a reasonable amount of time.

Requested Behavioral Records to the physician:

Documents show that the parent did request on September 20, 2023, for records to be shared with the student's physician and that the district responded that they would do so as soon as the parent signed the release. Documents also indicate that the district shared the records with the parent following this request on September 27, 2023.

The required release of information was signed and dated by the parent on 9/27/2023. Following this consent, the school records show that the requested records were then released to the physician within seven school days. The provision of student records to a representative of the parent within seven days falls within the required 45-day time period and is a reasonable amount of time. As such, it is found that the district did not violate state or federal laws by failing to provide the parent's representative with the student's educational records upon request, consent for release, or within a reasonable amount of time.

Requested DCF Report to the parent:

In the initial complaint, the parent lists a report that the district sent to DCF as part of the educational records the school allegedly failed to provide to the parent. During interviews, both the school and the parent referred to the parent's request concerning a Department of Children and Families (DCF) report submitted by the school.

The school references this request in their written response documentation and dates the parents request as 9/19/23. Under 34 C.F.R. 300.613(a), an educational record includes "any education records relating to their children that are collected, maintained, or used by the

agency under this part." As such, the district is only obligated to provide the parent with records that fall under this definition, and are collected, maintained, or used by the agency in relation to the student's special education. A report to DCF does not qualify as an educational record as it is not collected, maintained, or used by the school in relation to the student's special education. Therefore, the district ***did not*** violate state or federal laws by failing to provide the parent with a copy of a DCF report submitted to DCF by the school.

Summary and Conclusions

ISSUE ONE: The USD #475, did not violate state or federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to properly assess the student as required under K.A.R 91-40-9(B) and 34 C.F.R. 300.304(c). No corrective action required.

ISSUE TWO: The USD #¬¬¬475, did not violate state or federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically, 34 C.F.R. 300.613 and K.S.A 72-6310(c), by failing to provide the parent or the student's physician with behavioral reports. Additionally, the district did not violate state or federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically, 34 C.F.R. 300.613 and K.S.A 72-6310(c), by failing to provide the parent with a DCF report filed by the district. No corrective action required.

Corrective Action

Based on the foregoing, according to IDEA and Kansas special education regulations a violation is not substantiated, and no corrective action is required.

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).

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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 #305
ON SEPTEMBER 29, 2023

DATE OF REPORT OCTOBER 26, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of --------- by their parent, ---------. In the remainder of the report, --------- will be referred to as "Student A" and --------- will be referred to as "Student B." Together, they will be called, "the students." --------- will be referred to as "the parent," "the mother," or "the complainant."

The complaint is against USD 305 Salina Public Schools. In the remainder of the report, USD #305 will be referred to as "the district", "the local education agency (LEA)", or "the school."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on September 29, 2023 and the 30-day timeline ends on October 30, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Gwen Beegle, reviewed all evidence and documentation, which was provided by both the district and the complainant. The Complaint Investigator spoke with the parent on October 3, 2023 to clarify the complaint and interviewed the parent on October 17, 2023. These district staff persons were interviewed on October 16, 2023: Angie Dorzweiler (Principal), April Mayorga (Lead Teacher), Sydney Bacon (Special Education Teacher), Kent Trimmell (School Psychologist), Lori Thornton (Central Kansas Cooperative in Education-CKCIE) Coordinator for Oakdale Elementary), Genesis Resto-Torres (Kindergarten General Education Teacher), Brooklyn Bradley (Speech Language Pathologist), and Krista Linenberger (Elementary Director District Office).

The following documentation and information were used in consideration of the issue(s):

1. Evaluation and Eligibility Team Report for Student A, dated May 19, 2021
2. Evaluation and Eligibility Team Report for Student B, dated May 19, 2021
3. IEP for Student A dated May 19, 2021
4. IEP for Student B dated May 19, 2021
5. Prior Written Notice for Eligibility and Initial Services for Student A dated May 19, 2021 and signed by the parent giving permission on May 19, 2021

6. Prior Written Notice for Eligibility and Initial Services for Student B dated May 19, 2021 and signed by the parent giving permission on May 19, 2021
7. Conference Summary IEP Team Considerations for Student A dated May 19, 2021
8. Conference Summary IEP Team Considerations for Student B dated May 19, 2021
9. Notice of Meeting for Student A dated October 13, 2022 for a meeting on October 11, 2022 signed by parent waiving 10 day notice on October 11, 2022
10. Notice of Meeting for Student B dated October 10, 2022 for a meeting on October 11, 2022 signed by parent waiving 10 day notice on October 11, 2022
11. IEP Amendment for Student A dated October 10, 2022
12. IEP Amendment for Student B dated October 10, 2022
13. Prior Written Notice of material change in service, change in placement and other changes to the IEP for Student A dated October 11, 2022 for a meeting on October 11, 2022 signed by the parent giving consent on October 11, 2022
14. Prior Written Notice of material change in service, change in placement and other changes to the IEP for Student B dated October 11, 2022 for a meeting on October 11, 2022 signed by the parent giving consent on October 11, 2022
15. Conference Summary IEP Team Considerations for Student A dated October 11, 2022
16. Conference Summary IEP Team Considerations for Student B dated October 11, 2022
17. IEP Amendment without a meeting for Student A dated January 9, 2023
18. Prior Written Notice for a material change in services for Student A dated January 9, 2021and signed by the parent giving consent on January 9, 2023
19. Notice of Meeting for Student A dated March 30, 2023 for a meeting on March 30, 2023 signed by the parent waiving 10 day notice on March 30, 2023
20. Notice of Meeting for Student B dated March 30, 2023 for a meeting on March 30, 2023 signed by the parent waiving 10 day notice on March 30, 2023
21. IEP for Student A dated March 30, 2023
22. IEP for Student B dated March 30, 2023
23. Prior Written Notice for material change in services, substantial change of placement, and other changes to the IEP for Student A dated March 30, 2023 and signed by the parent giving consent on March 30, 2023
24. Prior Written Notice for material change in services, substantial change of placement, and other changes to the IEP for Student B dated March 30, 2023 and signed by the parent giving consent on March 30, 2023
25. Conference Summary IEP Team Considerations for Student A dated March 30, 2023
26. Conference Summary IEP Team Considerations for Student B dated March 30, 2023
27. IEP Amendment without a meeting for Student A dated August 22, 2023
28. IEP Amendment without a meeting for Student B dated August 22, 2023
29. Prior Written Notice for change in services and change of placement for Student A dated August 22, 2023 and signed by the parent giving consent on August 21, 2023

30. Prior Written Notice for change in services and change of placement for Student B dated August 22, 2023 and signed by the parent giving consent on August 21, 2023
31. Kindergarten Transition Notes, undated personal notes
32. Progress Reports, Student A, with entries dated from October, 2022-October, 2023
33. Progress Reports, Student B, with entries dated from October, 2022-October, 2023
34. Daily Schedule, Students A and B, 2023-24 School Year
35. Kindergarten Schedule, 2023-24 School Year
36. Special Class Schedule, 2023-24 School Year
37. Teacher Observations of Student A and Student B, with entries dated September 20, 2023 to October 5, 2023
38. Notes from Principal and Lead Teacher with entries dated August 29, 2023 to October 11, 2023
39. Elementary School Family Profile, 2023-24 School Year
40. KELPA Screener Student Report, Student A, dated August 28, 2023
41. KELPA Screener Student Report, Student B, dated August 28, 2023
42. IEP Meeting Notes dated October 19, 2023

Background Information

The students are 5-year-old twin boys, who currently attend a self-contained special education elementary classroom for their kindergarten year at Oakdale Elementary school in USD #305. The students have other siblings who attended the same elementary school in prior years. The family speaks Spanish in the home, and the mother speaks Spanish to the students and relies on their siblings to speak English to the students in the home. The records indicated that both English and Spanish are spoken in the home, according to the parents. The parents have interacted with the school in English, and the family informed the school that they regularly travel to Mexico for extended times over school breaks.

The students were born at 29 weeks gestation and had low birth weight, and both had complicating health conditions at birth, which are now resolved. Both students received speech language services through Part C. Evaluated for Part B special education prior to their third birthday, the students were found eligible in the developmental delay category. Their IEPs specified that speech language therapy would occur both as pull out and within general education in an early education preschool (Head Start) program which they attended as three- and four- year-olds. On March 30, 2023, both students' IEPs were held, anticipating entering the elementary school program in August, 2023. The students' IEPs contain four goals on communication, three goals on pre-academics, and two goals on social emotional skills. During the remainder of the preschool year, Student A's IEP called for 75 minutes of pull out special education or related (speech language) services weekly; Student B's IEP was similar, with 60 minutes of pull out special education or related (speech language) services weekly. Other than

the times they were removed for these services, they remained with their same age peers in the preschool program.

However, at the beginning of the 2023-24 school year, both students' services changed to special education in the self-contained special education classroom for all academics, with special education support in general education during meals and special classes. For both students, pull-out speech language therapy continued for 15 minutes three times a week.

Issues Investigated

1. ISSUE ONE: The USD #305 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop the students' IEPs, specifically by designing IEPs that would meet the students' needs, thereby denying them FAPE (page 6).
2. ISSUE TWO: The USD #305, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide FAPE by implementing the students' IEPs, including the goals, services, supplementary aids and services, access to the general curriculum, and the placement in the least restrictive environment during the 2023-24 school year (page 13).
3. ISSUE THREE: The USD #305, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to afford procedural safeguards to the students' parent, specifically by providing the parent with Prior Written Notice when changing the students' IEP services or placement (page 18).

Issue One

The USD #305 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop the students' IEPs, specifically by designing IEPs that would meet the students' needs, thereby denying them FAPE.

Applicable Law

Federal regulations at 34 C.F.R. 300.501(b) require that parents be given the opportunity to participate in meetings with respect to the identification, evaluation, and placement of their children, and the provision of FAPE to their children. Districts must ensure that parents are part of any group that makes decisions on educational placement of the parent's child according to 34 C.F.R. 300.501(c) including receiving notice of meetings. Additionally, federal regulations at 34 CFR 300.322(e) require that the public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents whose native language is other than English. Finally, 34 CFR 300.9(a) requires that the parent has been fully informed of all information relevant to the activity for which consent is sought in his or her native language.

With regard to evaluation for special education, federal regulations at 34 C.F.R. 300.304(c)(1)(ii) require that assessments are provided and administered in the child's native language and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally.

Analysis: Findings of Fact

The parent alleged that she learned that the students were kept in the special education classroom for the entire school day when she visited them at their elementary school during the first weeks of the 2023-24 school year. In the complaint and the interview, the mother alleged that she did not agree to have them isolated in this way at the IEP meeting, and that her children had language delays and could not learn if they were not around the other children in kindergarten. The parent alleged that the special classroom placement was not meeting their needs to learn and that they should not be in the self-contained special education classroom. The parent alleged in the Child Complaint and during the interview that the children could do more than what the school said; they just could not talk. The complainant alleged: "They have them in a special education classroom all day and not in a regular classroom just because they cannot speak."

The district responded that "U.S.D. 305 denies this allegation. The team went through the proper procedures for developing the IEPs for both [the students]. On May 19, 2021, both twins were found eligible for special education under the category of Developmental Delay. . . [the parent] signed the consent for the initial evaluations on March 22, 2021. . . Likewise, she signed consent for the IEP on May 19, 2021. . . Although [the parent] claims that the boys only have a speech delay and should be in the general education classroom, the initial evaluation reports clearly demonstrate that both are significantly cognitively delayed, in addition to their significant speech delays. Since the initial IEPs, there have been multiple amendments for both boys. Each time, the parent signed consent for the changes to the IEP."

The complaint investigation proceeded to determine (a) parent participation in the IEP process, including native language interpretation, (b) proper evaluation to include native language assessments and (c) proper development of the students' IEPs. The findings below will be organized into these categories.

Findings of the investigation based upon the evidence listed above include the following:

Parent participation

- During the interview, the parent reported that the change of placement was not explained to her and that she did not agree to have the children contained all day. The parent reported that she was not informed during the March 30, 2023 IEP meeting about the nature of the elementary classroom that the children were going to be assigned to attend, or that they would be there on a full-time basis. The parent and district agree that the parent strongly expressed her disagreement with the students'

placement in the special education classroom full time within a few weeks of the beginning of the 2023-24 school year, when she visited the students at school.

- Both parent and district agree that no Spanish language interpretation was provided for the parent at the evaluation or the March 30, 2023 IEP meeting. The district reported and provided documentation that the elementary school's parent database shows the family's home language is English.
- The parent signed her consent to waive 10 day notice of the meeting on March 30, 2023 and she signed consent to the Prior Written Notice (PWN) for a material change of services, substantial change placement, and other changes to the IEP for both students on March 30, 2023. The PWN signature statement indicated that the parent had received or had been offered parental rights in her native language. However, the parent and the school agreed that meetings were held only in English.
- Conference Summary IEP Team Considerations for both students dated March 30, 2023 show that the parent expressed concern about the students' transition to the school program. The conference notes state that the mother was concerned about the change of teacher and speech language therapist at the new school. The meeting notes said a discussion was held to ask the kindergarten team to let the boys come to school, meet the new teachers, and see the classroom. However, the district did not report this was done.
- The district reported and provided notes from a kindergarten transition meeting between the special educator, the lead teacher, and the parent where the placement in special education for reading, written language, math, and social skills was listed as a discussed topic, subsequent to the IEP's development. The kindergarten transition meeting notes indicated that the family trips to Mexico over school breaks may cause absences from school. The parent reported that she did not know the students were going to be in the self-contained special education program for the whole day.

Assessments in native language

- According to the Evaluation and Eligibility Team Reports for Students A and B dated May 19, 2021, the students were evaluated at 2 years 9 months of age and both were found eligible for special education in the category of developmental delay due to "significant delays in overall development in communication, cognitive, social-emotional and pre-academic skills." The evaluator urged caution in interpreting the cognitive testing due to the children's young age. The evaluator stated for each child: "[the student] presents with delayed speech and language skills that impact his ability to effectively communicate his wants and needs and to demonstrate his knowledge and skills he may have. Speech-language therapy is recommended at this time."
- The district reported during the interview and the May 19, 2021 evaluation social history for both students showed that the parent reported that both Spanish and

English were used in the home, with the mother speaking Spanish to the students and siblings speaking English.

- The students' evaluations dated May 19, 2021 did not indicate that any Spanish language testing or dual language testing was conducted. When questioned during the interview on October 16, 2023, the district confirmed that there was no Spanish language assessment included in the evaluation report. The district reported and documentation showed that play based assessments were conducted.
- Both students' IEPs dated March 30, 2023 stated that the students do not have limited English Proficiency. Both students' IEPs included this statement: "[The student] is a dual language learner. Though he is not strong in either Spanish or English, both languages were considered when developing his IEP." No dual language assessments or observations were further provided in either student's IEP.
- Both students were screened as English Learners (EL) upon their entry into the elementary program (August 28, 2023). Both students were assessed as "not proficient" and received ESOL services in the special education classroom.

IEP development

- Both students have current IEPs dated March 30, 2023. In the early education preschool setting (March 30, 2023 to May 18, 2023), Student A received special education 15 minutes three times a week in the special education setting for speech language services; Student B received special education 15 minutes two times a week in the special education setting and 15 additional minutes in the general education setting for speech language services. Each student also received special education 15 minutes two times a week in the special education setting and 15 minutes one time a week in the general education setting. The remainder of their educational program was in the preschool classroom with their same-age peers, with minimal special education support (15 minutes for Student A; 30 minutes for Student B).
- Beginning August 16, 2023, their IEPs dated March 30, 2023 changed the students' placements to a self-contained special education placement for "the duration of reading, math, written language and social skills instruction. [They] will receive special education services in the general education setting for breakfast, lunch, and special classes (music, PE, library, social studies, counseling, science)." No special education service minutes were specified on the IEP. No school member of the students' current elementary IEP team attended the March 30, 2023 IEP meeting.
- Both students' IEPs dated March 30, 2023 specify that upon entering the elementary program for the 2023-24 school year, 15 minutes of related (speech language) services in the special education setting would be provided three times a week.
- The district reported that speech language therapy is conducted in English, using physical objects and visual prompts. When questioned during the interview on October

16, 2021, the district confirmed that the students' speech language services no longer included dual language support as they had on a previous IEP.

Recent developments

- The parent and the district agreed that the parent requested an IEP meeting on October 12, 2023 and the district agreed to hold an IEP meeting on October 19, 2023. At this meeting, the notes provided by the district show that both parents attended. According to the notes, the mother stated that another person attending at the parent's request and the father were adequate for translation. The notes state that the students will be in the regular classroom an additional 15 minutes each day, by going to alternate halves of the creative play period.
- According to the October 19, 2023 IEP meeting notes, the district suggested conducting a reevaluation and the parents gave verbal permission to the request.
- In this case, the complaint and the initial interview appeared to center on whether the students' IEPs were appropriately developed, as the parent stated that they did not meet the student's needs because of the self-contained placement. During the interview, the parent asserted that there were two problems with the special education placement in the self-contained special education class. First, she was not informed that the children were going to be placed in a self-contained classroom and in her words "prevented" from going to the regular classroom where they could learn from other children. She did not believe the IEPs meant that the students would be all day in the special education classroom, as she found them upon visiting the school. Secondly, she claimed that the students were more capable than the school assumed, based on her belief that they were smart but could not speak. Accordingly, both these allegations were investigated as part of Issue One, the development of an appropriate IEP that was based on parental participation and understanding of the proceedings and decisions being made and the proper evaluation of the students to determine their placement in the elementary special education classroom for most of the school day.

While the parent asserted that she did not understand what the elementary school placement would be, she was provided with documentation of this change by the district, which she signed giving her consent. She attended the March 30, 2023 IEPs for Students A and B. However, no native language interpretation occurred at that meeting and the parent immediately protested the placements upon visiting the elementary school in August, 2023 at the outset of the 2023-24 school year.

Federal regulations at 34 CFR 300.322(e) require that the public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents whose native language is other than English, and federal regulations at 34 CFR 300.9(a) require that the parent has been fully informed of all information relevant to the activity for which consent is sought in his or her

native language. Given the parent's clear reaction when she learned that her children were in the K-1 self-contained special education classroom, it is likely that she did not understand the change of placement when the IEP meeting was held and upon signing the PWN.

Therefore, it is found that there was a violation of regulations for failing to take the actions necessary to fully inform the parent of all the information relevant to the placement decision for the students, for which her consent was sought, including native language translation of documents and participation in meetings (34 CFR 300.322(3); 34 CFR 300.9(a)). It is noted that the district and parents held an IEP meeting on October 19, 2023 at which native language translation was available and the topic of the students' placements was discussed.

Her second concern was her belief that the students were more capable than the school assumed, stating that the students were smart but only could not speak. The social history of the students' special education eligibility evaluations dated May 18, 2021 stated that the mother spoke Spanish to the students and that siblings in the home spoke English to them. At the time of the evaluation and subsequent IEPs, the district did not label the students as Limited English Proficient. However, the district did not provide any measure within or subsequent to the special education evaluation that their Spanish language delay was equal to their English language delay. With regard to evaluation for special education, federal regulations at 34 C.F.R. 300.304(c)(1)(ii) require that assessments are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally. Native language, according to 300.29(a)(1), is the language spoken by the parent, in the case of limited English proficiency. The district, by August 28, 2023, had determined that the children should be screened using the Kansas English Language Proficiency Assessment (KELPA) and found them to be "not proficient."

Therefore, it is found that there was a violation of 34 C.F.R. 300.304(c)(1)(ii) in failing to include assessments in the students' native language. It is noted that the district and parents held an IEP meeting on October 19, 2023 at which the students' re-evaluation was discussed and the parents gave verbal permission to the district's suggestion to begin the reevaluation at the present time.

Conclusion

Based on the foregoing, ***it is substantiated*** that USD #305 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop the students' IEPs, specifically by designing IEPs with parental participation that would meet the students' needs, thereby denying them FAPE.

Issue Two

The USD #305, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide FAPE by implementing the students' IEPs, including the goals, services, supplementary aids and services, access to the general curriculum, and the placement in the least restrictive environment during the 2023-24 school year

Applicable Law

According to federal regulations at 34 C.F.R. 300.320 (a)(4), the IEP developed for the student is to include a statement of the special education, related, and supplementary aids and services or modifications to be provided to the student to enable the child to advance toward their annual goals, to make progress in the general curriculum, to be educated and participate with other children with disabilities and nondisabled children, and an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and activities. Additionally, 34 C.F.R. 300.320 (a)(7) adds that the IEP must include the projected date for the beginning of the special education and related services along with the anticipated frequency, location, and duration of services and modifications. Federal regulations 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.

Analysis: Findings of Fact

The complainant alleged that the students' IEPs were not followed, and that the students were not being allowed out of the self-contained classroom during the day. She alleged: "[My children] are being prevented from going into a regular classroom and getting the education they need." In the interview, the complainant alleged that she found that the children were having lunch in the self-contained classroom and that the kindergarten children were unfamiliar with the students when she visited the school to have lunch with them in the lunchroom. The complainant alleged that she witnessed the students' efforts at communication being ignored by the special classroom staff. The complainant alleged that the students were isolated away from the other children in the school. The complainant alleged that isolation increases the children's vulnerability to mistreatment and that the children needed to be around other children without disabilities in order to learn what they needed.

The district responded: "U.S.D. 305 denies this allegation. Rather, the IEP team placed both boys in accordance with their needs, as determined during the initial evaluation and as continues to be clear through the provision of services. Both boys have significant delays in their overall development, including the areas of cognitive, speech, social/emotional, and pre-academic/academic skills; however, [Student B] is somewhat more delayed than [Student A] . . This is not unexpected, given the circumstances surrounding their premature birth and the

additional problems [Student B] experienced after birth. While to [the parent] it may appear that the boys simply do not speak but are otherwise normal, the testing data says otherwise. Unfortunately, these are not disabilities that the boys are likely to overcome. They will need significant special education support throughout their school career based upon their level of functioning. Furthermore. . . the parent has given consent to the initial evaluation and IEP, as well as the subsequent changes that have been made. It is understandable that the parents may wish for this to be simply a speech issue that could be overcome with speech therapy, but it is simply not true."

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 students' IEPs dated March 30, 2023 indicate their special education placement for "the duration of reading, math, written language and social skills instruction. [They] will receive special education services in the general education setting for breakfast, lunch, and special classes (music, PE, library, social studies, counseling, science)." No minutes of special education service are included on the IEP.
- The parent reported that the children were not attending lunch in the lunchroom with the other children when she visited the school at the beginning of the year. The parent reported that the lunchroom staff told her that the students received lunch in the special education classroom. When interviewed on October 16, 2023, the general education teacher stated that the students had lately been attending lunch and sitting with the kindergarten class, as well as attending indoor and outdoor recess with them. The kindergarten schedule shows that the afternoon recess but not the morning recess occurred at the same time as the students scheduled recesses.
- On October 12, 2023, the district provided a schedule for the students as follows:
    - 8:00-8:45 Breakfast, Morning Routine
        - 8:30-8:45 Related Services
    - 8:45-9:20 Tasks and Choice, Special Education Classroom
    - 9:20-9:40 Recess
    - 9:40-11:00 Tasks and Choice, Special Education Classroom
    - 11:00-11:30 Lunch
    - 11:30 -12:20 Tasks and Choice, Special Education Classroom
    - 12:20-1:20 Specials [25 minutes each]
        - 1. Music/Library
        - 2. PE/Science
        - 3. Music/Library
        - 4. PE/Science
        - 5. Music/Library
        - 6. PE/Science
    - 1:20-1:40 Recess

  - 1:40-2:40 Tasks and Choice, Special Education Classroom
  - 2:40-3:15 Creative Play, Listening Center
  - 3:15-3:25 Dismiss
- The kindergarten schedule provided by the district shows:
  - 8:15-8:20 Attendance
  - 8:20-8:45 Breakfast
  - 8:45-9:20 Whole Group Math
  - 9:20-10:30 Small Group Reading
  - 10:30-10:45 Recess
  - 10:45-11:00 Writers Workshop
  - 11:00-11:30 Lunch
  - 11:30-12:20 Whole Group Reading
  - 12:20-1:10 Specials
  - 1:10-1:25 Writers Workshop
  - 1:25-1:45 Recess
  - 1:45-2:35 Small Group Math
  - 2:35-3:05 Creative Play
  - 3:05-315 Daily News
- The schedules above show the students' and kindergarten schedules overlap for 25 minutes at breakfast, 30 minutes at lunch, 15 minutes at afternoon recess, and 50 minutes for special classes, for a total of 120 minutes each day. The district reported that the students attended breakfast with the kindergarten classroom.
- The district reported that the students were attending the 25-minute special class periods with a paraeducator at the rate their behavior permitted. According to the teacher's notes, the students attended the following specials during the period of September 20, 2023 to October 9, 2023. Social studies is held one time every 6 days; no data reporting that the students attended social studies was provided. Special class rotations show that music and library occur on the same day, as do science and PE.
  - Date Music Library Science PE
  - Sept 20 AB ½ AB
  - Sept 21 No ½ AB
  - Sept 22 AB ½ AB
  - Sept 25 No ½ AB
  - Sept 26 AB ½ AB
  - Sept 27 No 5 mins. AB
  - Sept 28 (no data provided)
  - Sept 29 (ill and appointments, no data provided)
  - Oct 2 AB ½ AB
  - Oct 3 No 5 mins. AB

- Oct 4 A 5 mins AB
- Oct 5 (no data provided)
- Oct 6 A A
  - 5 mins B 5 mins B
- Oct 9 7 mins AB AB

According to this chart from the teacher's notes, Students A and B attended music regularly, attended half of library most days, attended a fraction of PE on some occasions, and attended science once for a few minutes. When asked, the school did not report any additional programming to enable the students to remain in special classes with their peers.

- No data was provided for the period August 16, 2023 to September 19, 2023.
- Creative play is part of the kindergarten daily schedule, for 40 minutes each day. The district reported that it is reading and math reinforcement in a play-based model. The students were not in the kindergarten class during this period prior to the October 19, 2023 IEP meeting.
- On October 19, 2023 the parents and the district had an IEP meeting at which the IEP team added 15 minutes of creative play time to each student's schedule. The students would not attend the same half of the creative play period. A new schedule was provided to the investigator on October 23, 2023 showing that the students go to breakfast in the gym but do not overlap with the kindergarten class's schedule at breakfast. According to the new schedule, the students spend 305 minutes in special education, have breakfast in the general education setting for 15 minutes, and have 110 minutes with the kindergarten class for lunch, special classes, most of the afternoon recess, and 15 minutes of creative play. According to this information, the students are scheduled to be in the self-contained special education classroom about 70% of their day and with the kindergarten class about 25% of their day.
- At the October 19, 2023 IEP meeting, the notes recorded that the mother wanted the students removed from the special class and that the mother "doesn't feel that staff was supporting them, only expecting them to do it [be successful in the kindergarten classes]. [The principal] explained that there was a staff member assisting them during the time." The notes state that the mother asked why the students didn't attend kindergarten yoga, and the notes report that she was told that speech language therapy pull-out time conflicts with it.

In this case, the student's IEPs required that they would have special education services in special education settings for reading, math, written language and social skills and that they would not be removed from their general education peers for other times of the day (breakfast, lunch, and special classes). However, the students did not attend special classes as specified in the IEP despite being given a paraeducator to accompany them, and there is some evidence that the students did not attend lunch for some time at the beginning of the school

year. Therefore, it is found that a violation of 34 C.F.R. 300.323(c)(2) occurred. It is noted that there was an IEP meeting on October 18, 2023 at which these topics were discussed and the district clarified that the students would attend half of the creative play time in addition to lunch and special classes.

Conclusion

Based on the foregoing, ***it is substantiated*** the USD #305, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide FAPE by implementing the students' IEPs, including the goals, services, supplementary aids and services, access to the general curriculum, and the placement in the least restrictive environment during the 2023-24 school year.

Issue Three

The USD #305, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to afford procedural safeguards to the students' parent, specifically by providing the parent with Prior Written Notice when changing the students' IEP services or placement.

Applicable Law

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.

Analysis: Findings of Fact

The parent alleged that classroom staff told her they could make small changes in the students' daily schedules when she questioned the school staff as to why the students were not following the expected schedule, specifically attending lunch with the kindergarten students. She alleged that the students' IEPs did not require them to eat lunch away from the kindergarten class and that the classroom staff did not have the authority to change their schedules in this way outside the IEP process.

The district responded that they denied this allegation, providing the parent with the parent rights/procedural safeguard document at least one time each year and providing prior written notice for each change of IEP service or placement.

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 Issue Two are incorporated herein by reference.

- The parent was provided Prior Written Notice dated March 30, 2023 for a material change of services, substantial change placement, and other changes to the IEP for both students on March 30, 2023, which she signed giving her consent on the same date. The PWN signature statement indicated that the parent had received or had been offered parental rights in her native language.
- The parent was provided Prior Written Notice dated August 22, 2023 for change in services and change of placement for both students, which she signed giving her consent on the same date.
- The district reported no knowledge of any staff persons stating that the students' schedules could be changed from that stated in the IEP. The district reported that school schedules can be inexact and some daily variability is typical. The parent could not specify what person had made this statement.

In this case, the district documented that they provided or offered a copy of the parent rights - procedural safeguard document to the parent on March 30, 2023 at the time of the students' annual IEPs. The district provided Prior Written Notice (PWN) at the time of the IEP meeting and for an IEP amendment. The district denied any knowledge of a staff person stating that the student's IEP schedules could be changed by the classroom staff without an IEP meeting. However, the finding in Issue Two is that the district did not follow the student's IEP schedules as specified in the IEP. The district did not provide PWN for this change in the students' IEPs. For this reason, it is found that a violation of 34 C.F.R. 300.503(a) occurred.

Conclusion

Based on the foregoing, ***it is substantiated*** that USD #305, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to afford procedural safeguards to the students' parent, specifically by providing the parent with Prior Written Notice when changing the students' IEP services or placement.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 CFR 300.322(e), 34 CFR 300.9 and 34 C.F.R. 300.304(c)(1)(ii) was found, based on facts listed above. Corrective actions are required (as follows):
    a. CORRECTIVE ACTION for 34 CFR 300.322(e), 34 CFR 300.9:

i. Within 20 days of this report, USD #305 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations at 34 CFR. 300.322 (e) and 34 CFR 300.9 which require that the district take whatever action necessary to ensure the parent understands the proceedings of the IEP meeting and placement decisions, and to provide native language translation for each parent whose native language is not English.

ii. Within 20 calendar days of the date of this Investigation Report, the District must reconvene the Student's IEP Team and ensure parental participation in the discussion of the students' schedules, placements, and services, to include native language translation of documents and native language explanations of decisions for which consent is sought. Both students' March 30, 2023 placement decisions for the 2023-24 school year are to be re-determined with full parental understanding and participation; general education with pull out services for speech and language is the starting point for the placement discussion. The school's kindergarten schedule will be used as the foundation for the placement determination, with removals for special education services specified as determined by the IEP team and the remainder of their time spent with their same age peers. The students' daily schedule specifying the location, duration, and frequency of special education and related services and the students' time with general education peers will be clearly portrayed to the parent.

iii. Date due: November 15, 2023

b. CORRECTIVE ACTION FOR 34 CFR. 300.304(c)(1)(ii):

i. Within 20 days of this report, USD #305 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations at 34 CFR. 300.304(c)(1)(ii) which require that the district provide and administer assessments in the child's native language and in the form most likely to show what the child knows and can do academically, developmentally and functionally.

ii. Within 20 calendar days of the date of this Investigation Report, the district must initiate a re-evaluation to include assessments in the students' native language as part of the reevaluation determined to be needed at the October 19, 2023 IEP meeting.

iii. Date due: November 15, 2023

2. ISSUE TWO: A violation of 34 CFR 300.323(c)(2) was found, based on facts listed above. Corrective actions are required (as follows):

a. CORRECTIVE ACTION:

i. Within 20 days of this report, USD #305 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations at 34 CFR 300.323(c)(2) which require the 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.

ii. Within 20 days of the date of this Investigation Report, the district must provide training to the students' classroom staff on (a)the students' IEP services, including attending general education classes with special education support when not being removed to provide the special education services in special education settings as specified in the students' IEP, and (b) the necessity of and how to provide special education support in the general education settings so that the students can adhere to their IEPs' provisions for their participation in general education with their same age peers. The district will provide the training meeting agenda, content, and meeting participants and training providers to SETS upon completion.

iii. Date due: November 15, 2023

3. ISSUE THREE: A violation of 34 C.F.R. 300.503(a) was found, based on facts above. Corrective actions are required (as follows):

   a. CORRECTIVE ACTION:

      i. Within 20 days of this report, USD #305 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations at C.F.R. 300.503 which require that Prior Written Notice is provided to parents when a change of special education services or placement is made by the district. Upon the completion of the IEP meeting to re-determine placement (Issue One, a (i) above), the district will provide Prior Written Notice as required by 34 CFR 300.503.

      ii. Upon the completion of the IEP meeting in corrective action 1 (a) (ii), the district will provide Prior Written Notice with oral language translation of the changes in the students' IEPs.

      iii. Date due: November 15, 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).

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,
Goddard Public Schools: 24FC305-001

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on September 29, 2024, by ------, on behalf of her children, ------ and ------. In the remainder of the decision, ------ will be referred to as "the parent", and ------ will be referred to collectively, as the "the students". An investigation of the complaint was undertaken by complaint investigator, Gwen Beegle, 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 October 26, 2024. That Complaint Report concluded that there was a violation of special education laws 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 district's appeal and supporting documents, the original complaint filed by the parent, the complaint report, and the parent's response 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.

Districts' Appeal

The district claims the investigator erred in her finding of a violation under Issue One. The district argues the following on appeal:

"The investigator erred (1) by going beyond the scope of the concerns stated by the parent in the complaint; (2) by essentially conducting a file review audit on an evaluation that was 2 ½ years old without informing the District of the need to have the school psychologist available for interview;

and (3) making assumptions regarding the parent's need for an interpreter and regarding the alleged lack of evaluation of the students in Spanish, as well as English."

The following issue in this complaint has been addressed by the Appeal Committee:

Issue

USD #305, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop the students' IEPs, specifically, by designing IEPs that would meet the students' needs, thereby denying them FAPE.

In the appeal, the district argues the investigator erred in her finding under Issue One for three reasons, as stated above. The Appeal Committee will address reasons 1 and 2 collectively, and reason 3 separately.

1. Going beyond the scope of the concerns stated by the parent in the complaint; and
2. Essentially conducting a file review audit on an evaluation that was 2 ½ years old without informing the district of the need to have the school psychologist available for interview.

In support of their argument, the district claims "the statement of the issues by the investigator were so broad and went so far beyond the statement of concern made by the parent in this matter as to place the district at a disadvantage on responding to the complaint." The district further contends that due to the broad nature of the investigation, they did not realize "it would be necessary to have the school psychologist who conducted the 2021 evaluation present for interviews." Additionally, the district argues "the reevaluation conducted on [the students] was conducted 2 ½ years ago."

The parent offered no response to this argument.

The original complaint submitted by the parent states, "they have them in the Special Education room all day and not in a regular classroom just because they can't speak." The parent further alleges the students are "being kept in a classroom with children who need more attention", and "they are being prevented from going into a regular classroom and getting the education they need."

To address the parent's concern, the investigator partly determined an issue was whether the 2023-2024 IEPs were properly developed. The investigator then correctly notified the district of the issue. The district claims this was "broad and went so far beyond the statement of concern made by the parent." The Committee disagrees. Whether an IEP is properly developed would address the parent's concern that her children are not being served in the correct classroom.

The district also argues, due to the broadness of the issue, they were unaware "it would be necessary to have the school psychologist who conducted the 2021 evaluation present for interviews." It is common, during an investigation, that issues or concerns may arise requiring an investigator to probe further than originally considered. This is not "broadening the scope of the investigation", but rather, "following the evidence". Furthermore, the district is not confined to only one interview, nor are they prohibited from requesting the investigator speak to school staff they

feel would provide relevant information. This is evidenced in the investigator's formal complaint notice to the district, where she states, "I would like to schedule a phone interview with any school staff you, [the district], believe has pertinent information to share regarding the allegations." It is not the investigators responsibility to guess which staff members may have pertinent information.

Finally, the district argues "the reevaluation conducted on [the students] was conducted 2 ½ years ago." While that may be true, it does not mean the investigator is prohibited from looking at the re-evaluation. In the Final Report, the investigator states three areas relevant to determining whether the 2023-2024 IEPs were properly developed. This included parent participation, including native language interpretation, proper native language assessments, and proper development of the IEPs. During the investigation, the investigator did examine parent participation, assessments done in native language, including evaluations done in 2021, and the students' enrollment record. The investigator compared these documents to the current IEPs' development to establish what would constitute a "properly developed" IEP. The investigator did not make any finding on the development of any IEP, or evaluation, dated outside the 12-month look-back period, as required under the law.

It is important to note that investigators are given discretion as to what information they believe will be relevant to the complaint. At no time did the investigator go "beyond the scope of the parent's concern" or "essentially conduct a file review audit", but rather, examined the history of the students, their evaluations, and the parents' role in the process to better understand the current needs of the students. The investigator appropriately utilized this data to determine whether the current IEPs were properly developed.

When a parent, or district, submits a formal complaint, it is KSDE's responsibility to examine all relevant information. Sometimes, this includes historical or underlying data. A review of this data does not mean an investigator is conducting a file review, nor does it mean the investigator is broadening the scope of the investigation beyond the 12-month look back period. At times, fidelity to the process, and fairness to both parties, require an investigator to understand the historical situation before deciding on the issue at hand. Here, the district confuses historical relevance with making a finding on an issue that is beyond the 12-month look-back period. The 12-month restriction is in place to confine allegations to acts that occurred within the 12-month period, not to limit an investigator's understanding of the circumstances.

3. Making assumptions regarding the parent's need for an interpreter and regarding the alleged lack of evaluation of the students in Spanish, as well as English.

The district disagrees with the investigators statement, "Given the parent's clear reaction when she learned that her children were in the K-1 self-contained special education classroom, it is likely that she did not understand the change of placement when the IEP meeting was held and upon signing the PWN", claiming that the investigator "clearly made an assumption." The district further argues the parent is not upset because she did not know the placement for her children, but rather, "was upset because she saw that her students are with special needs children". The district also argues, "the parent refused an interpreter" at the 10/19/2023 IEP team meeting.

The district claims, in part, that the parent does understand English based the students' enrollment records indicating English spoken at home, and states that there is a difference between, "a parent who does not understand language due to difficulties and a parent who does to want to understand due to denial of the severity of the child's disability." The district further states the parent, "switched to Spanish whenever she wanted to make side comments that she did not want school staff members to understand."

In response to this the parent provides a statement, saying, "I understand most of the English language when it is spoken to me but when it comes to the written part, I have trouble understanding it." She also states, "I was not the one who did the enrollment, my oldest daughter enrolled my children in school as we have mentioned before I spend most of the summer in Mexico." The parent further claims, "I can assure you I never said anything bad about anyone. That is just me when I get frustrated because I feel the school does not understand me." To confirm this, the parent also submitted a document provided by the Child Advocacy & Parenting Services, Inc. (CAPS). In this document, Mr. Fernando Rodriguez, a parent advocate who accompanied the parent to the IEP meeting on 10/19/2023, stated "during the meeting, [the parent] did express frustration with statements such as "See how they lie?" and "They won't answer my question." However, I want to emphasize that, at no point, did I hear [the parent] use any profanity or engage in insulting behavior towards any individual present."

The preponderance of evidence standard is the standard used in an investigation. This standard gives investigators discretion to determine if, after reviewing all relevant evidence, it is more likely than not, a violation occurred. This standard provides room for investigators to give deference, when need be, to either party based on the evidence.

In the Final Report, the investigator notes, "while the parent asserted that she did not understand what the elementary school placement would be, she was provided with documentation of this change by the district, which she signed giving her consent." The investigator continues, "However, no native language interpretation occurred at the meeting (March 30, 2023, meeting) and the parent immediately protested the placements upon visiting the elementary school." From this, the investigator concludes "it is likely that she did not understand the change of placement when the IEP meeting was held and upon signing the PWN." Here, the district finds fault with the investigator's inclusion and assessment of, the parent's reaction to learning her children were in a self-contained classroom. The district counters the investigator's "assumption" with assumptions of their own, mainly that the parent "does to want to understand", "switched to Spanish" during meetings to discuss school staff, and "was upset because she saw that her students are with special needs children." The district also notes that the parent "refused an interpreter" during the 10/19/2023 IEP team meeting, indicating that the parent does not actually need an interpreter. However, the parent was supported by a parent advocate from CAPS at that meeting, who has alluded to speaking Spanish. While the Committee will not determine whether this negated the need for an interpreter, without further evidence as to why the parent refused, the Committee will also not draw a conclusion based solely on fact that the parent did not utilize an interpreter at the 10/19/2023 meeting.

In this case, the Final Report reveals the investigator examined historical data, the parents' reaction to learning her children were in a self-contained classroom, the development of the IEPs, IEP meeting notes, whether assessments were conducted in the students' native language, what the parents' native language is, who spoke English and who spoke Spanish inside the home, the districts assumptions and claims about the parents' English proficiency level, and the students' enrollment records, among other things. Given a review of all evidence, the investigator found it was more likely than not the district violated state and federal special education laws. The Committee finds the evidence supports the investigator's finding and affirms the finding.

Conclusion

The Appeal Committee affirms the investigator's finding of a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically, by failing to design IEPs that would meet the students' needs, thereby denying them FAPE. No corrective action required.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 27TH day of November 2024.

Appeal Committee

Brian Dempsey: Assistant Director of Early Childhood, Special Education and Title Services,

Ashley Niedzwiecki: Attorney, Special Education and Title Services,

Dr. Crista Grimwood: Dispute Resolution Coordinator

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT # 229
ON OCTOBER 6, 2023

DATE OF REPORT NOVEMBER 1, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ------- by his father, -------. In the remainder of the report, ------- will be referred to as "the student." ------- will be referred to as "the father," "the complainant" or "the parent." ------- will be referred to as "the mother."

The complaint is against USD #229, Blue Valley Public Schools. In the remainder of the report, USD #229 will be referred to as "the district", "the local education agency (LEA)," or "the school."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on October 6, 2023, and the investigation period ends with this report on November 1, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Gwen Beegle, reviewed all evidence and documentation, which was provided by both the district and the complainant. The following people were interviewed: Dr. Mark Schmidt (USD #229 Assistant Superintendent of Special Education) on October 27, 2023, the principal via email dated October 30, 2023, and the parent on two occasions, October 10, 2023 and October 29, 2023. The Complaint Investigator also spoke briefly on the phone and received emails from the district and the complainant between October 6, 2023 and October 30, 2023.

The following documentation and information were used in consideration of the issue:

1. IEP Progress Report Annual Goal dated June 29, 2023 on the student's IEP dated April 20, 2023
2. Email from Kristen Venable (Principal) to the father, the mother, Carol Lujano (School Psychologist), Julia Neece (Third Grade Teacher), Margaret Barilleaux (Resource Teacher) and Mark Schmidt (Assistant Superintendent of Special Education) on September 15, 2023 at 1:14 p.m. and the father's reply on September 19, 2023 at 2:38 p.m.
3. Video IVE 09252023 Office 1533 dated September 25, 2023
4. Email from Tracy Edwards to Mark Schmidt dated September 25, 2023 at 11:01 a.m.

5. Notice of Meeting dated September 25, 2023 for a meeting on October 12, 2023
6. Beginning of the Year Benchmark Progress report dated September 25, 2023 including Acadience, FAST, and iREADY scores
7. Email exchange between the parent and Mark Schmidt, Carol Lujano, Margaret Barilleaux, Samantha Lovgren-Uribe (Speech Language Pathologist), and Melissa Hillman (District's Equity Coordinator) beginning September 26, 2023 at 7:57 p.m. through September 27, 2023 at 8:22 a.m.
8. Email exchange between Mark Schmidt, Kristen Venable, and the parent beginning on September 26, 2023 at 06:14 a.m. and ending on September 26, 2023 at 8:36 a.m.
9. Email from Kristen Venable to the father, the mother, Margaret Barilleaux, Carol Lujano, Samantha Lovgren-Uribe, and Mark Schmidt dated September 26, 2023 at 4:29 p.m.
10. Email from Mark Schmidt to Melissa Hillman on September 27, 2023 at 10:44 a.m.
11. Email from Kristen Venable to the father, the mother, Melissa Hillman and Mark Scmidt dated October 6, 2023 at noon
12. Email exchange between the parent and Mark Schmidt, Kristen Venable, and Melissa Hillman beginning October 6, 2023, 3:37 p.m. and ending October 6, 2023 at 3:39 p.m.
13. District's Response to the Complaint, dated October 9, 2023
14. Email from Kristen Venable to the father, the mother, and Mark Schmidt dated October 12, 2023 at 3:56 p.m.
15. Email from Kristin Venable to the father, the mother, and Mark Schmidt dated October 23, 2023 at 11:51 a.m.
16. Email from the parent to Kristin Venable and Mark Schmidet dated October 23, 2023 at 11:59 a.m.
17. Email from Kristen Venable to Julia Neece, Margaret Barilleaux, Carol Lujano, Samantha Lovgren-Uribe dated October 24, 2023 at 7:49 a.m.
18. IEP Meeting Notes dated October 26, 2023

Background Information

This investigation involves a nine-year-old male student currently enrolled in the third 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 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 current

re-evaluation was conducted on April 20, 2023 when it was determined that the student continued to meet the eligibility criteria for the exceptionality category of Speech/Language Disorder; a new IEP was written for the student at that time. Because the parent did not consent to the elimination of ESY services that the prior IEP had provided, the district provided ESY services during June, 2023, although the student did not currently qualify for ESY speech-language services.

Issue Investigated

In the written complaint the parent alleged that the school had not provided access to progress reporting records, and that issue was determined to be investigated. In the written complaint. The parent had additional concerns which were not investigated here: first, that the student was being bullied at school, and second, that a school safety office had wrongly yelled at the parent and denied access to the school. Bullying resources were provided to the parent in an email dated October 10, 2023. The second issue is not an IDEA complaint and it did not affect the parent's ability to attend the student's IEP meetings.

1. ISSUE ONE: The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent access to documents following a parental request for school records, specifically progress reports from ESY (2023) and from the current school year

Issue One

The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent access to documents following a parental request for school records, specifically progress reports from ESY (2023) and from the current school year

Applicable Law

Federal statutes and regulations at 34 CFR 300.320(a)(3) require that the IEP include a description of how the student's progress toward meeting the IEP's annual goals will be measured and when periodic reports on the progress the student is making will be made, such as through the use of quarterly or other periodic reports concurrent with the issuance of grade-cards.

Federal statutes and regulations at 34 CFR 300.613 (a) (b) require that districts permit parents to inspect and review any education records relating to their children, including the right to request copies of the records, without unnecessary delay before any IEP meeting or hearing and in no case more than 45 days after the request.

Analysis: Findings of Fact

The parent in the written complaint alleged that the district had not provided progress reports, which he called "regression reports," for the summer 2023 Extended School Year (ESY) session within 45 days, and that the benchmark data he received in September was not comparable to the ESY report. The parent alleged that no progress reports on his son's IEP goals were provided properly during the 2023-24 school year. Finally, he alleged that the ESY 2023 report was in error because the case manager listed on the report had left the district at the end of the 2022-23 school year.

The district disputed these allegations. The district replied that the ESY 2023 had been the subject of a previous complaint investigation and the ESY 2023 report was correct and had been provided to the parent. The district asserted that at the time of the complaint, the school district had not yet been in session for a full quarter and so no progress report was yet due to the parent. The district replied that the correct ESY 2023 report had been provided to the parent. Further the district replied that it had gone to extraordinary lengths to provide the documents including benchmark data that the parent requested in a variety of ways, and that the parent had refused to accept receipt of the documents, citing child labor violation when sending documents home with the child, insisting on verbal notice prior to mailing documents, and not accepting the delivery of certified mail.

Findings of the investigation, based on interviews and documents reviewed are:

- The student's current IEP dated April 20, 2023 requires progress reporting at the end of each grading period.
- Documentation provided to a prior investigator showed IEP progress reports provided to the parent on February 16, 2023 and as of March, 2023.
- The district reported and documentation shows that the student's progress report dated June 29, 2023 was sent home with the student at the end of the ESY 2023 session. The parent acknowledged that he received this report and provided a copy of this IEP progress report to the investigator. The report shows six goals, two in writing, one in reading, and three in language; each goal shows a progress update dated May 26, 2023 at the close of the 2022-23 school session. The two writing goals show an updated progress note dated June 29, 2023 at the close of the ESY session. The IEP case manager on this report was listed as Cindy Ray. The district confirmed that this was the ESY progress report document sent to the parent.
- The district provided a copy of the report to the investigator at the time of the investigation with exactly the same goal and progress monitoring content. This report lists the current IEP case manager as Alexis Schoendaler.
- In an email to the investigator, the principal reported the explanation for this change: "It is district practice to keep the school year case manager listed through ESY. I explained to [the parent] that Cindy Ray was listed as the case manager but that a different

teacher taught ESY and that teacher completed the progress report. The June 29 Progress Report [he received] is accurate based on what the ESY teacher submitted."

- Documentation showed that the student's beginning of the year 2023-24 benchmark data included the following district standardized testing: Acadience (reading composite score at benchmark), FAST (a-Reading assessment showing the student at some risk), and I-Ready (math composite approaching grade 3).
- Documentation showed that the district mailed beginning of the year 2023-24 benchmark data and progress updates on the student's IEP goals via certified mail at the parent's request on September 15, 2023. The parent replied that he had not received the certified mail in an email dated September 19, 2023. An email from the principal to the parent dated September 26, 2023 shows that the benchmark data, update on goals, and a Notice of Meeting (NOM) were sent home again with the student and the benchmark data and NOM were attached to the email. A video shows that the principal attempted to hand hard copies of documents to the parent on September 25, 2023 and the parent refused to accept them. In an interview, the parent confirmed this interaction occurred and reported that he did not know what the papers included so he did not want to accept them when he was picking up his child from school. An email from the parent to the district dated September 26, 2023 indicated that he would not accept documents sent home with his son. An email from the district to the parent dated September 26, 2023 informed the parent that there was no requirement for verbal notice prior to written communication nor was there a requirement for certified mail delivery of special education related documentation and that future communication would occur via normal methods of communication.
- According to the school calendar, the end of the first quarter was October 13, 2023.
- The district scheduled an IEP meeting at the request of the parent and provided a Notice of Meeting (NOM) dated September 25, 2023 for a meeting on October 12, 2023. The district reported that the parent informed the district that due to the safety officer banning him from school property he would not attend the meeting. The district reported and documentation showed that they created a zoom option for the parent to attend, which he declined saying it would be difficult for him to understand the proceedings via zoom.
- Documentation showed that this meeting was subsequently rescheduled and held on October 26, 2023 with the student's mother attending in person at the elementary school with the school team members and the father attending via zoom in the assistant superintendent of special education's office to facilitate his understanding and participation. The IEP meeting notes dated October 26, 2023 showed that the student's reading and writing goal assessments, language goal meaning, and benchmark assessments were discussed in the meeting. The assistant superintendent reported

that each of the parent's questions were answered and that the meeting's proceedings were explained till the parent affirmed his understanding during the meeting.

In this case, the parent repeated a concern related to a prior complaint, that the ESY 2023 progress report he had received was erroneous and therefore it was not provided on time. It is found that the district has gone to great lengths to provide the student's progress reports and other communication regarding the student's IEP to the parent, despite obstructions presented by the parent. It is recommended that the district use typical methods of communication (as suggested in the assistant superintendent of special education's email) with the parent in further communication regarding his son's special education. It is found that the district provided the correct ESY progress report to the parent and that the district provided beginning of the year 2023-24 benchmark data to the parent in September, 2023. It is found that the complaint was filed before the end of the first quarter of 2023-24 school year when the first fall IEP update was required by the student's IEP and therefore no violation occurred at that time. It is found that these reports have been provided to the parent promptly and well within a 45-day time period and therefore no violation of 34 CFR 300.320(a)(3) or 34 CFR 300.613 (a) (b) occurred.

Conclusion

Based on the foregoing, it ***is not substantiated*** that the USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent access to documents following a parental request for school records, specifically progress reports from ESY (2023) and from the current 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).

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 # 261
ON OCTOBER 5, 2023

DATE OF REPORT NOVEMBER 7, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of -------- by his mother, --------. In the remainder of the report -------- will be referred to as "the student." -------- will be referred to as "the complainant", "the mother", or "the parent".

The complaint is against USD #261 (Haysville Public Schools). In the remainder of the report, this public agency may also be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on October 5, 2023 and the 30-day timeline was extended to allow for a systemic investigation.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation, which was provided by both the district and the complainant. The following documentation and information were used in consideration of the issue:

1. Letter dated September 15, 2023 written by Angela Karraker, Director of Special Education, to the complainant and the parents of 21 other students at Campus High School
2. Formal Complaint Request Form signed by the complainant on September 26, 2023
3. Response to the Allegations dated October 12, 2023 written by Dr. Karraker
4. Chart listing the 46 students with IEPs requiring speech/language therapy services enrolled at Campus High School
5. Individualized Education Program (IEP) for the student dated November 14, 2022
6. IEPs for the other 21 students who did not receive speech/language therapy services at Campus High School during the 2023-24 school year
7. Draft copy of the student's IEP dated October 11, 2023
8. Interview with the complainant on October 23, 2023
9. Interview with Dr. Karraker, on October 24, 2023
10. First quarter grade card of the student

Background Information

The student is a 16-year old male currently enrolled in the eleventh grade in USD #261 and attends Campus High School. His parent reports and records reflect diagnoses including Autism, Anxiety, and Traumatic Brain Injury due to brain cancer.

The student began receiving early childhood special education and related services in preschool in USD #261and has continuously received special education and related services during his school career. The student was most recently reevaluated on December 2, 2021 and was found to continue to be eligible for special education and related services at that time.

Issues Investigated

Based on the written complaint, three issues were identified and investigated.

Issue One

> USD #261, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP of the student and 20 additional students at Campus High School, specifically by not providing the required speech/language services during the 2023-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) requires 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. Federal regulations at 34 C.F.R. 300.17 states that when special education and related services are provided in conformity with the IEP so that the student is making progress towards achieving the IEP goals, the student is receiving a free appropriate public education.

Analysis: Findings of Fact

The parent reported that USD #261 failed to provide the student with the required speech/language therapy services since the beginning of the school year. The parent further alleged that speech/language services have not been provided for any of the other students with IEPs who attend Campus High School.

The IEP in effect during the 2023-24 school is dated November 14, 2022 and includes one goal related to pragmatic language skills. In order for the student to achieve this IEP goal, the IEP requires 20 minutes per week of speech/language therapy in the special education setting. as well as special education support in the general education setting for his assigned English, math, science, social studies, and electives classes.

USD #261 acknowledged that due to a late staff resignation, there was only one speech/language pathologist assigned to Campus High School at the beginning of the school year.

Angie Karraker, Director of Special Education, explained that multiple and ongoing efforts have been made to replace this open staff position during the summer; however, these efforts were unsuccessful so an administrative decision was made to prioritize providing the available speech/language services to the students with the most intense communication needs, such as students requiring augmentative communication or multiple therapy sessions weekly when school started in August. Using this delivery model, 24 students received the required speech/language services required by their IEPs; however, the student and another 21 students were not receiving the speech/language services required by their IEPs at the beginning of the school year. Dr. Karraker reported that ongoing efforts were made during August and September to attempt to hire or contract for a second SLP at Campus High School.

On September 15, 2023, Dr. Karraker sent an email to the parents of each of the 22 students who were not receiving the required speech/language therapy services at Campus High School. This email stated:

> *For the current 2023-2024 school year, there has been disruption of speech services for your child due to a late resignation and inability to hire staff at this time. We have worked diligently to obtain a staff member but have been unable to find anyone who is available and qualified. At this time, we are attempting to contract services with an agency to provide speech and language services, which may be in-person or through an online platform.*
>
> *The disruption will result in a loss of approximately 8-10 weeks of service. This disruption may also impact updated annual present levels, reevaluation assessment, and reporting at annual or reevaluation IEP meetings. We are tracking any services that are missed during this time. Upon hiring a Speech Language Pathologist, data will be collected to determine, as a team, if your child has not maintained or made progress toward his speech or language goal. If they have not, the team will discuss offering compensatory services to help your child make progress.*
>
> *We apologize for the disruption in speech and language services at this time. Please let me know if you have any concerns or questions at this time.*

Dr. Karraker reported the district has recently contracted with two currently employed speech/language pathologists (SLPs) to provide services during their plan periods for additional compensation. These services began on October 18, 2023. In an October 23, 2023 email, Dr. Karraker noted that she has contacted each of the 22 students' parents about reinstating services and the plan to determine if compensatory services are owed for the failure to provide the required IEP services listed in the IEP.

The first day of the 2023-24 school year was August 17, 2023. With speech/language therapy services beginning the week of October 18, 2023, the student missed a total of nine weeks of services or a total of 180 minutes of speech/language therapy during the 2023-24 school year.

Based on a review of the IEPs for the 21 other students who were not provided with speech/language therapy services during the first nine weeks of the school year, these students missed the following amount of services:

Student #	Required SLP services	Total amount missed
1	40 minutes per week	360 minutes
2	15 minutes consult per month	30 minutes
3	20 minutes per week	180 minutes
4	20 minutes per week	180 minutes
5	20 minutes per week	180 minutes
6	15 minutes consult every nine weeks	15 minutes
7	20 minutes per week	180 minutes
8	20 minutes per week	180 minutes
9	10 minutes consult per month	20 minutes
10	10 minutes consult per month	20 minutes
11	10 minutes every nine weeks	10 minutes
12	10 minutes consult per month	20 minutes
13	20 minutes per week	180 minutes
14	20 minutes per week	180 minutes
15	20 minutes per week	180 minutes
16	20 minutes per week	180 minutes
17	20 minutes per week	180 minutes
18	40 minutes per week	360 minutes
19	20 minutes per week	180 minutes
20	20 minutes per week	180 minutes
21	20 minutes per week	180 minutes

Conclusion

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) require USD #261 to ensure that the special education and related services are made available to the child in accordance with the child's IEP. In this case, the speech/language therapy services were not provided to a total of 22 students as required by each of their IEPs for nine weeks during the 2023-24 school year.

The Office of Special Education Programs (OSEP) in the Department of Education issued policy guidance on March 8, 2007 in Letter to Clark stating that local educational agencies (LEAs) are required to ensure that all children with disabilities receive a free appropriate public education (FAPE) consistent with their individualized education programs (IEP). General practice is that

services missed because of student absences are not made up because the district was ready, willing, and able to have provided the required special education and related services while services missed because of the absence of a provider are made up or provided by a qualified substitute.

OSEP further encouraged agencies to consider the impact of the absence of a child or provider on the child's progress toward meeting annual goals. OSEP stated that determination of whether an interruption in services constitutes a denial of FAPE must be made on a case-by-case basis.

In this case, the lack of services was caused by the absence of a provider, not the absence of the student. While the district has made ongoing efforts to hire a qualified SLP, the student missed a total of 180 minutes of speech/language therapy to address his pragmatic language goal as required by the student's IEP and the other 21 students missed between 10 and 360 minutes of speech/language therapy services during the 2023-24 school due to the staff shortage.

No findings related to the denial of FAPE for these 22 students can be made at this time because current data is not yet available regarding the long-term impact of the interruption of the speech/language therapy services caused the staff shortage. It is noted that the district has already made plans to collect data to determine if or to what extent the failure to provide the required speech/language therapy services impacted each the 22 student's progress towards meeting their individualized IEP goals.

However, based on the foregoing, ***it is substantiated*** that USD #261 failed to implement the student's IEP and the IEPs of 21 additional students, specifically regarding the provision of speech/language therapy services of between 10 and 360 total minutes over a nine week period during the 2023-24 school year.

Issue Two

USD #261, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP of the student, specifically by not providing the required paraprofessional support services during the 2023-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) requires 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. Federal regulations at 34 C.F.R. 300.17 states that when special education and related services are provided in conformity with the IEP so that the student is making progress towards achieving the IEP goals, the student is receiving a free appropriate public education.

Analysis: Findings of Fact

The parent reported that USD #261 failed to provide the student with the required special education support services in the US Modern History class in the general education setting during the 2023-24 school year. The parent noted that she first shared her concerns with Dr. Karraker on September 15, 2023.

The IEP in effect during the 2023-24 school is dated November 14, 2022 and includes one goal related to pragmatic language skills. In order for the student to achieve this IEP goal and receive the required classroom accommodations in the general education setting, the IEP requires both the speech/language therapy services as well as special education support in the general education setting for "the length of the scheduled class" for his assigned English, math, science, social studies, and electives classes.

The findings of Issue One are incorporated herein by reference.

On September 22, 2023, Marvin Miller, Special Education Teacher / Case Manager, reported to Dr. Karraker that a paraprofessional was not assigned to the US Modern History class in the general education setting. This was resolved when a paraprofessional was reassigned to the US Modern History class beginning September 25, 2023.

Dr. Miller once again determined the student was not being supported by a paraprofessional in another general education classroom on October 11, 2023 due to a paperwork error on the building's paraprofessional schedules. This was addressed and resolved that same day through a staff schedule change.

USD #261 acknowledged that student was not supported in the US Modern History class and one additional class as required by the IEP during at least some portion of the first quarter of the 2023-24 school year. However, the district reported the student received passing grades and credit at the end of the first quarter on October 13, 2023 for each of his assigned classes.

Conclusion

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) require USD #261 to ensure that the special education and related services are made available to the child in accordance with the child's IEP. In this case, the interviews and documentation *support a finding* that the district failed to implement the student's IEP as written, specifically the special education support in two of the student's general education classes during the first quarter of the 2023-24 school year.

While the student received passing grades in all classes, again, no findings related to the denial of FAPE for the student can be made at this time because current data is not yet available regarding the long-term impact of the failure to provide the special education supports in those two general education settings on the student's progress towards meeting his IEP goal for increasing pragmatic language skills. It is noted that the district has already made plans to collect data to determine if or to what extent the failure to provide the required services in conformity with the student's IEP impacted his progress towards meeting the IEP goal addressing pragmatic language.

Issue Three

USD #261, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP of the student, specifically the required accommodations for 1) separate environment for testing, 2) giving two-step directions, 3) providing copies of notes, and 4) checking often for understanding during the 2023-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) requires 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. Federal regulations at 34 C.F.R. 300.17 states that when special education and related services are provided in conformity with the IEP so that the student is making progress towards achieving the IEP goals, the student is receiving a free appropriate public education.

Analysis: Findings of Fact

The parent reported that USD #261 failed to provide the student with the required accommodations in all of his general education classes as follows:

- Testing in a separate setting was only provided in the English 11 and Algebra 2 classes.
- Giving two-step directions was not provided in any class on a regular basis.
- Providing copies of notes was only consistently done in the US Modern History class.
- Checking for understanding was only consistently done in the English 11 class.

The parent reported the student was struggling in his classes and becoming increasingly frustrated at school.

The IEP in effect at the time of the allegations is dated November 14, 2022 and includes the following accommodations: 1) separate environment for testing, 2) giving two-step directions, 3) providing copies of notes, and 4) checking often for understanding. All of these accommodations are to be provided in "general and special education classes".

USD #261 reported that the special education teacher / case manager provided a copy of the student's accommodation to all of his general education teachers on August 24, 2023. The parent first shared concerns regarding the accommodations not being provided with the special education director on September 15, 2023. These concerns were investigated and it was discovered that his teachers were providing notes digitally rather than in a paper format and, that while his teachers were making efforts to consistently provide all of the accommodations, there were instances when accommodations were not provided in the manner that the parent believed they were to be provided. This miscommunication between the school staff and parent was addressed in an IEP team meeting held on October 11, 2023.

The district and parent both reported that the student's IEP was reviewed and revised on October 11, 2023. Accommodations were discussed, clarified, and updated to be more specific. In addition, two goals were added to the IEP to address social/emotional skills and one goal was added to address academic skills.

On October 12, 2023, the special education teacher / case manager worked with all of the student's general education teachers to review first quarter missing assignments and to clarify expectations for providing the accommodations listed in his IEP. They determined that some of the work would be exempt or reduced since all of the accommodations had not been consistently provided during the first quarter. USD #261reported the student received passing grades and credit for each of his assigned classes at the end of the first quarter on October 13, 2023.

Both the parent and school staff report that the student is making good progress in all of his academic classes at this time.

Conclusion

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) require USD #261 to ensure that the special education and related services are made available to the child in accordance with the child's IEP. In this case, the interviews and documentation *support a finding* that the district failed to implement the student's IEP as written, specifically the accommodations in all general education classes.

However, FAPE appears to have been addressed through the review and revision of the student's IEP on October 11, 2023. In addition, any impact on the student was mitigated through a comprehensive review of the first quarter missing assignments, providing appropriate accommodations, and the student earning passing grades in all of his classes at the end of the first quarter.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of federal regulations at 34 C.F.R. 300. 300.323(c)(2) is substantiated because the district failed to provide the required speech/language therapy services to 22 students during the 2023-24 school year. Corrective action is required as follows:
    a. CORRECTIVE ACTION:
        i. USD #261 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will ensure that the special education and related services are made available to the students at Campus High School in accordance with each child's IEP.
            1. No later than December 5, 2023

ii. USD #261 shall reconvene the student's IEP team and will offer a minimum of 180 minutes of speech/language therapy in the special education setting as described in the November 14, 2022 IEP as compensatory services for failing to implement the student's IEP during the 2023-24 school year. USD #261 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.

1. No later than December 31, 2023

iii. USD #261 shall reconvene each of the other 21 student's IEP teams and will offer as a minimum the amount of speech/language therapy services shown in the chart included in Issue One as compensatory services for failing to implement each of these students' IEPs during the 2023-24 school year. USD #261 shall provide SETS with a copy of the written plan for providing these compensatory services offered and each of the parents' decision on whether to accept the offer, in whole or in part, no later than 10 days from the date of each IEP team meeting.

1. No later than February 1, 2024

iv. USD #261 shall provide IEP goal progress reports to the parents of all 22 students for each of their speech/language goals at the end of the first semester in order to determine if the absence of the SLP impacted the provision of FAPE to each of these students during the 2023-24 school year. If a student is not making progress towards one of these IEP goals, USD #261 shall reconvene that student's IEP team in order to review and revise, if appropriate, the IEP in order to provide FAPE to the student.

1. No later than February 1, 2024

1. <u>ISSUE TWO</u>: A violation of federal regulations at 34 C.F.R. 300. 300.323(c)(2) is substantiated because the district failed to provide the required special education support services in the general education setting to the student during the 2023-24 school year. Corrective action is required as follows:

a. CORRECTIVE ACTION:

i. USD #261 shall provide IEP goal progress reports to the parent of the student at the end of the first semester in order to determine if the absence of the special education support services in the general education setting impacted the provision of FAPE to the student during the 2023-24 school year. If the student is not making progress towards his IEP goals, USD #261 shall reconvene the student's IEP team in order to review and revise, if appropriate, the IEP in order to provide FAPE to the student.

1. No later than February 1, 2024

2. ISSUE THREE: A violation of federal regulations at 34 C.F.R. 300. 300.323(c)(2) is substantiated because the district failed to provide the required special education support services in the general education setting to the student during the 2023-24 school year. Corrective action is required as follows:
    a. CORRECTIVE ACTION:
        i. USD #261 shall provide training to all general education teachers and paraprofessionals working this the student regarding the requirement to provide the accommodations as written in the IEP. USD #261will 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 #261 will provide SETS with any handouts and/or a copy of the presentation.
            1. No later than December 31, 2023

Investigator

Nancy Thomas

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).

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 #500
ON OCTOBER 3, 2023

DATE OF REPORT NOVEMBER 3, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ---------- by his mother, ----------. In the remainder of the report, ---------- will be referred to as "the student." ---------- will be referred to as "the complainant" or "the mother."

The complaint is against USD #500, Kansas City, Kansas School District. In the remainder of the report, USD #500 will be referred to as "the district".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on October 3, 2023 and the 30-day timeline ends on November 3, 2023. The Complaint Investigator requested and was granted a one week extension to November 10, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham, reviewed all evidence and documentation which was provided by both the district and the complainant. Dr. Wickham exchanged emails with Dr. Lawrie, Director of Special Education with USD #500 to clarify evidence and answer questions about the investigation. Dr. Wickham interviewed the parent on November 1, 2023. The following documentation and information were used in consideration of the issues:

1. Waiver for 3 year evaluation, dated and signed by the parent September 23, 2021
2. Individualized Education Program, dated September 23, 2022
3. IEP Meeting Notes and Summary, dated September 23, 2022
4. Guardianship appointment dated December 7, 2022
5. IEP Meeting Notes and Summary, dated May 10, 2023
6. Notice of Meeting, dated August 11, 2023
7. Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent, dated September 18, 2023
8. Individualized Education Program, dated September 18, 2023
9. IEP Meeting Notes and Summary, dated September 18, 2023
10. Prior Written Notice for I dentification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent, September 18, 2023

11. Unified School District #500 Response to Formal Complaint 24FC500-003, dated October 5, 2023, updated October 31, 2023
12. IEP Meeting Notes and Summary, dated October 9, 2023
13. Email from parent to special education teacher dated October 13, 2023 at 5:04 PM
14. Email from parent to KSDE staff to forward to the Complaint Investigator dated October 13, 2023 at 5:22 PM
15. Email between the Complaint Investigator and Director of Special Education dated November 2, 2023 between 8:09 AM and 2:35 PM
16. Student Schedule School Year: 2023-2024
17. Job Performance Rating Scale – Vocational activities daily data collection document, undated

Background Information

The student met graduation requirements at the conclusion of the 2022-2023 school year continues to receive special education and related services beyond his high school graduation as determined by his IEP team. He attends his local high school in his district and his current placement continues to be in a Succeeding in Academics and Independent Living Skills (SAILS) classroom program. This classroom is designed to promote independence with both functional academic skills and independent activities of daily living and uses evidence-based instructional strategies to teach skills that are necessary to live beyond the classroom.

The student is eligible to receive special education services with a primary disability of Autism Spectrum Disorder and a secondary disability of Speech and Language according to the evaluation on September 23, 2021. The parent waived reevaluation on September 23, 2021.

During the 2022-2023 school year the complainant began requesting increased community-based instruction and vocational work experiences. The IEP team has met two times this school year to revise the IEP however, there has not been agreement on the proposed IEP dated September 18, 2023. The proposed IEP included material changes in services and the parent did not sign the PWN so the district states the IEP dated September 23, 2022 remains the IEP in effect for the student.

Issues Investigated

1. ISSUE ONE: USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to consider the Parent request for the Student to receive instruction in the community, functional activities such as vacuuming and using a blender and transition activities during May 2023 IEP and any IEPs during the 2023-2024 school year.
2. ISSUE TWO: USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond to a parent request

for an Independent Educational Evaluation and for outside technical assistance during the last 12 months.

3. ISSUE THREE: USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the transition services of the Student's IEP during the 2023-2024 school year.
4. ISSUE FOUR: USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), incorrectly contacted an outside agency without the consent of the Student's guardian during the 2023-2024 school year.

Issue One

USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to consider the Parent request for the Student to receive instruction in the community, functional activities such as vacuuming and using a blender and transition activities during May 2023 IEP and any IEPs during the 2023-2024 school year.

Applicable Law

Federal regulations at 300.322(b)(2)(i)(A) and State regulations at K.A.R. 91-40-17(3), IEP meetings and participants states a purpose of the meeting will be to consider the postsecondary goals and needed transition services for the student.

Analysis: Findings of Fact

The Parent alleged that during the May 2023 IEP meeting she stated she wanted her student to receive instruction in the community and work on independent living skills as he moved to transition services. She expressed concern that he was not going to a district transition program, but instead remaining in his current classroom placement the next school year. She alleged that she was told that community instruction was not something put into IEPs and the Special Education Director would need to be contacted and that these decisions would be put into an IEP at the beginning of the 2023-2024 school year.

At the September 18, 2023 IEP meeting the Parent alleged that again she was told that "we cannot give duration, dates, or times in the IEP for community activities, because we are at the mercy of services and resources. We may not have a bus or para available." The later October 9, 2023 IEP meeting was attended by the Director of Special Education and the parent alleged that while community instruction was added it was made clear that these services may occur in the community or in the classroom.

The district responded that the parent concerns and requests were recorded in the May 2023 IEP meeting notes, however it was determined the IEP would be updated at the beginning of the 23-24 school year to address these concerns/requests. The Notice of Meeting for this

meeting was sent in August 2023 and the IEP team met on September 18, 2023 and October 9, 2023 to review and discuss the proposed September 18, 2023 annual IEP. The district responded that the parent input was considered and discussed, however the parent has not signed the Prior Written Notice to implement the proposed September 18, 2023 IEP so the September 23, 2022 IEP is still in effect.

The May 10, 2023 IEP team meeting notes reported the following:

- "Mom discussed activities in the community/daily living that [Student] is currently doing."
- "Mom noted that her goal for [Student] would be to have increased community involvement, either through employment or volunteer opportunities"
- "The team discussed ensuring that [Student] has more access to community outings in the post-secondary setting"
- "The team discussed the rationale for [Student] remaining in the SAILS I setting vs a separate post-secondary program; however there will be opportunities for [Student] to participate in the community."
- "The plan moving forward will be to have an IEP meeting at the beginning of the 2023-24 (between 8/28 & 9/1) school year to have the new IEP drafted that more accurately reflects a student in the post-secondary program."

The proposed September 18, 2023 IEP included 1630 minutes weekly and 270 minutes one day every week of Special Education Services (Adaptive) Special Ed Direct Services outside Regular Ed Classrooms, / programs / other locations and 120 minutes of Vocational Special Education (Community Based Instruction (CBI) services in the school setting and/or community setting) Special Ed Direct Services outside Regular Ed Classrooms, / programs/ other locations. The Regular Education Participation section states, "[Student] has completed required course of study needed for graduation with a functional curriculum, but needs intensive supports in the area of transition to support post-secondary goals. Therefore the student is enrolled in a transition program with a curriculum that addresses functional academics, communication, and social skills."

The September 18, 2023 Annual IEP team meeting minutes recorded related service providers (communication, occupational therapy, and adaptive physical education) presenting proposals for service minutes followed by a review of the proposed IEP goals. The meeting minutes then record the advocate speaking on behalf of the mother to state that the proposed IEP "does not incorporate parent concerns" and stated that the student needs to go in the community and receive job training.

Prior Written Notice dated September 18, 2023 proposed adding Community Based Instruction services for 120 minutes weekly in the school setting and/or community setting for the student to gain greater access to skills needed to transition to the community. The mother does not sign the Prior Written Notice dated September 18, 2023 to provide consent for the

material change in services, so the IEP dated September 23, 2023 remained in effect. A continuation IEP meeting was scheduled for October 9, 2023. The mother stated that the 120 minutes of community based instruction services are not coded as a service occurring in the community and the statement of services states that they may be provided in the community or in the classroom.

The October 9, 2023 IEP team meeting notes included the following:

- "Mom wants service minutes in the IEP that are in the "C" Community setting"
- "The [Director of Special Education] says (sic) "CBI is a part of the post-secondary curriculum" [Director of Special Education] explains CBI does not have to be directly in the community"
- "Mom wants to know why [student] is not in the community "
- "[Director of Special Education] expresses that we do not need to put "Community" minutes into the IEP"
- "[Director of Special Education] say we cannot write in the IEP that we take [Student] into the community for CBI, but rather the (sic) CBI will be provided in the school or community setting on any given day / week"
- "[Advocate] states mom has no guarantee [Student] goes into the community. 'How will we know minutes will be in the community setting"
- "[Director of Special Education] expresses that CBI can be provided in the school or community settings"

Conclusion

There were three IEP meetings held between May 2023 and October 2023 in response to the parent's request for community based and vocational instruction. Minutes from each of the meetings show the discussion/consideration of community based and vocational instruction. The district provided a PWN following the September 18, 2023 IEP meeting responding to the parent request for community based and vocational instruction by offering services for community-based and vocational instruction. The parent did not feel that the offer of services was appropriate nor individualized for her student and therefore declined to sign the PWN. The meeting minutes from October 9, 2023 IEP meeting show that the district did not change its offer of services so no new PWN was provided. Based on the foregoing, it *is not substantiated* that USD #500 failed to consider the parent request for the student to receive instruction in the community, functional activities such as vacuuming and using a blender and transition activities during May 2023 IEP and any IEPs during the 2023-2024 school year.

Issue Two

USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond to a parent request for an Independent Educational Evaluation and for outside technical assistance during the last 12 months.

Applicable Law

Federal regulations at 34 C.F.R. 300.504(c)(1) state that the parents of exceptional children shall have the right to...obtain an independent educational evaluation of the child. Further, 34 C.F.R. 300.502(b)(1) and K.A.R. 91-40-12, Right to independent educational evaluation states that subject to the conditions specified in this regulation, the parent of an exceptional child shall have the right to request an independent educational evaluation at public expense if the parent disagrees with the evaluation obtained by the agency.

Federal law at 34 C.F.R. 300.119. Technical assistance and training activities. Each SEA shall carry out activities to ensure that teachers and administrators in all public agencies-- (a) Are fully informed about their responsibilities for implementing Sec. 300.550; and (b) Are provided with technical assistance and training necessary to assist them in this effort.

Analysis: Findings of Fact

As part of the Child Complaint dated October 3, 2023 the parent requested an Independent Educational Evaluation (IEE) be done at district expense and that the district bring TASN in to provide technical assistance and training for the school after observing the student. The parent alleged in the Child Complaint filed with the state that she is concerned with the results of the transition assessment and does not agree with the results. She alleged that the assessment used is designed to be used with students with significant support needs and the results weren't productive and that the student would fail in all areas. During the assessment only an hour was spent visiting with the school team and no Direct Observation or Home Study was conducted.

The district responded that the district did not receive a request for Independent Education Evaluation or a request for technical assistance during the last 12 months. The district further reported that they have procedures in place that if this was requested, this request would have been sent directly to the Director of SPED and information regarding IEE would have been sent to the parent at the district cost. The district has no documentation of technical assistance requests, nor does the district know why this would have been requested.

The findings of Issue One are incorporated herein by reference.

Review of the documentation showed that the parent waived a reevaluation for the student on September 23, 2021.

At the May 10, 2023 IEP meeting the meeting minutes recorded the advocate requested that the district "utilize the T-TAP (sic), not only to update the transition assessment, but to update other areas of the IEP (present levels, strengths, post-secondary goals, etc.) as well."

According to the September 18, 2023 IEP team meeting minutes the "Advocate requested the TTAP assessment". The meeting minutes further recorded that the transition teacher responded, that "the TTAP assessment is not well suited for [student], but we (sic) can revisit it as the school year progresses."

The proposed IEP dated September 18, 2023 listed the following assessments used in the Transition Assessment: Personal Preference Indicators (PPI) (discussed during the September 18, 2023 IEP meeting): A Guide for Planning (no date of administration provided); Group Interview with Teacher and Staff using the PPI (no date of administration provided); the TEACCH Transition Assessment Profile (TTAP) conducted by parent interview administered on September 28, 2023.

During an interview with the parent on November 1, 2023 the parent stated she did not make these requests of the district this school year. The Complaint Investigator explained to the parent that these requests need to first be made to the district.

Conclusion

In this case it is found that the parent did not make the request for an independent educational evaluation, nor request for outside technical assistance to the district, but instead requested it as a remedy as part of the Child Complaint filed on October 3, 2023. There are no documents found that the request was made in writing. The district reported they received no request and the parent stated she did not make the request to the district. Therefore, based on the foregoing, it *is not substantiated* that USD #500 failed to respond to a parent request for an Independent Educational Evaluation and for outside technical assistance during the last 12 months.

Issue Three

> USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the transition services of the Student's IEP during the 2023-2024 school year.

Applicable Law

Federal regulations 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. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are

implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

The parent alleged that transition services have not been a part of the student's IEP and that the student's case manager said transition services have never been a part of the student's IEP. She stated she recently learned that they could have started when he was 16 years old and would like compensatory education for those lost years.

The district responded that starting on page 10 of the student's IEP dated September 23, 2022 is the student's transition section. They additionally responded that the proposed IEP also has a transition section that meets IDEA regulations and the services in the proposed IEP were written to fulfill the goals of the transition plan.

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

During an interview with the mother on November 1, 2023 the mother clarified that by alleging the district was not implementing transition services she meant that the student should have been receiving transition services since 16. The Complaint Investigator explained that the investigation has a one-year limit for investigation.

The May 10, 2023 IEP meeting notes reported, "Mom noted that the transition services section of the IEP was missing key information; the team will update in this meeting"

The IEP in effect dated September 23, 2022 includes a transition plan with sections including: 1) Post secondary goals for (a) post-secondary employment (Following High School Graduation I will receive vocational training support); (b) vocational (Following High School Graduation I will receive assistance in a supported vocational setting); and (c) living (Following High School Graduation I will live at home for (sic) support in independent living needs). 2) course of study, and 3) needed transition services for OT, PT and APE. The following transition services were marked, N/A, 1) Acquisition of Daily Living Skills, 2) Community, 3) Development of Employment and Other Post-Secondary Adult Living, 4) Functional Vocational Evaluation, and 5) Instruction, , No outside agencies were indicated nor invited to the IEP while the student was a senior in high school.

Conclusion

While the student's transition plan includes the required components the services in the IEP in effect are minimally directed to the student's post-secondary goals and not likely to result in meeting the post-secondary goals identified in the student's IEP. Additionally, the IEP in effect minimally involved outside agencies. Based on the foregoing, it *is not substantiated* that USD #500 failed to implement the transition services of the Student's IEP during the 2023-2024 school year.

Issue Four

USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), incorrectly contacted an outside agency without the consent of the Student's guardian during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.321(b)(3) and State regulations at K.A.R. 91-40-17(g) state parents, or a student who is 18 years of age, must provide consent for the school to invite any outside agency to the IEP meeting. Consent from the parent (or adult student) is required when inviting outside agencies to ensure the protection of confidentiality of information under FERPA (Federal Register, August 14, 2006, p. 46672).

Analysis: Findings of Fact

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

This issue was not initially identified in the September 25, 2023 Complaint, however following the October 9, 2023 IEP meeting the parent alleged this issue. An email was sent to the Kansas State Department of Education stating that she did not wish to withdraw her complaint stated this issue occurred during the October 9, 2023 meeting. The Complaint Investigator contacted the KSDE and District Director of Special Education who agreed to include this additional issue in this investigation as opposed to filing a separate child complaint.

The parent alleged that during the October 9, 2023 IEP meeting the district's transition coordinator contacted the Community Developmental Disability Organization (CDDO) on behalf of the student and was told that he was not on the waiting list for the Home and Community based Services Medicaid waiver when in fact he has been receiving waiver services for 11 years. She stated she did not recall providing permission for the school to contact the CDDO about the student.

The district replied that in his role, the transition counselor received a list of students who are signed up for the CCDO, and when he did not see the student's name on the list, he called a contact within the CCDO and confirmed the student was on the waitlist. During the meeting, the CDDO program was mentioned and the reasoning for the interaction mentioned as part of the district's responsibility for interagency communications during transition. The district responded that the parent expressed she was not aware of the program and that the parent's advocate told the parent the transition coordinator/teacher would be able to help get the student on the list and explained what services would be like if he was to receive the services. The meeting notes from the October 9, 2023 IEP meeting document this discussion. Further, after the IEP meeting ended, The Director of Special Education spoke to the parent and the parent expressed she did not know about CCDOs and wondered why her Medicaid Targeted

case manager did not tell her about that because she said she would have signed her student up for that.

Documentation showed that on December 8, 2022 the county court electronically filed for the mother and father as co-guardians for the student.

The IEP dated September 23, 2022 and proposed IEP dated September 18, 2023 showed that the mother and father were the legal educational decisionmakers.

The September 23, 2022 IEP lists no outside agency involvement.

The PWN dated September 23, 2022 was signed by the mother and checked for, "My signature below represents my consent for Cooperative staff to electronically transmit my child's confidential special education records to other school districts or agencies for which I have signed a release of information." No signed release of information was provided by the district.

The parent signed consent on September 23, 2022 "for the school to submit claims to the Kansas Department of Health and Environment (KDHE) as described above" on the Document titled, [district] Parent Consent for Release of Information and Medicaid Reimbursement.

The proposed September 18, 2023 IEP lists outside agency involvement as Pre-Employment Transition Services, Kansas Vocational Rehabilitation Services (KRS) and [county]CDDO. The sign in sheet for this IEP meeting showed a representative for Pre-ETS was in attendance.

The October 9, 2023 IEP meeting minutes report that the transition teacher "reminds mom of CDDO services; the transition teacher "offers to provide mom CDDO waiver; the transition teacher "expresses [student] is currently not on the CDDO waiver; the transition teacher "will help mom followup with CDDO waiver."

Conclusion

IDEA regulations and Kansas specifies that when the IEP team is considering a child's post-secondary goals and transition services needed to assist the child in reaching those goals, the school is required to invite a representative of any agency that is likely to provide or pay for transition services. The school must obtain parental consent to invite the representative from that agency because confidential information about the child would be shared at the meeting (K.A.R. 91-40-17(g). It is found that the district did not obtain release of information from the mother to talk with or exchange information about the student with the CDDO agency. In addition, an outside agency representative was in attendance at the September 18, 2023 IEP. The release of information requested by the Complaint Investigator and provided by the district is specific to agencies other than the agencies listed as outside agencies for transition services. Based on the foregoing, ***it is substantiated*** that USD #500 incorrectly contacted an outside agency without the consent of the Student's guardian during the 2023-2024 school year.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 300.322(b)(2)(i)(A) and K.A.R. 91-40-17(3) was not found, based on document review. Corrective action is not required.
2. ISSUE TWO: A violation of K.A.R. 91-40-12, 34 C.F.R. 300.504(c) and 34 C.F.R. 300.502(b)(5) and 34 C.F.R. 300.119 was not found, based on interview with the Director of Special Education, parent, and document review. Corrective action is not required.
3. ISSUE THREE: A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was not found, based on interview with the Director of Special Education, parent, and document review. Corrective action is not required.
4. ISSUE FOUR: A violation of 34 C.F.R. 300.321(b)(3), K.A.R. 91-40-17(g) and FERPA was found, based on an interview with the mother and review of documentation. Corrective action is required (as follows):
    a. CORRECTIVE ACTION:
        i. Request release of information (ROI) from three agencies listed on the student's proposed IEP from parent and provide evidence to SETS that these releases have been collected.
        ii. Review records of a 5% random sample of transition aged students for each district high school and district transition program for outside agencies identified on the current IEP and determine if a release of information has been obtained from the parent/guardian/student for district staff to communicate about the student's services and provide evidence of such to SETS. SETS will determine if the corrective action will extend to demonstrating that ROIs from parents for all outside agencies are to be submitted as evidence.
        iii. Review or develop district practices regarding IEP procedures of updating consents and release of information for outside agencies involved in the transition process. Submit revisions or new district practices to SETS.
        iv. Conduct TASN training on transition responsibilities for coordinating with outside agencies with consent to transition staff and social workers who are responsible for coordinating student services with outside agencies. Provide evidence of training materials and sign in sheets of participants.
        v. Date due: December 31, 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).

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 SEPTEMBER 20, 2023

DATE OF REPORT OCTOBER 25, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ---------- by her mother, ----------. In the remainder of the report ---------- will be referred to as "the student." ---------- will be referred to as "the complainant", "the mother", or "the parent".

The complaint is against USD #497 (Lawrence Public Schools). In the remainder of the report, this public agency may also be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on September 20, 2023 and the 30-day timeline ended on October 19, 2023; however, KSDE granted an extension until October 25, 2023 to allow for research of a proposed resolution from the LEA.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation, which was provided by both the district and the complainant. The following documentation and information were used in consideration of the issue:

1. Email dated September 2, 2023 at 11:09 AM written by the complainant to Carolina Pierce, Special Education Teacher at Deerfield Elementary School
2. Email dated September 2, 2023 at 4:11 PM by Ms. Pierce to the complainant
3. Email dated September 7, 2023 at 3:36 PM written by the complainant to Joni Appleman, Principal of Deerfield Elementary School
4. Email dated September 11, 2023 at 10:55 PM written by Ms. Appleman to the complainant
5. Formal Complaint Request Form signed by the complainant on September 20, 2023
6. Email dated September 21, 2023 at 4:00 PM written by Shelia Smith, Assistant Director of Special Education to parents of students receiving speech/language services at Deerfield Elementary.
7. Email dated September 25, 2023 at 2:57 PM written by the complainant to Ms. Smith

8. Proposed Resolution to Complaint dated October 6, 2023 written by Ms. Smith
9. Individualized Education Program (IEP) for the student dated April 19, 2023
10. Interview with the complainant on October 13, 2023
11. Interview with Ms. Smith, on October 11 and October 16, 2023
12. IEP Goal Progress Reports dated October 18, 2023
13. Email dated October 18, 2023 at 5:50 PM written by Ms. Smith to the complaint investigator
14. Email dated October 19, 2023 at 8:53 AM written by Ms. Smith to the complaint investigator

Background Information

The student is currently enrolled in the third grade in USD #497 and attends Deerfield Elementary School. The student was most recently reevaluated on April 21, 202 and was found eligible for special education and services under the exceptionality category of Developmental Delay.

The student began receiving early intervention services at the age of 20 months and transitioned to receiving early childhood special education services at age three in USD #497. The student has continuously received special education and related services during her school career in USD #497.

Issues Investigated

Based on the written complaint, only one issue was identified and investigated.

Issue One

USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by not providing speech/language therapy and social work services during the 23-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) requires 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.

Analysis: Findings of Fact

The parent reported that USD #497 has failed to provide the student with the required speech/language and social work services since the beginning of the school year.

The parent initially contacted Carolina Pierce, Special Education Teacher at Deerfield Elementary School, on September 2, 2023 via email asking about the provision of speech/language therapy and stating:

> *I also noticed that her current class hasn't been added to her 3rd grade section on her board - nor have her teachers been updated for her to be able to communicate to and about peers and staff relevant to her. Can we make sure this gets done as soon as possible? She tries to tell me about her friends and staff at home but has no way since the names haven't been updated.*

Ms. Pierce responded back to the parent via email that same date indicating that no speech/language pathologist (SLP) or social worker had been hired to work at Deerfield Elementary School. She also stated:

> *I reached out to an SLP at another school and she met with me yesterday and taught me how to do it [update the names on the AAC device]. I anticipate it taking some time to add all the people so I was going to email you on Tuesday [September 5, 2023] to work on it (as I did not want to take it over a long weekend).*

The parent sent another email on September 7, 2023 to Joni Appleman, Principal of Deerfield Elementary School stating:

> *I am preemptively requesting compensatory services for the student's speech . . . I understand there is a shortage of qualified social workers and speech pathologists in your district, this is felt state-wide, however, my child should not have to suffer the consequences for poor planning on the administrative side.*

Ms. Appleman responded to the complainant via email on September 11, 2023 and stated:

> *I completely understand your concerns. We are watching the clock as well and will start services as soon as we have qualified staff to do so. At that time, the need for compensatory services will be determined.*

USD #497 acknowledged that social work and speech/language services have not been provided to the student this school year. Shelia Smith, Assistant Director of Special Education, stated that the district "*had not been able to secure through direct hire or contact agencies, a licensed speech language pathologist and social worker.*"

The IEPs in effect during the 2023-24 school dated April 21, 2023 includes three goals related to speech/language and social skills goals. In order for the student to achieve her IEP goals, the IEP requires 75 minutes per week of speech/language therapy in the special education setting, 25 minutes per week of speech/language therapy in the general education setting, and 20 minutes per month of speech/language therapy consult services with the student's

teachers. In addition, the IEP requires 20 minutes per week of social work services to be provided to the student.

An email was sent to the parents of all students receiving speech/language services at Deerfield Elementary on September 21, 2023. This email stated:

> *The district has not been able to provide speech language services at Deerfield this year. We have been working with several outside agencies, both locally and nationally, to hire a speech language pathologist (SLP). Unfortunately, despite various leads and potential candidates, we still have not been able to secure a licensed SLP.*
>
> *We know that your student has speech-language services listed on their IEP, and we remain committed to fulfill our obligation to provide these services. While we continue to problem-solve our shortage of SLPs, we want to be clear that your student will be offered compensatory services. Once we have services in place, goals will be closely monitored and proposals made by the school team with recommendations for the compensatory services. You will be contacted with the recommendation, how these services might be provided, and to discuss if an IEP meeting is necessary.*
>
> *We continue to actively recruit and will let you know when we have staff available to provide these services. The staff at Deerfield have been communicating any specific urgent student communication needs which we are addressing. For students who have IEPs or reevaluations that are due, so far, we have been able to secure limited SLP staffing to help with updating and completing annual IEPs and are striving to complete evaluations by their due dates.*
>
> *We recognize this is a challenging situation and one that none of us want to be experiencing. Fulfilling these services has been and continues to be a priority for our district.*

On September 24, 2023, the parent responded stating that she believed the lack of qualified speech-language pathologists and social workers was not the result of staff resigning their positions in an untimely manner. She stated:

> *The alarming number of staff flooding out of the district should send red flags to you and your staff about the overall atmosphere for educators in your school district. It is paramount, now more than ever, that specifically the special education department deeply examines why they are losing highly qualified and long-employed related services providers. Any educator knows that finding licensed, qualified, and reputable special education staff is unlikely to happen most of the way through September. From when the Deerfield speech-language pathologist's resignation was board approved, it has now been well over 5 months . . . The way the district has handled and continues to handle this situation is abysmal. Your disregard for your obligations to your most vulnerable populations is appalling. Special education is not a choice that does not have to be met, you are legally required to meet the agreements written in the IEP and yet you make excuses because you chose to not be aggressive with your hiring process and/or taking an uncomfortable look into your practices at the sped level.*

Ms. Smith reported multiple ongoing attempts to hire both a speech/language pathologist and a social worker beginning in spring 2023 through the current date. She indicated that a plan to

monitor student progress and to provide interventions was developed and implemented. Ms. Smith stated:

> *. . . we have been in frequent communication with the special education team and principal at the student's building to check on whether there were any needs that needed a more urgent response. Based upon this, we did bring in another district SLP at the beginning of the year to work with this student's team, to help with the programming of her AAC device and provide the team with assistance in using the device. In addition, the case manager collaborated with the speech person on strategies for encouraging the student to use the device.*

USD #497 reported a total of 60 minutes of AAC device consultation services were provided on behalf of the student during the 2023-24 school year as described above.

Ms. Smith reported the district has recently been able to fill the SLP vacancy at Deerfield Elementary School through a contracting agency. A paraeducator and a temporary virtual SLP have been hired to provide speech/language therapy beginning the week of October 9, 2023. During this time, the paraeducator will be temporarily supervised by an existing SLP in USD #497 who also works with virtual school students. These two staff will work together to build schedules, collaborate with staff and begin providing services. They will keep track of when services are provided and begin collecting data on student progress.

Then, beginning October 23, 2023, a different, newly contracted virtual SLP will begin working as the assigned 23-24 SLP for Deerfield. Ms. Smith stated:

> *This SLP will also be working remotely, and she will take over all SLP case management and service responsibilities. Her services will consist of working directly with students, direct supervision and observation of the SLP para providing services, as well as collaboration/consultation with staff.*

Ms. Smith stated that the service delivery model will be for the virtual SLP to provide the 75 minutes per week of speech/language therapy to the student with the paraeducator providing the in-person supervision and interactions during these sessions. The paraeducator will provide the 25 minutes per week of speech/language therapy in the general education setting under the direction and supervision of the virtual SLP. The virtual SLP will also provide the 20 minutes per month of consultation to the student's Deerfield team.

The parent expressed concerns regarding the use of this service delivery model as the pare educator is not a trained speech/language pathologist. She noted that the student did not progress well using virtual instruction during school closure during COVID. She also indicated that research shows this service delivery model is not effective for students with her daughter's medical diagnosis.

According to the Kansas State Department of Education (KSDE) Special Education Reimbursement Guide, a Speech Language Pathologist Para educator must be supervised a minimum of 10 percent of the time they are working with students (training time does not

count toward this minimum percentage) by a licensed speech-language pathologist. Speech Language pathologists are required to train, monitor, supervise, and evaluate para educators/ assistants assigned to them. (KAR 28-61-8.)

Ms. Smith noted that the paraeducator is currently working on certification as a speech/language pathology assistant (SLP-A) and holds a bachelor's degree in speech/language, Ms, Smith also stated the district continues is continuing the on-going search for an in-person SLP for the district.

The LEA initially hired a new social worker in September; however, this person resigned after three days of employment. The LEA then reassigned social work staff throughout the district and a social worker began providing services at Deerfield Elementary School on October 16, 2023.

The first day of the 2023-24 school year was August 17, 2023. With social work services beginning the week of October 16, 2023, the student missed a total of eight weeks of services or a total of 160 minutes of social work services during the 2023-24 school year. With speech/language therapy services beginning the week of October 9, 2023, the student missed a total of seven weeks of services or a total of 525 minutes of speech/language therapy in the special education setting and 175 minutes per week of speech/language therapy in the general education setting.

In addition to these direct services, the student was to receive 20 minutes per month of speech/language consultation services for a total of 60 minutes for the months of August, September, and October, 2023. Documentation showed the student was provided the required 60 minutes of monthly speech/language consultation services, specifically related to the student's AAC device, at the beginning of the 2023-24 school year.

USD #497 collected data on the three goals related to speech/language and social skills once those services resumed in mid-October 2023 and reported the student was making adequate progress towards meeting her IEP goals

Conclusion

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) require USD #497 to ensure that the special education and related services are made available to the child in accordance with the child's IEP. In this case, the social work and speech/language therapy services were not provided for between seven and eight weeks during the 2023-24 school year.

The Office of Special Education Programs (OSEP) in the Department of Education issued policy guidance on March 8, 2007 in Letter to Clark stating that local educational agencies (LEAs) are required to ensure that all children with disabilities receive a free appropriate public education (FAPE) consistent with their individualized education programs (IEP). General practice is that services missed because of student absences are not made up because the district was ready,

willing, and able to have provided the required special education and related services while services missed because of the absence of a provider are made up or provided by a qualified substitute.

OSEP further encouraged agencies to consider the impact of the absence of a child or provider on the child's progress toward meeting annual goals. OSEP stated that determination of whether an interruption in services constitutes a denial of FAPE must be made on a case-by-case basis.

In this case, the lack of services was caused by the absence of a provider, not the absence of the student. While the district has made ongoing efforts to hire qualified providers and provided 60 minutes of consultation services regarding the student's AAC device, the student missed a total of 160 minutes of social work services, 525 minutes of speech/language therapy in the special education setting and 175 minutes of speech/language therapy in the general education setting during the 2023-24 school year as required by the student's IEP.

Based on the foregoing, ***it is substantiated*** that USD #497 failed to implement the student's IEP, specifically regarding the provision of speech/language therapy and social work services during the 2023-24 school year.

USD #497 collected data on the social skills goal twice during the first quarter of the school year and collected data on the speech/language goals for approximately two weeks in order to complete the October 18, 2023 IEP goal progress reports. While this data indicated the student was making adequate progress towards her IEP goals, no findings related to the denial of FAPE can be made at this time because of the limited amount of available data on the long-term impact of the interruption of services caused by the absence of the providers on the student's progress toward meeting the annual IEP goals.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of federal regulations at 34 C.F.R. 300. 300.323(c)(2) is substantiated because the district failed to provide the required speech/language therapy and social work services during the 2023-24 school year. Corrective action is required as follows:
   a. CORRECTIVE ACTION:
      i. USD #497 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will ensure that the special education and related services are made available to the child in accordance with the child's IEP.
         1. No later than November 25, 2023
      ii. USD #497 shall reconvene the student's IEP team and will offer a minimum of 160 minutes of social work services, 525 minutes of speech/language therapy in the special education setting and 175 minutes per week of speech/language therapy in the general education setting as described in the April 21, 2023 IEP as compensatory services for failing to implement the student's IEP during the 2023-24 school year. USD #497 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.
         1. No later than December 15, 2023
      iii. USD #497 shall reconvene the student's IEP team to review the data and IEP goal progress reports related to social work and speech/language therapy services at the end of the first semester in order to determine if the absence of providers impacted the provision of FAPE to the student during the 2023-24 school year. The IEP team will revise the IEP if the student is not making progress in order to provide FAPE to the student.
         1. No later than January 30, 2024

Investigator

Nancy Thomas

Nancy Thomas, M.Ed., Complaint Investigator

Right to Appeal

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For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f).

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 13, 2023

DATE OF REPORT NOVEMBER 17, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ----------, by his mother, ----------. In the remainder of the report, ---------- will be referred to as "the student." ---------- will be referred to as "the complainant" or "the parent".

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

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on October 13, 2023, and the 30-day timeline ends on November 12, 2023. An extension was granted until November 17, 2023, due to the inclusion of new issues discovered during the investigation.

Evidence Reviewed

During the investigation, the Complaint Investigators, Ashley Niedzwiecki and Doug Tressler reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The following documentation and information were used in consideration of the issue(s):

1. Email correspondence between the parent and the district dated September 28, 2023, and September 27, 2023.
2. The student's IEP dated 10/20/2022.
3. Prior Written Notice dated for, and signed by the parent on, 10/20/2022.
4. Team meeting notes (undated)
5. Notice of Meeting dated 10/12/2022.
6. Notice of Meeting, scheduled for 10/20/2022, signed by the parent on 11/28/2022.
7. Evaluation Report dated 10/20/2022.
8. Emails correspondence between the parent and the district dated October 2, 2023, pertaining to the student's alleged elopement and subsequent vandalism.

9. Email correspondence between the parent and the district, dated October 6, 2023, pertaining to the elopement and vandalism incident sited in the above-mentioned email.
10. Interview notes from an interview with the district conducted on October 18, 2023. Participants included: Mr. Noonan, Ms. Cooney, Ms. Harrington, and Ms. Whiteman.
11. Interview notes taken during an interview with the parent on October 19, 2023.
12. Discipline records.
13. Progress Reports (9/13/2023 & 10/16/2023).
14. District calendar.

Background Information

The student is a middle school student, in attendance at USD #501. The student has been identified as a student with an exceptionality, specifically, "Other Health Impairment".

Issues Investigated

1. ISSUE ONE: The USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), was wrongly disciplined when given ISS or OSS. [Pg. 3]
2. ISSUE TWO: USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide specialized instruction. [Pg. 5]
3. ISSUE THREE: The USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide requested breaks to the student as required in the student's IEP. [Pg. 6]
4. ISSUE FOUR: The USD #501, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), materially changed the services of the student by 25% or more, and substantially changed the placement of the student by 25% or more, both without amendments to the IEP. [Pg. 8]

Issue One

The USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), was wrongly disciplined when given ISS or OSS.

Applicable Law

A student, identified as a student with an exceptionality, may be subject to disciplinary action, including in-school or out-of-school suspensions and expulsions for violations of the school's

code of conduct. However, under K.A.R. 91-40-35(b)(1)(A)–(B), a student with a disability is entitled to continue to receive special education and related services if the student has been suspended from school for more than 10 cumulative school days in a year, or more than 10 consecutive school days in a year for behavior that has been determined not to be a manifestation of the student's disability. If a student with a disability is suspended or expelled for more than 10 days, starting on the 11th day of suspension, or any subsequent suspension, the agency must provide "special education and related services that are needed 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." (K.A.R. 91-40-35(b)(2)). Days of suspension include in-school or out-of-school suspensions.

Findings of Fact

According to the complainant, the student was "wrongfully accused/suspended" after allegedly violating the school's code of conduct. The complainant argues, in part, that the student did not elope, but rather was denied a break when requested.

The incident in question took place on October 2, 2023. The principal sent an email to the parent, stating the student, "was in Ms. Yoder's class and [the student] said the videos she was showing were boring and it was not his break time, so he walked out of class." The email further discussed the incident, explaining that after the student left the classroom a "loud bang" was heard, and cameras show other students looking toward the hallway where the student had just gone. Following this, a sign was discovered damaged. The district determined the student was responsible and assigned ISS for the remainder of the day followed by a two-day out-of-school suspension "for eloping from the classroom without permission, vandalism, and trying to frame his peer."

During interviews, the district clarified the student received multiple in-school and one (2 day) out-of-school suspensions due to eloping from class. According to the district, the student has not reached the 11th cumulative day of suspension. Discipline records confirm the student had only reached 4 days of ISS and OSS at the time of the incident. As such, the 2 days of out-of-school suspension did not constitute a change in placement and did not require the district to conduct a Manifestation Determination hearing, nor was the district required to provide services to the student.

Further, students identified as students with a disability are subject to discipline following code of conduct violations the same as their nondisabled peers. Discipline records do not indicate that the student requested a break, however the district did admit that "it was not his break time." We will not determine whether the student was "wrongly accused" because that is outside the scope of our investigation. Regardless, we find the district did not violate state or federal special education laws by assigning 2 days of OSS to the student. The denial of a break allegation will be addressed further in Issue Three.

Conclusion - Issue One

Based on the foregoing, a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically that the student was "wrongly disciplined" when given ISS or OSS following the student's violation of the district's code of conduct *is not substantiated*.

Issue Two

The USD #501, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide specialized instruction.

Applicable Law

Federal and state statutes and regulations require a district to provide specially designed instruction, as appropriate, to meet the needs of an eligible child. This means adapting the content, methodology, or delivery of instruction in order to address the unique needs of the child that result from the child's disability, and to ensure access to the general education curriculum, so that the child can meet educational standards. (K.A.R. 90-40-1(lll); 34 C.F.R. 300.39(3)).

Findings of Fact

An IEP meeting was held on October 20, 2022, in which the district, with participation from the parent, drafted an IEP the team felt would best address the student's needs. The parent signed consent for the IEP that day. The IEP states the student is to receive services in ELA, math, electives, science and social studies in a progressively reduced manner to "reintegrate" the student from a more restrictive environment to a less restrictive environment over the course of the year. Additionally, the student receives accommodations of extended time on work, reminders of assigned tasks, preferential seating, an electronic reader, and BASR breaks. Progress reports indicate the student was working toward goals.

Therefore, we find that the district was providing specially designed instruction as appropriate to meet the needs of the student. Implementation of the IEP will be further addressed under Issue Four.

Conclusion - Issue Two

Based on the foregoing, it *is not substantiated* that USD #501 failed to provide specialized instruction to the student.

Issue Three

The USD #501, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide requested breaks to the student as required in the student's IEP.

Applicable Law

Under federal and state law, specific accommodations, modifications, and supports must be provided to the student in accordance with the student's IEP. (K.A.R. 91-40-16; 34 C.F.R. 300.323).

Findings of Fact

According to the Complainant, the student did not receive breaks as directed in the student's IEP, specifically, the student was being denied breaks upon request.

The student's IEP includes a Behavior Intervention Plan (BIP), and the BIP includes a proactive strategy, "allowing [the student] to take breaks when requested". Additionally, the IEP provides breaks "when the teacher recognizes that [the student] is having difficulty maintaining appropriate interactions with adults or peers OR when [the student] requests a break." These breaks are the length in time for [the student] to "refocus and be able to work in an academic setting." The IEP also includes 30 minutes of breaks in the Behavior & Academic Support room (BASR), 5 days a week. The district states, "we were breaking that 30 minutes up into 3 scheduled 10-minute breaks. One in math and two in ELA [for the 2023-2024 school year]."

The district provided emails and affidavits, showing that a scheduled break system was initiated at the beginning of the 2023-2024 school year due to the student's frequent request for breaks. In their response, the district's Special Education Consulting and Behavior Intervention teacher states, "we do grant breaks that [the student] requests, we just don't grant every single break that he requests due to the high frequency of requests that are more for work avoidance and not for regulating emotions or avoiding classroom disruption." Further, in an email titled "eloping', sent to the parent, the principal states, "we would really appreciate it if you would talk to [the student] about waiting to take a break until his designated time", and continues,"Mr. Noonan does have scheduled breaks built in for [the student] and the times he is walking out have not been to take those breaks."

A review of the student's discipline records, shows the student was denied a break upon request on at least one occasion within the past 12 months. According to discipline records, on September 27, 2023, a teacher states, "I was made aware that [the student] had lost the opportunity for an afternoon break in BASR. After asking my para multiple times if he could go to BASR he became frustrated and walked out of class." As noted in the student's IEP, the student is permitted breaks "as requested". District records indicate the student asked, "multiple times if he could go to BASR", only to be denied due to the "lost opportunity for an

afternoon break." The IEP does not provide the student was to have only scheduled breaks or that breaks could be removed for any reason.

Additionally, accommodations listed in an IEP are not privileges that can be removed due to bad behavior, they are required services offered to the student as determined appropriate by the IEP team. Not only did the district remove the student's ability to request breaks, but the district acknowledged the student lost his BASR scheduled break. Both types of breaks are listed in the students' IEP and therefore neither may be removed unilaterally. We find the district violated federal and state special education laws by failing to implement the student's IEP by denying the student breaks as requested and removing scheduled breaks as a punitive measure.

Conclusion - Issue Three

Based on the foregoing, a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically that the student was denied breaks upon request, as specified in the IEP, *is substantiated*.

Issue Four

The USD #501, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), materially changed the services of the student by 25% or more, and substantially changed the placement of the student by 25% or more, both without amendments to the IEP.

Applicable Law

K.A.R. 91-40-1(sss) provides a "substantial change in placement" means the movement of an exceptional child, for more than 25 percent of the child's school day, from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment. K.A.R. 91-40-1(mm) provides a "Material change in service" means an increase or decrease of 25 percent 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. A material change in service or a substantial change in placement requires parental consent, even if the parent verbally agreed to the change. Under state and federal law, a parent must agree in writing to the action for which his or her consent is sought. (K.A.R. 91-40-27(a); 34 C.F.R. 300.300).

Findings of Fact

In interviews, the district revealed that during the 2022-2023 school year the student's day was abbreviated (removed from electives) and he was enrolled in a virtual program for ELA. This change took effect on March 22, 2023. Conversations with the parent confirm that in the Spring of 2023, the parent voluntarily removed the student from ELA, and enrolled him in the

virtual course, as well as verbally consented to removing the student from electives. Additionally, both parties agree that neither the IEP team met to discuss the change, nor did the district offer a Prior Written Notice to the parent.

According to the IEP, during the final quarter of 2022-2023, the student would receive 90 minutes of special education in the Gen Ed setting (5 days a week, in Math, ELA, and Science or Social Studies (depending on the block schedule)), 30 minutes of BASR breaks (5 days a week), and 20 minutes of social work services (1 day a week, every other week).

1. Gen Ed Inclusion services:

   Interviews with the district, and a review of the current IEP, confirm the 90 minutes of Gen Ed inclusion must be provided as "support in the general education setting as 30 minutes in each class math, ELA, science and/or social studies depending on the block schedules."

   According to the district, the student's enrollment in the virtual school for ELA "did not result in any reduction in the services he received under his current IEP." The district further explained "the student's IEP was not amended or changed at the end of last school year [2022-2023] as the district staff were still meeting the 90 minutes of inclusion through math and science/social studies, as well as the daily BASR and biweekly social work minutes." As confirmed by the district, "we did not meet nor do an amendment when [the student] went virtual."

   A. Material change in services:

      A "material change in service" means an increase or decrease of 25 percent 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)). While it may be true that the district was providing the student a total of 90 minutes of Gen Ed support 5 days a week, the district is mistaken about their ability to apply those minutes in a manner that is inconsistent with the IEP team's decision. Additionally, according to the Kansas Process Handbook, adding a new service or deleting a service completely "is a material change in services because it is a 100% change of both frequency and duration of that service."

      In this case, when the student moved to a virtual ELA setting, the district unilaterally increased the number of minutes provided in math and science/social studies and removed support completely in ELA. However, the IEP provides for 90 minutes of inclusion divided between math, ELA, and science/social studies. According to the district this was done in 30-minute increments in each listed class/block. Regardless of whether the student was attending ELA virtually or in-person, the IEP team had determined that the student required support in each

subject listed, and as such, the district is required to provide that support in accordance with the IEP.

The district provided no evidence the IEP team met to determine how ELA services could be provided in the virtual setting. Rather, the district discontinued support in ELA completely, a class which, by the district's own admission, the student was significantly struggling in. This is evidenced by the fact that the district scheduled 2 of the student's 10-minute BASR breaks for ELA, and stated the student missed "a lot" of ELA, and often "sat with his head down and did not engage."

Ultimately, the district's decision to remove ELA support reduced the student's GenEd service minutes by 33% overall, and a 100% reduction of ELA minutes. Since this is a material change in service of more than 25%, an IEP team meeting, PWN, and parental consent was required. Additionally, the district states that they added minutes to math and science/social studies in leu of the ELA minutes. This too is a material change in placement because adding 15 minutes to each of those classes increased the number of minutes in the subjects by 50%, also requiring an IEP team meeting, PWN, and parental consent. (Even if consent isn't required, the district must still provide parents with a PWN notifying them of the change in service).

Here, the student was in a virtual setting for ELA from 3/22/2023 until the end of the school year on 5/24/2023 (43 school days), during which time the district missed a total of 1,290 minutes of services in ELA and increased the total minutes in math by 645 minutes and science/social studies by 645 minutes. Removing any service by 100% requires parental consent. Also, while providing additional minutes in math and science/social studies may have been helpful, that was for the IEP team to decide not a unilateral district decision. Therefore, both actions required an IEP team meeting, PWN, and parental consent.

Therefore, because the district unilaterally removed a service, and unilaterally increased service minutes, both in amounts greater than 25%, creating a material change in services that required an IEP team meeting and parental consent, a violation of state and federal law ***is substantiated***.

B. Substantial change in placement:

A substantial change in placement occurs when there is movement of an exceptional child, for more than 25 percent of the child's school day, from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment. (K.A.R. 91-40-1(sss)).

Here, the district claims "it was the parent's decision to transition the student to virtual English class for the fourth quarter last year due to multiple missed classes."

While this may be true, a parent's choice does not excuse a district's obligation to convene an IEP team meeting to discuss the possible effect on the student's services, and possibly amend the student's IEP, or gain parental consent if necessary.

The district acknowledges as much when discussing the student's possible removal from ELA again this year with investigators. In our discussion with the district, Dr. Harrington asks the principal, Ms. Cooney, if the student has "services in language arts", to which the principal responds "he has inclusion services, yeah." Following this Dr. Harrington offers, "so then if we did make a change, we would need to do the amendment [and] put it in the IEP for a change of placement."

Despite this acknowledgment, the district failed to hold a meeting, send a PWN, or amend the IEP when the student was removed from electives and switched to a virtual setting for ELA at the end of the 2022-2023 school year. In explanation, the district offered the change was "the parent's decision" and therefore was "not an IEP team discussion."

According to the district, the student's schedule last year consisted of "8 class periods, each one was 42 minutes and a 9th hour non-academic seminar for 20 minutes." The district provided the following regarding the student's attendance changes beginning March 22, 2023, through May 24, 2023:

> "Attendance changed from hours 1-9 being available to hours 3-6 being available. *Language Arts was during periods 1 & 2 and started showing * * on 3/22/2023 [virtual];* Math was periods 3 & 4; History was period 5
>
> Science was period 6; *2 electives were periods 7 & 8 and started showing * * on 3/22/2023 [not attending]; Seminar was period 9 (non-academic) and stated showing * on 3/22/2023 [not attending]*"

In this case, the parent exercised her right to voluntarily place the student in a virtual setting and remove the student from electives. the district did not unilaterally, substantially change the student's placement. However, while this is the parent's right, the district should convene an IEP team meeting to discuss the effect this change may have on the delivery of services to the student, amend the IEP as needed, issue a PWN to the parent, and obtain parental consent, if required. A failure to do so requires the district to implement the IEP as written.

Therefore, because the parent exercised her right to move the student to a virtual ELA setting, and remove the student from electives, a finding that the district violated state and federal law by unilaterally, substantially changing the placement of the student *is not substantiated*.

2. BASR Break services:

   According to the district, the 30 minutes of BASR breaks noted in the student's IEP is divided into three 10-minute breaks (These minutes are in addition to the breaks the student is permitted upon request or teacher initiated). Interviews with the district and affidavits from teachers indicate this change occurred at the beginning of the 2023-2024 school year to address the student's frequent requests for breaks. According to the district, during an August 16, 2023, conversation with the parent it was agreed the 30-minute BASR break minutes would be given as one 10-minute break in math and two 10-minute breaks in ELA. The district acknowledges there was no amendment to the IEP to reflect the scheduling/limiting of the BASR break minutes to certain classes. The district also states no "supports have been reduced", regarding the 2023-2024 school year, and confirms the student is permitted "additional breaks when he requests them, or staff sees that he needs them."

   The student's IEP does not specify when BASR breaks are to be given, for how long, or whether they may be given upon request or scheduled. The only parameter seems to be that the student receives 30 minutes each day. As such, we find scheduling the breaks for certain classes may be acceptable. However, scheduling breaks does not permit the district to deny the student any amount of the 30 minutes for any reason.

   On closer inspection of the student's disciplinary records (as discussed under Issue Three), the district denied the student a scheduled break on at least one occasion (when the student requested a break but "lost" his afternoon break). This is the only confirmed occurrence of the student not receiving all 30 minutes of his scheduled BASR break minutes.

   Therefore, because there is only one confirmed occurrence of BASR breaks being denied, a substantial change in placement or a material change in services, ***is not substantiated***.

3. Social Work services:

   Finally, in interviews with the district, staff shared the student was not receiving social work minutes "due to the student coming to school late on numerous occasions." The district stated that "six social work sessions in the last school year, 2022-2023 [were missed]. These sessions were missed due to student absences. The student has missed 7 sessions so far this school year (2023-24 school year)." The district further explained that the Social Worker documented multiple attempts to see the child throughout the days "but due to absences /being late to school she has not been able to meet with him." Attendance records, dated 8/9/2023 to 10/5/2023 (approximately 41 school days), confirm the student came to school late on 18 occasions (typically arriving between

9:15 am and 10 am), left early on 2 occasions, was unexcused all-day on 4 occasions, and was excused all-day on 4 occasions.

It is relevant that the student missed scheduled service minutes due to absences and tardiness, however, it is equally important that a school address such behavior when a pattern is recognized. In this case, the district acknowledged that student attendance interferes with delivery of services. Additionally, progress reports on the student's annual goal of "Emotional Regulation" show a decrease from a 30% ability to regulate emotions on 9/13/2023 to a 28% ability to regulate emotions on 10/16/2023, further highlighting the need for the service. Finally, school administrators state the student is most often at school between the hours of 10 am and 2 pm. In this case, the district is aware of the student's pattern of tardiness and absenteeism, and his lack of progress on annual goals. When a district is presented with such a situation, they may have a duty to address the issues in an IEP team meeting.

In Letter to Clark, OSEP addressed when a district has the obligation to "make-up" sessions when a child misses services due to either the student not being in school or because the provider is not in school. OSEP stated,

States and local educational agencies (LEAs) are required to ensure that all children with disabilities have available to them FAPE, consistent with the child's individualized education program (IEP) (see 34 C.F.R. 300.101). We encourage public agencies to consider the impact of a provider's absence or a child's absence on the child's progress and performance and determine how to ensure the continued provision of FAPE in order for the child to continue to progress and meet the annual goals in his or her IEP. Whether an interruption in services constitutes a denial of FAPE is an individual determination that must be made on a case-by-case basis. (emphasis added).

Here, the district acknowledges the student missed 7 social work sessions this school year [2023-2024] and 6 sessions last year [2022-2023]. As of November 9, 2023, school had been in session for 14 weeks, requiring the student to have received 7 social work sessions thus far. Therefore, the student has missed 100% of his minutes this year.

Additionally, there is no evidence that the district has attempted to address the student's absences or tardiness as a possible barrier to the student receiving services. The district does provide an unsigned draft IEP that was completed after the investigation began (10/25/2023). While typically an unsigned IEP would not be relevant, it is noteworthy, in this case, that the only reference to missing classes is a concern from the father. No where else in the draft IEP is absences or tardiness mentioned or considered. Therefore, we find the missed social work services for 2023-2023 is a material change in services.

Similarly, the district acknowledges the student missed 6 sessions last year. During the 2022-2023 school year, the student should have received social work services a total of 19 times, for a total of 380 minutes (approx. 39 weeks of school, including all half weeks, divided in half = 19.5 sessions). Of those 19 weeks the student missed 6 sessions (120 minutes), or a total of 31.5% of his services. Again, this is a material change in service.

It is important to note that generally, a student missing services, by their own accord, would not require an IEP team meeting, however, as stated above, when the student's absences and tardiness are interfering with the delivery of services, it is in the student's best interest to hold an IEP team meeting in order to address any possible impact on the student's progress.

Therefore, the district ***violated state and federal law*** by materially changing the services of the student for both the 2022-2023 school year and the 2023-2024 school year resulting in 260 minutes of missed social work minutes (13 weeks x 20 minutes).

Conclusion - Issue Four

Based on the foregoing, ***it is substantiated*** that USD #501:

1. Violated state and federal law when by unilaterally deleting a service completely (denying the student 1,290 ELA service minutes) and unilaterally adding service minutes (math and science/social studies), therein materially changing a service without an IEP meeting, PWN, or parental consent.
2. Violated state and federal law by materially changing the service of the student for both the 2022-2023 school year (6 sessions) and the 2023-2024 school year (7 sessions) by not providing social work minutes for a total of 13 sessions (a total of 260 minutes).

Based on the foregoing, ***is not substantiated*** that USD #501:

1. Violated state and federal law by substantially changing the placement of the student because the student's placement in a virtual setting, and removal from electives, was the parent's decision.
2. Violated state and federal law, resulting in a substantial change in placement or a material change in service, due to a denial of BASR break minutes on one occasion.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically that the student was "wrongly disciplined" when given ISS or OSS following the student's violation of the district's code of conduct, is not substantiated.
    a. No corrective action required.
2. ISSUE TWO: A violation of state and federal regulations implementing the Individuals with Disabilities Act (IDEA), specifically that USD #501 failed to provide specialized instruction is not substantiated.
    a. No corrective action required.
3. ISSUE THREE: A violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically that the student was denied breaks upon request, as specified in the IEP, is substantiated.
    a. CORRECTIVE ACTION:
        i. Training to staff on implementing breaks as specified in the IEP.
            1. Date due: December 31, 2023
        ii. Provide a letter to KDSE confirming the training was completed.
            1. Date due: December 31, 2023
4. ISSUE FOUR:
    a. A violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically when the district unilaterally deleted a service completely (1,290 ELA service minutes) and unilaterally added service minutes (math and science/social studies), therein materially changing a service without an IEP meeting, PWN, or parental consent is substantiated.
        i. CORRECTIVE ACTION:
            1. Draft a proposal to the parent offering 1,290 minutes of compensatory services in ELA. The parent may accept, some, all, or none of the minutes.
                a. Date due: December 31, 2023
            2. Provide copy of the offer to KSDE along with the parent's response.
                a. Date due: December 31, 2023
            3. Training to staff on what constitutes a material change in service and the procedures to follow when it does occur.
                a. Date due: December 31, 2023
            4. Provide a letter to KDSE confirming the training was completed.
                a. Date due: December 31, 2023

b. A violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically by materially changing the service of the student for both the 2022-2023 school year (6 sessions) and the 2023-2024 school year (7 sessions) for a total of 260 social work minutes is substantiated.

    i. CORRECTIVE ACTION:

        1. Draft a proposal to the parent offering 260 social work minutes. The parent may accept some, all, or none of the minutes.

            a. Date due: December 31, 2023

        2. Provide a copy of the offer to KSDE along with the parent's response.

            a. Date due: December 31, 2023

Investigators

Ashley Niedzwiecki

Doug Tressler

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).

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 #469
ON OCTOBER 9, 2023

DATE OF REPORT NOVEMBER 9, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ---------- by his guardian, ----------. In the remainder of the report, ---------- will be referred to as "the student." ---------- will be referred to as "the complainant" or "the guardian."

The complaint is against USD #469, Lansing Public Schools. In the remainder of the report, USD #469 will be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on October 9, 2023, and the 30-day timeline ends on November 9, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham interviewed the complainant on October 15, 2023. The Complaint Investigator requested six additional individuals be interviewed with information about this investigation - the parents of additional students in the district (phone interview with 2 parents, left message and was unreturned of 3rd parent), two previous employees (phone interview with one and phone not answered and no answering machine with second) and a Child Protective Services Investigator (phone interview). The complainant and Complaint Investigator further exchanged emails between October 15 and November 11, 2023.

The Complaint Investigator conducted a group phone interview with the school principal, assistant school principal, Special Education Coordinator and Special Education Director on October 30, 2023. The Special Education Director and Complaint Investigator exchanged emails between October 14, 2023 and November 8, 2023.

Finally, the Complaint Investigator reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The following documentation and information were used in consideration of the issue(s):

1. Individual Education Plan (IEP) dated December 6, 2022, includes Functional Behavior Assessment report, Behavior Intervention Plan, Crisis Plan
2. Emergency Safety Intervention Board Policy revised July 10, 2023

3. Student Discipline Report dated between August 25, 2023 through October 23, 2023
4. Emergency Safety Intervention report dated September 1, 2023 at 10:05 AM
5. Emergency Safety Intervention report dated September 1, 2023 at 10:09 AM
6. ABC Data Descriptions dated September 4, 2023-October 2, 2023
7. Emergency Safety Intervention report dated September 8, 2023 at 10:41 AM
8. IEP amendment dated September 22, 2023
9. Prior Written Notice, signed by grandmother dated September 22, 2023
10. Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated October 2, 2023 (from September 22, 2023 meeting)
11. Email from Special Education Coordinator to parent dated October 12, 2023 at 3:37 PM
12. IEP Team Meeting notes dated October 16, 2023 at 11:00 AM
13. Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated October 17, 2023
14. Emergency Safety Intervention report dated October 20, 2023 at 9:43 AM
15. Emergency Safety Intervention Parent Feedback form and Parent Contact form, undated
16. Student Discipline Reports for the 2023-2024 school year through October 16, 2023
17. Attendance for the Student, 2022-2023 school year and 2023-2024 school year – October 16, 2023
18. Email from Special Education Coordinator to parent dated October 18, 2023 at 7:48 PM
19. Emergency Safety Intervention Reports for the Student for the 2023-2024 school year through October 20, 2023
20. District Response dated October 23, 2023
21. Student Progress Report dated October 27, 2023
22. Copy of Student's Class Schedule for the 2023-2024 school year

Background Information

The student is a second grader in a multi-age self-contained classroom in a K-3 elementary school in the student's district. The classroom has three students with one teacher and one paraprofessional. The student is eligible for special education and related services as a student with developmental delays. He was diagnosed at a pediatric behavioral center with

oppositional defiant disorder - moderate, and attention deficit hyperactivity disorder - combined presentation- severe.

The student has an IEP in effect dated December 6, 2022 and amended on September 22, 2023. The IEP has a BIP and Crisis Management Plan. In addition, the student takes medication and has a health condition that necessitates monitoring his activity for breathing and during hot temperatures. According to the December 2022 evaluation the student demonstrates sensory processing skills delays including sensory sensitivity and sensory avoiding. Therefore, he may have difficulty participating in group settings where there is talking or other noises. He may fidget with whole body movements or appear disruptive when standing in line or close to other people.

The Functional Behavior Assessment (FBA) included in the IEP revised 9/22/23 conducted according to district staff about November 2022 included additional information, "[Student] has had 44 office referrals to date. He has had 6 Out of School Suspensions. [Student] has not been successful in the General Education classroom with a para, and is now receiving his instruction primarily in a Special Education setting with a one on one para. A plan has been put into place for re-integrating [Student] back into the Gen Ed classroom. Further, it is reported that "Data collection for 30 school days revealed 17 incidents of physical aggression (both towards adults and peers as well as property destruction). Antecedents to physical aggression includes unstructured activities (e.g., lining up, recess), not receiving immediate adult attention, a task demand (academic or non-academic). Data collection for the month of November [2022] indicates that dysregulated incidents range from 3 minutes up to 163 minutes. Consequences of behaviors include an adult 1. verbally redirecting 2. removing [student] to a recovery room to calm down and process." The primary function of the behavior is listed as adult attention and the secondary function as demand. The hypothesis of the FBA is listed as, "During unstructured periods as well as academic periods in the general education classroom, when given a direction [Student] will become dysregulated (may look like: kicks items, throws items on floor, hangs on chairs, knocks chairs over, runs on tables, climbs shelf, breaks items, physically aggressive towards adults and peers, elopes from a classroom and/or the building, and/or uses profane language) which is followed by an adult interceding to help [Student] calm down. Therefore, the primary function of the behavior is to obtain adult attention, and the secondary function is to avoid a task demand."

Issues Investigated

1. ISSUE ONE: USD #469, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to follow the Student's IEP, specifically the Behavior Intervention Plan during the 2023-2024 school year.
2. ISSUE TWO: USD #469, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to revise the IEP, including the

Behavior Invention Plan to address a lack of expected progress toward goals during the 2023-2024 school year.

3. ISSUE THREE: USD #469, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), conducted an assessment/evaluation with the Student without proper consent during the 2023-2024 school year.

Issue One

USD #469, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to follow the Student's IEP, specifically the Behavior Intervention Plan during the 2023-2024 school year.

Applicable Law

Federal regulations 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. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

The grandparent alleged that the IEP is not being followed. She has expressed concern with the student's behavior and how it effects his access to the general education curriculum. She is concerned with the time spent in the recovery room and the classroom.

The district responds that the student's last annual IEP meeting was held on December 6, 2022 which also included a re-evaluation. The re-evaluation was conducted to determine the appropriate services and educational placement for the student and included a Functional Behavior Assessment and gifted cognitive and academic assessments. Re-evaluation results indicated a need to develop a Behavior Intervention Plan and he did not meet eligibility criteria for gifted services. The IEP team increased time from the prior IEP in special education classroom due to behavioral data indicating behaviors were interfering with his ability to participate in general education setting; his educational placement service minutes were updated to reflect self-contained placement with the behavior program with general education inclusion during specials and recess.

The district further responded that during the 2023-2024 school year the BIP has been followed within the self-contained behavior program in his school. The "reaction" section of the BIP indicates that when dysregulated and aggressive behaviors are occurring, he will receive services within the special education environment. His first discipline record for the 2023-2024

school year occurred on August 25, 2023, additional behavior data has been documented and shared with his guardians via a daily communication log.

The Behavior Intervention Plan included in the December 6, 2022 IEP and revised September 22, 2023 include prevention, replacement, and reaction strategies.

The student's IEP in effect on December 6, 2022 and again revised 9/22/23 includes 4 accommodations that address components of the BIP and include, 1) access to a more restrictive environment during lunch, either self- directed or teacher directed daily until the student is able to self regulate again; 2) access to a more restrictive environment either teacher directed or self directed whenever student is stressed or not in control of his emotions for the duration of the stressor; 3) access to sensory strategies and/or equipment to support self regulation needs/attention to task (e.g., body sock, mini-trampoline, hand fidgets, alternative seating, etc.) daily until his sensory needs are met; and 4) access to preferential seating daily until he is able to demonstrate attention to task." Parent and district report and documentation from discipline referrals dated August 25, 2023, August 29, 2023 (twice), August 31, 2023 (access) September 5, 2023, showed the more restrictive environment (recovery room) was used. Beginning September 9, 2023 discipline records report the student had access to a more restrictive environment. No documents or data were provided to demonstrate implementation of Accommodations 3 and 4.

Prevention strategy 1) receive direct instruction in Behavior Management as well as Social Skills. The 2023-2024 student schedule included 30 minute blocks for each topic twice each week. One of the teachers has a schedule with these times.

Prevention strategy 2) Use of a token economy. The district staff and long term substitute agreed that a token economy was implemented for the student to earn tokens to receive recess time with 2nd general education students. This was later refined to receive recess time with 3rd grade general education students which was reported as more reinforcing. No data were provided as to how often the student earned recess.

According to the Child Complaint on September 28, 2023 "In person conversations with admin [administrators] on the antecedent to the behavior; nobody could provide a specific answer other than [principal] saying he became dysregulated during transition that correlated with recess time. I specifically asked each person if he was being denied recess and nobody would answer that question. I was at the school because I was called to see if I could assist calming [student] down after he left the building, crossed the playground, and climbed the fence (fence climbing was not disclosed by staff) and was hitting yelling and using profanity."

Prevention strategy 3) Use of teacher initiated/student requested break system. No evidence was provided for this prevention strategy.

Prevention strategy 4) Use of visuals (coping skills that have been pre-taught as well as size of the problem/reaction) No evidence was provided for this prevention strategy.

Replacement strategy 1) Use of coping skills to match [student] 's emotional state Ability to match size of reaction to size of problem Ability to process with staff when at behavior baseline (regulated) No evidence was provided for this prevention strategy.

The IEP includes one goal, that during the school day the student will be able to use socially acceptable, self control skills (breathing, pausing and relax) when he becomes upset, mad, or frustrated 80% of all opportunities. His baseline is listed at 41%. The progress reports for Quarter 1, dated October 27, 2023 do not report progress on this goal.

Reaction strategy 1) When a directive is given to [student] (in a small group or one-on-one setting), first, gain his attention - can be a nonverbal (e.g., making eye contact and proximity). Give him one-step directions (First you will sit in your seat then complete this worksheet). Give [student] approximately 10 seconds to comply before giving one redirect. If [student] begins the work, give him a token paired with high specific social praise. (e.g., I like the way you are listening to directions the first time and started working - you have 2 tokens now, you only need one more for a break). If [student] does not begin his work - redirect verbally. If [student] continues not to comply , give him a choice of working in his current setting, or moving to a more restrictive environment, providing visuals with pre-taught coping skills. If [student] refuses to move to the next more restrictive environment, staff will call for administration to assist. When [student] is moved to a recovery room, the Processing Protocol will be completed. The Processing Protocol that will be used will include (but not limited to): discussing a sequential series of events, taking perspective of others in the situation, behavior mapping of the situation, engaging in restitution justice. As [student] becomes more successful, the number of tokens needed for a break should increase, gradually fading the number of breaks needed. Evidence was only provided about the use of the recovery room. No evidence was provided about the steps leading up to the use of the recovery room nor the process that follows.

According to the Child Complaint the grandmother wrote that on September 14, 2023 “when asked about his day, specifically his morning, [student] spoke of attempting to go out the window after entering the Recovery Room with [staff 1] and [staff 2]. I asked him if anyone tried to stop him from going out the window and he said that [staff 1] physically restrained him. I asked him to show me how and he demonstrated a 2 arm hold of his torso from behind and said his arms were outstretched toward the window”. Further, “[Student] has previously told me of a para walking behind him with her hand on his shoulder upper arm guiding him to the padded room at the back of the seclusion room, not shutting the door instead physically standing in the door from preventing him from walking out. I believe this may have been one of his suspensions days as he tried to shove his way past her.

According to the Child Complaint the grandmother wrote that on September 27, 2023 the student and complainant were “directed to it (seclusion room) for him to complete work on this day and he got very upset at the mere mention of being told to go there.”

An interview with a long-term substitute who instructed the student beginning November through mid-August 2023 was conducted November 7, 2023. During the interview, the long-term substitute stated that he observed that using the recovery room only escalated the student. He stated that instead he formed a relationship with the student and was able to manage the student's behavior through respect and holding high expectations. Additionally, although the student did not qualify for gifted services, he often got access to higher grade materials to extend the grade level curriculum and challenge the student.

An interview with the parents of another student in the same classroom observed the student of this investigation began to display dysregulated behavior and the staff responded by telling the student to stop and when he did not stop allowed him to become more agitated and then called the office to have the student picked up by the parent.

According to the September 22, 2023 IEP amendment the following BIP revision was made. "[Student] will have non-contingent rapport building time 2x per week for 10 minutes with his general education teacher for his grade level. After the team has determined that rapport has been established, pending safety criteria below, [student] will be able to join 15 minutes of the afternoon math group in the general education setting, with the same teacher. He will get to choose coming in for the first or second half of the group and that will be his schedule. Criteria for attending the general education math group: [student] will exhibit safe behavior for the entire 1 hour leading up to math group time. Safe behavior includes staying in his designated learning space (no eloping), appropriate language (no profanity or otherwise inappropriate language), and safe body (no physical aggression or property destruction)." It was reported that this has not been implemented due to scheduling logistics with the teacher. Once the logistics have been worked through the district reports it will be started.

The IEP dated December 6, 2022 and revised September 22, 2023 indicated that a Crisis Management Plan was warranted and included use of recovery room or emptying a classroom if student becomes physically aggressive toward staff or peers. The crisis plan then listed a contact list for additional support and an emergency plan including calling 911. Discipline referrals and ESI records demonstrate these instances. The complainant and district staff agree the crisis plan was implemented although the complainant expresses concern that not all instances were reported.

The IEP dated December 6, 2022 and IEP amended on September 22, 2023 lists 50 minutes of special education service 5 days every week in the general education/inclusion setting for electives/specials; 5 minutes of special education service 5 days every week in the special education/resource/pull-out setting for triage; 30 minutes of special education service 2 days every week in the special education/resource/pull-out setting for social skills; 30 minutes of special education services in the special education/resource/pull-out setting for behavior management; 8 minutes of nursing service 5 days every week in the general education/inclusion setting for medication; 30 minutes of attend care in general

education/inclusion 5 days every week for recess; 265 minutes of special education service 5 days every week in the special education/resource/pull-out setting for core subjects; and 15 minutes of indirect (consultation) occupational therapy services every quarter.

The district reported in their October 23, 2023 response that "the IEP team increased time (compared to the prior IEP written on 3/29/22) in the special education classroom due to behavioral data indicating behaviors were interfering with his ability to participate in the general education setting; his educational placement service minutes were updated to reflect self-contained placement within the behavior program with general education inclusion during specials and recess."

The district reported during their interview on October 30, 2023 that the student receives his services in a multi-age self-contained program of 3 students in a K-3 elementary school with a teacher and two paras available to the student. This is confirmed by the September 22, 2023 PWN and October 16, 2023 IEP team meeting notes that discuss re-integrating the student back into general education classes. The student's schedule for the 2023-2024 school year shows his day beginning at 8:00 a.m. (breakfast and break) with instruction (morning meeting) beginning at 8:45 a.m. and dismissal at 3:25 p.m. summing to 440 minutes of time the student is at school daily. According to the service minutes the student is receiving a total of 88 minutes daily in the general education/inclusion setting for recess, specials or nursing services and 330 minutes daily in the special education setting for triage, social skills, behavior management and core instruction for a total of 418 minutes of service daily.

Conclusion

There are both procedural and substantive violations of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2).

Procedurally, the district's response to the Child Complaint stated that they increased time for the student in the special education setting on or about March 29, 2022 in response to data showing increased student behavior, however the December 6, 2022 IEP and September 22, 2023 IEP amendment show no change in service minutes in sped/resource/pull-out or general education/inclusion settings. Further, the September 22, 2023 and October 16, 2023 documents IEP team discussion about the logistics and conditions for the student to re-integrate back to general education classes.

Substantively, there was no documentation or data provided on the preventative, replacement, and some precursor steps of the reactive phases of the behavior intervention plan. Based on the foregoing, ***it is substantiated*** that USD #469 failed to follow the Student's IEP, specifically the Behavior Intervention Plan during the 2023-2024 school year.

Issue Two

USD #469, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to revise the IEP, including the Behavior Invention Plan to address a lack of expected progress toward goals during the 2023-2024 school year.

Applicable Law

Federal regulations and Kansas statutes at 34 C.F.R. 300.324(b)(1)(A), and K.S.A 72-3429(f)(2), states the IEP team should revise the IEP, 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.

Analysis: Findings of Fact

The findings of Issue One are incorporated herein by reference.

The complainant alleged that the student's behavior continues to worsen and while the IEP team has met twice during the 2023-2024 school year the district is focused on reducing his time in the general education setting, using a recovery room in spite of it not working, reducing his school hours, or considering out of district placement.

The district responded that the IEP team met on September 22, 2023 to amend the IEP including the behavior intervention plan and discuss additional concerns presented by his grandmother. The amendment revised the BIP to include a general education reintegration plan. The amendment paperwork was signed on October 16, 2023 during a meeting with the grandmother to discuss additional concerns including discussing the contents of his current BIP.

The investigation of Issue 1 found that the Behavior Intervention Plan was not implemented.

The IEP team meeting notes and PWNS from both IEP meetings held during the 2023-2024 school year, discipline reports and ESI reports from the 2023-2024 school year show that the IEP team agree that the student is not progressing with the current IEP/BIP.

Interviews with the complainant and district show agreement that the student is not progressing with the current IEP/BIP.

Conclusion

Based on the foregoing, it is found that the district recognized that the student was not progressing and the IEP team has met twice since the start of the 2023-2024 school year. The IEP meeting notes and Prior Written Notices show that the IEP team discussed the changes and therefore *it is not substantiated* that USD 469 failed to revise the IEP, including the Behavior Invention Plan to address a lack of expected progress toward goals during the 2023-2024 school year. While it is found that the district did meet the IEP to consider revisions for a

student not progressing with the current IEP/BIP it is important to note that Issue 1 concluded that the IEP/BIP was not implemented and may be a crucial factor in the student's lack of progress.

Issue Three

USD #469, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), conducted an assessment/evaluation with the Student without proper consent during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.304(a) state that the public agency must provide notice to the parents of a child with a disability that describes any evaluation procedures the agency proposes to conduct.

State statutes at K.S.A. §72-3430(b)(2) states he parents of exceptional children shall have the right to written prior notice whenever an agency: (A) Proposes to initiate or change; or (B) 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.

Analysis: Findings of Fact

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

The complainant alleged that on September 27, 2023 she was at the school and observed an unfamiliar woman interacting with the student who then followed the student and complainant to a different room while continuing to interact with the student. The complainant finally asked who this unfamiliar person was and was told it was a BIST instructor who comes in once a month to lead trainings throughout the day. On September 28, 2023, the complainant questioned the school in an email and in the student's behavior log if she was there to provide an assessment/evaluation/recommendation to the district regarding the student. The complainant stated she has not received a response to that question sent on September 30, 2023.

The district responded that the BIST consultant mentioned in the complaint that the grandmother saw in the building is a general education consultant for the school and district, not specific to the student. The district has a contract with Cornerstones of Care for BIST training and the consultant comes in for observations, to clarify training points as they apply to specific students and respond to teacher and administrative questions as they work to implement the training with students.

The district further responded it has not initiated any new re-evaluation during the 2023-2024 school year. The student's guardian requested a gifted evaluation, however, during the meeting on September 22, 2023 the team agreed not to evaluate at this time and to instead provide

enrichment materials. The Prior Written Notice dated October 2, 2023 and signed by the guardian on October 16, 2023 records that a gifted evaluation would be revisited when the student has established rapport with school staff.

The September 22, 2023 Prior Written Notice recorded, "The family requested evaluation for gifted services for [student]. He was just evaluated last school year, so the IEP team (including the family) agreed that it would not be in [student's] best interest for him to test again with a new person at this time. The team discussed providing enrichment materials for him to work on at school and letting him know it is enrichment and discussing gifted testing again in the future when [student] has built more relationships with school staff members." . The PWN also recorded in the Explanation of why the action was rejected as "The family requested a gifted evaluation for [student]. The team (including the family) has agreed to not move forward with the evaluation at this time. This action is proposed due to [student's] need to build more relationships with school staff and have consistent, extended periods of self-regulation to allow for testing."

The October 16, 2023 IEP meeting notes recorded, "BIST trainer comes to the building once per month to train and provide support. We are not using the BIST program structure with [student]. Grandma had questions about the role of the BIST trainer. They do not come into SBS to provide support."

On October 30, 2023, the district stated during an interview with the complaint investigator that the person who was identified as the Behavior Intervention Support Team (BIST) consultant on September 27, 2023 by the complainant was an *outside consultant contracted by the district who acts as a resource to teachers in the district on behavior. They further stated that the consultant will often accompany administrators on days she is in schools for responsive calls.*

According to the Cornerstones of Care website BIST is described as a program of Cornerstones of Care, providing training and support to teachers, parents and administrators in pre-K to 12th grade public, private, charter and parochial schools in suburban, urban and rural settings throughout the Midwest. With services and trainings for individuals, teams or entire faculties tailored specifically for each school, Cornerstones of Care lists services for schools to become more trauma-informed for the students. After an initial meeting and in-depth analysis training is provided to the entire staff of the BIST philosophy and program. Then consultants will recommend and follow a plan of action to improve the staff skills.

Conclusion

Based on the foregoing, ***it is not substantiated*** that USD #469 conducted an assessment/evaluation with the Student without proper consent during the 2023-2024 school year.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was found, based on review of documentation, interview with long term substitute, district staff and parent. Corrective action is required as follows:
    a. CORRECTIVE ACTION PROCEDURAL:
        i. Conduct an IEP meeting to determine appropriate services and settings. The service minutes and setting do not match the district's response of where the student receives services. Further, the IEP meetings that have occurred during the 2023-2024 school year corroborate that the student is receiving his services 100% of the time in a self-contained classroom and earning time for recess with general education students. This change of placement apparently occurred prior to the date of investigation. The service minutes/setting should reflect the IEP team decision to reintegrate the student back with general education students. The Notice of Meeting, revised IEP along with IEP team meeting minutes and PWN should be provided to SETS within 1 week after the meeting is held.
        ii. Contract with TASN to train the staff in the student's program on writing IEPs, BIPs, data collection, and when to write PWNs. Submit evidence that the training occurred.
        iii. Date due: December 31, 2023
    b. CORRECTIVE ACTION SUBSTANTIVE:
        i. Train all staff that will be implementing the BIP on all phases (prevention, replacement, reaction) including the data collection methods as written into the IEP. Provide the training materials and data collection sheets as well as attendance sheets to SETS.
        ii. Implement the BIP (including data collection of its implementation of all phases) for 4 weeks and hold an IEP team meeting within 1 week of the 4 weeks of data collection to review and refine the plan. Provide the data and IEP team meeting minutes with plan refinements to SETS.
        iii. Date due: December 31, 2023
2. ISSUE TWO: A violation of 34 C.F.R. 300.324(b)(1)(A), and K.S.A 72-3429(f)(2) was not found, based on review of documentation, findings of Issue One, interview with grandparent and district. Corrective action is not required.
3. ISSUE THREE: A violation of 34 C.F.R. §300.304(a) and K.S.A. §72-3430(b)(2) was not found, based on review of documents and interview with district staff. Corrective action is not required.

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).

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

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

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(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 # 512
ON OCTOBER 19, 2023

DATE OF REPORT NOVEMBER 17, 2023

This report is in response to a complaint filed with our office by ------ on behalf of his son, ------ For the remainder of this report, ------ will be referred to as "the student." ------ will be referred to as "the parent." USD #512 will be referred to as "the district."

Investigation of Complaint

On October 25 and 27 and November 6, 2023, the complaint investigator spoke via telephone with Sherry Dumolien, Chief of Special Education for the district. The investigator spoke again with the Chief of Special Education on a video conference call on November 14, 2023. Also present during portions of that call were Stacy Cates, Dyslexia Consultant for the district, and Natalie Kaiser, Occupational Therapist. The investigator spoke by telephone with the parent on October 27, 2023.

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

- Confidential Educational Evaluation dated November 30, 2017
- Confidential Educational Evaluation dated May 15, 2019
- Confidential Educational Evaluation dated February 9, 2021
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated March 1, 2021 refusing placement in a private school setting
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated March 1, 2021 offering "COVID-19 impact services"
- Email dated June 10, 2021 from the parent to the director of special education
- Notice of Meeting dated February 2, 2022
- IEP for the student dated February 23, 2022
- Letter dated March 1, 2021 from the director of special education to the parent
- Prior Written Notice for Identification Initial Placement, Change in Services, Change of Placement, and Request for Consent related to February 23, 2022 IEP signed by the parent on March 4, 2022
- IEP Progress Report for the student's February 23, 2022 IEP
- Notice of Meeting dated January 30, 2023

- Notice of Meeting dated February 17, 2023
- Draft Agenda for the February 24, 2023 IEP team meeting
- IEP for the student dated January 30, 2023 completed during February 24, 2023 IEP team meeting
- Prior Written Notice for Identification Initial Placement, Change in Services, Change of Placement, and Request for Consent dated January 30 and February 24, 2023
- Email dated March 7, 2023 from the student's special education resource teacher (co-teacher of the student's Physical Science class) to the parent
- Prior Written Notice for Identification Initial Placement, Change in Services, Change of Placement, and Request for Consent dated March 9, 2023
- Notice of Meeting dated April 4, 2023
- Team Meeting summary for April 4, 2023 IEP team meeting
- Team Meeting record dated April 4, 2023
- Notice of Meeting dated April 21, 2023
- Notice of Meeting dated May 1, 2023
- IEP Amendment dated May 17, 2023
- Amended IEP dated May 17, 2023
- Prior Written Notice for Identification Initial Placement, Change in Services, Change of Placement, and Request for Consent dated May 17, 2023
- High School Core Replacement Acknowledgement Form related to the proposed May 17, 2023 IEP Amendment
- IEP Amendment signed by the parent on June 5, 2023
- Email dated August 11, 2023 from the student's special education case manager to the parent
- Email dated August 16, 2023 from the parent to the student's case manager
- Agenda for September 18, 2023 team meeting
- Prior Written Notice for Identification Initial Placement, Change in Services, Change of Placement, and Request for Consent dated September 18, 2023
- Notice of Meeting dated September 27, 2023
- Agenda for October 6, 2023 IEP team meeting
- Prior Written Notice for Identification Initial Placement, Change in Services, Change of Placement, and Request for Consent dated October 9, 2023
- IEP for the student dated October 20, 2023
- Revocation of Consent for Particular Special Education and Related Service(s) Placement(s) dated October 20, 2023
- Prior Written Notice for Identification Initial Placement, Change in Services, Change of Placement, and Request for Consent dated October 20, 2023

- All email correspondence regarding the student for the period of October 19, 2022 through October 19, 2023

Background Information

This investigation involves an 17-year old boy who is enrolled in the 11th grade in his neighborhood high school.

The student was initially evaluated to determine his eligibility for special education support in May 2010 at age 3. The student was determined eligible for support under the category of "Sound System Disorder" - - a special education categorical designation used by the state of Missouri where he was evaluated. The diagnostic category includes students who demonstrate a "difficulty or combination of difficulties with perception, motor production, or phonological representation of speech sounds and speech segments—including phonotactic rules governing permissible speech sound sequences in a language."

The student was reevaluated in February 2011 while receiving services in Early Childhood Special Education and was determined at that time to have met criteria to be identified as a student with a Developmental Delay in the area of communication. While in Kindergarten, the student was again reevaluated and met the Missouri criteria as a child with a "Sound System Disorder."

The student received special education support in Raytown, Missouri from the age of 3 years through second grade. He was enrolled in one school for Kindergarten and first grade, transferring to a second school for second grade.

During the second semester of his second grade year, the student was once again re-evaluated and was determined to have met Missouri Department of Education's Special Education eligibility criteria for Specific Learning Disability in the areas of basic reading, reading fluency, reading comprehension, written expression, and mathematics calculation.

Beginning in his third grade year, the parents enrolled the student in Horizon Academy, a private school in Roeland Park, Kansas which, according to its website, emphasizes the daily use of the Orton-Gillingham Approach to phonetic instruction across all curriculum areas for students diagnosed with dyslexia. The school also uses the "Multisensory Math Approach" which - according to the school's website - "advocates a Concrete-Representational-Abstract Instructional Sequence and explicit language to make math concepts memorable."

In Spring 2017, while attending 4th grade at the private school, the student was evaluated through an area hospital. As a result of this evaluation, the student was given diagnoses of Attention Deficit/Hyperactivity Disorder (ADHD); Specified Anxiety Disorder; Multiple Specific Learning Disabilities (Dyslexia and Dysgraphia or developmental coordination disorder) and Language Disorder, specifically a moderate impairment in receptive language and a severe

impairment in expressive language. The student has also been diagnosed with short stature and is followed by the Endocrine Clinic at an area hospital.

The National Institute of Neurological Disorders and Stroke, a division of the National Institute of Health, defines attention deficit hyperactivity disorder (ADHD) as

> *"...a neurobehavioral disorder marked by trouble controlling impulsive behavior, difficulty paying attention, or overactivity. It is one of the most common neurodevelopmental disorders of childhood... [ADHD] interferes with a person's ability to stay on task and maintain focus." (See ninds.nih.gov.)*

The IDA (International Dyslexia Association) defines "Dyslexia" as follows:

> *"Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge." (See https://dyslexiaida.org.)*

Diagnosis of dyslexia is a clinical decision made by a doctor, clinical psychologist, neurologist, or other clinical professional. The identification of a child with a "Learning Disability" - the term used by the Individuals with Disabilities Education Act (IDEA) is made by a school team through a comprehensive evaluation. The term "Learning Disability" is used in the IDEA to describe children who have a disability in the areas of reading, writing, or math.

"*Dysgraphia," the condition of impaired letter writing by hand, is, according to the IDA, often present in individuals diagnosed with dyslexia.* The DSM-5 (Diagnostic and Statistical Manual - 5th edition) - the handbook used by health care professionals in the United States and much of the world as the authoritative guide to the diagnosis of mental disorders - does not define dysgraphia as a separate disorder but includes it - along with dyslexia - under the "specific learning disorder" category.

The DSM - 5 defines a Language Disorder as:

> *"difficulties in the attainment and use of language due to comprehension or discourse shortfalls."*

In an email to the investigator dated November 7, 2023, the parent reported that the student worked with a private tutor beginning in June 2017 through April 2019 for two 2-hour sessions per week focusing on reading, spelling, and math. According to a summary developed by the provider, the tutor used the Susan Barton Reading and Spelling System with the student, a tutoring system for students who struggle with reading, spelling, and writing due to dyslexia.

For the 2017-18 school year, the student's fifth grade year, he was enrolled for the first time in his current district of residence. In November of 2017, the student was re-evaluated by the district.

A cognitive assessment conducted at that time placed the student at the 5th percentile overall with a pattern of scores consistent with students who have been diagnosed with Dyslexia. The student's Verbal Comprehension Index fell at the 7th percentile, and he had low scores on subtests that measure working memory and processing speed, but he performed in the average range in areas related to spatial processing, visual-motor integration, and novel problem solving. Reading skills were at that time determined to be at or below the first percentile as were math and written language skills. Significant deficits were also seen with regard to the student's expressive and receptive language.

The student received special education support from the district for the remainder his fifth grade year. The student's IEP team determined that he should receive 240 minutes of special education support in a special education setting per day with 45 minutes per day of additional support in the general education setting. He received 30 minutes of speech support 3 times per week and 30 minutes of OT support per week.

For his sixth grade year, the student received more support in the general education setting (75 minutes per day) and 165 minutes per day of pull-out special education services in addition to the previously established speech and OT support. The student was re-evaluated in preparation for his transition to middle school. Testing showed that the student continued to struggle with reading, math, and written language skills placing him well below his grade level peers.

In seventh grade, the student was placed for the first three quarters of the 2019-20 school year in what is now called the "Intensive Resources" classroom which provided a highly individualized program to meet the student's needs. In mid-March 2020, Kansas schools were closed for the remainder of the school year due to COVID-19.

Beginning in the Fall of the student's 2020-21 eighth grade year, students in the district were offered the option for either in-person or remote learning because of ongoing concerns regarding COVID-19. The student's parents opted to have the student participate remotely from September of 2020 through February 2021. Materials were provided to the family in a combination of paper/pencil format delivered to their door and the use of an online platform. According to the director of special education for the district, special education services were available to the student on a daily basis despite the pandemic.

In February 2021, the parent requested that the district pay for the student to return to the private school he had attended for third and fourth grade. It was the position of the parent that the district had failed to provide the student with a free appropriate public education (FAPE) during the COVID-19 pandemic. The district refused the parent's request stating that

the district was able to implement services to target deficits identified by the re-evaluation completed on February 9, 2021. The district offered up to 30 hours of "COVID-19 impact services" for the student during the summer following the 2020-21 school year that would target math and reading. The parent provided written consent for these services on March 29, 2021.

The parent states that the student's experience in the middle school (7th and 8th grade) was negatively impacted by changes in staff although those changes did not result in any missed services for the student. The student continued to struggle with reading and math.

Issues

In his complaint, the parent identified two issues.

Issue One

By failing to appropriately address the student's limited progress in reading and math, the district has denied the student a free appropriate public education.

Parent's Position

It is the position of the parent that the student's failure to make progress in his reading skills is the result of the district's failure to provide him with proper specially designed instruction. The parent contends that the services and supports provided to the student are not meeting his educational needs, and the student has made only minimal progress in the development of reading skills since entering the district in 2017. The parent asserts that the district should provide a private placement for the student as well as private tutoring to enable the student to progress to at least a 7th grade level in reading and math skills. The parent further asserts that the district should commit to offering the student services through age 21 to compensate for the past four years when skills were allegedly lost or only trivial progress was made.

District's Position

The district contends that it has developed, implemented, and adjusted an educational program for the student that has promoted challenging expectations and has ensured participation and progress in the general education curriculum. It is the position of the district that during the time period covered by this complaint, there have been numerous changes to the student's IEP and continued efforts to adapt and adjust instruction and services to meet the student's needs.

Applicable Statutes and Regulations

A formal complaint must allege that a district has - within not more than one year prior to the date the complaint is received and filed with the commissioner of education - violated a state or federal special education law or regulation. (See K.A.R. 91-40-51(b).)

Federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. Federal regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special education and related services provided in conformity with an Individualized Education Program (IEP).

At 34 C.F.R. 300.320, federal regulations define an IEP as

> *"a written statement for each child with a disability that is developed, reviewed, and revised at a meeting...that must include...a statement of measurable annual goals...designed to meet the child's needs that result from the child's disability...and a statement of the special education and related services and supplementary aids and services] to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other needs that result from the child's disability."*

The IEP must be reasonably calculated to enable the child to make "progress appropriate in light of the child's circumstances" (E*ndrew F. v. Douglas County School District (137 S. Ct. at 999*) and should aim to enable the student to make progress toward the student's annual IEP goals and in the general education curriculum, but there is no guarantee of progress.

A student's IEP is to be reviewed at least once every 12 months, to determine whether the annual goals for the child 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 and in the general education curriculum, where appropriate. If the student is not making progress or the progress is not sufficient to meet the annual IEP goals and make appropriate progress in the general education curriculum, the IEP team should meet to discuss the lack of progress and consider meeting more frequently than once a year.

Investigative Findings

As of October 19, 2022 - 12 months prior to the date this complaint was received - the student was being served under a February 23, 2022 IEP. The parent had participated in the development of that IEP and had provided written consent for the changes in the delivery of the following services directly related to the areas of reading and math:

- 180 minutes daily of specially designed instruction in the general education setting to support math, science, social studies, and ELA (English Language Arts);
- 45 minutes once a week of Study Skills in a special education setting to address self-advocacy and to provide explicit instruction in math concepts and to allow the student to spend 15-20 minutes working on a typing program;
- an additional 90 minutes twice a week of Study Skills in a special education setting to address self-advocacy and to provide explicit instruction in math concepts and to allow the student to spend 15-20 minutes working on a typing program;

- 45 minutes once a week for a Direct Reading Class in a small group special education setting for targeted work on reading skills;
- an additional 90 minutes twice a week in the Direct Reading Class.

Under the February 2022 IEP, the student continued to receive speech/ language services as well as transition services and Occupational Therapy (OT) support.

The IEP included goals to address areas where the team had determined specially designed instruction was required:

- expressive and grammatical language;
- listening comprehension;
- math;
- writing;
- self-advocacy;
- typing; and
- reading .

Baseline data related to the student's math goal showed that if given a verbal prompt as to which mathematical operation a problem required, the student was able to solve the problem with 100% accuracy using a calculator. In the area of writing, he was able to produce an average of 5 sentences with 5-6 word length when writing informative/explanatory text. The student had an average of 86% on listening comprehension tasks that required him to listen to grade level content passages and answer open-ended and multiple choice questions. His reading goal required him to read multi-syllabic words containing open and closed syllables, long vowel/silent /e/ words, and predictable vowel teams with 90% accuracy.

The February 2022 IEP specified accommodations/modifications for testing, instruction, assignments, attention to task, and communication. Instructional accommodations/modifications included the following:

- frequent monitoring/checks for understanding;
- modified curriculum at the student's instructional level;
- scaffold explicit instruction to teach missing skills;
- teach use of the calculator;
- prompt use of math cards;
- repeat instructions if more than 2 steps;
- provide visual aids such as flow charts, diagrams, and other graphic organizers for main idea and details and model use of these aids;
- provide guided class notes or a copy of completed notes;
- read aloud instructions and assignments and provide audio version of reading assignments;

- provide frequent breaks;
- pre-teach key vocabulary (look it up, use it in a sentence, provide similar words); and
- use of a checklist for legibility and mechanics.

Per the February 2022 IEP, the student was given extra time to complete assignments. His assignments and projects were modified in length and complexity. He was allowed to use oral responses which could be submitted as an audio or video file. He was prompted to use the speech to text tool on his MacBook and to use grammar and spell check on his written work.

The IEP Progress Report for the February 2022 IEP shows that the student made adequate progress toward attainment of his math goal, consistently performing above his goal level of 70% on targeted skills during all monitoring periods for the February 2022 IEP. By the December 2022 monitoring period, the student was performing above his goal level with regard to his written products. Over the final three monitoring periods of the IEP cycle, the student earned a score of 85% or above on listening comprehension tasks (with a goal of 86%). Though at the time of October 2022 monitoring, the student had been refusing to work on his reading goal, by December 2022 he had been changed to a different reading program and was making progress.

The annual review of the student's IEP was conducted over two days - January 30 and February 24, 2023. A "Draft Agenda" for the February meeting showed that the team would focus on the following:

- Math goals, proposed curriculum and services as well as the grading system and environment for the delivery of services;
- updated speech/language information;
- OT service delivery and goal;
- the class schedule for the student for the 2023-24 school year;
- Dyslexia consultant information; and
- group/social interactions.

During the period while the student's IEP team was completing the annual IEP revision, the student continued to receive the following support for reading and math (in addition to ongoing speech/language and OT services:

- 180 minutes of specially designed instruction in a general education setting to address reading, writing, math, and executive functioning (the student having completed the typing program);
- 135 minutes per week of specially designed instruction in a special education for the Direct Reading Class; and
- 135 minutes of specially designed instruction in the special education setting for Study Skills to address executive functioning.

The parent provided his written consent on March 2, 2023 for proposed changes to the student's IEP resulting from discussion at the January and February meetings. Those changes included the following:

- updating the student's goals;
- moving the student to a pass/fail grading approach for Science;
- moving the delivery of special education services for math for the student from the general education setting Algebra/Geometry classroom to the special education setting for Individualized Math for the remainder of the school year;
- reducing in-class general education support for English and Science from 90 to 60 minutes on block days and 30 minutes on "traditional" days;
- increasing in-class general education support to include social studies for a total of 150 minutes a week beginning August 15, 2023;
- removal of a special education study skills class (225 minutes per week) beginning August 15, 2023;
- adding an Introduction to Careers class for vocational skill development (225 minutes per week) starting August 15, 2023; and
- changing the setting for the delivery of math support from the special education setting back to the general education setting beginning August 15, 2023.

Those changes impacting the remainder of the 2022-23 school year were implemented beginning March 7, 2023.

According to meeting notes from a subsequent meeting in April 2023, the parents made a request at the February 24, 2023 IEP team meeting for the district to pay for the student to return to the same private school he had attended for third and fourth grade if the newly proposed IEP goals, schedule, curriculum modifications, and accommodations did not result in "substantial progress" by the end of the 2022-23 school year. The parents also expressed concern regarding the district's ability to place the student in the "least restrictive environment" (LRE) although the meeting notes do not specify what that environment would be.

On March 9, 2023, the parent was provided with prior written notice of the district's proposal for a change to the student's IEP, moving "Consult with Dyslexia Specialist" listed as an accommodation to the "Supports for School Personnel" section of the student's IEP. The parent gave written consent for that change on April 4, 2023.

On April 4, 2023, a team meeting was held to discuss concerns presented after the February 24, 2023 IEP team meeting. During that meeting, the team discussed the parent's previously stated LRE concerns as well as concerns regarding the student's test preparation and para support for testing, staff qualifications and availability, meeting scheduling and organization, and the student's participation in clubs. The parents also requested that the student's case manager be changed.

In response to the parents' concern, the district agreed to address test preparation with staff working with the student, noted that the student had begun participating in a Ping Pong Club, agreed to make contact with staff to explore options for the student to work with animals in the Environmental Ed class, and provided contact information to enable the parent to get more information on how the student might become involved in working on the Stage Crew for plays for the 2023-24 school year.

During the April 4, 2023 meeting, the parents expressed particular concern that the student's participation in such classes as his 1:1 Individual Math class was restricting his involvement with his peers. The district stated that it would search for other students with needs similar to those of the student in the area of math so that the student would be able to interact with peers. The district noted that it had explored having the student participate in the AA class (now known as "Intensive Resources" class) for math, but data showed that the student would be functioning at a higher skill level in math that his peers in that class, so Individualized Math was more appropriate. The district also noted that the student would be enrolled in the Consumer Math class with peers for the 2023-24 school year.

The district agreed to look at the student's anticipated schedule for the 2023-24 school year to attempt to place the student in core classes in the morning to the greatest extent possible in order to maximize his attention and energy.

According to the notes from the April 4, 2023 meeting, despite staffing shortages in the district as a whole, the student had been provided with all of the special education services called for in his IEP. The district also told the parents that the teacher leading the student's Directed Reading group was a certified special education teacher who had taken specialized training to enable her to teach the student's class. The district agreed to change the student's case manager for the 2023-24 school year. The district also informed the parent that under his IEP, the student was earning a "Pass/Fail" grade for science and receiving significant modifications so that the work was more meaningful for his learning.

As a result of the April 4, 2023 IEP team discussion, the student's January 30, 2023 IEP was amended as follows:

> *"Beginning 8/15/23 and for the duration of [the student's] annual IEP, special education teachers will provide specially designed instruction in the special education setting for ELA [English Language Arts] and math for 90 minutes one day per week (45 minutes each) and 180 minutes two days per week (90 minutes each) in core replacement courses. He will be in the core replacement ELA course instead of the directed reading course to address his basic reading needs.*
>
> *Beginning 8/15/23 and for the duration of [the student's] annual IEP, special education teachers will provide specially designed instruction in the general education setting for science and social studies for 60 minutes one day per week (30 minutes for each class) and then 90*

> *minutes two days per week (45 minutes for each class). The change is due to [the student] receiving his ELA and math classes in the special education setting instead of the general education setting."*

The parent was provided with prior written notice outlining this proposed change as well as a copy of the "Core Replacement Acknowledgement" form which informed the parent that "core replacement will affect the student from completing the requirements for acceptance to a 4-year university or college [and] inability to meet NCAA guidelines for collegiate athletics." The parent provided his written consent for the action on June 5, 2023. The prior written notice form stated that the team considered keeping the student in co-taught core classes for ELA and math but determined that:

> *"[The student's] level of functioning with academics is below his peers. The IEP team agreed that the special education setting for core ELA and math will benefit him and allow him to attain growth with his academics...*
> *because [the student] requires extensive, repeated, individualized instruction and support beyond what is able to be provided in the general education setting."*

The student's January 30/February 24, 2023 IEP contained seven annual goals developed by the team to support areas requiring specially designed instruction. Those goals address the following:

- reading fluency;
- writing;
- independent task initiation;
- math;
- vocabulary;
- listening comprehension;
- independently using a writing checklist to self-check his written products.

During the January/February 2023 annual review, the IEP team developed the following annual goal to address the student's reading needs:

> *"By 1/29/24, when given a grade level passage, [the student] will read grade level text orally at 100 words correct per minute, as measured by an Oral Reading Fluency (ORF) and monitored by a special education teacher."*

The student's progress on this goal was monitored in March, May and October 2023. The student was reading 79 words per minute as of March 21, 2023, and he was reading 84 words per minute as of May 21, 2023. However, when progress was monitored on October 17, 2023, he was only averaging 77 words per minute.

At the January/February 2023 annual review, the IEP team had also developed a new math goal for the student:

> *"By 1/29/24. [the student] will be able to solve real world problems by adding, subtracting, multiplying, and dividing decimals and percents with 75% accuracy as measured by math probes."*

Progress was monitored on this goal in March, May, and October 2023. The student was solving problems with 56% accuracy on March 20, 2023 and with 85% accuracy by May 23, 2023. However, October 17, 2023 monitoring found he was solving addition problems with 75% accuracy, and was 50% accurate with subtraction, multiplication, and division problems. As noted above, the student had been moved to a special education setting for math as of the start of the 2023-24 school year. Instruction for the first quarter had focused on addition problems. That focus shifted to subtraction for the second quarter.

The student withdrew failing from his Algebra/Geometry class second semester of 10th grade, but passed all other courses, earning the following grades:

- Auto Essentials: Semester 1 = D
- Direct Reading: Semester 1 = B; Semester 2 = A
    - 3 students in this class working with one teacher and one paraeducator
- English/Language Arts: Semester 1 = B; Semester 2 = C
    - 11 students in this class co-taught by a general education teacher and a special education teacher
- Health Ed: Semester 2 = B
- Individualized Math: Semester 2 = B
    - one-on-one instruction
- Algebra/Geometry: Semester 1 = C; Semester 2 = Withdrew failing and transferred to Individualized Math
- Physical Science: Semesters 1 and 2 = D
    - co-taught by a general education teacher and a special education teacher
- Robotics: Semesters 1 and 2 = B
- Study Skills: Semesters 1 and 2 = B
    - 15 students with one special education teacher and one paraeducator

Accommodations/modifications were provided for the student in all of his elective classes.

A team meeting was held on September 18, 2023. The agenda for that meeting shows that the team was planning to review the student's progress in his classes since the beginning of the school year. The parent expressed concern during the meeting that the student was bored with the materials in his Careers class and had a negative perception of the other students in the class.

Another IEP team meeting was held on October 6, 2023. A prior written notice form summarizing the discussion was provided to the parent on October 9, 2023. As stated on the

prior written notice form, the team discussed the student's Intro to Careers class participation as well as the student's Individual Math Goals class and his Individual Goals ELA class. The special education teacher stated that current testing data placed the student at a third grade level in reading. The parent advocate pointed out that the student was operating at a second grade level when he was tested in 2017.

On October 20, 2023, the parent revoked consent for the student's participation in the special education Intro to Careers class which had been providing the student with exposure to specially designed instruction related to a pre-employment curriculum. The student had been enrolled in that class for a total of 230 minutes each week.

For the first semester of his 11th grade year, the student is currently earning the following grades:

- Wood Design: C
- Individualized Math: C
    - 8 students work with one special education and one paraeducator
- US History: B
- Dark Room Photography: F first quarter with a D to date for second quarter
- Environmental Ed: D first quarter, failing second quarter
    - taught by a general education teacher with support from a paraeducator
- Directed Reading: A
    - 6 students work with one special education teacher and one paraeducator

Again this school year, accommodations/modifications have been provided to the student in all of his elective classes.

The team is addressing the student's current non-passing grades. A plan was developed during parent-teacher conferences to allow the student to have opportunities for reteaching or other support.

Summary and Conclusions

In this complaint, the parent alleges a violation of FAPE because the student's reading and math skills have not progressed substantially since they were evaluated in 2017 and 2019. A formal complaint must allege the occurrence of a violation of state and/or special education statutes or regulations within the 12-month period prior to the date the complaint is received - in this case, between October 19, 2022 and October 19, 2023, so this investigation focused primarily on that time period. Context is, however, important in determining whether such a violation can be substantiated.

The student was first determined to have a disability when, at age three, his language skills warranted the provision of special education services in an Early Childhood Special Education program. He was subsequently found eligible for services as a child with a developmental

delay in the area of communication. As a Kindergarten student, he met the Missouri definition of a student with a Sound System Disorder. By second grade, he had been determined to be eligible for special education services under the category of Specific Learning Disability.

A school district in the state of Missouri provided the student with special education services through grade three, but for fourth grade, the parents opted to place the student in a private school where the entire focus was on meeting the needs of students with dyslexia through a specialized curricular approach tailored specifically for the unique learning needs of that population.

In the Spring of his fourth grade year, the student was evaluated through a local hospital and was given the following clinical diagnoses: Attention Deficit/Hyperactivity Disorder (ADHD); Specified Anxiety Disorder; Multiple Specific Learning Disabilities (Dyslexia and Dysgraphia or developmental coordination disorder) and Language Disorder, specifically a moderate impairment in receptive language and a severe impairment in expressive language.

While these neurological disorders were less visible in this student than disabilities such as blindness or paralysis might be in another child, they proved to be no less impactful on the student's learning - particularly in areas related to language. A cognitive assessment conducted in 2017, shortly after the student was enrolled in his current district, showed that the student demonstrated a profile frequently seen in students who have been diagnosed with dyslexia wherein language related cognitive performance falls significantly lower than visual-spatial skills. Additionally, the student's short term memory skills were below average.

The student transferred back to the public school setting for fifth grade, the point where most students were moving from learning to read to using their acquired reading skills to learn in other curricular areas. Academic testing completed in November 2017 showed that the student demonstrated profound delays in his reading and math skills, falling below the 1st percentile in most areas - despite having received special education services beginning at age 3 and after having been enrolled for two years in a private school specifically focused on meeting the needs of students with dyslexia.

For the next two years of elementary school, the student continued to receive special education services to address his reading, writing, and math deficits, but he was also being exposed to a broader curriculum along with his general education peers. In order for the student to be successful in that broader curriculum, the district implemented supportive modifications and accommodations.

In addition to the services provided by the school district, the parents employed a private tutor who, for four hours a week, worked with the student from June 2017 to April 2019 in the areas of reading and math using a curriculum tailored for students with dyslexia.

For seventh, eighth, and ninth grades, the district continued to provide special education services and implemented accommodations and modifications.

In February 2022, during the student's ninth grade year, the district conducted an annual review of the student's IEP and - with the participation of the parent - developed a new IEP. The parent gave written consent for the services outlined in that IEP which were being implemented as of October 19, 2022, twelve months before this complaint was received.

The student made progress on all of the goals established in the February 23, 2022 IEP. Despite the continuing impact of his disability on the acquisition of reading and math skills, the student was enrolled in - and passed - general education classes for the first semester of the 2022-23 school year with the implementation of accommodations and modifications. The district continued to provide specially designed instruction to improve reading and math skills, and the student had progressed to a third grade level in both areas.

New goals and services were proposed under a new IEP developed over two meetings in January and February of 2023. Again, the parent participated actively in the development of the IEP. He gave written consent for the services proposed by the district as well as for subsequent revisions to those services resulting from discussions during numerous IEP team meetings conducted over the following months. The student continued to make progress on achieving his annual goals.

Through the IEP team meeting process, the decision was made to move the student to a more restrictive setting for the delivery of math instruction when it became apparent during the second semester of the 2022-23 school year that the general education setting was no longer the most appropriate placement for the student. There was ongoing discussion by the team regarding the best approach to the student's specialized reading instruction.

With modifications and accommodations, the student was able to continue to participate in and pass elective classes, but when the student was not being successful in two of those elective classes after the first quarter of the 2023-24 school year, the IEP team promptly began exploring additional accommodations.

A student's IEP must be reasonably calculated to enable the child to make progress appropriate in light of the child’s circumstances and should aim to enable the student to make progress toward the student’s annual IEP goals and in the general education curriculum. However, special education laws do not consider a child's IEP to be a guarantee of progress.

Recognizing the wide diversity of students receiving special education services, neither state nor federal statutes and regulations require that a student reach any specific performance level in order for a student to have been considered to have received a FAPE. For a child to be considered to have received a FAPE, a district must develop, review, and implement an IEP designed to meet the child's needs that result from his or her disability. The district must provide the special education and related services and the supplementary aids and services needed to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other needs that result from the child's disability.

Ample evidence has been presented through the course of this investigation to show that - in light of the special circumstances associated with this student - the district has met its responsibility with regard to the provision of a FAPE. A violation of special education statutes and regulations *is not substantiated* on this issue.

Issue Two

The district has failed to provide the student the Occupational Therapy and Assistive Technology services needed to enable the student to make progress toward meeting IEP goals related to handwriting.

Parent's Position

It is the position of the parent that the student has not been provided with any assistive technology support to assist with his writing despite alleged regression in skills and a statement by district staff that "the educational model shifts towards the use of assistive technology" when a student has dysgraphia.

District's Position

The district contends that the student has received Occupational Therapy services to address his handwriting needs. The district notes that while Assistive Technology (AT) services are not included in the student's IEP, all students at the high school are issued a Macbook with embedded capabilities.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. The regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special education and related services provided in conformity with an IEP.

Investigative Findings

When the student's IEP team met for the annual review of the student's IEP on February 23, 2022, the parent (according to the "Parent questions/concerns to be addressed during the IEP meeting" section of the IEP) expressed concern regarding:

> *"... the student's ability to write legibly in a manner consistent with other students his age. His handwriting issue has been discussed multiple times with the school over the last 3 years and both parents are concerned there has not been meaningful progress to bring it to an appropriate level. The parents are asking for more focus on this area in his normal classes as well as with the Occupational Therapist."*

The "Special Education and Related Services to be Provided" portion of the student's February 23, 2022 IEP shows that the team determined the student should receive 15 minutes of OT services twice a month in the special education classroom setting as well as 15-minutes twice monthly of indirect OT services.

The IEP team - which included the parent - developed an annual goal related to the continued development of the student's typing skills:

> *"Within 36 weeks, in order to legibly complete classroom writing tasks, [the student] will use two hands to type 5 sentences with 80% accuracy."*

Additionally, according to the "Accommodations/Modifications/Supplementary Aids and Services" section of the student February 23, 2022 IEP, the student would provide oral responses as an alternative to written work. He was also to be prompted to use the speech to text tool on his MacBook.

When the goal was monitored in May 2022, the student was using a typing program and making adequate progress. His speed had increased to 6-8 words per minute with accuracy ranging from 85-100%. He was also working on creating a legible signature, and was making progress.

By October 2022 monitoring, the student was able to use two hands to type and was typing up to 5 sentences with an average of 77% accuracy. When the student's progress was monitored on January 3, 2023, the student had met his goal and was able to type with an average accuracy of 97%.

When the student's IEP team met on January 30, 2023 for the student's annual review, the IEP team - which again included the parent - determined that the student would receive increased OT services. Specifically, the team determined that, in addition to the indirect OT services already being provided and the twice monthly OT support offered in the special education setting, the student would be provided with 15 minutes twice a month of direct services in the general education classroom setting between January 30 and May 24, 2023 and again from August 15, 2023 to January 29, 2024.

To increase his overall legibility for writing activities, the team developed the following goal to encourage the student to self-edit his written work:

> *"By the end of the IEP year, [the student] will initiate utilizing a writing checklist with no more than 1 verbal prompt to self-edit his work and increase overall legibility for writing activities on 2 out of 3 opportunities."*

Additionally, the team included in the student's January 30, 2023 IEP a number of accommodations/modifications/supplementary aids and services to address the student's handwriting disability. The student would be allowed extra time to complete both assessments and assignments. His assignments and assessments would be reduced in complexity and

length. A checklist for legibility and mechanics would be provided. The student would be allowed to submit an audio or video file or another "visual" of the assignment as an alternative to written work. He would be prompted to use the "speech to text tool" on his MacBook and to use the microphone when dictating with a note that the "inline mic built into earbuds work well."

According to the OT providing services to the student, the student was able to generate adequate writing samples during therapy sessions and inconsistently demonstrated adequate writing techniques. The therapist reported that she has provided a finger spacing tool for the student's use as well as a variety of adaptive paper and has coached the student on highlighting baseline and adding lines to classroom worksheets/workbook to assist him on writing tasks. The OT has also worked with the student on how to use text to speech programs. She created a 7-point writing checklist for the student to use in self-editing.

The student's progress toward attainment of his IEP goal was monitored in March and May 2023. As of March 21, 2023, the student was still requiring more than 1 verbal prompt to self-edit his written work. When progress was monitored in May 2023, it was noted that:

> *"[The student] requires moderate verbal prompting with a minimum of 7 verbal prompts to initiate using the writing checklist to self-check his work. Once using the checklist [the student] requires assistance to thoroughly and accurately check over his work. After corrections have been made using the checklist [the student's] overall legibility does improve."*

On September 18, 2023, an IEP team meeting was held. The parent expressed concern with the student's progress with regard to letter formation and with the use of lines and spacing. The parent provided consent for a change to the services outlined in the student's January 30, 2023 IEP. According to the prior written notice form, the provision of OT services to the student would move from a general education setting to a special education setting because the student was no longer participating in the general education ELA classroom where those services had previously been provided.

When progress toward attainment of the student's annual goal was monitored on October 17, 2023, adequate progress was noted. According to the student's IEP Progress Report,

> *"[The student] requires one verbal prompt to initially use the checklist and requires a minimum of one verbal prompt for each of the seven subsections of the checklist in order to self-edit his work. When prompted to fix his work, he typically will start with fixing the capitalization errors and then punctuation."*

Summary and Conclusions

With the participation of the parent, the district has developed and revised two IEPs which included goals related to the student's handwriting. The parent gave written consent for OT services specified in these IEPs and for related amendments to these services, all of which

have been implemented by the district. The student met the typing goal established in the student's February 2022 IEP which was implemented using a MacBook and typing programs provided by the district. He has made progress on the IEP goal established in the annual IEP developed over two meetings in January and February 2023. The student continues to use the MacBook provided by the district to complete many of his written assignments.

The district has provided the OT services specified in the student's February 23, 2022 and January/February 2023 IEPs and has provided the student with the assistive technology needed for the implementation of those goals and services. 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 the issues presented in this complaint. Therefore, no corrective actions are ordered.

Investigator



Diana Durkin

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).

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. 512
Shawnee Mission Public Schools: 24FC512-003

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on October 19, 2023, by -----, on behalf of his child, -----. In the remainder of the decision, ----- will be referred to as "the parent", and ----- will be referred to as "the student". An investigation of the complaint was undertaken by complaint investigator, Diana Durkin, 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 November 17, 2023. That Complaint Report concluded that there were no violations of special education laws 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 parent's appeal and supporting documents, the original complaint filed by the parent, the complaint report, and the district's response 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.

Parent's Appeal

The parent presents numerous arguments as to why the investigator erred in her finding of no violation under issue one and issue two. Each argument will be reviewed separately. The following issues in this complaint have been addressed by the Appeal Committee:

Issue One: By failing to appropriately address the student's limited progress in reading and math, the district has denied the student a Free Appropriate Public Education (FAPE).

Issue Two: The district has failed to provide the student with Occupational Therapy and Assistive Technology services needed to enable the student to make progress toward meeting IEP goals related to handwriting.

Issue One

The parent argues the following under Issue One:

1. Page 11, Paragraph 2 of the Complaint Report:

The parent claims the Complaint Report includes incorrect information, specifically that the investigator "misread the PLAAFP in the goal section and not the actual goal" for the February 2022 IEP. The parent also argues a 2% increase in performance "should not be considered "meaningful progress." The parent insists the student's "progress reports vs. data in the present levels of academic achievement and functional performance are inconsistent and do not support meaningful progress forward." The parent further notes that "a lack of meaningful progress is a denial of a free and appropriate public education." The parent claims the investigator failed to consider "data, raw data, and consider a longitudinal look at specifically designed instruction since 2019."

In response, the district states, "the IEP team met and made substantial changes to services in January and February 2023." The district further contends that following each change the student continued to make progress, as noted in the record provided to the complaint investigator.

Discussions with the complaint investigator, and a review of the record, reveal the student did make progress toward goals, albeit in small increments. As noted by the investigator, a comparison of the current and previous IEPs, PLAAFPs, progress reports, and goals, along with a substantial amount of historical data, show the student has made progress. Additionally, documents confirm that, following IEP team meetings, with parent involvement and consent, the district did implement changes to the student's IEP as necessary.

As stated by the investigator, "The IEP must be reasonably calculated to enable the child to make "progress appropriate in light of the child's circumstances" (*Endrew F. v. Douglas County School District (137 S. Ct. at 999)* and should aim to enable the student to make progress toward the student's IEP goals and in the general education curriculum, but there is no guarantee of progress." As such, progress may look different for each student.

In this case, the parent states, in the formal complaint, "[the student] should be reading at least at a 7th grade level to be functional in the community and work setting. He should also be able to do basic math at a 7th-grade level to function appropriately as an adult with managing money, bills, etc." While the Appeal Committee understands the parents' desire for his child, it is necessary to

consider each student, and their specific circumstances independently. Progress needs to be appropriate *in light of the child's circumstances*, therefore, a predetermined "grade level" achievement may not be appropriate.

To comply with *Endrew F.*, a district must develop, monitor, and revise a student's IEP as necessary to ensure the student's IEP is appropriately individualized and ambitious. In this case, as shown in the record, and confirmed by the investigator, the district had routinely adjusted the student's IEP goals and targeted various skills, as appropriate, to provide the student with an IEP reasonably calculated to enable the student to make progress in light of the student's circumstances. Further, the record shows the student did make progress, albeit in small increments, in reading and in math, as noted by the investigator.

The parent also argues the investigator failed to look at the longitudinal data, specifically the student's specially designed instruction since 2019. However, the Complaint Report shows that the investigator, in fact, did examine longitudinal data well beyond 2019, dating back to the student's kindergarten year. As confirmed by the investigator, well over 200 documents, including past and current IEPs, emails, progress reports, meeting notes, and PWNs were examined during the investigation. As related to this argument, the Appeal Committee affirms the investigators finding.

2. Page 18, Paragraph 2 of the Complaint Report:

The parent claims the investigator's statement, "again this school year, accommodations/modifications have been provided to the student in all elective classes", is not a true statement.

The district states it provided requested information to the investigator, including the student's IEP, with additional documentation, which outlines specific accommodations/modifications implemented within the general education setting.

A review of the record shows the student was able to continue to participate in, and pass, electives "with modifications and accommodations" during the period in question. Further, as noted in the report, "when the student was not being successful in two of those elective classes after the first quarter of the 2023-24 school year, the IEP team promptly began exploring additional accommodations."

As indicated by the record, the student received accommodations and modifications in elective classes, and the IEP team monitored the student's progress pertaining to those classes. When the student was not being successful, the IEP team met to revise and modify the student's accommodations. As such, the record does not support the parent's contention that the investigator's statement is untrue. As related to this argument, the Appeal Committee affirms the investigator's finding.

3. Page 1, paragraph 2 of the Complaint Report:

The parent claims to have requested IEP team status updates regarding the consulting services provided by Stacy Cates, the Dyslexia Consultant for the district, but the IEP team has yet to provide that information.

In response the district states, "the accommodation outlines that the case manager will share a recap of a meeting with dyslexia consultant to the parent 1x per semester. This has been provided to the parents." The district also notes the student is currently under evaluation by an outside agency, being paid for by the district and selected by the parent, "to obtain further clarity on the current student needs."

The only information in the record, pertaining to Ms. Cates, the Dyslexia Consultant, is a notation by the investigator indicating that she was present for an interview (Page 1, Paragraph 2), as well as a reference to a PWN, sent on March 9, 2023, signed by the parent, which gave the district permission to move "consult with Dyslexia Specialist" from the accommodations section of the IEP to the support for personnel section of the IEP. Conversations with the investigator further confirm the Dyslexia Consultant does not work directly with the student, but rather is utilized by the IEP team to give general guidance on understanding dyslexia. Finally, "status updates", pertaining to the Dyslexia Consultant was not an issue the parent identified prior to filing this appeal. As such, the Appeal Committee will not address it now.

4. Page 7, Paragraph 3 of the Complaint Report:

The parent disagrees with the investigator's statement, "it was the position of the parent that the district failed to provide the student with a free appropriate public education (FAPE) during the Covid-19 pandemic." Specifically, the parent states, "we the parents made the position that when [the student] was transferred to the middle school (before Covid) he was placed in an inappropriate class, with inappropriately designed curriculum."

In response the district contends the parent *did* request private placement during the Covid-19 pandemic but was denied because the district was able to provide services as required by the student's IEP. Further, the district claims that a private institution would not have been the LRE for the student. Finally, the district adds, "as a resolution to the formal complaint, the parent requested the following: private placement or a check for $250,000.00." In response to that request the district again considered private placement, but the private placement location rejected the student's enrollment.

Documents show, and conversations with the investigator confirm, that information pertaining to services provided to the student during the Covid-19 pandemic was used to establish a timeline of events leading up to the current complaint issues. This historical data was relevant to determine the progression of the student's education but was not a finding made by the investigator. Also, nothing in the record indicates placement "in an inappropriate class, with inappropriately designed curriculum" (before Covid-19), was an issue the parent identified prior to filing the appeal. Even if

the parent had identified this issue, the investigator would not have been able to make a finding about the district's placement decision (prior to the Covid-19 pandemic) as this event occurred outside the 12-month look back time frame in which formal complaints are permitted. As such, the Appeal Committee will not address this issue.

5. Page 13, Paragraph 2 of the Complaint Report:

Within the Final Report, the investigator includes a concern, addressed in meeting notes, from IEP team meetings held in April 2023. The investigator's notes, "the parent also expressed concern regarding the districts ability to place the student in the "least restrictive environment" (LRE) although the meeting notes do not specify what that environment would be." The parent argues that it is not their responsibility to determine LRE but emphasize that they "made it clear multiple times that [the student] continues to be misplaced in inappropriate classes." The parent further states, "[the student] is being served curriculum design[ed] for Down Syndrome and Autistic children. Most recently, this year [the student] was placed in a Careers class with children on the spectrum."

In response the district states "the district has an obligation to serve students individually based on their individual identified needs and cannot guarantee the students eligible for special education have the same disabilities. In the alternative assessment classroom, [the student] receives individualized services designed to meet his unique needs."

According to documents, on April 4, 2023, the parents expressed concern about the student's placement in certain classes because they were "restricting his involvement with his peers." To address this concern, the district stated it would "search for other students *with needs similar* to those of the student in the area of math so that the student would be able to interact with peers." Additionally, the district rejected the idea of having the student participate in an AA class (Intensive Resources class) because data showed the student was functioning at a higher level then his peers in that class. As the district correctly states, "the district has an obligation to serve students individually based on their individual identified ***needs***", and as such, a district cannot guarantee that a student will be exposed only to peers with the exact same disabilities, nor would such an attempt at segregation be appropriate. Also, once again, this issue was not identified by the parent in the original complaint. As such, the Appeal Committee will not address it now.

6. Page 13, Paragraph 3 in the Complaint Report:

The parent states they have not received any information on data from the Dyslexia Consultant even though the IEP states that updates will be given.

This issue has been addressed above under argument number three. As previously stated, "status updates", or information pertaining to the Dyslexia Consultant was not an issue the parent identified prior to filing this appeal and the Appeal Committee will not address it now.

7. Page 13, Paragraph 4/5 in the Complaint Report:

The parent argues two issues under this section. First, the parent claims to have requested information pertaining to after-school resources/clubs multiple times before information was provided.

The district responds by claiming it, "strives to ensure ALL students have access to extra-curricular opportunities and provides necessary support when an IEP team determines the student requires support." The district further contends, following an IEP meeting with the parent, they did provide information to the parent pertaining to extra-curricular activities, via multiple emails.

In this case, the record shows that during a team meeting, held April 4, 2023, the district addressed parent concerns by exploring options for the student to work with animals in the Environmental Ed class, providing the parent with information on how the student could become involved with the Stage Crew for plays, and noted the student was participating in a Ping Pong Club. The IEP team also determined the student would not need any services to participate in the clubs or extra-curricular activities. Regardless, this issue was not addressed prior to filing this appeal, and therefore the Appeal Committee will not address it now.

Second, the parent claims there are "still issues with staffing and para coverage" and that paras have been replaced in [the student's] history class. The district provides no response to this allegation.

Documents confirm the parent did report concern to the IEP team regarding staff shortages on April 4, 2023. The parent voiced concern, in part, about para involvement in both the general education and special education classrooms, specifically that "each year [the student's] team turns over and consistency is important." The parent also expressed concerns about the qualifications of the student's teachers.

According to documents, the district acknowledged staff shortages have occurred. However, the student's service minutes have been delivered as stated in the student's IEP. There is nothing in the record to indicate otherwise. Conversations with the investigator further confirm that, after reviewing well over 200 documents, no evidence was found to indicate the student had not received services as required. Documents also show the student's math teacher was a certified long-term substitute teacher in the building, and the Directed Reading teacher is a certified Special Education teacher who has undergone specialized training.

While the Appeal Committee understands the parent's concern about staff inconsistency, it is important to note that decisions regarding personnel utilized to deliver services is a discretionary decision for the district to make. Documents show the district did ensure the student continued to receive services and that appropriately certified staff were utilized to deliver those services. Further, there is nothing in the record to indicate this has a significant impact on the student's progress. As related to this argument, the Appeal Committee affirms the investigator's finding.

Conclusion – Issue One

Based on a review of the above, the Appeal Committee affirms the investigator's finding that a violation of special education statutes and regulations *is not substantiated*, and that the district has met its responsibility regarding the provision of FAPE.

Issue Two

The parent argues the following under Issue Two:

1. Page 22, Paragraph 2 in the Complaint Report:

The parent claims there is "zero data backing the district's position" that the student did receive Occupational Therapy Services to address handwriting. The parent requests that the investigator "look deeper into IEP docs, emails, and meeting notes" because "it will show the parents have been raising this issue for years."

The district contends documentation and interviews, provided to the complaint investigator, support that appropriate OT services have been provided to the student and that the student has made adequate handwriting progress.

The record confirms the IEP team met in January of 2023 and developed a goal to increase the overall legibility of the student's handwriting for written assignments. To help achieve this goal, the Occupational Therapist created a 7-point writing checklist. Additionally, the OT stated that the student was able to generate adequate writing samples during therapy sessions and inconsistently demonstrated adequate writing techniques. Further, documents indicate the district monitored the student's progress in March, May, and October of 2023, and that OT service minutes were changed during a September 2023 IEP meeting, following the parent's expressed concern over the student's progress toward letter formation and line spacing. At that meeting, the parent consented to move the OT services from the general education setting to a special education setting. Continued monitoring revealed the student improved from requiring "a minimum of 7 verbal prompts to initiate using the writing checklist" (May 2023) to "one verbal prompt to initially use the checklist" (October 2023). May 2023 progress monitoring also notes, "after corrections have been made using the checklist [the student's] overall legibility does improve."

In this case, there is ample evidence in the record to support the investigator's finding that the district provided OT services and assistive technology, as specified in the student's IEP, enabling the student to make progress toward IEP goals. Therefore, the Appeal Committee affirms the investigator's finding under issue two.

Conclusion – Issue Two

Based on a review of the above, the Appeal Committee affirms the investigator's finding that a violation of special education statutes and regulations *is not substantiated*, and that the district did

provide the student with Occupational Therapy and Assistive Technology services needed to enable the student to make progress toward meeting IEP goals related to handwriting.

Summary of Conclusions

The Appeal Committee affirms the investigator's finding of no violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) under issue one and issue two.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 15th day of December 2023.

Appeal Committee:

Brian Dempsey: Assistant Director of Early Childhood, Special Education and Title Services,

Ashley Niedzwiecki: Attorney, Special Education and Title Services,

Dr. Crista Grimwood: Dispute Resolution Coordinator

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT # 512
ON SEPTEMBER 27 AND OCTOBER 10, 2023

DATE OF REPORT NOVEMBER 22, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ------ by her mother, ------. In the remainder of the report ------ will be referred to as "the student." ------ will be referred to as "the complainant", "the mother", or "the parent".

The complaint is against USD #512 (Shawnee Mission Public Schools). In the remainder of the report, this public agency may also be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE received first complaint on September 27, 2023, 2023 and the second complaint on October 10, 2023. The KSDE combined these two complaints and the timeline was extended to allow for the parent to provide additional information / documentation and was subsequently extended due to the illness of the investigator.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation, which was provided by both the district and the complainant. The following documentation and information were used in consideration of the issue:

1. Email dated April 1, 2022 written by the parent to Stephanie Booth, First Grade Teacher at Lenexa Hills Elementary School, regarding gifted testing
2. Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent dated April 18, 2022 and signed by the parent on May 2, 2022
3. Email dated September 7, 2022 at 9:14 AM written by Lauren McConnell, School Psychologist, to the parent scheduling the IQ testing
4. Email exchange dated October 14, 2022 between 12:21 and 3:46 PM written by the parent and Ms. McConnell regarding the notification to eligibility determination meeting
5. Confidential Educational Evaluation of the student dated September 20, 2022
6. Gifted Evaluation Summary dated September 30, 2022
7. PWN for Identification, Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent dated September 30, 2022

8. Letter dated November 17, 2022 written by Sherry Dumolien, Director of Special Education, to the parent regarding the request for an Independent Educational Evaluation (IEE)
9. Log of weekly math interventions dated between November 29, 2022 and March 17, 2023
10. Email dated October 11, 2023 at 2:35 PM written by Michael Brewer, Principal of Lenexa Hills Elementary School, to the parent regarding a referral to the Student Intervention Team (SIT) due to academic achievement
11. Email dated November 6, 2023 at 7:33 PM written by Mr. Brewer to the parent regarding accelerating math instruction for the student
12. Independent Educational Evaluation Summary dated February 6, 2023 written by Karen Jorden, Licensed Psychologist
13. Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent dated March 24, 2023
14. Email dated September 24, 2023 at 5:12 PM written by the parent to the school principal requesting an evaluation for gifted in the area of math
15. Formal Complaint Request Forms signed by the complainant on September 27 and October 10, 2023
16. Email dated October 11, 2023 at 2:35 PM written by the school principal to the parent regarding single subject acceleration
17. Response to the Allegations dated October 20, 2023 written by Ms. Dumolien
18. Interview with Ms. Dumolien on October 20, 2023
19. Interview with the complainant on November 3, 2023
20. Email dated November 6, 2023 at 3:53 PM written by the complainant to the investigator regarding the incomplete independent educational evaluation
21. Email dated November 17, 2023 at 1:03 PM written by the complainant to the investigator regarding grade acceleration for math
22. Administration and Scoring Manual for the Wechsler Intelligence Scale for Children – 5th Edition (WISC-V)
23. USD #512 School Calendar for the 2021-22 School Year
24. USD #512 School Calendar for the 2022-23 School Year
25. The *Kansas Special Education Process Handbook*
26. The *KSDE Eligibility Indicators Guidance Document*

Background Information

The student is currently enrolled in the third grade in USD #512 and attends Lenexa Hills Elementary School. The student attended Raintree Montessori School for kindergarten prior to enrolling in the first grade in USD #512. The student scored significantly higher than her peers during first grade and, at the end of the school year, the first grade teacher encouraged the parent to request an evaluation for the gifted program. The student scored at the 98th percentile in math and the 89th percentile in reading in the fall of 2022 in second grade. Interviews and documentation reflect the student has consistently performed at or above grade level in the area of mathematics to date.

Issues Investigated

Based on the written complaints, three issues were identified and investigated.

Issue One

USD #512, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures when conducting an evaluation of the student for special education and related services during the past 12 months.

Applicable Law

Federal regulations at 34 C.F.R. 300.301(a) and state regulations at K.A.R. 91-40-7(c)(3) allow for parents to refer a student for an initial evaluation for special education. Federal regulations at 34 C.F.R. 300.301(c) require school districts to complete initial evaluation for special education within 60 days of receiving parental consent. State regulations at K.A.R. 91-40-8(f) clarify the timeline to complete the initial evaluation and determine eligibility is 60 school days.

Federal regulations at 34 C.F.R. 300.304(c) and state regulations at n K.A.R. 91-40-8(f) require the student to be assessed in all areas of suspected exceptionality using valid and reliable measures of student performance. Based upon the comprehensive evaluation, federal regulations at 34 C.F.R. 300.306 and state regulations at K.A.R. 91-40-10 require school districts to determine if the student meets the eligibility criteria to be considered a child with a disability and in need of specialized instruction because of that exceptionality.

Analysis: Findings of Fact

Documentation and interviews show the parent initially requested a gifted evaluation on April 1, 2022. USD #512 responded to this request by requesting parental consent to conduct such an evaluation on April 18, 2022. The parent signed consent for the initial evaluation on May 2, 2022.

The last day of the 2021-22 school year was May 19, 2022 and the first day of the 2022-23 school year was August 11, 2022. The initial eligibility determination meeting was held on September 30, 2022. Based on these dates, the initial evaluation was completed in a total of 35 school days.

Chapter Three of the *Kansas Special Education Process Handbook* states:

> *"Gifted" as defined in K.A.R. 91-40-1(bb) means performing or demonstrating the potential for performing at significantly higher levels of accomplishment in one or more academic fields due to intellectual disability, when compared to others of similar age, experience, and environment.*

The KSDE Eligibility Indicators Guidance Document requires that a student scores not less than the 95th percentile on national norms on a standardized, norm-referenced achievement test in one or more of the academic fields (mathematics, language arts (including reading), science, and social science), or evidence that such test scores do not adequately reflect the child's excellence in academics. In the area of general intelligence, the student needs to score a composite rank of not less than the 97th percentile on an individually administered, standardized, norm referenced test of intellectual ability, or evidence that the child's standardized, intelligence test score does not adequately reflect the child's high intellectual potential.

The Gifted Evaluation Summary completed on September 30, 2023 states:

> *Gifted Education is part of Special Education and follows Special Education processes and procedures. That means we must be able to answer yes to 2 separate questions: 1) Does the student have an exceptionality? (in this case, gifted) 2) Does the child require special education services because of the exceptionality?*

The Confidential Educational Evaluation of the student dated September 30, 2022 reflects that a comprehensive evaluation was conducted to determine eligibility for the gifted exceptionality. The area of academics was evaluated through a record review, the Measures of Academic Progress (MAP), interviews and observations as well as the student's response to general education interventions. The area of general intelligence was evaluated through the administration of the Wechsler Intelligence Scale for Children – 5th Edition (WISC-V). The summary of the student's evaluation results states:

> *Based on current evaluation results, the student's most recent academic abilities, as indicated on the fall MAP assessment, are at the 89th percentile (reading) and 98th percentile (math) when compared to same-grade peers. The student's cognitive ability, as measured by the WISC-V, is at the 94th percentile when compared to same age peers (WISC-V GAI [General Ability Index] Standard Score: 123). The student's total score on the eligibility rubric is 109 out of a possible 240 points. At this time, the student does not meet eligibility criteria as a student with an exceptionality (Gifted).*

Conclusion

Federal regulations at 34 C.F.R. 300.301(a) and state regulations at K.A.R. 91-40-7(c)(3) allow for parents to refer a student for an initial evaluation for special education. In this case, the parent made a referral for a gifted evaluation on April 14, 2022.

Federal regulations at 34 C.F.R. 300.301(c) require school districts to complete initial evaluation for special education within 60 days of receiving parental consent. State regulations at K.A.R. 91-40-8(f) clarify the timeline to complete the initial evaluation and determine eligibility is 60 school days. In this case, the documentation shows the initial evaluation was completed within 35 school days from the date of written parental consent.

Federal regulations at 34 C.F.R. 300.304(c) and state regulations at n K.A.R. 91-40-8(f) require the student to be assessed in all areas of suspected exceptionality using valid and reliable measures of student performance. Based upon the comprehensive evaluation, federal regulations at 34 C.F.R. 300.306 and state regulations at K.A.R. 91-40-10 require school districts to determine if the student meets the eligibility criteria to be considered a child with a disability and in need of specialized instruction because of that exceptionality.

In this case, the student was evaluated in all areas required to determine eligibility for the gifted exceptionality. The assessment results found the student met the criteria for academics by scoring at the 98th percentile in the area of mathematics; however, the student did not meet the eligibility criteria for general intelligence by scoring at the 94th percentile using the GAI score on the WISC-V.

Based on the foregoing, it appears USD #512 *complied with the federal and state regulations* required in order to conduct an appropriate educational evaluation of the student for the gifted exceptionality during the past 12 months.

Issue Two

USD #512, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to appropriately consider an independent education evaluation (IEE) of the student during the past 12 months.

Applicable Law

If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, federal regulations at 34 C.F.R. 300.502(c)(1) and state regulations at K.A.R. 91-40-12(e) require the public agency to consider the results and recommendations of that independent educational evaluation in any decision made with respect to the provision of a free appropriate public education (FAPE) to the child so long as the evaluation meets the agency criteria.

Analysis: Findings of Fact

The findings in Issue One are incorporated herein by reference.

The parent disagreed with the results of the special education evaluation conducted on September 30, 2022 when USD #512 determined the student did not meet the eligibility criteria as a student under the exceptionality category of gifted. Interviews and documentation show the parent first requested mediation as means of resolving this dispute. USD #512 and parent agreed that the district would conduct an independent educational evaluation and that the student would receive targeted intervention through either an instructional coach or innovations specialist in the area of math weekly for the duration of the independent educational evaluation.

The district sent a letter to the parent on November 17, 2022 which documented that USD #512 agreed to pay for an independent educational evaluation in the areas of academic achievement and general intelligence. This letter also described the required agency criteria for the independent educational evaluation including providing contact information for at least two providers who met the examiner credentials, the cost of the exam, and the timeline to complete the independent educational evaluation.

USD #512 provided a log documenting weekly math interventions between November 29, 2022 and March 17, 2023.

The parent contacted Karen Jordan, Clinical Psychologist, to conduct the evaluation. Records show the student was administered the Stanford Binet Intelligence Scale – 5th edition (SB5) by Dr. Jordan on February 6, 2023. Test results found the student's level of cognitive functioning fell in the average range when compared to other children her age (FSIQ = 106 with average scores falling between 85 and 115. The report included a recommendation that *"Given the student's strength in math, differentiation in this area should be considered. She may benefit from enrichment opportunities and possibly even consideration of single-subject grade acceleration"*.

The multidisciplinary IEP team met again on March 24, 2023. A Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent dated March 24, 2023 shows that multidisciplinary IEP team reviewed and considered the independent educational evaluation results from Dr. Jordan and determined the student did not meet the eligibility criteria for special education services under the exceptionality category of gifted. The explanation of why the action is proposed states:

> *Consideration of the Independent Evaluation findings indicate that the student's Full Scale IQ, as measure by the Stanford-Binet Intelligence Scales – Fifth edition is at the 66th percentile. Based on consideration of independent evaluation findings, SMSD [USD #512] evaluation findings, and the special education (gifted) eligibility criteria, no changes in the student's eligibility for special education are proposed. The student continues to progress through the general education curriculum with enrichment and differentiation opportunities in place.*

The parent believes the original intelligence testing conducted is not a valid and reliable measure of the student's true abilities because the student was not fully recovered from the emergency room visit and illness when the original IQ testing was conducted.

The parent also believes the second IQ testing conducted on February 6, 2023 as part of the independent educational evaluation is flawed and not a valid and reliable measure of the student's true ability level because the SB5 is not the "gold standard" of IQ tests. It is noted that Dr. Jordan was precluded for using the WISC-V because it had been previously administered to the student during the September 30, 2022 evaluation for initial eligibility.

Records show the original intelligence testing was administered on September 8, 2022. The September 30, 2022 Evaluation Report notes that the testing session lasted about one hour, with the student being described as well-rested, cooperative, and comfortable in the testing environment. Records show the student displayed good effort and engagement during the testing and that she "*tolerated the testing session well and demonstrated no evidence of fatigue.*" This second IQ test was considered to be "an accurate measure of her current level of functioning" by the psychologist administering the test on February 6, 2023.

According to the American Psychological Association (APA), the WISC-V and the SB-5 are both commonly used standardized tests designed to be measures of general intelligence when administered according to the test publisher's guidelines. The Administration and Scoring Manual for the WISC-V recommends at least one year between test administrations to ensure valid test results.

The parent also believes USD #512 failed to conduct the academic testing as part of the independent educational evaluation. Subsequent to the filing of this child complaint, the parent requested the district complete the academic testing as part of the independent educational evaluation since it was not completed in February 2023.

The parent reported the Student Intervention Team (SIT) met to review the student's academic progress on November 6, 2023. It was determined that the student would benefit from grade acceleration in the area of math. The parent indicated that the student was moved from the third grade math class up to the fourth grade math class beginning November 13, 2023. The student is doing well and earning 100% on multiple assignments since the switch in classes according to the parent.

Conclusion

Federal regulations at 34 C.F.R. 300.502(c)(1) and state regulations at K.A.R. 91-40-12(e) require the public agency to consider the results and recommendations of an independent educational evaluation in any decision made with respect to the provision of a free appropriate public education (FAPE) to the child so long as the evaluation meets the agency criteria.

In this case, the parent requested an independent educational evaluation for the student on November 16, 2022 in the areas of academic achievement and general intelligence resulting from a mediation agreement. The district responded on November 17, 2022 explaining the process and providing the agency criteria. The student was tested in the area of general intelligence by Dr. Jordan on February 6, 2023 using the SB5. The multidisciplinary IEP team met on March 24, 2023 to review and consider the information from the independent educational evaluation and determined the student did not meet the eligibility criteria to be identified as gifted. USD #512 provided the parent with appropriate PWN describing this decision and the rationale.

While the parent reported the district has accelerated the student from the third grade to the fourth grade math class as was recommended in the February 6, 2023 evaluation report from Dr. Jordan, the independent educational evaluation did not include testing in the area of academic achievement as required. For this reason, the independent educational evaluation of the student has not yet been completed, reviewed, or considered by USD #512. Based on the foregoing, USD #512 *failed to consider the results and recommendations* of an independent educational evaluation in any decision made with respect to the provision of a free appropriate public education (FAPE).

Issue Three

USD #512, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures for conducting an independent education evaluation (IEE), specifically by placing a timeline on when the IEE could be completed, during the past 12 months.

Applicable Law

If an independent education evaluation is at public expense, federal regulations at 34 C.F.R. 300.502(e)(1) and state regulations at K.A.R. 91-40-12(g) require the criteria under which the independent educational evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria the public agency uses when it initiates and evaluation. However, federal regulations at 34 C.F.R. 300.502(e)(2) prohibit a public agency from imposing any other conditions or timelines related to obtaining an independent educational evaluation at public expense.

Chapter 3, Section H of the *Kansas Special Education Process Handbook* states:

> *If an independent educational evaluation is provided at public expense, the criteria under which the evaluation is obtained must be the same as the criteria that the school uses when it initiates an evaluation. These criteria may include the location of the evaluation and the qualifications of the examiner. The credentials of the independent evaluator or evaluators must be comparable to the school's evaluators. The school may set reasonable limitations on*

the costs for which it will be responsible. The school may have to exceed those costs if necessary to ensure that the independent educational evaluation meets the child's unique needs.

Analysis: Findings of Fact

The findings of Issue Two are incorporated herein by reference.

The parent reported USD #512 imposed a timeline on the completion of the independent education evaluation she requested on November 16, 2023. Because of this timeline, the academic portion of the independent educational evaluation was not completed which resulted in the student being denied the opportunity to be accelerated one grade level in the area of mathematics during the 2022-23 school year.

The Director of Special Education sent a letter acknowledging the parent's request for an independent educational evaluation in the areas of academic performance and general intelligence on November 17, 2023. The letter stated:

The district agrees to pay up to $1,500.00 for the evaluation. If the cost will exceed this amount, please notify us prior to proceeding with the evaluation to discuss. Dr. Karen Jordan, Jordan Psychological Assessment Center or Responsive Center for Psychology and Learning both are located in Overland Park and are two options for evaluation. Sometimes there are extended waiting periods for a particular facility to be able to conduct the IEE. You may want to check with those I have listed to see if one can accommodate the request more quickly than the others. If you desire to have the IEE done somewhere other than the options listed above, please let me know prior to making arrangements so that I can ascertain their credentials. In any case, payment will be made directly to the evaluator and/or their facility. Once the results of the IEE are received by the district, they will be considered. Please note unless notified to further discuss an extension, the IEE results need to be received by the school district by Thursday April 13, 2023.

Conclusion

Federal regulations at 34 C.F.R. 300.502(e) and state regulations at K.A.R. 91-40-12(g) require the criteria under which the independent educational evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria the public agency uses when it initiates and evaluation. However, a public agency is prohibited from imposing any other conditions or timelines related to obtaining an independent educational evaluation at public expense. The *Kansas Special Education Process Handbook* clarifies that a school district may set reasonable limitations on the costs for which it will be responsible; however, the school may have to exceed those costs if necessary to ensure that the independent educational evaluation meets the child's unique needs.

In this case, USD #512 informed the parent of the agency criteria for the independent educational evaluation in a letter dated November 17, 2022. One of the criteria was a requirement for the independent educational evaluation results to be received by the school district by Thursday April 13, 2023 unless the parent notifies the district to discuss an extension. This constitutes a timeline and implies that the district makes the decision of whether an extension to the timeline is granted.

Based on the foregoing, USD #512 ***failed to follow appropriate procedures*** for conducting an independent education evaluation (IEE), specifically by placing a timeline on when the IEE should be completed, during the past 12 months.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: It appears USD #512 complied with the federal and state regulations required in order to conduct an appropriate educational evaluation of the student for the gifted exceptionality during the past 12 months; therefore no violation is substantiated.
2. ISSUE TWO: A violation of federal regulations at 34 C.F.R. 300.502(c)(1) and state regulations at K.A.R. 91-40-12(e) require the public agency to consider the results and recommendations of the independent educational evaluation in any decision made with respect to the provision of a free appropriate public education (FAPE) to the child so long as the evaluation meets the agency criteria. Corrective action is required as follows:
    a. CORRECTIVE ACTION:
        i. USD #512 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will review and consider the results of the entire independent educational evaluation when making any decision with respect to the provision of a free appropriate public education (FAPE).
            1. No later than December 31, 2023
        ii. USD #512 shall ensure the parent has been provided with agency criteria for conducting an independent educational evaluation in the area of academic achievement. Once the district receives the results of that independent educational evaluation, the multidisciplinary IEP team shall meet to review and consider those results in any decision with respect to the provision of a FAPE to the student.
            1. No later than December 31, 2023
            2. No later than 30 days from the date USD #512 receives the academic testing from the independent educational evaluation
3. ISSUE THREE: USD #512, in violation of federal regulations at 34 C.F.R. 300.502(e) and state regulations at K.A.R. 91-40-12(g) is substantiated because the district failed to follow appropriate procedures for conducting an independent education evaluation

(IEE), specifically by placing a timeline on when the IEE should be completed, during the past 12 months. Corrective action is required as follows:

a. CORRECTIVE ACTION:
    i. USD #512 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will follow appropriate procedures for conducting an independent educational evaluation, specifically not placing any additional requirements other than those allowed in the IDEA.
        1. No later than December 31, 2023
    ii. USD #512 shall review the policies, procedures, and practices related to criteria for providing an independent educational evaluation. Based on that review, the template letter for responding to parent requests for an independent education evaluation shall be updated to remove any criteria related to a timeline for completing the evaluation. USD #512 shall develop a plan to share this updated form and explanation regarding the change with all special education case managers and school psychologists within the district. USD #512 will provide SETS with a copy of the updated form as well as documentation this information has been shared with special education case managers and school psychologists throughout the school district.
        1. No later than January 31, 2024

Investigator

Nancy Thomas

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).

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 #469
ON OCTOBER 31, 2023

DATE OF REPORT DECEMBER 4, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of [the student] --------- by his mother --------- ---------. In the remainder of the report, [the student] --------- will be referred to as "the student." --------- --------- will be referred to as "the complainant" or "the parent". --------- --------- is [the student] -------- father and will be referred to as "the father."

The complaint is against USD #469, Lansing Public Schools. In the remainder of the report, USD 469 will be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on October 31, 2023 and the 30-day timeline ends on December 4, 2023.

Evidence Reviewed

During the investigation, the complaint investigator, Gwen Beegle, reviewed all evidence and documentation, which was provided by both the district and the complainant. On November 14, Mike Strand, formerly employed as the student's special education classroom teacher, was interviewed. On November 15, four district administrators were interviewed: Ascendra Donald, Director of Student Services LaKrystal McKnight, Elementary and Intermediate Special Education Coordinator; Jennifer Kolb, Principal Lansing Elementary and Tyler Hayes, Assistant Principal Lansing Elementary. On November 15, the parent was interviewed. In addition, the investigator received emails from both the parent and district from November 3, 2023 to November 25, 2023.

While more documents were reviewed by the investigator, the following documentation and information were used in consideration of the issues:

1. Functional Behavior Assessment and Behavior Intervention Plan for the Student dated May 13, 2021
2. Professional Teaching License for Michael Strand (former special education self-contained classroom teacher): Emergency Substitute dated July 1, 2022

3. Professional Teaching Licenses for Ellie Mae Seeler (current special education self-contained classroom teacher): Emergency Substitute dated July 27, 2022; Initial License dated March 14, 2023; High Incidence Special Education dated August 2, 2023
4. Individualized Education Plan (IEP) dated March 22, 2022
5. IEP Team Meeting Notes dated March 22, 2022
6. Progress Report 2022-23 with entries dated May 24, 2022
7. Student Discipline Report, with entries dated August 22, 2022 to November 3, 2023
8. IEP amendment dated September 9, 2022
9. IEP Team Meeting Notes dated September 9, 2022
10. Consent to excuse required member of IEP team (general educator) dated September 9, 2022 and signed by the parents on the same date
11. Prior Written Notice for material change of services and substantial change of placement dated September 9, 2022 for a meeting on September 9, 2022 signed by the parent giving consent on October 2, 2022
12. Signature page for IEP amendment dated September 9, 2022 signed by the parent giving consent on October 12, 2022
13. Prior Written Notice for material change of services and substantial change of placement dated September 9, 2022 for a meeting on September 9, 2022 signed by the parent giving consent on October 20, 2022
14. Psychological evaluation for the student dated January 26, 2023 completed by Lindsay Colburn-Malousek (Licensed Clinical Psychologist, The Guidance Center).
15. Prior Written Notice for Reevaluation of the student dated February 9, 2023 and signed by the parents giving consent on the same date
16. Notice of Meeting dated March 10, 2023 for a meeting on March 21, 2023
17. Re-evaluation for the student dated March 21, 2023
18. Individualized Education Plan for the student dated March 21, 2023
19. IEP Team Meeting Notes dated March 21, 2023
20. Consent to excuse required member of IEP team (general educator) dated March 21, 2023 and signed by the parents on the same date
21. Prior Written Notice regarding eligibility, services, placement, and changes to the IEP dated March 21, 2023 for a meeting on March 21, 2023 and signed by the parents on the same date
22. Report Card 2022-23
23. Progress Report 2023-24 with entries dated May 25, 2023, June 26, 2023 and October 27, 2023
24. Professional Teaching License for Crystal Gonzales (current self-contained classroom support teacher): Emergency Substitute dated July 1, 2023
25. Paraprofessional Orientation Training Agenda (21 hours) undated
26. STAR Comprehensive Virtual Workshop Agenda (2 days) undated

27. Lansing Elementary Professional Development agenda titled "Pairing Yourself as a Reinforcer" dated August 30, 2023
28. Audio recording of meeting dated August 31, 2023
29. Student Daily Schedule, 2023-24 school year
30. Student Communication Log with entries dated beginning September 11, 2023 to November 6, 2023
31. Behavior rating data with entries from September 28, 2023 to October 31, 2023
32. Report Card 2023-24, First Quarter
33. Professional development description of session "A Deeper Look at Deescalation"
34. Email from Jennifer Kolb (Principal Lansing Elementary) to Ascendra Donald (Director of Student Service) LaKrystal McKnight (Elementary and Intermediate Special Education Coordinator) and Ellie Seeler dated October 10, 2023 at 7:53 a.m.
35. Email from LaKrystal McKnight to Ellie Seeler, Cristal Gonzales, Christina Pennington (Teacher, First Grade), Jennifer Kolb, and Tyler Hays (Assistant Principal, Lansing Elementary) dated October 11, 2023 at 3:32 p.m.
36. Email from Tyler Hays to LaKrystal McKnight, Ellie Seeler, Christina Pennington and Jennifer Kolb dated October 16, 2023 at 7:31a.m.
37. Email from the father to Jennifer Kolb and Tyler Hayes dated October 31, 2023 at 2:54 p.m. and Jennifer Kolb's reply dated October 31, 2023 at 4:56 p.m.
38. Email from Ellie Seeler to LaKrystal McKnight dated November 3, 2023 at 1:45 p.m.
39. Email from LaKrystal McKnight to Ellie Seeler dated November 7, 2023 at 3:34 p.m. and Ellie Seeler's reply dated November 7, 2023 at 3:59 p.m.
40. Email from Ellie Seeler to LaKrystal McKnight dated November 7, 2023 at 5:04 p.m.
41. Email exchange between Ascendra Donald, Tyler Hayes, and Jennifer Kolb beginning November 6, 2023 at 7:30 a.m. to November 13, 2023 at 11:27 a.m.

Background Information

The student is a 6 year-old first grader in a multi-age self-contained special education classroom in a K-3 elementary school in the student's district. The student is eligible for special education and related services as a student with developmental delays. He was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD) by the local guidance center during his kindergarten year. In the past year, he was diagnosed with Post Traumatic Stress Disorder (PTSD) by the guidance center. The student was removed from his biological parents due to neglect, and he was placed in foster care at 20 months of age with the parents who later adopted him.

The student received infant and toddler services just before his third birthday and transitioned to the current school district upon his third birthday in 2020, when he was evaluated and found eligible for special education in the disability category of developmental delay in the areas of communication and social emotional development. He was evaluated on February 5,

2021 and qualified for articulation services in addition to language and special education services he was already receiving in an integrated preschool. On May 13, 2021 a Functional Behavior Assessment (FBA) was conducted and a behavior intervention plan initiated, when the student was 4 years one month old. On January 14, 2022, he was evaluated by the district and it was found that he did not meet eligibility requirements for autism. On March 22, 2022 he was re-evaluated to determine continued eligibility for speech language services and dismissed from both language and articulation services.

For the period of the past twelve months, the student had an IEP in effect dated March 21, 2022 and amended on September 9, 2022. His IEP included the FBA conducted on May 13, 2021 and continued the behavior management plan first initiated on the same date. The student's triennial evaluation was conducted in concert with his current IEP on March 21, 2023. He continued to be eligible and receive special education services as a student with developmental delay in the area of social emotional development.

Issues Investigated

ISSUE ONE: The USD #469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop the student's IEP, specifically by designing an IEP that would address the students' needs in light of his disabilities.

ISSUE TWO: The USD #469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, including the goals, services, supplementary aids and services, access to the general curriculum, and the placement in the least restrictive environment during the 2023-24 school year.

ISSUE THREE: The USD #469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide staff who are properly trained to implement the student's IEP.

ISSUE FOUR: The USD #469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the parent procedural safeguards, specifically by responding to a parent's request for an IEP meeting and scheduling the IEP meeting within a reasonable period of time.

Issue One

The USD #469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop the student's IEP, specifically by designing an IEP that would address the students' needs in light of his disabilities.

Applicable Law

The development of the IEP begins with the evaluation. Federal statutes and regulations at 34 CFR 300.304(b)(2) require that the evaluation does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate IEP for the child. Additionally, 34 CFR 300.304(c)(4) requires that the child be assessed in all areas related to the suspected disability, and 34 CFR 300.304(c)(6) and (7) require that the evaluation be sufficiently comprehensive to identify all the child's special education and related services needs and that tools and strategies provide relevant information to directly assist in determining the educational needs of the child are used.

K.S.A. 72-3429(d) requires that in developing the child's IEP, the IEP team shall consider the following: the strengths of the child, the concerns of the parents, the results of the child's evaluation, the academic and functional needs of the child, the use of positive behavior interventions and supports if the child's behavior impedes learning, the need for braille or the impact of limited English proficiency, the child's communication needs, and the need for assistive technology. K.S.A. 72-3429(e) requires that the general education teacher, as appropriate, shall participate in the development of the IEP of the child, including determining positive behavior intervention supports and other strategies, supplementary aids and services, support for personnel, and the review and revision of the child's IEP.

Federal statutes and regulation at 34 CFR 300.321(e)(1) states that a required member of an IEP team is not required to attend an IEP meeting if the parent and the district agree that their attendance is not necessary because the member's area of the curriculum or related service is not being modified or discussed in the meeting.

Analysis: Findings of Fact

The parent expressed a concern that the school was not knowledgeable about her son's disabilities and therefore did not properly address them in his educational program. The parent alleged that the school did not take these disabilities into account when interacting with her son, specifically that his PTSD and ODD indicate that there are specific ways to make requests successfully and to get the child to attend his general education special classes, such as physical education. The parent alleged that the child's behavior intervention plan contained elements that did not conform with knowledge of the student's disability and behavior. The parent alleged that, during the IEP meeting, they expressed that their child needed social development and interaction with peers, which was not considered when developing the student's IEP.

The district responded that: "[the student]'s current IEP was written on 3/21/23 to address social-emotional needs. Parent concerns noted during this meeting included wanting to see an increase in his social skills and opportunities to use them; they were concerned that he was not getting much socialization with peers. Present levels included on this IEP reported his

participation in special classes (PE, art, STEM, music and library). Identified needs included: elopement, refusal to enter the general education classroom setting, physical aggression, and cursing; he continues to struggle when he goes into the general education classroom setting for approximately 20 minutes before behavior begins to increase and he needs to return to the self-contained setting. Additionally, he continues to struggle with choosing appropriate wording with peers and adults. One goal was written during this IEP meeting: By March 20, 2024, across all environments in school, [the student] will decrease his physical and verbal aggression towards both peers and adults from 5 days per week, 60% of the day to 3 days per week 30% of the day on 5 out of 5 data collection days."

The district response continued: "Additionally, a functional behavior assessment had been completed in May of 2021 and was included within this IEP with a Positive Behavior Intervention Plan. Undesired behaviors noted on the FBA included: [the student] will hit, kick, punch, squeeze, lay on top of a peer; he will roll up into a "turtle" position, and/or use profane language . . . He will hit adults as well as peers. The hypothesis indicates: During unstructured activities such as centers, recess, or transitions; [the student] may hit, kick, punch, squeeze, or lay on top of a peer; he will roll up into a "turtle" position, and/or use profane language . . . in order to obtain or retain a toy or to get a reaction from an adult; therefore the primary function of [the student]'s behavior is to obtain/hold on to a preferred object/activity, and the secondary function is to gain an adult's attention. To assist [the student] with making progress, the BIP included prevention strategies (preferential seating, priming for transitions, visual timers, and visual aids, fidgets, and token economy/break system), replacement behaviors to be taught (sharing and following directions), and staff reactions to behavior (positive praise, if/then language, providing choices, access to more restrictive environment), as well as provisions for home coordination (daily behavior chart). The most recent progress report dated 10/27/23 indicates that [the student] is making progress towards his goals. [The student] has decreased his physical and verbal aggression towards both peers and adults 79% of the time."

Using the documents provided by the parent and the district along with interviews of the parent and district personnel, the findings of fact are found in the paragraphs below. There are two IEPs relevant to the investigation period. First, the March 22, 2022 IEP when a Speech-Language evaluation was conducted and the student was dismissed from Speech-Language therapy services. The student's two IEP goals were that he "transition with confidence" with one verbal prompt 80% of the time, and that he transition to different tasks and activities while maintaining self-regulation. Upon entering kindergarten on August 17, 2022, the student's IEP required for him to be in general education with special education support for recess, specials, lunch, "triage" (5 minutes), the hallway, and behavior management class (90 minutes, 5 days a week), with the remainder of his time in the special education classroom. This IEP was amended on September 9, 2022 to increase the student's special education services in special education to all areas except recess and specials. The current March 21, 2023 IEP coincided

with the student's triennial evaluation of the same date. A health care plan stating that the student will take medication at school is included in the IEP. The district reported that the current functional behavior assessment was conducted on May 13, 2021; this was included on both IEPs, along with a behavior intervention plan.

Reevaluation

The parents had the student evaluated (January 26, 2023) at The Guidance Center by a licensed clinical psychologist for the purpose of "diagnostic clarity related to cognitive, social, and overall adaptive functioning with treatment recommendations."

The district provided a PWN for reevaluation dated February 9, 2023 for the student's triennial evaluation, at 5 years 11 months of age, stating that its purpose was to determine whether the child continues to be a child with an exceptionality, the education needs of the child, the present levels of academic and developmental needs of the child, whether the child continues to need special education, and whether any changes are needed to the IEP services or placement in order to participate in the general education curriculum. The PWN for reevaluation stated that existing and new data would be reviewed in the social emotional area only, stating that "no additional information is needed" to make the determinations listed above. No other existing data were reviewed, according to the PWN dated March 21, 2023 at the time of the evaluation meeting.

The March 21, 2023 re-evaluation listed his most recent 2022 vision and hearing screening results, including failing hearing screenings in his left ear. The parents reported, and review of district documents showed that the student's ear, nose, and throat problems regularly affected his ability to hear in the classroom and at home. No cognitive, health/motor, communication, academic, or outside reports were considered. In the social emotional area, the Behavior Assessment System for Children Third Edition (BASC-3) found that the student was at risk in the following subscales: externalizing, aggression, behavioral, atypicality, withdrawal, adaptive, adaptability, and social skills. No behaviors were listed as clinically significant. Behavior data using a monthly summary of 0-1-2-3 rating system were presented, indicating that the student was generally meeting his IEP goal "easily" the majority of the time. The evaluation states: "[The student] continues to qualify for Special Education services under the exceptionality of Developmentally Delayed in the area of Social Emotional skills. [The student] will continue to be included in the General Education classroom as his behavior data indicates he is successful with appropriate inclusion support." Assurances were given that the student was assessed in all areas related to the suspected disability "as deemed appropriate" by a qualified group of individuals, and that "in accordance with State and Federal guidelines, no single test or score will determine a student's eligibility."

The prior self-contained classroom teacher (an emergency substitute, who was dismissed by the district early in the 2023-24 school year) reported that his input on the student's classroom and behavior performance was not considered by the lead special educator in preparing the

draft IEP or evaluation report. He reported that the behavioral data in the reports were not reliable. He reported that the student's reading was an area of need based on a low reading FastBridge assessment.

The March 21, 2023 triennial reevaluation lists "medical diagnosis: ADHD and ODD from the Guidance Center" with medication for ADHD symptoms being given daily at home and at school. The parent reported that the ADHD and ODD diagnoses were given to the district during the student's kindergarten year (2022-23) with a later diagnosis of PTSD and anxiety made in April, 2023. Documentation showed that a diagnostic evaluation and treatment plan conducted by a local guidance center dated April 15, 2021 was provided to the district by fax April 4, 2023. The parent reported giving a hard copy of the student's full psychological evaluation conducted by the guidance center, dated January 26, 2023 to the district at the time of the March 21, 2023 reevaluation meeting. However, the district did not share this report with the investigator, and it is unknown when or if the district was aware of this report. Neither of the guidance center reports were reviewed or listed as resources for the district's March 21, 2023 reevaluation.

FBA, Behavior Intervention Plan and the IEP

The district reported that the current functional behavior assessment (FBA) was conducted on May 13, 2021 when the student was 4 years and one month old. Similar to the March 22, 2022 IEP, the March 21, 2023 IEP made no changes to the student's FBA and no changes to the behavior intervention plan initiated with the FBA. That is, there was no change to the description of the behavior, the hypothesis, the prevention or reaction strategies, the stated desired behavior, or the review methods or review schedule.

The March 21, 2023 IEP states: "As of 3/1/22, [the student]'s physical aggression will last an average of 15 seconds. This behavior happens 2 out of four times a day. 80% of incidents were during transitions from classroom to recess/gym or back to the classroom after recess. His behavior during a transition time when he is refusing to follow a direction lasts an average of 8-10 minutes. Observations indicated that the antecedent was often to gain adult attention or to gain/keep desired objects in an inappropriate way (e.g. eloping, hiding under a table)." The March 22, 2022 IEP includes the same statement. Both IEPs include the following statement: "The behavior plan will be updated at a minimum of an annual basis. Data collected will be used to evaluate the effectiveness of the plan."

The district reported that the classroom team collected data and reviewed it weekly at the classroom level, but that no changes were made to the behavior intervention plan in the IEP. Recently, the type of data being collected has changed to include antecedent-behavior-consequence data.

According to the March 21, 2023 IEP, the parents were satisfied with the student's academic achievement but they "expressed they would like to see an increase in his social skills and

opportunities to use them. They are concerned that he is not getting much socialization with peers." In an interview by the investigator, the parent reported that she believed the self-contained classroom, and the additional more restrictive room used for the behavior intervention plan, constituted "seclusion" with only two additional students in the classroom. The parent and the district agree on the number of students in the self-contained classroom (three).

Notes of the March 21, 2023 meeting showed that the parents twice reiterated their concern for increased socialization and asked for an IEP goal in social skills; the district told the parents they would work toward gradually increasing time in general education with trial of allowing the student to participate with other special education students in a small group setting for behavior management and social skills classes and a trial at lunch.

The March 22, 2022 IEP had two goals addressing transitions; the IEP team changed the March 21, 2023 IEP to have only one goal, that the student would "decrease his physical and verbal aggression towards both peers and adults from 5 days per week, 60% of the day to 3 days per week 30% of the day on 5 out of 5 data collection days." In addition, the March 21, 2023 IEP eliminated two of the four accommodations: (a) visuals and social stories to help make decisions for transitions and calm down options and (b) visual timer to warn of transition times, accommodated with multiple prompts and reminders for transition preparation. Two accommodations were retained: (a) "access to a more restrictive environment either child directed or teacher directed whenever [the student] is escalated and unable to control his emotions and behaviors for the duration of the stressor" and (b) "access to a more restrictive environment during lunch."

Required team members and IEP development

The district provided a Notice of Meeting (NOM) dated March 10, 2023 for the March 21, 2023 IEP and re-evaluation meeting, which the parents attended. Also attending were the school psychologist, the LEA representative [special education coordinator] and two special educators, one a long-term substitute (emergency substitute license) who was the self-contained classroom teacher. Similar to the prior IEP amendment meeting on September 9, 2022, no general education teacher was present; the parents and district signed a form indicating that the presence of the required IEP member (general education teacher) was not needed because their area of expertise would not be discussed in the meeting. In addition, no member of the current IEP team attended the March 21, 2023 IEP meeting because all staff have changed.

The district reported that it is their practice for general education teachers to attend IEP meetings when the school routinely provides substitutes on specific days of the week for this purpose. The district reported that the student's current academic program is planned by the general education first grade teacher and delivered to the student in the self-contained classroom by staff members there. The previous teacher (emergency substitute dismissed by

the district) reported that he sought out academic resources during the previous year to teach the student reading.

The student's report cards showed that he was average in most areas rated in the current school year and average or above average in most areas rated in the 2022-23 school year.

Conclusion

The development of the IEP begins with the evaluation which should be sufficiently comprehensive to identify all the child's special education and related services needs and use tools and strategies that provide relevant information to directly assist in determining the educational needs of the child. In this case, the triennial reevaluation was conducted with the child at 5 years, 11 months of age. This reevaluation used only one formalized assessment in one area, reviewed existing data in that same area only, and failed to review existing data available at the time pertaining to the student's psychological conditions as reported by the parent, available from the parent through their January 26, 2023 thorough psychological evaluation by a licensed clinical psychologist, or the previous evaluations conducted by the district itself.

Additionally, the district relied upon an FBA conducted when the child was 4 years old without meaningfully updating that assessment or the analysis upon which the child's behavior intervention plan and single IEP goal were founded. Further, the goal of the IEP did not address the parental concern for improved social skills or opportunities to practice socialization with other children although this concern aligned with the results of the single standardized assessment conducted during the reevaluation. As a secondary concern, the reevaluation notes that the student failed his two most recent hearing screenings, a repeated issue based on parent report and document review, but the team does not further address the educational implications of this health concern on the student's ability to focus or his behavior in school.

The reevaluation included the statement that "[The student] will continue to be included in the General Education classroom as his behavior data indicates he is successful with appropriate inclusion support." The team reported that the student could spend 20 minutes in general education at the time but no further tool or evaluation strategy offered to determine the student's needs in that setting. The IEP did not include a goal, accommodations or supplementary aids and services aimed at supporting the student to extend his time in general education settings to the degree already required by the IEP. Accommodations specified only removal to "more restrictive" settings. It is noted that a paraeducator accompanied the student to the general education settings.

The district provided documentation that the general educator was excused from the March 21, 2023 IEP meeting signed by both the district and the parent, the document stated that their absence was allowable because the student's academic program would not be discussed

in the IEP meeting. Therefore, it is reasonable to conclude that the student's academic program was not discussed or seen as critical to the IEP/reevaluation meeting's purpose. It is noted that the current administration reported that the general educator is responsible for planning the student's academic lessons to be delivered by the special education staff in the self-contained classroom. It is noted that the student's current academic progress is rated as average in most areas.

For these reasons, it is found that the evaluation was not sufficiently comprehensive in order to identify all the student's special education and related services needs whether or not commonly linked to the disability category. It is found that the evaluation relied predominantly on a single standardized assessment and failed to use tools and strategies to provide relevant information to directly assist in determining the educational needs of the child. It is further found that the behavior intervention plan was not updated annually as required by the student's IEP. Because of these limitations, the IEP was not properly developed.

Based on the foregoing, ***it is substantiated*** that USD # 469 failed to properly develop the student's IEP, specifically by designing an IEP that would address the students' needs in light of his disabilities.

Issue Two

The USD #469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, including the goals, services, supplementary aids and services, access to the general curriculum, and the placement in the least restrictive environment during the 2023-24 school year.

Applicable Law

Federal regulations 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. Unless they exit from special education, special education and related services in the IEP are to be available to all children residing in the State between the ages of 3 and 21 according to 34 C.F.R. 300.101(a).

Analysis: Findings of Fact

The parent alleged that the student's IEP was not being followed, including that he was no longer able to attend his general education classes because the staff failed to take his disability into account when taking him to classes. The parent alleged that the behavior intervention plan was not being followed and that parts of it did not take into account the student's disability or the classroom setting. The parent alleged that the student's classroom setting was a "seclusion room" with padding on the walls and his interaction was limited to 2 other students with disabilities also in the classroom.

The district responded: "During the 2023-2024 school year, [the student] has received services within a self-contained special education classroom setting in his neighborhood school as written in his current IEP. Additional general education inclusion services include: Transitions (10 minutes daily), Electives/Specials (50 minutes daily), Reading (30 minutes daily), Math (30 minutes daily), Recess (30 minutes daily), Medication/Nursing (10 minutes daily)- 140 total general education inclusion minutes per day (minus the 20 for medication management and transitions). He also receives transportation services."

The district further responded: "The daily communication logs are shared with the classroom teacher, administration, and parents to share the details of [the student]'s day each week. It also includes a space for parents to include input and provide feedback. Inclusion opportunities are noted on the log as well. [The special education teacher] described inclusion opportunities are provided for specials, but he refuses to participate at times. The recorded behavior data related to his IEP provides additional details. The goal in the current IEP is related to the social-emotional needs identified in the present levels section, and are relevant to the current behavior data. During the previous annual review meeting, since behavior data the team considered the least restrictive environment for [the student] to receive special education services and to continue to make progress towards his goal(s). He continues to access the general education curriculum from the current placement."

The findings of Issue One are incorporated by reference. Based on the documents provided by the parent and the district, and interviews of the parent and district staff, additional findings are listed in the following paragraphs.

For the 2023-24 school year, the March 21, 2023 IEP included the following special education services in the special education classroom for all subject areas (205 minutes 5 days a week), social skills (30 minutes 2 days a week) and behavior management (30 minutes 2 times a week). It stated that the student will attend general education specials for 50 minutes 5 days a week and general education intervention in reading and math for 30 minutes each 5 days a week with special education support. The IEP required the student to have attendant care in the hallway during transitions (10 minutes daily), during lunch in the special education classroom (30 minutes daily), and during general education recess 30 minutes daily). The IEP listed five minutes daily of "triage" in the special education classroom and to see the nurse for medications at noon each day.

The district reported that the student did not regularly attend his general education classes because he refused to attend. The assistant principal, in an email dated November 13, 2023 at 11:27 a.m. reported that the special educator gave this report on the student's general education attendance: "He goes to recess with class but often does not want to go. He goes to specials when he wants to: he will go when it is STEM and PE. He has not been to his class for reading and math. I have encouraged him to be with his class but he chooses not to. He gets scared/shy when he walks in and everyone looks at him. For example, I try to get there before

his class goes so not all eyes are on him. Do you want me to try to make him go to his class for reading and math. I worry he is going to escalate."

The district reported that the parent was not open to more time in general education; the parent reported that the parents asked for more time out of the self-contained room.

The parent and district agreed and the student's discipline report showed that the student had fewer discipline reports during the 2022-23 school year. The student's previous teacher (emergency substitute released by the district early in the current school year) reported that he seldom used the tools and strategies in the behavior intervention plan because the student was appropriately behaved with him. He reported, and the parent agreed, that the student's behavior improved over the course of his kindergarten year (2022-23).

The parent and district also agreed that the student's behavior deteriorated during the 2023-24 school year, necessitating 17 discipline reports from the school office for physical aggression, disorderly conduct and leave without permission from August 25, 2023 to November 3, 2023. The student had 3 days of out of school suspension, 1 day of in school suspension served in his own classroom, and 11 assignments of alternative placement. Alternative placement meant that the student was placed in the SBS3 classroom, according to the district response to an emailed question.

The behavior intervention plan and the accommodations in the student's IEP referred to "access to more restrictive environments, either student directed or adult directed." Questioning of the district personnel indicated that the current special education classroom consisted of three spaces named SBS1, SBS2, and SBS3. SBS3 was the most restrictive space, a room (11 ft by 22 ft) with padding on the walls. The student's "home base" was SBS2 as the self-contained classroom location; the district reported that the home base had been SBS3 but was moved to SBS2 due to the parent's concerns with the SBS3 room. If the student became dysregulated, the space designated as "more restrictive" was the SBS3 room. When other students from SBS1 became dysregulated, the SBS2 room was "more restrictive" as the self-contained classroom. The three spaces were close in proximity; the district reported that the spaces were evacuated if any student's dysregulation becomes disruptive.

The district reported that the student was not troubled by using the SBS3 room and that he requests to work in the room. The district reported they were using the SBS3 room less due to parental concerns. Since decreasing the use of the SBS3 room, the district reported that the student's problem behavior increased because he was more often in the presence of other students with dysregulated or problem behavior.

According to the district, as part of the self-contained special education program located in SBS2 the student received direct instruction, preferential seating, breaks, timers, visuals, preventive strategies, choices in his day to allow autonomy and control, systematic reinforcement through tokens and rewards throughout the day. The district reported that the

program used the following: calming strategies for de-escalation, moving to a more restrictive space, teaching zones of regulation strategies and uses the general social emotional Boys Town approach. These strategies listed in the student's behavior intervention plan were summarized by the district response as: " the BIP included prevention strategies (preferential seating, priming for transitions, visual timers, and visual aids, fidgets, and token economy/break system), replacement behaviors to be taught (sharing and following directions), and staff reactions to behavior (positive praise, if/then language, providing choices, access to more restrictive environment), as well as provisions for home coordination (daily behavior chart."

Conclusion

In this case, the student's IEP services require special education support in the general education classroom for recess, special classes, and general education instruction in reading and math. The student's recent evaluation stated: "[The student] will continue to be included in the General Education classroom as his behavior data indicates he is successful with appropriate inclusion support." However, the district has failed to implement the student's participation in the general education classroom or activities due to the student's reluctance to attend them.

In addition, the student's behavior intervention plan, including what consists of his removal to, calming within, and return from a "more restrictive setting" appears to be unclear and inconsistently implemented during the past twelve months. This may have been emphasized by the change of the student's classroom location at the start of the 2023-24 school year, when the student's classroom was changed from a more traditional classroom setting to the current three SBS1, SBS2, and SBS3 locations. It is noted that the district has made wholesale changes to classroom staff in order to provide for a more reliably consistent special education program, including ensuring that there are grade level academic materials available to the student and academic lessons planned by the general education teacher.

Based on the foregoing, *it is substantiated* that USD 469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, including the goals, services, supplementary aids and services, access to the general curriculum, and the placement in the least restrictive environment during the 2023-24 school year.

Issue Three

The USD #469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide staff who are properly trained to implement the student's IEP.

Applicable Law

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), require 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.

State statutes and regulations at K.A.R § 91-31-34 (4) state: "If a substitute teacher holding a valid Kansas substitute teaching license is not available, the education system shall use a person who holds a baccalaureate degree and an emergency substitute teaching license or certificate. An education system shall not allow a person who holds a baccalaureate degree and an emergency substitute teaching license or certificate to teach for more than 45 days in the same assignment."

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 in-service 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.

Analysis: Findings of Fact

The parent alleges that the district staff are not trained to appropriately respond to the student's behavior due to his disabilities of ADHD, ODD and PTSD. The parent alleges the district staff are not capable of appropriately interacting with the student.

The district responded that "The current teacher in the classroom is [name of student's current teacher]; she is currently licensed as a K-6 High Incidence Special Education Teacher. Additionally, we have a long-term emergency substitute, [name of current emergency substitute], who also supports the classroom. The former staff member who the parents preferred was also a long-term emergency substitute, [name of former emergency substitute]. [The former emergency substitute] was the primary teacher until he was no longer employed with the district, then [the current teacher] became [the student]'s primary teacher.

Additionally, there are 3 support staff paraprofessionals in the classroom. Each person who works in this classroom received certification in the MANDT system, the district's ESI intervention and technical restraining skills program. Specific behavior programming professional development that has been provided throughout this school year for staff and includes: STAR Autism Curriculum Resource (8/3/23), BIST (8/9/23 and 9/6/23), Relationship Building/Pairing Reinforcement (8/31/23 and 9/7/23), A Deeper Look at De-escalation ([the current classroom teacher] attended in October), and Strategies for De-Escalation ABCs-Antecedents, Behavior and Consequences (11/1/23).

Additionally, new paraprofessionals participate in onboarding activities to prepare them for the position. Our district contracts with a BCBA agency, Beyond the Individual for ongoing behavioral intervention support, management of behavior intervention plans, functional behavior assessments, professional development among other behavioral services. Training has been provided by building administrators [principal, assistant principal and special education coordinator] related to data collection and classroom management on an informal basis. On the IEP dated 3/21/23 the Supports for School Personnel section indicates "No" additional training is needed for staff to properly implement his current IEP. However, professional development for staff within the self-contained behavior program is relevant to their assignment to meet the needs of the students they serve."

The findings of Issue One and Issue Two are incorporated by reference. Based on the documents provided by the parent and the district, and interviews of the parent and district staff, additional findings are listed in the following paragraphs.

The district provided the following qualifications for the classroom teachers, emergency substitutes, and paraeducators in the student's classroom during the past twelve months.

- The current classroom teacher has a Bachelor of Science in Education with a Concentration of Special Education from Kansas State University. She graduated December, 2022; she was a substitute January, 2022 through May, 2023. She is in her

first year as a certified teacher in her current position. She holds three current licenses in the state of Kansas: Emergency Substitute, High Incidence Special Education and Initial Teaching License in Elementary Education.

- The current emergency substitute who assists the classroom teacher in the SBS programs, has a current Kansas license as an Emergency Substitute. She holds a Bachelor's of Science in Business Administration and a Master of Health Administration. She is in her first year as a substitute in this classroom.
- According to the district, the district provided classroom and student related professional development (PD) this year (as listed above). In addition, the current classroom teacher attended "A Deeper Look at De-escalation" in October, 2023.
- The formerly employed emergency substitute was the classroom teacher as a long-term substitute during the 2022-23 school year and until September 6, 2023 of the current school year. He holds an Emergency Substitute license and a Bachelor of Arts degree in History and a minor in Sociology.

In the district, paraeducators are required to have a high school diploma and new hires complete the orientation, 21 hours of required training that includes MANDT training. Paraeducators are required to complete 10 or 20 hours of PD depending on their length of time of service.

Paraprofessionals currently in the classroom are listed below, with their date of hire and hours of training completed. Orientation training was completed on-line for those hired after the beginning of the year.

- Para AP started on 4/11/18 and she completed 10 hours of PD.
- Para IH started on 10/9/23 and she completed 20 hours of PD.
- Para SW started on 11/6/23 and he completed 20 hours of PD.

One paraeducator supported the program this year but is not regularly assigned there is listed below with her date of hire and hours of training completed.

- Para DC started on 10/8/19 and she completed 10 hours of PD.

Each of three paraeducators who worked in the program but who are no longer employed by the district completed 20 hours of PD.

Conclusion

In this case, the special education teacher working with the student holds a bachelor's degree and holds current licenses by the state of Kansas that qualify her to teach elementary education and high incidence special education during the 2022-23 school year. As such, she meets the requirements to be assigned as a special education teacher.

Also, the district has used emergency substitutes in the classroom to serve as classroom teachers. Kansas state regulations at K.A.R. 91-31-34 allow districts to staff classrooms with emergency substitutes if more qualified persons are not available. An emergency substitute

with a baccalaureate degree can serve no longer than 45 days in the same assignment. In this case, last year the classroom teacher was an emergency substitute who served longer than 45 days. This is not in compliance with the state regulations governing school administration, but it is out of the authority of this investigation to issue a finding on this matter. The staff member was qualified to serve in the special education classroom with an emergency substitute license.

The paraeducators hired in the district meet the minimum standards for education, orientation, and professional development required in the state of Kansas and are therefore qualified to serve in the classroom.

The district has provided recent, relevant professional development aimed at improving the behavioral and relationship building skills of the classroom professional and paraeducator employees. The student's IEP did not require professional development for classroom staff specific to the student's disability.

Based on the foregoing, ***it is not substantiated*** that USD #469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide staff who are properly trained to implement the student's IEP.

Issue Four

The USD #469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the parent procedural safeguards, specifically by responding to a parent's request for an IEP meeting and scheduling the IEP meeting within a reasonable period of time.

Applicable Law

Federal and state statutes and regulations at CFR 300.324(b)(1)(ii)(c) and KSA 72-3429(f) require that the IEP team meets at least annually and that it revises the IEP as appropriate to respond to a parent's request for an IEP meeting to address a lack of progress, evaluation, the child's anticipated needs, information provided to or by the parents, or other matters. In Kansas, a reasonable time to respond to parental requests such as the request for an evaluation or for an IEP meeting is 15 school days.

Analysis: Findings of Fact

The parent alleges that she alerted the staff to the need for an IEP meeting in a meeting on August 31, 2023 with the principal and assistant special education director. She further asserts that at the time of the parent teacher conference on October 11, 2023 the assistant principal indicated his belief that an IEP meeting was in the process of being scheduled. The parent alleges that the district did not contact her to schedule the meeting until November 7, 2023 and the meeting was scheduled on November 21, 2023.

The district responded: "[the student]'s annual IEP review is due by March 20, 2024. The district responded that on two occasions when the parents interacted with the principal or assistant principal, the meeting was not mentioned. The district responded that when October conferences were held, the district offered to hold the meeting sooner than November if the parents wanted to do so. The district responded that the notes of the meeting showed the parents in agreement to this plan and that the special education self-contained classroom teacher emailed the parents to schedule the meeting.

The findings of Issue One, Issue Two and Issue Three are incorporated by reference. Based on the documents provided by the parent and the district, and interviews of the parent and district staff, additional findings are listed below.

The parent reported that a meeting was discussed first on August 31, 2023 when the parents met with the principal and special education coordinator on the change of classroom. The parent audio-recorded the meeting and provided it to the investigator. The audio recording was not clear that an IEP meeting was being discussed.

An email from the principal to the special education coordinator, special education director, and special education classroom teacher dated October 10, 2023 relayed that she had spoken to the parent that day and the parent was "looking forward to an IEP meeting." The parent reported that the parents met with the assistant principal on October 11, 2023 during parent teacher conferences. Notes of the meeting sent by the assistant principal to the principal, special education classroom teacher, and special education coordinator in an October 16, 2023 email stated: "The beginning of November works for parents to have an IEP meeting."

The special education classroom teacher sent an email to the parents on November 7, 2023, offering three dates for a meeting.

The district reported that when parents request a meeting, it is the practice to respond and schedule a meeting. The district reported that they do not have a specific policy on time to respond to a parent's request for a meeting.

Conclusion

In this case, the request for a meeting was known by the district at least by October 10, 2023. The district responded to schedule the meeting by November 7, 2023, when 19 school days had elapsed.

Based on the foregoing, ***it is substantiated*** that USD 469, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the parent procedural safeguards, specifically by responding to a parent's request for an IEP meeting within a reasonable period of time.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 CFR 300.304(b)(2), 34 CFR 300.304(c)(6) and (7) and 34 CFR 300.304(c)(4) was found based on the evidence summarized above. Corrective action is required (as follows):
    a. CORRECTIVE ACTION
        i. USD #469 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations implementing the IDEA at 34 CFR 300.304(b)(2), 34 CFR 300.304(c)(4) and 34 CFR 300.304(c)(6) and (7) which require that evaluation does not use a single measure, that the evaluation include all areas related to the suspected disability, that the evaluation is sufficiently comprehensive to identify all special education and related services, and that tools and strategies are used to determine the educational needs of the child.
        ii. USD #469 shall request permission of the parents to reevaluate the student and the IEP team shall convene after the parents have given permission to conduct the evaluation to determine a comprehensive evaluation plan.
            1. After the evaluation plan is determined, the comprehensive evaluation shall be expedited and conducted within no more than 45 days following the IEP team's determination of the evaluation plan. The district shall ensure that tools and strategies are used to provide relevant information to directly assist in determining the educational needs of the student to include his needs to participate in the general education classroom.
            2. In addition to the areas determined by the current evaluation team, the reevaluation shall include the review of the student's January 26, 2023 psychological report by the Guidance Center, the student's academic performance as rated by the general education teacher, general education classroom academic assessments including but not limited to the areas of reading and mathematics, and social skills development and interaction with typically developing peers.
            3. The evaluation team shall discard the 2021 FBA and determine if a new FBA is needed to write an appropriate behavior plan for the student. If a new FBA is needed, the evaluation team shall question whether the student's reluctance to attend general education settings and to elope from stressful situations is motivated by escape and avoidance.

4. The evaluation, team meeting notes, PWN-E, NOMs, and PWN shall be submitted to SETS as evidence of completion of these requirements within 75 days of the date of this report.

iii. The district shall, in concert with the re-evaluation, write a new IEP, to include goals, services, and accommodations in all the areas of concern for the student. The IEP Team shall include the participation of a general education teacher. The team shall consider goals in areas such as: coping and self-calming skills, social development, social interaction with typically developing peers, academics, and extending attendance in the general classroom for academics or in other general education settings. Accommodations and supplementary aids and services in the general education classroom shall be considered. If the IEP team writes, in concert with a new FBA, a new behavior intervention plan that specifies removing the student from a general or special education setting, specific and clear procedures for removing, calming, and returning the child shall be written and the use of removal will be monitored. The new IEP, BIP, PWN, and team meeting notes shall be submitted to SETS as evidence of completion within 75 days of this report.

b. Date due for 1(a)(i) is 21 days from the date of this report: December 21, 2023.

c. Date due for 1(a) (ii) and (iii) is 75 days from the date of the report excluding winter break and days when staff is not on duty: February 29, 2024.

2. ISSUE TWO: A violation of 34 C.F.R. 300.323(c)(2) was found based on the failure of the district to implement the student's IEP, specifically to attend general education classes and to implement the student's behavior intervention plan. Corrective action is required (as follows):

a. CORRECTIVE ACTIONS

iv. USD #469 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations implementing the IDEA at 34 C.F.R. 300.323(c)(2) which require the district to implement the IEP within 21 days of the date of this report.

v. The district will immediately clarify the procedures associated with the student's behavior plan and provide training to classroom staff to assure that the behavior plan is followed, within 21 days of this report. The district will provide the procedures and training agenda and participants to SETS as evidence of this clarification and training.

vi. The district will immediately seek an expert review of the behavior plan, including the procedures associated with the removal of the student to SBS3 or similar space, from a person in the TASN network or other person approved by SETS. The district will provide evidence of the

technical assistance agreement to SETS as evidence of the agreement to review the plan within 21 days of this report.

vii. Subsequent to the corrective actions in 1(a)(ii), the district will clarify and provide training for all IEP team members including the paraeducators on *any behavioral program* that involves removal to a "more restrictive" environment, including specifying the conditions that necessitate his removal, how the student will be supported in becoming calm and how he will be returned to the same setting from which he was removed. The procedures will be explained and provided to the parents. The district will submit evidence of this training to include training agenda, training participants and the specific content of the training to SETS within 90 days from the date of the report.

viii. Training will be provided for all IEP team members including the paraeducators and measurement methods put into place by administrators to ensure that the student's IEP and BIP (or other behavior plan determined by the IEP team) are implemented with fidelity as evidenced by submitting training agenda, training participants, and administrative oversight methods to SETS within 90 days from the date of the report.

b. Dates due:

i. Date due for 2(a)(i), (ii), and (iii) is 21 days from the date of the report: December 21, 2023.

ii. Date due for 2(a)(iv) and (v) is 90 days from the date of the report excluding winter break and other days when staff is not on duty: March 18, 2024

3. ISSUE THREE: A violation of at 34 C.F.R. 300.156(a), was not found, based on facts listed above. Corrective action is not required.

4. ISSUE FOUR: A violation of Federal and state statutes and regulations at CFR 300.324(b)(1)(ii)(c) and KSA 72-3429(f) was found based on the facts summarized above. Corrective action is required (as follows):

a. CORRECTIVE ACTION

i. USD #469 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations implementing the IDEA at CFR 300.324(b)(1)(ii)(c) and state regulations at KSA 72-3429(f) which require that the IEP team meet to respond to a parent's request for an IEP meeting to address a lack of progress, evaluation, the child's anticipated needs, information provided to or by the parents, or other matters.

ii. The district will review and revise their current policy on responding to parental requests for IEP meetings in a timely way to SETTS. The district will disseminate the policy to all administrative and special

education teaching staff responsible for receiving or scheduling IEP meetings. The district will provide the policy and documentation showing the dissemination of the policy to SETS within 21 days of the date of this report.

b. Date due for 4(a)(i) and (ii) is 21 days from the date of the report: December 21, 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).

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 #500
ON OCTOBER 11, 2023

DATE OF REPORT NOVEMBER 30, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ---------, by her mother, ---------. In the remainder of the report, --------- will be referred to as "the student." --------- will be referred to as "the complainant" or "the parent".

The complaint is against USD #500. In the remainder of the report, USD #500 will be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on October 11, 2023, and the 30-day timeline ended on November 10, 2023. An extension was granted until November 30, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Doug Tressler reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The following documentation and information were used in consideration of the issue(s):

1. The student's attendance records for 2022-2023 school year and 2023-2024 school year.
2. The student's discipline records for 2022-2023 school year and 2023-2024 school year.
3. Prior Written Notice, dated 9/27/2023, refusing to conduct an initial evaluation.
4. The timeline of the student's evaluation and request for evaluation history, starting 2019-2020 through 2023-2024 school years.
5. Comprehensive Evaluation Report, dated 12/13/2021.
6. Manifestation Determination Review completed 5/22/2023.
7. The student's current 504 Plan, dated 1/06/2023.
8. Letter to parent, dated 1/26/2023, stating that student refuses to use accommodations in the 504 Plan.
9. Interviews with district.
10. Interviews with the parent.
11. Discipline records provided by parent.

Background Information

The student is a second-grade student, in attendance at USD #500. The student has been determined eligible for Section 504/ADA through the Section 504 identification process. Additionally, the student has been diagnosed, through an outside agency, with Attention-Deficient Hyperactivity Disorder (ADHD), Intermittent Explosive Disorder (IED), and Autism Spectrum Disorder (ASD).

Issues Investigated

1. ISSUE ONE: The USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to evaluate the child upon request from the parent. [Pg. 2]
2. ISSUE TWO: The USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed follow the student's safety plan, resulting in the student being disciplined. [Pg. 8]

Issue One

The USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to evaluate the child upon request from the parent.

Applicable Law

Under K.A.R. 91-40-7(c)(3), an LEA may refer a child for an evaluation if the parent of the child requests, and gives written consent, for the evaluation, and the board agrees an evaluation of the child is appropriate. Under state and federal law, once the district receives a request for evaluation from the parent, the district must meet to review existing data, (including input from the parent, current classroom-based, local, or state assessments, classroom observations, and observations by teachers and related services) and determine if any additional data is required. (34 C.F.R. 300.305; K.S.A. 72- 3430(i)).

Additionally, under K.A.R. 91-40-7(a)(3), an LEA is obligated to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction, including any children "suspected of being children with disabilities even though they are advancing grade to grade."

If, following the review of all existing data, the district determines there is not enough evidence to support conducting an evaluation, the district may refuse to evaluate the student. In that case, the district must send a Prior Written Notice informing the parent that the child will not be evaluated and why that decision was made. (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.304(a)).

Findings of Fact

Parent's Position

The parent claims the student has been wrongfully denied an evaluation for an IEP, in part, due to the student's attendance record. However, the parent notes that many of the student's absences are a result of disciplinary actions taken by the school. The parent further contends the district is "punishing [the student] for her behaviors by placing her in isolation and not giving her the correct support". The parent feels the student "needs support and isn't getting it." Because of this, the parent has requested an IEP evaluation on five separate occasions. Twice the district has completed comprehensive evaluations, and following the last three requests the district has refused to evaluate.

District's Position

The district claims that they have properly reviewed all existing data and appropriately refused to conduct an evaluation. The district reports to have considered, "student attendance records, discipline records, data and progress monitoring from available strategies and interventions being implemented within the multi-tiered system of support (MTSS) process, and current Section 504 Plan." The district further states the student's 504 plan was changed during the 2022-2023 school year and therefore not enough time has lapsed to determine how the interventions put in place will affect the student's behavior.

Investigation

During the investigation, the district provided a timeline of the student's evaluation history and the history of the parent's requests for evaluation. The timeline is as follows:

2019-2020 School Year Early Childhood student
Parent Requested SPED Evaluation
11/18/2019- SPED Conducted Comprehensive Evaluation
Outcome: Student did not qualify for SPED
Results Noted: Medical Diagnosis of ADHD

2020-2021 School Year Early Childhood student- attended virtual school.

2021-2022 School Year Kindergarten student
Parent Requested SPED Evaluation
9/13/2021- SPED Conducted Comprehensive Evaluation
Outcome: Student did not qualify for SPED, recommended 504 Plan
Results Noted: Medical Diagnosis of ADHD

2022-2023 School Year First Grade student
Parent Requested SPED Evaluation
8/26/2022- SPED Issued parent PWN refusal to evaluate due to lack of data and did not have data to suspect a sped disability, it was also noted the student was chronically absent.
4/26/2023- SPED Issued parent PWN refusal to evaluate due to lack of data and did not have data to suspect a sped disability, it was also noted the student was chronically absent.
Outcome: Recommendation Revise 504 plan

2023-2024 School Year Second Grade student

Parent Requested SPED Evaluation
9/27/2023-SPED Issued parent PWN refusal to evaluate due to lack of data and did not have data to suspect a sped disability, it was also noted the student was chronically absent.
Outcome: Recommended 504 comprehensive evaluation and to revise the 504 to include a Behavior Intervention Plan with the support of the Behavior team
Results Noted: Medical Diagnosis of ADHD only.

The timeline shows the parent requested an evaluation on five occasions. The district completed a comprehensive evaluation following two of those requests, once on 11/18/2019 (Preschool year), and then again on 9/13/2021(kindergarten year). Both evaluations resulted in finding the student ineligible. However, following the 9/13/2021 evaluation, the district did recommend the student be placed on a Section 504 Plan.

The parent again requested an evaluation on 8/26/2022, 4/26/2023 (first grade year), and on 9/27/2023 (second grade year). Following each request, the district refused to evaluate because of "lack of data and did not have enough data to suspect a sped disability." It was also noted each time that the student was chronically absent.

Specifically, the PWN mailed to the parent on 9/27/2023, stipulates that the reason an evaluation will not be conducted is,

> *"The team reviewed the parent's request letter along with [the student's] attendance records, classroom performance, district and state assessment data, current Section 504 Plan, and staff observations. Additionally, both teacher and staff were interviewed to provide insight to [the student's] behavior in the school environment. Furthermore, upon review of school interventions, it was determined that there was a lack of structured, evidence-based interventions done with fidelity or over a long enough period with routine adjustments to render the intervention effective.*
>
> *The LEA refusal to conduct an initial evaluation at this time due to her chronic absenteeism and lack of evidence-based Tier I, Tier II and Tier III behavioral interventions and it is not most educationally appropriate to conduct an initial special education evaluation at this time."*

This latest refusal to evaluate has come two years after the last evaluation. During that timeframe, according to district records, the district has completed a 504 evaluation on 1/6/2022, met to review the 504 Plan on 1/26/2023, and following the filing of this complaint, reviewed the 504 Plan again in November 2023 to include a Behavior Intervention Plan.

A review of the student's attendance record reveals the student was absent a total of 31.5 days during the 2022-2023 school year and 6 days in the 2023-2024 school year (from the start of the year until the 9/27/2023 refusal to evaluate). Cross-referencing these dates with the student's discipline record shows that during the 2022-2023 school year, 7 of the 31.5 absences were due to out-of-school suspensions resulting from the student's behavior. Additionally, a Manifestation Determination Review was completed on 5/22/2023, in which the

district found the incident triggering the MDR was a manifestation of the student's disability (triggering event included aggression toward staff, "(punch, kick, slap, pinch)", resulting in a staff member's wrist being "significantly hurt.") Further, in that MDR, the district states the student had been hospitalized, because of her behaviors, 6 times during the school year. Therefore, of the 31.5 days missed: 7 were due to the student's behavior, her behaviors were determined to be a manifestation of her disability, and an undisclosed number of those days were undoubtedly due to her 6 hospitalizations.

Conducting the same cross-reference for the 2023-2024 school year's relevant timeframe, shows that of the 6 days the student was absent, one was for an out-of- school suspension resulting from the student's behaviors. Additionally, on 9/5/2023, an incident involving the student prompted the school to request the parent come to the school and the school social worker to recommend the student be taken to a crisis center. Following this incident, the student missed the next four days of school due to being in the hospital. Only one day of the six is possibly not linked to the student's behavior.

Additionally, the parent provided over two dozen documents, sent to her by the district, notifying her of seclusions, restraints, or both, which have occurred since the beginning of the 2023-2024 school year. From August 22, 2023, to August 31, 2023, alone the student was restrained or secluded eight times due to her aggressive behaviors.

Despite all this, the district argues that there has been a lack of data to determine whether to evaluate the student for an IEP. They also claim that chronic absenteeism has prevented the district from executing behavior interventions listed in the 504 Plan and Tier interventions with fidelity.

First, while it is important to note the student is chronically absent, it is equally important to consider the district's reaction to the student's behaviors and how that has affected the student's attendance. Next, the district acknowledges that the student's behaviors, such as anger, and aggressiveness are manifestations of the student's disability. Third, the district acknowledges, in discipline reports, that the student's behaviors do disrupt the learning of others (as evidenced by the discipline reports – example, 9/25/2023 incident in which the class had to be "evacuated" and the "room was destroyed" by the student). Finally, while the district does indicate that new interventions were included in the student's 504 Plan last year (1/26/2023), this alone does not lessen the fact that the district had approximately 5 months to utilize those new interventions. Even given the student's absences (which in this case seem to be mostly linked to the student's behaviors), the district had ample time to gather data on the student's progress in relation to the "new interventions". Also, the district has had two years to obtain data since the last comprehensive evaluation done on 9/13/2021. During that time, the student has been suspended 8 times, been placed in isolation, restrained, gone through an MDR, which found her behavior was linked to her disability, and been hospitalized at least 6 times.

Furthermore, as is often noted; all students are general education students first, and therefore, general education interventions (GEI) should be used, and often are used, prior to determining an initial evaluation is appropriate. However, even GEI has its limits. When a district is in a situation where a student is chronically absent, especially when many, if not most, of those absences are due to the student's behaviors, the district has an obligation to consider the absenteeism as a possible effect of the student's disability, and not use it as a factor to refuse to evaluate.

Finally, it is worth noting that a 504 evaluation or the existence of a 504 Plan does not negate a district's requirements under IDEA child find. Even if a student's 504 Plan is being reviewed, that does not remove the district's IDEA child find requirements.

Districts have an obligation to identify, locate and *evaluate* a student suspected of a disability. In this case the district clearly should have suspected the student was a student with a disability based on the number of suspensions, behaviors, restraints, hospitalizations, disruption to the student's learning and the learning of others (as evidenced by the discipline records), and the MDR which notes that the behavior of the student was linked to her disability.

Conclusion

Therefore, based on the information above, a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to evaluate the child upon request from the parent *is substantiated*.

Issue Two

The USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed follow the student's safety plan, resulting in the student being disciplined.

Applicable Law

Section 504 is a purely federal law, and as such KSDE does not have authority to interpret this purely federal law.

Parent's Position

In her complaint, the parent alleges that the school is not following the student's safety plan. The parent claims that the safety plan requires the district to call the student's caseworker at PACES or her SED supervisor before discipline action can be taken.

District's Position

The district claims that the safety plan is being followed.

Findings of Fact

In this instance, the student has a 504 Plan which includes a safety plan. Because KSDE does not have jurisdiction to interpret Section 504 law, a determination of compliance with the law will not be made.

Conclusion

Therefore, a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to follow the student's safety plan, resulting in the student being disciplined, *is not substantiated*.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to evaluate the child upon request from the parent, is substantiated.
    a. CORRECTIVE ACTION:
        i. Schedule an evaluation of the student as required under IDEA.
            1. Date due: December 31, 2023
        ii. Provide a letter to KDSE that an offer to evaluate was made to the parent and parent's response.
            1. Date due: December 31, 2023
        iii. Training to staff on child find.
            1. Date due: December 31, 2023
        iv. Provide a letter to KDSE confirming the training was completed.
            1. Date due: December 31, 2023
2. ISSUE TWO: A violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to follow the student's safety plan, resulting in the student being disciplined is not substantiated.
    i. CORRECTIVE ACTION:
    ii. No corrective action required.

Investigator

Complaint Investigator - Ashely Niedzwiecki

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).

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 #392
ON NOVEMBER 6, 2023

DATE OF REPORT DECEMBER 5, 2023

This report is in response to a complaint filed with our office by ---------- on behalf of his daughter, ----------. In his complaint, ---------- states that requests for additional information could be directed to him or to his wife, ----------. For the remainder of this report, ---------- will be referred to as "the student." ---------- will be referred to as "the parents." ---------- will be referred to as "the student's father" or "the parent," and ---------- will be referred to as "the student's mother." USD #392 contracts with the North Central Kansas Special Education Cooperative (NCKSEC) Interlocal #636 for the provision of special education and related services to students enrolled in the district. In the remainder of this report, "the district" will refer to both of these agencies.

Investigation of Complaint

On November 10, 2023, the investigator spoke by telephone with Cher Greving, the Director of Special Education for the NCKSEC. The investigator spoke by telephone with the student's mother on November 17, 2023.

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

- Evaluation Team Report with Prior Written Notice and Request for Consent dated November 9, 2021
- IEP for the student dated November 18, 2021
- Staffing Notes dated November 9, 2021
- IEP Amendment Between Annual IEP Meetings with Prior Written Notice and Request for Consent dated February 7, 2022
- Report of Complaint dated April 6, 2022
- Notice of Meeting dated October 13, 2022
- Staffing Notes dated October 25, 2022
- IEP (proposed) dated October 31, 2022
- Prior Written Notice and Request for Consent for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated October 31, 2022
- Staffing Notes dated October 31, 2022
- Notice of Status Change dated October 31, 2022

- Prior Written Notice and Request for Consent for Identification, Special Education and Related Services, Educational Placement, Changes in Services, Change in Placement, and Request for Consent emailed to the parents on November 22, 2022
- Report of Psychoeducational Evaluation dated November 29, 2022
- Prior Written Notice and Request for Consent for Identification, Special Education and Related Services, Educational Placement, Changes in Services, Change in Placement, and Request for Consent dated February 16, 2023
- Communication and Documentation record covering the period of November 10, 2022 to April 4, 2023
- Letter dated March 27, 2023 from the special education teacher to the parents
- Email dated April 3, 2023 from the student's mother to the special education teacher
- Notice of Meeting dated September 12, 2023
- Draft IEP dated September 28, 2023
- Staffing Notes dated September 28, 2023
- Prior Written Notice and Request for Consent for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated September 28, 2023
- Email dated October 9, 2023 from the director of special education to the student's mother
- Professional license for the student's current special education teacher
- Certificates of completion for dyslexia training for the student's current special education teacher

Background Information

This investigation involves a 12-year old girl who is in the 6th grade in her district's junior high school. The student has been enrolled in her current district since 1st grade, having previously been determined by another Kansas district to be eligible for special education services at the preschool level because of her speech/language needs. The student transitioned to Kindergarten one year behind her same-age peers. While in Kindergarten in her previous district, the student's primary exceptionality was changed to Developmental Delay. The student's primary exceptionality was changed to Learning Disability by the current district in 2019.

The student has been clinically diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) Inattentive Type. She was diagnosed with Dyslexia and a Written Language Disorder in 2019.

Diagnosis of Dyslexia is a clinical decision made by a doctor, clinical psychologist, neurologist, or other clinical professional. The identification of a child with a "Learning Disability" - the term used by the Individuals with Disabilities Education Act (IDEA) - is made by a school team

through a comprehensive evaluation. The term "Learning Disability" is used in the IDEA to describe children who have a disability in the areas of reading, writing, or math.

The IDA (International Dyslexia Association) defines "Dyslexia" as follows:

> *"Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge." (See https://dyslexiaida.org.)*

The National Institute of Neurological Disorders and Stroke, a division of the National Institute of Health, defines attention deficit hyperactivity disorder (ADHD) as

> *"...a neurobehavioral disorder marked by trouble controlling impulsive behavior, difficulty paying attention, or overactivity. It is one of the most common neurodevelopmental disorders of childhood...[ADHD] interferes with a person's ability to stay on task and maintain focus." (See ninds.nih.gov.)*

At the request of the parents, an updated cognitive assessment of the student was completed by the district in early 2022. According to that assessment, the student performed at the 2nd percentile with regard to general intellectual ability. Her score was negatively impacted by weaknesses in the areas of phonological processing, short-term memory, and perceptual speed - key areas in the development of reading skills.

The student received outside vision therapy at the expense of the parents while in first grade. The parents have also previously contracted for the student to receive supplemental instruction services from the Herndon Speech-Language-Hearing Clinic and Phillips Fundamental Learning Center. Beginning in the Spring of the 2022-23 school year, the parents contracted with a private tutor through Reading Redefined to provide services to the student. During the student's fifth grade year, the student left school on three days each week for off-site video conferences with the tutor. Currently, the student's mother reports that the student is being tutored four days a week.

Issue

In outlining facts in support of his complaint, the parent cited issues going back to 2018 when the first IEP for the student was written. However, special education statutes and regulations state that a formal complaint must allege that a district has - within not more than one year prior to the date the complaint is received and filed with the commissioner of education - violated a state or federal special education law or regulation. (See K.A.R. 91-40-51(b).)

The circumstances in this case did require the investigator to look outside of the specified 12-month window to understand how services were being provided to the student during the year prior to the date this complaint was received. However, this investigation did not attempt to determine whether any violations of special education laws or regulations occurred outside of the one year timeframe.

In his complaint, the parent identified the following issue:

> The student is a 12-year-old 6th grader who is reading at a 1st grade level. She has made no progress improving her reading skills in the 5 years at her elementary school.

Parents' Position

The parent states that he and the student's mother have taken the student to experts across the state on their own time and largely at their own expense and have presented the district with reports stating what programs the student needs and what training is needed by her teachers.

The parent contends that the district has refused to provide the needed programs and to pay all the associated fees. The parent states that the student needs intensive intervention from a trained dyslexia therapist five days a week. He contends that the district should either employ the student's current tutor to provide the student's special education services during the school day - replacing the services currently being provided by the district - or should cover the parents' costs for paying for those services.

District's Position

It is the position of the district that special education services have been provided to the student under IEPs that have been developed with the participation of the parents and implemented with their consent. The district asserts that the student is making progress on her IEP goals with services being provided by qualified staff currently employed by the district.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. Federal regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special education and related services provided in conformity with an Individualized Education Program (IEP).

At 34 C.F.R. 300.320, federal regulations define an IEP as

> *"a written statement for each child with a disability that is developed, reviewed, and revised at a meeting...that must include...a statement of measurable annual goals...designed to meet the child's needs that result from the child's disability...and a statement of the special*

> *education and related services and supplementary aids and services] to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other needs that result from the child's disability."*

The IEP must be reasonably calculated to enable the child to make "progress appropriate in light of the child's circumstances" (*Endrew F. v. Douglas County School District (137 S. Ct. at 999*). The IEP should aim to enable the student to make progress toward the student's annual IEP goals and in the general education curriculum, but there is no guarantee of progress.

A student's IEP is to be reviewed at least once every 12 months, to determine whether the annual goals for the child 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 and in the general education curriculum, where appropriate. If the student is not making progress or the progress is not sufficient to meet the annual IEP goals and make appropriate progress in the general education curriculum, the IEP team should meet to discuss the lack of progress and consider meeting more frequently than once a year.

While parental involvement is essential to the decision-making process regarding their child's special education services, the choice of special education service providers for a child is left to the district. Each school district must ensure that all personnel necessary to carry out the requirements of IDEA are appropriately and adequately prepared and trained. All special education personnel, as appropriate, shall have the content knowledge and skills to serve children with exceptionalities. This includes special education teachers, related services personnel and paraeducators. School districts must take steps to actively recruit, hire, train, and retain qualified personnel to provide special education and related services to children with disabilities (34 C.F.R. 300.156; 34 C.F.R. 300.207).

Investigative Findings

An annual review of the student's IEP was conducted on November 18, 2021. According to the "Parent Input/Concerns" section of that IEP, the parents were concerned about the student's progress, expressing their belief that special education was not providing enough resources for the student. The student's father told the IEP team that he did not want the student taught life skills but instead wanted the student to attend the Davis Program in another town - an evening and weekend private tutoring service provided by a Title I teacher in another district.

The district proposed that, for the rest of her fourth grade year, the student come to the resource room for 100 minutes a day, five days a week to receive instruction using an alternate curriculum for reading and language arts. Alternate instruction in math for 45 minutes, 5 days a week was also proposed. Additionally, the district proposed that the student receive special education pull out services for study skills for 30 minutes, five day a week. Special education support would be provided in the general education setting for 50 minutes twice a week and 20 minutes twice a week in the areas of science and social studies.

The district proposed a reduction in reading and language arts from 100 to 75 minutes, five times a week for the student's fifth grade year. Math instruction would, however, increase from 45 minutes to 60 minutes, five days a week. The student would continue to receive 30 minutes of support for study skills, five days a week. Her in-class support would change to 30 minutes, four times a week for science and social studies. The student would, throughout the period of her IEP, receive twice weekly speech/language services.

The November 18, 2021 IEP specified twelve accommodations addressing seating, use of an alternate math curriculum and a calculator, use of an alternate reading/language arts curriculum, highlighting key words and answers in text, permission to give verbal answers, reductions and modifications to assignments and her spelling list, having a scribe, having tests read to her in a separate location, and limiting assignment responses to a few multiple choice options. The IEP contained a reading goal related to sight words and another for reading words with vowel digraphs.

The student's November 18, 2021 IEP contained one goal to address the development of reading skills and one for the development of phonological awareness. Her reading goal was:

> *"By the end of the IEP year, when given 20 sight words from a Primer list of words, [the student] will read the words with 75% accuracy 4 out of 5 opportunities."*

The student had been working on the Primer sight word list under her previous IEP, but she did not retain those words over the summer. When she was first tested in August of 2021, she was only able to read half the words correctly. By November 2021, she was showing mastery at the 80% level.

The student's phonological awareness goal was:

> *"By the end of the IEP, during structured and unstructured activities, [the student] will improve phonological awareness skills through various phonemic awareness tasks (phoneme deletion, addition, substitution, segmentation, isolation, and rhyme recognition) with at least 80% accuracy and minimal cuing."*

The IEP team met on March 31, 2022 to discuss the student's progress and review the results of the cognitive assessment. The team compared the reading program currently being used with the student (Sonday) with the program recommended by an outside source (Alphabet Phonics) - both of which were approved by Orton Gillingham.

The team also discussed extended school year (ESY) services for the student. The district proposed that the student receive 2 hours, three days a week of services for 10 weeks - 60 minutes for reading and 60 minutes for math. The parents reported that the student had stated she did not "want more help" and the family was very busy. No decision on summer services was made at that time, but the parents later decided to send the student to the ESY program.

The student's IEP team met on August 11, 2022, before the start of the 2022-23 school year to review the student's performance in ESY and to address other topics for the upcoming school year. The team decided to add the services of a behavior consultant to the student's IEP to provide support for staff. Reading support was decreased to 45 minutes, five days a week. The 30 minutes of study skills support was also removed from the student's IEP. According to the IEP amendment and prior written notice form, the team felt that this reduction in services would "encourage [the student] to be more independent and be more involved with others."

Because the student had already met both of the reading goals in her November 2021 IEP, a new goal was developed to focus on reading fluency. The new goal was:

> *"[The student] will increase her reading readiness skills in the area of word fluency, within 30 seconds to 55% as measured by work samples."*

The parents provided their written consent on August 22/23, 2022 for all of the changes proposed by the district.

As was established in the April 6, 2022 investigation report of a previous formal complaint against the district by the parents of this student, the special education teacher supervising the student's reading instruction meets state-established requirements to be considered "appropriately and adequately prepared and trained to teach students with specific learning disabilities, including those students with dyslexia."

On October 31, 2022, the student's IEP team conducted an annual review of her IEP. An advocate for the parents was in attendance via Zoom and spoke on behalf of the parents who were also present. According to notes taken during that meeting, the advocate expressed the parents' concern that the student had made little progress in the area of reading since being diagnosed (with Dyslexia) in 2019, noting that the student was still not reading above a first grade level. The advocate asserted that the district had no "targeted intervention" in place for the student and expressed concern that the district was not "taking appropriate actions toward addressing [the student's] low [cognitive and academic achievement] scores" as reported in the report of an outside evaluation obtained by the parents in the Spring of 2022.

The advocate stated that she "would like the school to quit working on fluency" and to instead focus on accuracy with regard to the student's reading. The advocate questioned the reading program being used by the district, saying she would "like to do additional research on the program," and stated that she wanted the district to stop using "the Bob Books" with the student, preferring something she felt was more appropriate for a fifth grade student.

The advocate said that she was concerned that IEP goals "had not been updated in five years...stated that it is also a concern that schools quit teaching reading after 5th grade." She questioned the student's pull-out time in the resource room, asking why that time had been reduced through an IEP Amendment in August 2022. The parents stated that they agreed that the student "would be encouraged and motived to receive less time in the resource room and

more time with her peers." The advocate suggested that the student be pulled from an elective class for her reading instruction. Pulling the student from her band elective was discussed.

The district proposed that, for the remainder of the 2022-23 school year, the student come to the Resource room for alternate instruction in math for 50 minutes, four days a week, and that she come to the Resource room five days a week for 45 minutes for alternate instruction in reading. In addition, the district proposed that the student receive 30 minutes of support in the general education classroom during science and social studies instruction four days a week as well as an additional 90 minutes once a week.

For the 2023-24 school year, the district proposed that the student receive special education support for 50 minutes five times a week in a special education setting for alternative math instruction and 100 minutes five times a week for alternative instruction in reading and English. An additional 50 minutes five times per week of Study Skills instruction was also proposed. She would be provided with 100 minutes of support in the general education setting five times per week in her Science and Social Studies classes. The student would also continue to receive 20 minutes of speech/language support twice a week in a special education setting. A Behavior Consultant would offer support to staff for 10 minutes weekly to discuss strategies to help the student with peers in the school setting. An Occupational Therapist would consult with staff monthly for 10 minutes regarding expectations for the student's writing and would provide assistive technology support.

In addition to these special education and related services, the district proposed alternate curriculums for both math and reading, that the student be allowed to use text to speech programs, and that she have a scribe to assist her when forming sentences or copying from the board. The student's spelling list would be modified and shortened, she would be allowed to use a calculator, she would be provided reduced multiple choice options on daily assignments, key words in text would be highlighted, and she could provide verbal rather than written responses. The student would have access to a laptop and voice to text and text to speech extensions.

The proposed IEP contained the following reading goal:

> *"[The student] will increase her reading readiness skills in the areas of word reading fluency, within 30 second to 60% as measured by work samples."*

The proposed IEP contained the following annual goal related to phonemic awareness:

> *"By the next annual IEP, using visual supports and manipulatives, [the student] will demonstrate an average of 80% accuracy on the following phonemic awareness tasks: phoneme deletion, phoneme addition, segmenting 4 phoneme words, phoneme isolation."*

The district provided the parents with prior written notice of its proposal following the October 31, 2022 team meeting. The form noted that consideration had been given to providing more

special education services, but that option was rejected "due to needing to include [the student] in her general education classroom as much as possible." The team also considered "shifting skills addressed in speech-language services to special education support during her reading curriculum," but the team rejected that option because "specifically targeting phonemic awareness skills with the SLP [speech/language pathologist] will support what [the student was] doing in the Sonday curriculum [an Orton-Gillingham program designed specifically for students with Dyslexia]."

The parents declined to give consent for the district's proposed changes to the IEP, so the district continued to provide special education and related services to the student as they were described in the student's November 2021 IEP. While, after providing notice to the parent of proposed changes to IEP goals, the district did begin working with the student on those new IEP goals for reading and phonemic awareness, proposed changes in special education services and related services were not implemented. Because the student's November 2021 reading goals had been amended in August 2022, the district continued to implement that amended goal.

Following the annual IEP team meeting on October 31, 2022, the parents and their advocate met with the director of special education and the district superintendent. Through their advocate, the parents told the district that they did not believe the special education teacher had the skill set needed to deliver the reading intervention the student needed and requested that, in a timely manner, the district appoint another teacher to deliver the student's reading instruction.

On November 10, 2022, the special education teacher sent a text to the student's mother writing:

> *"We are checking in with you guys to see if you guys are ready to sign the consent form from the IEP meeting, or if there are possibly proposed changes you guys are thinking of to the IEP?"*

The student's mother responded:

> *"I think there are some changes. Let me talk to [the student's father] tonight and I'll let you know."*

The student's mother sent a text to the special education teacher on November 11, 2022 requesting another copy of the proposed IEP. The special education teacher emailed that copy to the parent on that same date.

The special education teacher sent a follow up text to the student's mother on November 14, 2022 asking for updates. The student's mother texted:

> *"Not yet. I sent it to [the parent advocate] to review."*

The parents requested that the district pay for an independent educational evaluation (IEE) of the student. That evaluation was conducted on November 29, 2022.

A second meeting was held on November 21, 2022 to follow up on the parents' requests of October 31, 2022. Present at this meeting were the director, the superintendent, the student's mother, and the parent advocate. At this meeting, the student's mother - through her advocate - requested that the district pay for a private tutor to work with the student during the school day and pay for these private tutoring services.

The district recognized that the working relationship between the student and the special education teacher was not a positive one and agreed to begin having the district's Title I teacher deliver services to the student under the supervision of the special education teacher.

The parents were provided with prior written notice on November 22, 2022 via email from the director denying the parents' request for a private tutor to be employed by the district but agreeing to appoint another teacher to provide the student's reading instruction. According to the prior written notice form, the district refused to employ the requested tutor for the following reasons:

> *"...the student is currently being offered services within the IEP that allow for appropriate instruction, ambitious goals that allow the student to make adequate progress. The reading program offered for this student is the Sonday System 1 that is endorsed by Orton Gillingham. This instruction is delivered in a separate one-on-one setting with a certified special education teacher who is now (since the IEP in October) co-teaching with the Title I reading teacher in the building. The special education teacher has completed a formal Sonday System training hosted by Sonday representatives along with an informal Sonday training hosted by a special education director. Both the Title I reading teacher and the special education teacher have completed dyslexia trainings in August 2021 and August 2022. The Title I reading teacher is scheduled to complete the formal [6 hour] Sonday training on December 21, 2022."*

The prior written notice form notes that the parents considered but rejected the option of having the special education teacher and Title I teacher co-teach the student's reading. The Title I teacher, who held a Bachelor of Arts degree in psychology and a Master of Arts degree in clinical psychology, completed training specifically related to the student's reading program in December 2022. The Title I teacher began working with the student in November 2022 and continued through May 2023.

Progress on the student's phonemic awareness goal was monitored on December 9, 2022. At that time, she was making adequate progress, performing above 80% with regard to phonemic segmentation and phoneme deletion, at 79% in final phoneme isolation, and at the 70-75% level on phoneme deletion. The speech/language therapist noted that the skill was initially very difficult for the student but she had persevered and "demonstrated good progress."

Progress on the student's amended August 2022 reading goal was monitored on December 15, 2022. At that time, she was making progress toward attaining her goal and was showing gains on testing.

The IEP team met on February 16, 2023 to review the results of the IEE. The parents were provided with prior written notice regarding the review and the comparison of the results of the IEE with the district's November 9, 2021 evaluation.

The prior written notice (PWN) stated that the student had "made progress from 4th grade year (district evaluation) to her 5th grade year (IEE)" in all academic areas assessed using the Woodcock-Johnson IV Tests of Achievement. She was being provided with accommodations and modifications to address problems with sustained attention, working memory, and task initiation that had been identified in the IEE. The PWN also noted that the district has provided accommodations related to an area of weakness identified in the IEE report: becoming frustrated or easily distracted when working on assignments. The district stated that the student was provided with "brain breaks" such as going for a walk, getting a drink, or coloring. Brain breaks are allowed for all students in the district and were therefore not called out specifically in the student's IEP.

All other accommodations recommended by the outside evaluator were already a part of the student's IEP with the exception of "extended time to complete homework and tests." According to the PWN, the district did not feel this accommodation was needed because the student's assignments were being reduced, and she rarely had homework. Additionally, the student was being provided with opportunities to work on her daily assignments both in the classroom and in the resource room. She was given reduced assignments and a shortened spelling lists as part of her accommodations.

Both the district and the outside evaluator identified significant problems in the area of reading for the student. The February 16, 2023 prior written notice stated that the student had - since January of her 4th grade year - been provided with reading instruction using the Orton-Gillingham approved Sonday curriculum during 45-minute daily individualized instruction in reading.

According to the PWN, other ideas were mentioned while the team was meeting:

- Reduce workload with reading and writing assignments: This was already happening as part of the accommodations and modifications offered to the student as written in her most recent IEP.
- Encourage questioning and self-questioning when reading: On going questioning and conversations were taking place while the student was working through the Sonday curriculum as her specially designed instruction in reading. The student's classroom teachers were also using these techniques and strategies with the general education class as a whole when delivering instruction.

- Avoid copying from textbooks and white boards by providing the student with partially completed outlines or photocopying notes: As noted in her IEP, the student was being offered a scribe to dictate information when forming sentences, phrases, copying from the board and when asked to come up with her own ideas.
- Blocking pages with a piece of paper to help reduce visual overstimulation and help her keep her place while completing her work: The district noted that this is a strategy that had been used for this student and her classmates when needed.
- Allowing the option of oral expression rather than written expression: This accommodation was already included in the student's IEP.
- Use of computer to complete work: The student had been issued a Chromebook and had access to Google Classroom and to the text to speech function as an assistive tech accommodation.

According to the February 16, 2023 PWN, the district concluded that the IEP "in place for [the student was] appropriate." The parents subsequently requested mediation, but the mediation ended in an impasse.

The student's progress on her phonemic awareness goal was monitored on March 3, 2023. Again, she was recorded to have made adequate progress. Though her performance was somewhat lower on phoneme isolation, her segmentation skills were at the 100% level. She was working on phoneme addition, and focus was being placed on /s/ and /sp/ words.

The student was also making adequate progress on her reading goal when that goal was monitored on March 6, 2023.

On March 7, 2023, the special education teacher sent a letter to the parents writing that the November 2021 IEP (under which the district was continuing to provide services) had stated that extended school year services (ESY) were appropriate for the student. The teacher stated that ESY had not been discussed during the October 31, 2022 IEP team meeting, but the district remained "ready and willing to provide extended school year services." The November 2021 IEP called for ESY services to be provided for 60 minutes per days, three days per week, for 10 weeks. The teacher asked the parents to contact her or the superintendent/building principal if they wanted to discuss ESY services for the student.

On March 27, 2023, the student's mother sent a text to the student's general education teacher notifying her that the student would be picked up "around 9:15 to start with her tutor and then she'll be back."

On March 29, 2023, the student's mother sent another text to the student's general education teacher stating:

> *"[The student] has tutoring again today. Same time. She'll do this Monday Wednesday and Friday (sic) going forward..."*

For the remainder of the 2022-23 school year, the student continued to leave school three mornings a week to be driven to her grandparent's home for a one hour videoconference with the private tutor.

The student's mother responded to the special education teacher via email on April 3, 2023 writing:

> *"We will not be needing [ESY]. [The student] is set up to work with a tutor over the summer and we are going to do that instead."*

IEP goal progress was monitored again in May 2023. The student was not making adequate progress on either her reading or phonemic awareness goal. At that time, it was noted that she was able to "master her words with 100% accuracy when given more time." By report of the parent, the student did not "like" the teacher who was delivering her reading instruction and was resistant to working with her. In a similar vein, the progress report shows that the student "generally gets pretty upset about coming out of the classroom to attend speech sessions."

An IEP team meeting was held via Zoom on September 28, 2023. Participants included the parents, an LEA (local education agency) representative, a general education teacher, a special education teacher (who holds current licensure as a teacher of students with Learning Disabilities and has completed additional state training in Dyslexia), an OT, a speech/language pathologist, a school psychologist, a behavior consultant, and the student's tutor. The district proposed to provide the following services:

- 106 minutes of special education services for math, reading (30 minutes), and English once a week in a special education setting;
- 130 minutes of special education services in a special education setting for math reading (30 minutes), and English once a week in a special education setting;
- 91 minutes of special education services for math, reading (30 minutes), and English three times a week in a special education setting;
- 120 minutes of special education services for reading (20 minutes), science, and social studies five days a week in the general education setting;
- 15 minutes of speech/language therapy services three times per week in a special education setting which may be provided via virtual therapy classroom;
- 10 minutes every other week of staff consultation with a behavior consultant; and
- 15 minutes of speech/language services three times per week.

The district proposed that alternate reading curriculum be used with the student for reading called I.S.P.I.R.E. which is a multisensory reading program that integrates phonological awareness, phonics, spelling, fluency, vocabulary, comprehension, and handwriting. The program is based on the Orton-Gillingham approach to reading.

The student would also be provided with an alternate curriculum for math instruction. She would continue to have a scribe to dictate information when forming sentences, phrases, copying from the board and when asked to come up with her own ideas. The student would also continue to have access to a laptop and voice to text and text to speech extensions.

The IEP team developed the following goal in the area of reading:

> *"By the end of this IEP year, [the student] will maintain or improve her overall reading percentage of the 1st percentile based on national norms for her peers."*

According to the IEP, the student scored at the 1st percentile for broad reading skills and the 4th percentile for AUTOreading (decoding, word identification, spelling, and vocabulary) according to the 2023 Fall FastBridge assessment. The student scored at the 1st percentile in the area of reading fluency as assessed by CBM Reading measures.

The parents were provided with prior written notice of the district's proposed action at the September 28, 2023 IEP team meeting, but they did not provide written consent for the implementation of those services at that time.

At the September 28, 2023 IEP team meeting, the parents requested that the director speak with the private tutor that the parents had been employing to work with the student. To that end, a Zoom conference was held on October 4, 2023. Both the director and the assistant director participated in the conference along with the parents and the tutor. According to the director, the purpose of the conference was for the tutor to discuss her concerns with the student's IEP, data collected, and IEP goals developed over the years. The tutor requested that she be allowed to provide services to the student via Zoom and that her services replace the services being provided by the building resource teacher. The tutor asked that the district pay for her services to the student, stating that she currently had a similar arrangement with another school district to provide services to a special education student. The director told the team that she would consult with the superintendent of the district and follow up on the request via email.

On October 9, 2023, the director of the special education cooperative sent an email to the student's mother, the assistant director of special education, the district superintendent, the tutor and the junior/senior high school principal, following up on the tutor's request. The director stated that the cooperative/ interlocal would not pay for the tutor to provide services to the student because it was not permissible for her to do so.

In her email, the director stated that the decision as to whether to employ the tutor to provide three days of staff training for district staff would be made by the district superintendent who would follow up with the tutor on the subject. The director also stated that it would be the decision of the superintendent as to whether he wished to utilize the tutor for the provision of general education interventions as a part of the tiered MTSS building-level support.

In her email, the director stated that she had been notified by the junior high school principal that arrangements had been made for a room to be available where the student could teleconference with the tutor during the school day for her private tutoring session.

The October 9, 2023 email also stated that the district could not implement the services outlined in the prior written notice document the parents had been given following the September 28, 2023 IEP team meeting until the parents provided their written consent for those services. The student's father provided his written consent for the district's proposal on October 10, 2023.

Summary and Conclusions

In this complaint, the parent alleges a violation of FAPE, citing issues going back as far as 2018. A formal complaint must allege the occurrence of a violation of state and/or special education statutes or regulations within the 12-month period prior to the date the complaint is received - in this case, between November 6, 2022 and November 6, 2023, so this investigation focused primarily on that time period. Context is, however, important in determining whether such a violation can be substantiated.

The student began receiving special education services at the preschool level because of her speech/language needs. She entered Kindergarten one year later than her age peers and received special education support under an IEP. She was determined eligible for special education services under the exceptionality category of Learning Disabilities in first grade. The student has continued to receive special education support to address her learning needs throughout the ensuing years. Additionally, the student has received parent-supported vision therapy during first grade and extended outside support to address speech/language and phonological needs.

The student has been clinically diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) Inattentive Type. She was diagnosed with Dyslexia and a Written Language Disorder in 2019. While these neurological disorders were less visible in this student than disabilities such as blindness or paralysis might be in another child, they proved to be no less impactful on the student's learning - particularly in areas related to language and reading. According to a cognitive assessment completed in early 2022, the student performed at the 2nd percentile with regard to general intellectual ability. Her score was negatively impacted by weaknesses in the areas of phonological processing, short-term memory, and perceptual speed - key areas in the development of reading skills.

A student's IEP must be reasonably calculated to enable the child to make progress appropriate *in light of the child's circumstances* and should aim to enable the student to make progress toward the student's annual IEP goals and in the general education curriculum. However, special education laws do not consider a child's IEP to be a guarantee of progress.

During the 12-month period covered by this complaint, the district has implemented IEPs that were developed with the participation and consent of the parents. When, in October 2022 following an annual IEP review, the parents did not agree to proposed changes to the student's IEP, the district properly continued to provide the student with special education and related services as well as the supplementary aids and services outlined in her November 2021 IEP. Only after receiving parental consent for changes proposed during a September 28, 2023 IEP team meeting were those changes implemented.

As noted in the February 16, 2023 prior written notice, the student had made progress from 4th grade year district evaluation to her 5th grade year (IEE) in all academic areas assessed using the Woodcock-Johnson IV Tests of Achievement. The student's progress toward attaining annual goals in the areas of reading and phonemic awareness has been regularly monitored and reported. While monitoring reports show that the student was struggling to make progress on her goals during the last quarter of the 2022-23 school year, she had also recently begun leaving school three days a week to participate in off-site video conferences with a private tutor and had begun to demonstrate a reluctance to leave her classroom for additional work with her special education service providers.

The parent asserts that a goal written to "maintain" a level of performance assumes that a student will make no progress with regard to her reading skills. However, the student's skills will have to grow if she is to maintain this ranking as her peers continue to expand their reading skills. That said, if the parent objects to this goal, he should call for an IEP team meeting to discuss the development of a new goal.

While the district has not conceded to every request made by the parent or incorporated every recommendation presented by an outside expert, evidence developed in the course of this investigation clearly shows that the district has made a good faith effort to provide FAPE to this student and to address parental concerns.

While parents are free to seek outside services to support their child's education, it is the responsibility of the district to decide whom they wish to hire to provide special education services to the students they serve in the school setting. While the parent may want the district to employ the student's tutor to provide the student's reading instruction, the district is under no legal obligation to do so. The district's decision not to employ the student's tutor is not a violation of FAPE.

This investigation did not uncover any evidence to show that the student was denied FAPE because of a refusal of the district to consider recommendations of outside experts. While districts are required to consider recommendations from outside agencies that are provided by the parents, special education statutes and regulations do not require the wholesale adoption of such recommendations. As was clearly stated in the prior written notice provided to the parents by the district on February 16, 2023, the student was already being provided with accommodations and modifications designed to mitigate areas of weakness identified by

an IEE. Some of the recommended accommodations were universally available to all students in the classroom and therefore not called out in the student's IEP. Other recommendations - such as those related to homework - were not incorporated into the student's IEP because they were not applicable in the case of this student. At the IEP team meeting of February 16, 2023, the team actively discussed additional accommodations and how those accommodations were currently being provided to the student.

Recognizing the wide diversity of students receiving special education services, neither state nor federal statutes and regulations require that a student reach any specific performance level in order for a student to have been considered to have received a FAPE. For a child to be considered to have received a FAPE, a district must develop, review, and implement an IEP designed to meet the child's needs that result from his or her disability. The district must provide the special education and related services and the supplementary aids and services needed to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other needs that result from the child's disability. Ample evidence has been presented through the course of this investigation to show that - in light of the special circumstances associated with this student - the district has met its responsibility with regard to the provision of a FAPE. 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 the issues presented in this complaint. Therefore, no corrective actions are ordered.

Investigator

Diana Durkin
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).

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 #402
ON OCTOBER 2, 2023

DATE OF REPORT NOVEMBER 1, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of -------- and -------- by their father, --------. In the remainder of the report, -------- will be referred to as "Student A" and -------- will be referred to as "Student B." -------- be referred to as "the complainants" or "the parents." -------- will be referred to as "the father" and -------- will be referred to as "the mother."

The complaint is against USD #402, Augusta Public Schools. In the remainder of the report, USD #402 will be referred to as "the district". Butler County Interlocal #638 is the Special Education Cooperative providing special education services to USD #402 and in the remainder of the report will be referred to as the "coop".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date on which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaints on October 2, 2023, and the 30-day timeline ends on November 1, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham interviewed the mother and Coop Director. She additionally reviewed all evidence and documentation provided by both the district and the complainant. The following documentation and information were used in consideration of the issue(s):

1. Student A Individualized Education Program dated December 2, 2022
2. Student B Individualized Education Program dated December 2, 2022
3. District 2023-2024 Calendar, board approved March 13, 2023
4. Emails between Father and Assistant Coop Director dated October 4, 2023 at 9:23 PM and October 6, 2023 at 5:44 PM.
5. District Resolution Proposal dated October 9, 2023
6. District Response to Formal Complaint received October 16, 2023
7. Emails between the Complaint Investigator and Coop Director dated between October 15, 2023 at 1:50 PM and October 25, 2023 at 8:03 AM.
8. Student A Attendance Overview 23-24 Semester 1

9. Student B Attendance Overview 23-24 Semester 1

Background Information

Kansas has statutes and regulations regarding IEPs, which also include children identified as gifted. Student A is currently a 10th grader and attends the High School in the district. He qualifies for special education services under the exceptionality category of gifted. Student B is currently an 8th grader and attends a middle school in the district. He qualifies for special education services under the exceptionality category of gifted. Both Students have received services through the coop for 30 minutes five days every week.

Issues Investigated

1. ISSUE ONE: USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow each of the two student's IEP, specifically, provision of service minutes during the 2023-2024 school year.
2. ISSUE TWO: USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to appropriately respond to a parent request for an IEP meeting for each of the two students during the 2023-2024 school year.

Issue One

USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow each of the two student's IEP, specifically, provision of service minutes during the 2023-2024 school year.

Applicable Law

Federal regulations 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. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

The Parent alleges that while both Student A and Student B are each supposed to be provided 30 minutes of services every day, they are each receiving 30 minutes of services once a week this school year.

The District acknowledges that the Gifted Facilitator resigned from the position and despite many efforts to hire for the position the Coop has not been able to hire a qualified

replacement. The District further states that they are working with the Coop and scheduled for each Student to have IEP management and at least one day per week of gifted services with the Gifted Facilitator. They acknowledge this is a reduction from 30 minutes, five days every week. To make up for the diminished minutes the Student A is provided the opportunity to use ACE time to collaborate with other gifted students on Monday, Tuesday, and Fridays. ACE is a high school option for students to examine college and career readiness activities. Student B has the opportunity to read or do enrichment activities in lieu of the daily "tier intervention class time.

Student A's IEP dated December 2, 2022 documents the Student is to receive 30 minutes of Gifted Instruction services 5 days every week during study skills in the special education room.

Student B's IEP dated December 2, 2022 documents the Student is to receive 30 minutes of Gifted Instruction services 5 days every week during study skills in the special education room.

In the District's response letter dated October 9, 2023 the Coop's Gifted Facilitator mailed a letter of introduction to the parents and a request for parents to sign a Prior Written Notice agreeing to the reduced time and on August 24, 2023 mailed a letter to parents with additional forms regarding the reduction in services.

The District and Parents agree they did not consent to the change in time of services for Student A or Student B.

According to notes from the October 9, 2023 resolution meeting between the Parents and Coop Director the concerns are not about academic progress, but about the social emotional impact of not having gifted services five days every week. They stated they were concerned their children are bored, might develop a dislike for school and might not have as much access to like-minded peers.

The 2023-2024 District School Calendar shows that Student A's first day of school would be August 17 and Student B's first day of school would be August 18.

The 2023-2024 District School Calendar shows no school was held on September 4 and 18.

The District and Parent agree Student A and Student B are each receiving 30 minutes of Gifted Instruction services 1 day every week and are offered time in ACE (Student A) and tier intervention (Student B) to work on gifted activities.

Conclusion

While the District has made efforts and met with the parents in response to the absence of a District gifted facilitator the district has not provided the service minutes written in Student A or Student B's IEP. The District reports they continue to explore options for meeting the service minutes and have a potential interviewee upcoming. The district and parents may consider reevaluating each student to determine the appropriate level of services needed, considering the social/emotional impact and need for enrichment activities. Based on the foregoing, ***it is***

substantiated that USD #402 failed to follow each of the two student's IEP, specifically, provision of service minutes during the 2023-2024 school year.

Issue Two

USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to appropriately respond to a parent request for an IEP meeting for each of the two students during the 2023-2024 school year.

Applicable Law

According to federal regulations at 34 CFR §300.322and State Statutes at K.S.A. §72-3429(f), Request by Parent or School Staff for IEP Meeting; although the school is responsible for determining when it is necessary to conduct an IEP meeting, the parents of a child with an exceptionality have the right to request an IEP meeting at any time. The child's teacher or other school staff may also propose an IEP meeting at any time they feel the IEP has become inappropriate for the child and revision should be considered.

According to federal regulations at 34 CFR §300.322(a)(1) and (2) and state regulations at K.A.R. §91-40-17(a)(1) and (2) each agency shall take steps to ensure that one or both of the parents of an exceptional child are present at each IEP meeting or are afforded the opportunity to participate to include the following: (1) Scheduling each meeting at a mutually agreed-upon time and place and informing the parents at least 10 days in advance of the meeting.

Analysis: Findings of Fact

The parent alleges that the school has not initiated any conversation on the lack of services provided. In the complaint it is written, "I have emailed them and have been given excuses. When I did not consent to the lack of services provided, the school principal ends the conversation. We formally requested an IEP meeting in writing about 10 days ago from the date of the complaint on October 3, 2023 and have yet to hear back from the school."

The district responded that the team was not aware that the parent had requested a meeting and were not able to locate a parent request for a meeting. Upon learning of the meeting request via the Child Complaint they contacted the father to schedule a meeting and did in fact hold a meeting. They reported they later located the meeting request dated September 20, 2023 in the mailed IEP Amendment. They assured the parent that they would have scheduled a meeting if they had known of the request. They stated that they have since spoken with the IEP manager to ensure that this confusion could not happen again.

According to the District Response and interview with the Coop Director on August 15, 2023 the Gifted Facilitator mailed a letter to the parents with a Prior Written Notice to reduce

services for Students A and B. On August 18, 2023, the High School Principal responded to an email from the father and offered a meeting but did not receive a reply.

On August 24, 2023, the Gifted Facilitator mailed a letter to all parents with forms regarding the reduction in services for Students A and B as no response to the August 15, 2023 PWN was received from the family.

On about August 26, 2023 the district received the August 11, 2023 PWN from the parents marking they did not consent to the change in the reduction in service for either Students A or B.

The District reported on September 12, 2023, an IEP amendment was sent to parents for each student since only the PWN was previously returned. The returned IEP amendment showed the parents signed the amendment on September 20, 2023, checking the box indicating "I/we do wish to convene an IEP meeting".

According to the October 9, 2023 District response, On October 3, 2023 at approximately 3:00 p.m., the Coop Assistant Director called the parent to schedule a meeting in response to the formal complaint. By report, the parent did not answer, and a voicemail was left. By report, on October 4, 2023 at approximately 11:30 a.m., Coop Assistant Director and the Coop Director called again tried to call to schedule a meeting with the parent, again leaving a voicemail.

The Coop Director then sent the father an email on October 4, 2023 at 11:59 a.m. stating "We would like to meet with you as soon as possible to discuss your concerns. Can you please give us some times/days you are available? If you prefer to visit by phone, you are welcome to call my office at 316-775-6904." On October 4, 2023 at t 9:23 pm , the Father emailed Coop Assistant Director stating "I am sorry, I have not called you back. I work 3rd shift and sleep during regular business hours. It is best to reach me via email."

Between October 5 - 6, 2023 the Parent and Assistant Coop Director finalized a meeting time for October 9, 2023 at 8:30 am.

On October 9, 2023 at 8:30 a.m. an IEP meeting was held between the Parents and District IEP team members to discuss Student A and Student B's missed services and services moving forward, but no changes were determined. The Coop Director stated that the IEP team members were present at the meeting and minutes were recorded. No changes to the IEP were made.

In this case the parent made a request for an IEP meeting as part of an IEP amendment on September 20, 2023 and the District first Coop first attempted to schedule the meeting on October 3, 2023 – 9 school days from the September 20, 2023 parent request. In Kansas it is generally accepted that a district has 15 days to respond.

The IEP meeting was held on October 9, 2023. A waiver of 10 days' notice of the meeting was not signed, however both parents attended the meeting and participated in setting the meeting dates, so a waiver of the notice is implied.

Conclusion

Based on the foregoing, ***it is not substantiated*** that USD #402 failed to respond to a request for a meeting in a reasonable timeframe and provide notice of the meeting for parent participation.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was found, based on review of Student A and Student B IEPs, Student attendance, District School Calendar, and interviews. Corrective action is required (as follows):
    a. CORRECTIVE ACTION:
        i. USD #402 shall reconvene Student A's IEP team and will offer a minimum of 210 minutes of gifted services as described in the December 2, 2023 IEP as compensatory services for failing to implement the student's IEP during the 2023 school year. USD #402 shall provide SETS with a copy of the written plan for providing the compensatory services offered and the parent's decision on whether to accept the offer, in whole or in part, no later than 10 days from the date of the IEP team meeting.
        ii. Date due: No later than December 15, 2023
        iii. USD #402 shall reconvene Student B's IEP team and will offer a minimum of 240 minutes of gifted services as described in the December 2, 2023 IEP as compensatory services for failing to implement the student's IEP during the 2023 school year. USD #402 shall provide SETS with a copy of the written plan for providing the compensatory services offered and the parent's decision on whether to accept the offer, in whole or in part, no later than 10 days from the date of the IEP team meeting.
        iv. Date due: No later than December 15, 2023
2. ISSUE TWO: A violation of 34 CFR §300.322, 34 CFR §300.322(a)(1) and (2) and State Statute at K.S.A. §72-3429(f) and state regulations at K.A.R. §91-40-17(a)(1) and (2) was not found, based on review of documents. Corrective action is not required.

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).

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 #382
ON NOVEMBER 9, 2023

DATE OF REPORT DECEMBER 9, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of -------- by his mother, --------. In the remainder of the report, -------- will be referred to as "the student." -------- will be referred to as "the complainant" or "the mother."

The complaint is against USD #382. USD #382 contracts with the South Central Kansas Special Education Cooperative #605 (SCKSEC) and the student attends Haskins Learning Center a day school operated by SCKEC. In the remainder of the report, USD #382, SCKSEC or the day school will be referred to as "the district".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on November 9, 2023 and the 30-day timeline ends on December 9, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham interviewed the mother on November 11, 2023 and November 28, 2023; the student's case manager, Ms. Marci Adams, and Mr. Dakota Oller, another Haskins Learning Center school teacher on December 5, 2023 and Officer James Sheldon of the Pratt Police Office on November 27, 2023. Dr. Wickham reviewed all evidence and documentation which was provided by both the district and the mother. Although additional information was provided and reviewed by the Complaint Investigator the following documentation and information were used in consideration of the issues:

1. Individualized Education Plan, initiation date December 10, 2022
2. Vanderbilt Assessment Scale, Follow-up: ADHD Toolkit Teacher-Informant Form, administered March 7, 2023, April 11, 2023
3. Emotional Outburst Inventory (EMO-I) administered March 7, 2023
4. Release of Information/Consent to Communicate between student's medical doctors and IEP team members signed by parent dated April 18, 2023
5. Grades and Absences for Grade 3 Reading, Math, Centers, Specials, dated May 23, 2023
6. IEP Team Meeting Minutes, dated July 11, 2023

7. Student behavior pie chart dated August – November 2023
8. IEP Zoom meeting invite for August 8, 2023 from 9:00 – 9:45 AM
9. Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent, dated August 8, 2023
10. Consent to Invite Representative of Noneducational Agency (CDDO) to IEP Meeting signed by parent dated August 22, 2023
11. IEP team meeting minutes dated August 23, 2023
12. School psychologist notes and emails compiled in document titled, [student initials] Documentation" dated between August 31, 2023 and November 3, 2023
13. IEP team meeting minutes dated September 14, 2023 at 12:10 PM
14. Student journal assignment dated September 25, 2023, September 26, 2023, October 10, 2023, October 16, 2023, October 25, 2023, November 2, 2023
15. Kaufman Test of Educational Achievement, Third Edition (KTEA™-3) Standard Report, administration date September 28, 2023
16. Learning Center Incident Report, dated October 5, 2023 resulting in parent coming to school and meeting with principal.
17. Letter to parents informing of Emergency Safety Intervention (ESI) dated October 5, 2023.
18. Learning Center Incident Report 1, dated October 6, 2023 resulting in student de-escalating in office.
19. Learning Center Incident Report 2, dated October 6, 2023 resulting in principal calling parent.
20. Learning Center Incident Report, dated October 10, 2023 resulting in parent coming to school and picking up student.
21. Letter to parents informing of Emergency Safety Intervention (ESI) dated October 10, 2023.
22. Learning Center Incident Report, dated October 11, 2023 resulting in 2 day OSS
23. Letter to parents informing of Emergency Safety Intervention (ESI) dated October 11, 2023.
24. Psycho-Educational Report, dated October 16, 2023
25. Letter to parents informing of Emergency Safety Intervention (ESI) dated October 19, 2023, restraint times of 12-12:03; 12:03-12:06;12:06-12:09; 12:09-12:12; and 12:12-12:14
26. Learning Center Incident Report 1, dated October 24, 2023 resulting in police intervention.
27. Letter to parents informing of Emergency Safety Intervention (ESI) dated October 31, 2023, interventions offered at three minute intervals between 11:09 – 11:40 AM

28. Learning Center Incident Report, dated November 2, 2023 resulting in student suspension.
29. Eight photos showing property and staff injury from November 2, 2023 incident.
30. Video of November 2, 2023 staff interaction following behavioral incident 1 minute, 8 seconds.
31. Video of November 2, 2023 staff interaction following behavioral incident 37 seconds.
32. [Student] Crisis Development Model (Integrated Experience), undated
33. Emails between mother and Director of Special Education dated November 3, 2023 at 3:12 PM through 6:26 PM
34. Email between Director of Special Education, mother and father dated November 9, 2023 at 9:42 AM through 9:55 AM
35. Notice of Special Education Meeting, dated November 10, 2023 to discuss changes to the IEP and meeting on Manifestation Determination review.
36. Resource teacher notes describing November 11, 2023 behavior incident.
37. Emails between mother and Cooperative School Psychologist dated between November 14, 2023 at 9:57 PM and November 15, 2023 at 4:40 AM
38. Emails among IEP team members including parents dated November 16, 2023 between 4:04 PM and 5:30 PM
39. Email from school psychologist to case manager and Director of Special Education dated November 20, 2023 at 1:30 PM
40. WISC® -V Wechsler Intelligence Scale for Children® -Fifth Edition Score Report, administration date November 20, 2023
41. Email between complaint investigator and Director of Special Education between December 5, 2023 at 5:04 PM and December 7, 2023 at 1:44 PM
42. SCKSEC Emergency Safety Intervention Parent Information, undated
43. Images of student binder, first-then graphic, student classroom rules, binder with "to do" and "done" sections, student word cards, student choice board with manipulatives, math "manipulatives," sensory toys, array of supports including headphones, student timer, visual board, visual schedule (with staff and peers), student sensory picture cards, undated.

Background Information

The student attends a behavior day school administered by the special education cooperative that provides services to the students in the district. The day school is a specialized placement for students with significant behavioral and emotional disabilities. The program consists of individualized and group instruction in the following areas: 1) safety, 2) essential social skills, 3) self-advocacy, 4) knowledge of community resources, 5) educational planning – transitioning back to home school, 6) self-help, 7) self-regulating skills, 8) emotional skill training, 9) appropriate academic instruction.

The student began receiving early childhood special education services at age three in the district. He continued to receive special education services when he transitioned to kindergarten at Southwest Elementary School during the 2019-20 school year. At the end of the first grade, the student was placed in a 45 day interim alternative educational setting (IAES) at Haskins Learning Center as a result of physical aggression towards a staff member.

On August 24, 2021, the district provided the parent with PWN to change the student's placement to the separate day school during second grade and the student primarily attended Haskins Learning Center during second, third, and fourth grades where he received specialized instruction, speech therapy, paraeducator support, counseling, occupational therapy, and autism support services. The student has been medically diagnosed with ADHD, combined type, and Autism spectrum disorder.

Issues Investigated

1. ISSUE ONE: *In violation of* state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), the USD #382 school staff failed to inform police officers that the student was eligible for special education services when called for behavior at the school during the 2023-2024 school year.
2. ISSUE TWO: USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP, specifically the accommodation of chunking of assignments or assessments and shortening assignments and assessments up to 50% without changing the content to ensure minimal frustration on November 2, 2023 which resulted in the student's behavior to escalate and result in staff and student injury.
3. ISSUE THREE: USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide documentation of student discipline (seclusion, calling police, OSS) during the 2023-2024 school year.

Issue One

In violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), the USD #382 school staff failed to inform police officers that the student was eligible for special education services when called for behavior at the school during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.622(a) state that parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies, such as transition agencies and private schools. FERPA regulations, however, allow some exceptions to the requirement to obtain parent consent before releasing records. Specifically, FERPA allows the school to release records to authorized individuals in certain situations, such as in connection with a health or safety emergency, if knowledge of the

information is necessary to protect the health or safety of the student or other individuals (34 C.F.R. 99.31(a)(10)).

Analysis: Findings of Fact

The parent alleged that on October 24, 2023 that the local police were not informed that the student had a disability when they were called in response to the student eloping from the school following a behavioral episode at the school. She stated that because the police were not informed of his disability their treatment of the student continued to escalate the student. Later, during an interview the parent clarified that her concern was that the police were not aware of strategies to de-escalate her student's behavior that were a part of his disability.

The district responded that the student attends a behavior day school, located on the grounds with a special education cooperative and the local police are aware that students attending the school have a disability and receive special education services. The Special Education Director stated during an interview on November 15, 2023 that prior to the start of the school year staff at the school meet with the police department to discuss the expectations of the police if called by staff at the school.

The principal reported in an incident report dated October 24, 2023

> *I was called morning because he was hitting staff. Found him in front of [case manager's] door with three adults around him. He was stripping paint off the door. I told the adults to take a break and I would handle it. I let him pick at the paint because he was letting people in and out of the door. When he settled I had [special education teacher] monitor him*
>
> *I was called in lunch room as he was knocking over tables and chairs and throwing things. [Staff] was able to get him to go with her to the timeout room. I went back to my office and was called because he had eloped the building. I asked for police assistance when he was not being safe and we were going to be able to bring him back. I asked [case manager] to call his mom to let her know what had happened. When I found them [student] had kicked the van and I believe he had assaulted [special education teacher]. I asked if I could help him and he started hitting me with his lunch bag. He went to the van and I went to talk to him and he started hitting me. The police came and he escalated. The police said they were going to take him in as a child in need of care. I told them mom was on her way. Mom arrived and was upset. The police told her she had to stay away from [student] at that time. [Student's] grandma came and she was upset. She stated they were going to file another complaint. The police decided [student's] mom would have to meet them at the station to work things out. I returned to the building.*

The Police Officer stated that he was dispatched when the school reported to the police that the student was 2-3 blocks away from the school. The Police Officer reported he was aware the student had a disability because the community is small, and he personally knows family members including the mother. He further stated that while the police department met with

the school staff prior to the start of the school year about their role he did not attend the meeting but was made aware of the information. He stated that he and fellow police officers have received Critical Incident Training that provides strategies and information on interacting with students with disabilities for approximately the past eight years. He stated that any time he has been dispatched he has not received any personally identifiable information about the student, only guidance for strategies that may assist with de-escalation.

Conclusion

Based on the foregoing, ***it is not substantiated*** that USD #382 failed to inform police officers that the student was eligible for special education services when called for behavior at the school during the 2023-2024 school year. Due to the purpose of the school the student attended it could be reasonably assumed by the police that the student had a disability, but not any personally identifiable information. IDEA regulations address protecting personally identifying information and FERPA further address situations in which that information may be accessed. In this case the parent's desire that police understand strategies about disabilities is beyond the reach of IDEA regulations.

Issue Two

USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP, specifically the accommodation of chunking of assignments or assessments and shortening assignments and assessments up to 50% without changing the content to ensure minimal frustration on November 2, 2023 which resulted in the student's behavior to escalate and result in staff and student injury.

Applicable Law

Federal regulations 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. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

The findings of Issue One are incorporated herein by reference. The IEP in effect during the 2023-2024 school year dated December 10, 2022 lists "chunking of assignments or assessments" and "assignments and assessments may be shortened up to 50% without changing the content to ensure minimal frustration" as two accommodations whenever assignments or assessments are given at the Special Education Day School for the length of the assignment or assessment with a start date of 12/10/2022 and end date of 12/08/2023.

The mother reported during an interview on November 28, 2023 that she talked with the teacher and student about what led to the student's behavior on November 2. She was told that the student had been given a two question assignment. She reported that the student had completed one of the questions but refused the other question and that was consistent with the accommodation of 50% of the assignment.

During an interview with the case manager and the other special education teacher on December 5, 2023 the case manager stated that the chunking accommodation is regularly implemented and was described as breaking instructional time into smaller "chunks" dependent on the student's body language during stressful situations.

The case manager further described the accommodation for reducing the November 2, 2023 classroom assignment by 50%. She stated that the student had two journal prompts. During the first journal prompt the goal was for any student to write one grammatically correct sentence. She stated that the student's accommodation for that part of the classroom assignment was for him to write one sentence and it would not need to be grammatically correct. Documentation showed the student's work on the November 2, 2023 assignment was, "Thursday,november 2,2023 i am thankful for go hom"

The second journal assignment was for all students to write four sentences. She stated the accommodation was for the student to write two sentences and the student wrote one sentence and when told he needed to write one more sentence his behavior quickly escalated. The case manager and special education teacher stated that the student uses a first work/then recess schedule and his behavior was likely triggered by delaying his recess until he finished writing the second sentence.

An incident report dated November 2, 2023 written by the Principal recorded:

> *[Principal] entered the room to find [student] knocking desks and chairs over as well as throwing things across the room. [Principal] became concerned about [student] damaging two laptops that were on a desk [Principal] placed the laptops on a shelf out of harms way. [Student] became mad at [Principal] for doing this and began to escalate the throwing of objects. [Principal] instructed [special education teacher] to allow [student] to continue what he was doing with the intent of avoiding a physical confrontation. [Principal] shared with [special education teacher] that it would be best to take pictures of the damage for later. [Student] overheard this, and started attacking [Principal]. [Special education teacher] and [Principal] then escorted [student] to the seclusion room across the hallway. While trying to leave the seclusion room, [Student] started kicking and trying to bite [Principal]. As [Principal] was trying to get away, [student] then grabbed [Principal] by the coat collar pulling him towards the ground. In doing so, Mr. Marciano felt a pop in his back as well as a loss of feeling going down his legs. [Principal] asked for additional assistance. During this process [student] wrapped his arms and legs around [Principal] leg and started biting him in the leg.*

As a result of the incident [Principal] experienced trauma to the back as well as bite marks to his arm and leg.

Written witness statements from staff members are similar to the incident report.

Conclusion

Based on the review of the IEP accommodations and case manager description of the accommodation implementation ***it is not substantiated*** that USD #382 failed to follow the student's IEP, specifically the accommodation of chunking of assignments or assessments and shortening assignments and assessments up to 50% without changing the content to ensure minimal frustration on November 2, 2023 which resulted in the student's behavior to escalate and result in staff and student injury.

Issue Three

USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide documentation of student discipline (seclusion, calling police, OSS) during the 2023-2024 school year.

Applicable Law

IDEA does not specifically address providing documentation of student discipline notice to parents; that is guided by district practice. However, if a district is considering a suspension or an expulsion of a child with a disability, school districts must follow the requirements of K.S.A. 72-6115. For long-term suspensions or expulsions, the school district must also provide parents the required notice, under K.S.A. 72-3433(d), of the school's decision to make a disciplinary change of placement as well as a copy of the Parent Rights document 34 C.F.R. 300.523(a)(1).

Analysis: Findings of Fact

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

The parent alleged that there have been multiple times the student has been in seclusion and sent home and the police have been called one time. She stated that she had received documentation for 10/5/23, 10/6/23, 10/10/23, 10/11/23, and 10/26/23.

She stated the student was suspended on November 2, 2023 and a manifestation determination was held subsequent to filing this complaint. These actions are not investigated as part of this complaint.

Behavior incident reports were reported for October 5, 2023, October 6, 2023 (2 reports), October 10, 2023, and October 24, 2023. The district reported that this is not a special education requirement, and it is the district's practice to send this report to all parents on record by the district.

The Behavior incident dated October 11, 2023 recorded, "Administrative Action: [student] has been suspended from school for the remainder of today (10-11-23) and all day tomorrow (10-12-23). These account for his first two days of suspensions this school year.

Emergency Safety Intervention reports were made for October 5, 2023, October 10, 2023, October 18, 2023, and October 30, 2023. The district reported that this is not a special education requirement, and it is the district's practice to send this report to all parents on record by the district.

Documentation showed police were called on October 24, 2023 and the school secretary called the parent as is the district's practice.

Documentation showed an instance on October 26, 2023 in a teacher note that "I went into timeout room because he was tearing up camera wires." There was not a corresponding ESI report for this incident. The Special Education Director explained in an email on December 7, 2023 to the Complaint Investigator that, "he was not secluded in this instance or restrained. [Student] went into the timeout room on his own to take a break with the doors open and began to tear up the camera wires and the principal utilized black mats around the principal's body when he stood in the room with the doors open to avoid being hurt."

The parent reported during an interview on November 28, 2023 she learned that when she picked up her student when called about a behavioral incident it was considered an excused absence and not considered a behavioral episode.

Conclusion

Based on the foregoing, *it is not substantiated* through IDEA that USD #382 failed to provide documentation of student discipline (seclusion, calling police, OSS) during the 2023-2024 school year.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. §300.622(a) and 34 C.F.R. 99.31(a)(10) was not found, based on review of law and interviews. Corrective action is not required.
2. ISSUE TWO: A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was not found, based on review of student IEP and interview with school staff. Corrective action is not required.
3. ISSUE THREE: A violation of 34 C.F.R. 300.523(a)(1) was not found, based on review of IDEA regulation and documentation. Corrective action is not required.

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).

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 NOVEMBER 2, 2023

DATE OF REPORT DECEMBER 11, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of --------, by his father, --------. In the remainder of the report, -------- -------- will be referred to as "the student." -------- will be referred to as "the complainant" or "parent." -------- is the student's mother and she will be referred to as "the mother" in the remainder of the report. Together, -------- and -------- will be referred to as "the parents." -------- is the student's stepfather and he will be referred to as "the stepfather" in the remainder of the report.

The complaint is against USD #437 Auburn Washburn Public Schools. In the remainder of the report, USD #437 will be referred to as "the district," "the local education agency (LEA)," or "the school."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on November 2, 2023 and the 30-day timeline on December 4, 2023, with a one-week extension allowed to complete the investigation.

Evidence Reviewed

During the investigation, the complaint investigator, Gwen Beegle, reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The following district staff were interviewed on November 28, 2023: Tracie Bauer (Social Worker), Caroline Spaulding (PBIS-Social Skills teacher and IEP Case Manager), Howard Tush (formerly Behavior Interventionist, currently Dean of Special Programs), Brandon Dial (8th Grade Principal), Erin Bennett (Dean of Behavioral Services) and Heidi Carlson (Assistant Director of Secondary Special Education). The parent was contacted on November 7, 2023 to clarify the issues and interviewed on December 1, 2023. In addition, the investigator received emails and texts from the district and the parent through December 5, 2023, often in response to specific follow up questions sent by the investigator.

The following documentation and information were used in consideration of the issue(s):

1. Individualized Education Program (IEP) for the student dated May 5, 2022

2. Behavior Detail Report (2022-23) for the student with entries beginning October 4, 2022 through April 26, 2023
3. Prior Written Notice for Reevaluation (PWN-E) to review existing data in all areas and collect new data on social-emotional-behavior status dated October 7, 2022 and signed by the mother giving permission on October 20, 2022
4. Progress Report for the student dated October 19, 2022 with reading goal update dated October 19, 2022
5. IEP Amendment including Behavior Intervention Plan (BIP) dated October 19, 2022 and signed by the mother giving consent on October 31, 2022
6. Prior Written Notice (PWN) for material change of service and substantial change in placement dated October 19, 2022 for a meeting on October 19, 2022 signed by the mother giving consent on October 31, 2022.
7. Email exchange among Caroline Spalding (PBIS-Social Skills Teacher), the parents, Howard Tush (Behavior Interventionist; Dean of Special Programs), Phillip Chesmore (7th Grade Principal), Tracie Bauer (Social Worker) and Justin Tizman (School Psychologist) beginning November 4, 2022 and ending November 8, 2022 at 7:51 a.m.
8. Progress Report for the student dated December 9, 2022 with math and behavior goal updates dated October 19, 2022 and December 9, 2022
9. Email from Erin Bennett (Dean of Behavioral Services) to the father dated December 16, 2022 at 2:56 p.m.
10. Reevaluation for the student including Functional Behavior Assessment (FBA) dated February 6, 2023
11. IEP for the student including BIP dated February 6, 2023
12. Prior Written Notice (PWN) for continued eligibility, material change of service and substantial change in placement dated February 9, 2023 for a meeting on February 6, 2023 signed by the parents giving consent on February 9, 2023
13. Email chain between Caroline Spalding and the mother dated March 24, 2023, 11:35 a.m. to March 24, 2023 at 2:51 p.m.
14. Email chain among Caroline Spalding and the parents dated March 31, 2023 at 3:03 p.m. to March 31, 2023 at 3:26 p.m.
15. Email chain among Caroline Spalding, Tracie Bauer, Justin Titzman, Phillip Chesmore and Howard Tush dated May 4, 2023 at 1:34 p.m. and ending May 4, 2023 at 1:55 p.m.
16. Reinforcement Inventory for the student dated May 11, 2023
17. Zones of Regulation workbook pages, undated
18. IEP Amendment dated May 11, 2023 signed by the stepfather giving consent on June 14, 2023
19. Data Collection Report (2022-23) with entries dated May 15, 2023 to May 23, 2023
20. PWN for material change of service and substantial change in placement dated May 31, 2023 for a meeting on May 11, 2023 and signed by the parents giving permission on June 6, 2023.

21. Student Schedule (2022-23)
22. Period Attendance Detail Report (2022-23)
23. Student Schedule (2023-24)
24. Data Collection Report (2023-24) with entries dated August 15, 2023 to November 16, 2023
25. Period Attendance Detail Report (2023-24) August 22, 2023 to November 17, 2023
26. Personal notes by the father of conversation with Brandon Dial (8th Grade Principal) dated August 25, 2023
27. Email from Erin Bennett to the parents dated August 30, 2023 at 4:26 p.m.
28. Email from Erin Bennett to the parents dated September 13, 2023 at 8:18 a.m.
29. Email from the father to Erin Bennett dated September 13, 2023 at 11:33 a.m.
30. IEP Amendment dated September 13, 2023 and signed by the mother on September 13, 2023 giving consent
31. PWN for material change of service and substantial change in placement dated September 13, 2023 signed by the mother giving consent on September 13, 2023
32. Email from Erin Bennett to the parents dated September 13, 2023 at 11:06 a.m.
33. Family Report dated September 13, 2023
34. Agenda for IEP meeting dated September 13, 2023
35. IEP Amendment dated September 15, 2023 signed by the mother giving consent on September 15, 2023
36. PWN for change of service dated September 15, 2023 signed by the mother giving consent on September 15, 2023
37. Email from Brandon Dial to Andrew Weese (Special Education Math Teacher), Patrick Cook (Special Education ELA Teacher), Caroline Spalding and Erin Bennett dated September 28, 2023 at 8:59 a.m.
38. Email chain with subject "[Student name]-homework?" among Caroline Spalding, Erin Bennett, the mother and the father dated September 29, 2023 at 2:02 p.m. and ending October 5, 2023 at 12:16 p.m.
39. Email from Caroline Spalding to the parents, Howard Tush, and Erin Bennett dated October 5, 2023 at 1:08 p.m.
40. Email from the mother to the father, Caroline Spalding, Howard Tush, and Erin Bennett dated October 5, 2023 at 2:37 p.m. and Howard Tush's reply dated October 5, 2023 at 2:56 p.m.
41. Email from the mother to the father, Caroline Spalding, Howard Tush, and Erin Bennett dated October 10, 2023 at 2:14 p.m. and Caroline Spalding's reply dated October 10, 2023 at 2:32 p.m.
42. Progress report for the student dated October 13, 2023
43. Report Card for the student 2023-24 school year, first quarter
44. Statement from Erin Bennett (Dean of Behavioral Services) dated November, 2023

45. Communication log submitted by Erin Bennett recording communication with parents and school team members
46. Grade transcript for the student generated on November 14, 2023 showing grades for the 2022-23 school year
47. Email from Tracie Bauer to Erin Bennett dated November 16, 2023 at 2:11 p.m. including service log and comments
48. Professional License for Courteny Appelhanz, 2019-2024: Art PK-12; High Incidence Special Education PK-12; Math 5-8
49. Professional License for Erin Bennett, 2020-2024: School Psychologist PK-12.
50. Behavioral Sciences Regulatory Board Licensee Details for Tracie Bauer: Licensed Specialist Clinical Social Worker (2022-24)
51. Professional License for Patrick Cook, 2022-2028: High Incidence Special Education 6-12
52. Professional License for Ollie Brandon Dial, 2019-2024: Building Leadership PK-12, Elementary K-9.
53. Health Occupations Credentialing Verification of License for Shelle Peek, 2018-2025, Speech Language Pathologist
54. Professional License for Caroline Spalding, 2022-2027; Core Content MESH, Elementary, High Incidence Special Education 6-12; Math 5-8
55. Professional License for Justin Titzman, 2019-2024: School Psychologist, PK-12.
56. Professional License for Howard Tush, 2020-2025: Adaptive Special Education K-6 and 6-12, American History 7-12, Building Leadership PK-12, Political Science Government 7-12, World History 7-12.
57. Appendix 5 dated December 5, 2023: Compilation of emails from Caroline Spalding to the parents and others dated August 21, 23, 25, and 29, 2023; September 1, 7, 19, 27 and 29, 2023; October 24 and 30, 2023; and November 2, 2023.
58. Additional questions: Emailed response to investigator questions dated December 5, 2023
59. District Response to the Allegations

Background Information

The student is a 14 year-old who attends the eighth grade in USD #437. According to his IEP, he is eligible for special education as a student with a primary disability of Specific Learning Disability and a secondary disability of Emotional Disability. During the 2022-23 and 2023-24 school years, the student had significant problems stemming from failure to attend his classes. His parents provided a neuropsychiatric examination (October, 2022) used in his most recent comprehensive re-evaluation (February 6, 2023), recording diagnostic impressions of Disruptive Mood Dysregulation Disorder, Generalized Anxiety Disorder Attention-Deficit/Hyperactivity Disorder, combined type Specific Learning Disability in Mathematics (dyscalculia). His parents are divorced and both participate in the student's education planning

along with his stepfather. He entered the district in August, 2022 with an IEP, FBA, and a BIP from another district. The IEP dated May 5, 2022 included resource support for math and social skills, special education support in his general education classes, speech language services, with bi-weekly social work services; the IEP was revised to amend the BIP on October 19, 2022.

Issues Investigated

ISSUE ONE: The USD #437 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an appropriate IEP for the student in light of his disabilities, including failing to articulate the curriculum, strategies, and interventions to be used as special education and related services [page 6]

ISSUE TWO: The USD #437 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by implementing the student's behavior intervention plan and providing academic support during the past 12 months [page 14]

ISSUE THREE: The USD #437 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide appropriately trained staff capable of implementing the student's IEP during the past 12 months [page 25]

Issue One

The USD #437 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an appropriate IEP for the student in light of his disabilities, including failing to articulate the curriculum, strategies, and interventions to be used as special education and related services

Applicable Law

The development of the IEP begins with the evaluation. Federal statutes and regulations at 34 CFR 300.304(c)(4) requires that the child be assessed in all areas related to the suspected disability, and 34 CFR 300.304(c)(6) and (7) require that the evaluation be sufficiently comprehensive to identify all the child's special education and related services needs and that tools and strategies provide relevant information to directly assist in determining the educational needs of the child are used.

Federal statutes and regulations at 34 CFR 300.324(a) require that in developing the child's IEP, the IEP team shall consider the following: the strengths of the child, the concerns of the parents, the results of the child's evaluation, the academic and functional needs of the child,

the use of positive behavior interventions and supports if the child's behavior impedes learning, the need for braille or the impact of limited English proficiency, the child's communication needs, and the need for assistive technology. Federal regulations at 34 CFR 300.327 and state regulations at K.S.A. 91-40-25(a)(1) and (2) require that the district allow the parents to participate in any meeting with respect to the identification, evaluation, or educational placement of the child, and that the agency take steps to ensure that the parents are present and afford the opportunity to participate in each meeting concerning their child.

Analysis: Findings of Fact

The parent alleged that the parents have not been informed of the methods being used in the student's IEP and in the special education classroom, such as the emotional disturbance classroom curriculum, the intervention strategies used, and the positive behavioral intervention and supports being implemented. The parent alleged the behavioral methods of the classroom and responses to the student's emotional disability need to be known in order to determine their effectiveness. The parent alleged that he cannot adequately participate and advocate for changes in the student's IEP without understanding the application of behavioral methods.

The parent alleged he cannot adequately assist his child to improve through contingencies at home for school attendance and after school implementation of missed assignments without knowledge of the classroom curriculum and behavioral methods. The parent alleged that the district should make the public aware of the district curriculum and other teaching methodologies.

The district responded that the student had transferred to the district on August 11, 2022 and the district had implemented the student's IEP from the former district, including the BIP. The district continued: ". . .in response to the inadequate [behavior] goal performance and parallel behavioral discipline reports, an amendment to the IEP from [the previous district] was proposed and consented to which included adding a Positive Behavioral Supports instructional time in a special education setting, a revised Behavior Intervention Plan, and consent to conduct a reevaluation that included a Functional Behavioral Assessment."

The district responded that it had been responsive to the parents' concerns and pointed to the new evaluation, including a Functional Behavioral Assessment (FBA), and revised IEP dated February 6, 2023, and its meetings with the parents at their request May 11, 2023 to revise the BIP and September 13, 2023 to amend the IEP as evidence of its responsiveness. The district also responded that "If and when changes are made, they are completed with parental involvement. As referenced in the IEP Accommodations as a Positive Behavior Support System and specifically the Behavior Intervention Plan, Zones of Regulation was an instructional strategy used for specialized instruction on social emotional skills."

In its response to the complaint, the district continued: "Specific to the parents' concerns of not receiving work to be sent home from teachers at [the school], USD 437 contends that this

perceived failure is not specific to a special education formal complaint process as specific methodology was not specified in the IEP. But instead [this] should be addressed through an internal USD 437 complaint process with [the school's principal] when a parent feels their concerns have gone unaddressed."

In addition, the district responded that in reviewing the case more thoroughly, that procedural errors specific to Reports of IEP Goal Progress existed (reading goal, Quarter 1; Quarter 4 Progress Report missing) and that a parent teacher conference held October 19, 2022 resulted in the need for an IEP amendment and so there is no associated Notice of Meeting for an IEP meeting. Instead, the district provided Prior Written Notice and an IEP amendment on that date. "As stated in the Prior Written Notice for the amendment, a material change in services and substantial change in placement was proposed. The IEP team agreed to add *specialized instruction in the special education setting, Positive Behavior Support classroom, to teach the student self-regulation, executive functioning, and mood regulation skills.* In addition a new Behavior Intervention Plan was added to the student's IEP. . .. Parent consent was provided by [the mother] on 10.31.22."

Finally, the district's response noted that academic programming in the building is available on the district's website, located under the *Parents and Students* drop down menu as the *Student Handbook*, and under *Board of Education* drop down menu as *Board Policy, IDA Instructional Program*. Additionally, Multi-Tiered System of Support (MTTS) information can be found as a *Quick Link Accountability* drop down menu and *Needs Assessment;* Curriculum information can be found at the *Parents and Students* drop down menu, *Curriculum*. The district responded: "Information specific to special education that a parent of a special education [student] should seek would be in the student's IEP or through requesting an IEP meeting."

The following findings are based on the review of documentation and interviews provided by the district and the parent.

The district provided PWN dated October 19, 2022 for a meeting on October 19, 2022 for a material change of services and substantial change of placement for an IEP amendment dated October 19, 2022, signed by the mother giving consent on October 31, 2022.

Through a PWN-E, the district sought and obtained parental consent to reevaluate the student on October 31, 2022. That reevaluation dated February 6, 2023 considered existing data in health, vision, hearing, social emotional behavioral status, general intelligence, academic performance, communicative status, transition skills, and new data in social emotional behavioral status; the evaluation considered the community based report provided by the parents. A new FBA was included. The mother and the stepfather participated in the reevaluation meeting, which determined that the student continued to be eligible for special education services under the categories of Specific Learning Disability and Emotional Disability. The mother and stepfather participated in the concurrent IEP meeting, which included a BIP for the student.

The IEP dated February 6, 2023 described the impact of the student's disability in this way: "[The student] struggles to complete school-related tasks with which he associates difficulty, whether real or imagined. He presents with irritability and moodiness more significantly than other children his age. He struggles to regulate and modulate his behavior. He also is diagnosed with a specific learning disability in math." The BIP stated that the problem behaviors exhibited by the student were aggression, elopement, refusal, and avoidance of expectation or task. The IEP had two goals: (a) When given a curriculum based math assessment, [the student] will be able to correctly solve problems about scale drawings with an accuracy of at least 16 out of 20 problems by end of the IEP as measured by Curriculum Based Assessment, and (b) when in school, [the student] will be able to attend at least 6 out of his 7 classes without eloping (walking out of class, walking away from staff) at 85% of the days in school bend of the IEP as measured by observation. The BIP (detailed in Issue Two) listed 8 preventive and 10 reactive strategies to be used with the student for physical aggression, refusal, and elopement. These strategies included the use of Zones of Regulation, processing with staff persons, social skills instruction and use of "toolbox" strategies. According to the February 6, 2023 IEP, "Parents will receive written reports of student progress toward meeting IEP goals in accordance with the district's established grade reporting schedule."

The IEP dated February 6, 2023 showed that the student's special education services for transition were to include resource social skills with a focus on executive functioning (regulating emotions, transitions, and social skills), discontinuing speech language services. The IEP services chart showed the following through the end of the 2022-23 school year: (a) special education services, direct services outside regular education for 3 different durations every two weeks (128 minutes-5 days, 108 minutes-1 day, and 128 minutes-4 days), (b) social work services outside regular education for 20 minutes every 2 weeks, and (c) special education services in regular education for 230 minutes, 5 days a week, every week. Beginning the 2023-24 school year, the IEP services chart showed the following beginning in August, 2023: (a) special education services, direct services outside regular education for 5 different durations every two weeks (174 minutes-5 days, 154 minutes-1 day, 174 minutes-4 days, 184 minutes-5 days, and 164 minutes-1 day), (b) social work services outside regular education for 20 minutes every 2 weeks, (c) transportation, and (d) extracurricular (40 minutes-5 days, every week). The student's schedule at the beginning of the 2023-24 school year showed that the student had seven 8th grade classes in special education settings. Additionally, the IEP included 14 accommodations, 13 focused mainly on facilitating academic learning and the fourteenth being the Positive Behavior Supports System to be in place in all locations during the school day.

The district provided PWN dated February 9, 2023 for a meeting on February 6, 2023 and signed by the parent on February 9, 2023 giving consent for material change of services and substantial change of placement in the IEP.

The Behavior Detail Report showed that the student had six discipline incidents in the 2022-23 school year: October 4, 2022 (OSS 1 day), October 16, 2023 (OSS 1 day), October 17, 2022 (Other), February 14, 2023 (OSS 1 day), April 18, 2023 (OSS 1 day), and April 26, 2023 (OSS 1 day).

The communication log showed that the complainant contacted the 7th Grade Principal with concerns on April 27, 2023 and the Executive Director of Learning Services responded to discuss the concerns, resulting in an IEP meeting being scheduled.

The IEP team including the parents met on May 11, 2023 to make changes to the student's IEP and BIP. At this time the IEP team finalized the behavior plan and added resource special education for ELA to the student's 8th grade class schedule. The district provided PWN dated May 31, 2023 for a meeting on May 11, 2023 and signed by the parents giving permission on June 6, 2023, after discussions with parents to finalize the May 11, 2023 IEP amendment changing the BIP to include specific strategies for regulation. The PWN states: "[The student]'s Behavior Intervention Plan is modified to include specific methods for helping [the student] regulate his emotions. For example, he will learn how to identify triggers and develop a "toolbox," or "choice board."

The district implemented a system for recording the student's location when he was not attending his regularly scheduled classes but was instead returning to or remaining in the PBIS Classroom, also known as Room D5. The student's absence was coded "TG" for Teacher Guided. This code first appears in the 2023-24 Attendance Detail by Period report on August 30, 2023.

The Dean of Behavioral Services reported that the father had contacted her with concerns including the methods, attendance, and curriculum in the PBS classroom and communication with parents in an email on August 24, 2023 and a phone call on August 25, 2023. In response, she reported through a communication log and statement that she observed the student, met with school team members, prepared answers to his questions and an IEP meeting was scheduled. The Dean of Behavioral Services reported that she met with district staff on September 12, 2023 to ensure that the revised attendance recording (TG for Teacher Guided when the student was in Room D5 rather than in his elective, ELA or math class) was clear and implemented by staff. The Dean of Behavioral Services reported that in response to a parental request for work to be sent home with the student, "Teachers agreed that work that could be appropriately sent home for independent completion would be" on September 13, 2023 (Communication log.)

The IEP team including the parents met on September 13, 2023 and made changes to the IEP. At the meeting, according to the IEP amendment and PWN of the same date, the IEP team addressed the student's behavioral and emotional needs by amending the IEP to provide a partial day schedule with all classes a special education environment: Special education ELA, math, PBIS/social skills, and an elective overseen by a special education teacher, resulting in 184 minutes of resource 5 days per week for Math, ELA, PBIS and an elective, with social work services continuing at 20 minutes every other week (deducted from the 184 minutes) and 40

minutes of special transportation. The mother provided consent on September 13, 2023. The district provided PWN on September 15, 2023 to add a change in transportation. After the meeting, the parent requested and the Dean of Behavioral Services emailed the family on September 15, 2023 and provided an IEP meeting agenda, the family report of academic data, the student's BIP and a summary of the student's data on movement, communication, and activity for the 2023-24 year.

The communication log showed that the Dean of Behavioral Services, who had been designated to maintain communication with the father, spoke or exchanged emails with the parent approximately 20 times during the past year and followed these conversations with meetings with staff, practice clarifications, or IEP meetings.

Conclusion

It should be noted that the publication of curriculum information by the district is not addressed by IDEA and therefore outside the scope of this investigation. Information from the district is included in this report in order to address the concern of the parent.

In this case, the district responded to parental concerns by revising an existing IEP (October 19, 2022), reevaluating the student and conducting a new FBA, writing a new IEP (February 6, 2023), creating a new BIP (finalized May 11, 2023) and amending the IEP to shorten the student's schedule (September 18, 2023). The February 6, 2023 re-evaluation was comprehensive and it included information from the parents and the community based report they provided. The BIP included preventive and reactive strategies and the district involved the parents in its development. The district showed that the IEP listed the behavioral and social skills methods that are used generally in the classroom, school and with the student. Each time the district met with the parents either to evaluate the student or to develop the IEP, the district provided the proper PWN and one or both of the parents were involved in the meetings and giving permission for the changes. The district showed that it communicated frequently with the complainant in order to respond to his concerns.

Based on the foregoing, ***it is not substantiated*** that USD #437 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an appropriate IEP for the student in light of his disabilities, including failing to articulate the curriculum, strategies, and interventions to be used as special education and related services.

Issue Two

The USD #437 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by implementing the student's behavior intervention plan and providing academic support during the past 12 months.

Applicable Law

Federal/State statutes and regulations at 34 CFR 300.39 defines special education as specially designed instruction at no cost to the parent to meet the unique needs of a child with a disability. Further 34 CFR 300.320(a)(4) requires that the IEP include "a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child: (i) To advance appropriately toward attaining the annual goals; (ii) To be involved in and make progress in the general education curriculum. . . and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and nondisabled children. "

Federal regulations 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. 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. The *Kansas Special Education Process Handbook* clarifies a material change in services: "A change in the instructional methodology used to provide a service, even if the methodology is specified in an IEP, is not a material change in services. For example, a change to a strategy within a behavior intervention plan is a change in the instructional methodology, not a material change in services" (p.8).

Analysis: Findings of Fact

The parent alleged that the district has failed to implement the student's BIP with rigor and fidelity during the past twelve months. The parent alleged that the district did not provide evidence of implementing the IEP by sending home completed work, implementation evidence of the students BIP (such as the toolbox of strategies), or any reports on what staff did when implementing the BIP. The parent points to the failure to generalize to other classes as inadequate application of the social skills curriculum and behavioral methods.

The parent alleged that the student stopped attending his ELA and math classes and that he was not receiving academic instruction. The parent alleged that scanning and sending the student's work home was agreed to at the "8.30.23 IEP meeting" with the 8th grade principal and that the 8th grade principal directed the PBIS-social skills teacher to provide daily updates on attendance and behavior data to the parents. The parent alleged that these things are not

being done consistently, that the student is not expected to complete academic work during TG periods and that interventions in the BIP are not being implemented and documented.

The district responded that the district had been responsive to the student's behavior and parental concerns by meeting and revising the IEP and BIP (February, May and September 2023). The district continued, "The behavior intervention plan included in the student's transfer-in IEP, dated 5.5.22, targeted emotional regulation. Proactive strategies listed were proximity control and alerting the student to changes in the schedule, providing reminders about school appropriate conversations, and providing acknowledgement for efforts. Reactive strategies involved providing access to the Positive Behavior Support (PBS) room for regulation. These strategies were implemented through daily check-ins in the PBS room, when schedule and expectations would be reviewed each day. When dysregulated, staff would offer or suggest that he return to the PBS room."

The district response noted that the amendment dated October 19, 2022 shifted the focus of the BIP to elopement and refusal of adult requests and strategies included a daily bag check, providing reminders of expectations, and monitoring the student through daily data sheets that tracked movement (physically being in designated location), activity (working on assigned activity), and communication (expressing wants and needs without use of profanity). The district continued that content area teachers were provided the student's IEP at a glance and the accommodation in his IEP and supported by the PBS teacher. The district responded that, following the February 6, 2023 reevaluation, FBA and new IEP, the team "continued to provide relevant accommodations and implement strategies outlined in the behavior plan" along with daily data collection and ongoing troubleshooting to encourage class attendance and participation in social emotional learning. "As a result of ongoing parent concern and lack of desired level of behavioral progress [in spring, 2023], the team collaborated to amend the IEP/BIP, update data collection, and look ahead to support for his 8th grade year."

The district responded that the team met again on September 13, 2023 in response to behavior incidents and parent concerns to review the behavior plan data and revise the IEP providing a shortened day and special transportation. The district continued that parents have been informed of the student's progress through emails with data summaries included; parents requested and have been provided with unfinished when it is something that would be completed independently or out of class. The district responded: "Since the student was regularly refusing to attend his academic classes, both his math and ELA teacher would periodically visit with the student in the PBS class. At parent/teacher conferences on October 18, 2023, additional updates were provided regarding behavior data, grades, class schedule/classwork, and strategy implementation. Additional resources for social emotional learning and social work sessions were discussed as well."

The findings of Issue One are incorporated by reference. Based on the documents provided by the parent and the district, and interviews of the parent and district staff, additional findings are listed below.

The May 5, 2022 IEP amended on September 19, 2022 states: "Parents will receive written reports of student progress toward meeting IEP goals in accordance with the district's established grade reporting schedule." The February 6, 2023 IEP includes the same statement.

In its response to Issue One, the district acknowledged procedural errors in failing to provide progress reports on all goals, specifically failing to report progress on the student's reading goal on December 9, 2022 and on both the student's goals (math and reading) on May 24, 2023.

The parent and the district agreed that the student's February 6, 2023 reevaluation included an FBA and BIP, and that the BIP was amended at a May 11, 2023 meeting to include more specific regulation strategies. The parent and district agreed that the student did not make adequate progress toward meeting the behavior goal on his IEP in the first two quarters of the 2023-24 school year. The parent and district agreed that the student was chronically absent from his classes beginning in October, 2022 and that this was a focus of the behavior goal in his IEP.

Attendance and Academic Instruction

The parent reported and provided notes dated August 25, 2023 of a conversation with the 8th grade principal regarding attendance, daily data sheet, and "any behavioral information the team is tracking. Per [the 8th Grade Principal], parents will get a copy of this sheet daily." Additionally, the parent reported that the parent portal was unreliably reporting the student's attendance: "Unfortunately, parents were not aware that [the student] was not attending classes until 8/22 email from [the PBIS - social skills teacher] and upon parent investigation, multiple answers were given as to where [the student] had been." The parent's notes reported that when similar attendance issues were discussed last spring, the district assured parents that "someone would know where [the student] was at all times. School personnel would be able to reliably report attendance to parents upon request."

As noted in Issue One, the Dean of Behavioral Sciences reported in a communication log that she communicated with the parent regarding the parent's concerns about the beginning of the school year: "On August 25th, 2023, I received a call from [the parent] expressing his dissatisfaction with the way the school year had started. He shared increasing concern regarding overall programming and implementation, as well as clarity of communication. Again, I investigated his concerns and shared relevant information, as well as worked with the team to address [the parent]'s concerns and hold an IEP meeting," which was held on September 13, 2023.

In an emailed reply to a question by the investigator, the district reported that the student's attendance and grades were available to parents through the parent portal and that the TG system for reporting the student's attendance was in place.

In the communication log, the Dean of Behavioral Services reported that on September 25, 2023, the father emailed her and the PBIS-social skills teacher asking about work to send home, and "Agreement on work that could be completed independently at home was sent." In the communication log, on September 28, 2023, the 8th Grade Principal emailed ELA and math teachers to remind them to provide [the PBIS-social skills teacher] with any outstanding work so that it can be sent home. The ELA teacher said that his work was up to date and [the math teacher] responded that there were two missing assignments he would give to [the PBIS-social skills teacher].

The PBIS-social skills teacher (also the student's IEP case manager) emailed the parents on September 29, 2023 to provide a weekly update on the student's attendance. In an email to the school on October 5, 2023 at 12:16 p.m., the mother said the student told her that he had stayed in the PBIS room (Room D5) and that she believed that the student had not had any ELA or math instruction all week. The mother asked for work to be sent home, noting that she had asked several times and nothing was being sent home. On the same day, the PBIS-social skills teacher emailed the parents to provide an update on the student's behavior and attendance confirming the student's lack of attendance in ELA and math classes, stating: "When the student is not attending his math and ELA classes I am prompting him at least every 15 minutes to talk to me, or attend class, or to retrieve work from his teachers. Today I talked to [the student] while he had his head down. I tried 6 times to get him to discuss ways we could problem solve his struggles to attend class. He told me he did not care and he did not want to speak to me regarding ELA or math."

The same day, the mother emailed the Dean of Special Programs asking: "Can you ask the ELA and math teachers to have daily work available to send to [the PBIS - social skills teacher] if [the student] doesn't show up in their room so he can work on it there? Also, I have requested work be sent to me via email and that has not happened. At this point, he is not getting any math or English education." In his response, the Dean of Special Programs agreed to facilitate getting work to the student in Room D5 and to assist in problem solving the transfer between the teachers. In an email on October 10, 2023 the mother thanked the PBIS teacher for sending work home and reported the student's progress in completing it and returning it to the school. In an interview, the father reported this was the only time work was sent home with the student at the time the complaint was filed.

In an interview, the PBIS-social skills teacher reported the student was given opportunities and reminders to do work from class or work that was similar to that work and that the student frequently refused to do it. The PBIS-social skills teacher reported that she had other students to teach during the periods when the student remained in her class at unscheduled periods. The Dean of Special Programs reported that there wasn't daily acquisition work available from the classes as the instructional delivery of new content was slower than in a typical academic class. In response to an emailed question from the investigator, on December 5, 2023 the

Dean of Special Programs reported that he took work from the student's academic teachers to Room D5 three to five times each week.

The student's grade report for the first two quarters of the 2023-24 school year showed 17 total absences for second hour (elective), 30 total absences for third hour (ELA) and 27 total absences for fourth hour (math).

As noted in Issue One, the district developed a method to record the student's whereabouts when he was present but not in his assigned classroom, in addition to unexcused absences. When the student was in attendance in "D5" (the PBIS classroom) rather than the classes to which he was assigned, the absence was coded as "TG" for Teacher Guided. According to interviews, when TG appeared in the Period Attendance Detail report, the student was in Room D5 during that period. The Period Attendance Detail report (2023-24) showed the following absences for periods 2-4 from August 22, 2023 to September 20, 2023 and from October 2, 2023 to November 17, 2023:

Second hour (Elective):	27 TG	4 unexcused absences
Third hour (ELA):	28 TG	7 unexcused absences
Fourth Hour (Math):	26 TG	11 unexcused absences

Daily behavior rating of movement, defined as physically in the assign space in the expected seat for the entire time for a rating of 2, showed that the student attended the following classes, from September 18, 2023 to November 6, 2023:

First hour (Social Skills):	39/40 days, with one day of partial attendance
Second hour (Elective):	17/40 days with one day of partial attendance
Third hour (ELA):	8/40 days with two days of partial attendance and one day noted that the student did the work in Room D5
Fourth Hour (Math):	11/40 days

The daily behavior ratings available to the investigator showed that (a) the student stopped attending his math class on September 28, 2023 except for two instances on October 23, 2023 and November 15, 2023, (b) the student stopped attending his reading class on September 28, 2023 except for two partial attendances on October 2 and 3, 2023, and (c) the student stopped attending his elective on October 6, 2023, was absent for 8 days, present for the next 5, and stopped attending on October 31.

The student's grade report for the first quarter ending October 12, 2023 showed: Office-Teacher Aid (elective): A+; PBS (social skills) A+; Reading N; Math C.

The district did not provide PWN to the parents subsequent to that dated September 13, 2023.

Behavior Intervention Plan Implementation and Communication

The IEP dated February 6, 2023 showed that the BIP's methods included the following preventive and reactive strategies:

- *Preventive strategies*: (a) controlled access to phone and internet, (b) access to alternate spaces for self-regulation, (c) identifying triggers and feelings by using a researched program such as Zones of Regulation, (d) teach the student to develop a choice board or toolbox of coping strategies such as deep breathing, guided imagery and counting backwards, (e) teach the student to regulate self by navigating thoughts and feelings, for example teach him which strategies he can use to move from a yellow to a green zone, (f) Social skills instruction with social worker related to self-regulation/emotional regulation) and the opportunity to "process" with mental health team member with 3 passes per day, (g) Review schedule and choice board (toolbox) with the student (teacher, para, social worker or other staff) with a daily check in to review schedule and choice board; (h) staff using common language to remind him of expectations.
- *Reactive strategies*: (a) staff will provide an opportunity to take a short break in the classroom (b) staff will provide opportunity to utilize "safe spot"/ cool down zone and allow [the student] to utilize his self-regulation "toolbox," (c) common language can be "[Student name], it seems like you are upset. Can you use something in your "toolbox" to regulate," (d) staff will seek to provide brief de-escalation services/supports, (e) for refusal- a reminder of the expectation, (f) for elopement in the building - staff will monitor the student on the school video if available or shadow him and attempt to provide 10 minute reminders of the expectation (g) limit attention and verbally direct (h) D6 /proximity control; (i) elopement (outside of building, within bus lane and immediate walking areas around the school)- staff will notify building admin team and/or school resource officer and monitor the student, (j) elopement (past bus lane, towards roadway) -staff will notify building admin team and/or school resource officer and monitor the student and use emergency safety interventions as deemed necessary.

The data collection sheets provided by the district include some brief comments describing student's problem behavior accompanying the rating and do not include descriptions of staff responses. The Behavior Detail Report provided by the district includes descriptions of the student's problem behavior warranting administrative actions (suspension) with limited descriptions of staff responses to the behavior. The Behavior Detail Report (2022-23) does not describe strategies from the BIP other than verbal redirection and monitoring when out of the building. A similar report for the 2023-24 school year was not provided to the investigator.

The parent reported, in notes of a telephone conversation with the 8th Grade Principal and email from PBIS-social skills teacher, that the PBIS-social skills teacher redirected the student during a behavioral incident on August 18, 2023.

The school social worker provided a service log of 15 instances of working with the student from August 18, 2023 to November 9, 2023. In addition to the biweekly scheduled social work services, the social worker met with the student as part of the school's crisis team and when the student "checked in." Three instances of processing feelings or helping the student to become regulated are reported: August 18, 2023; August 22, 2023; and September 14, 2023. In her comments to the record of interactions, the social worker reported that the student had

some knowledge of feelings associated with the zones of regulation, and "He refuses to identify tools he can utilize to assist with regulating his emotions when he experiences feelings identified in each zone." The districts provided an example of the Zones of Regulation curriculum labeled as "[the student]'s toolbox" in the form of blank worksheets. The social worker reported that the student is respectful in sessions and interactions with her. The social worker reported that the PBIS-social skills teacher also used Zones of Regulation as a practice, including having students develop a toolkit and use it schoolwide.

The PBIS-social skills teacher reported that her classroom is focused on teaching social skills focused on self-regulation and executive functioning skills. The PBIS-social skills teacher reported that to implement the BIP in her classroom, district staff discussed the zones (what does your body look like, feel like, etc.) and when "seething mad" the student did not want her to do things "that his parents make him do" so she used the strategies without labeling them as such. For instance, she gave reminders of calming, identifying his feelings, making priorities, or setting goals as skills he can use. The PBIS-social skills teacher reported that the classroom has spaces for the student to work through problems with staff in order to self-regulate. Data was collected for decision making purposes.

In response to an emailed question, the district reported: "When a student enters the PBS classroom during a class period that is not part of their schedule, there is a clear understanding of expectations of the student. The student has the opportunity to de-escalate by engaging in one or more of their specific coping strategies. For the student in question, that would be the activities referenced in [Zones of Regulation workbook]. Once the student has de-escalated, they are given the opportunity to return to the class listed on their schedule. For the student in question, the activities referenced in [Zones of Regulation workbook] align with the student's BIP strategies."

In response to an emailed question, the district provided "Appendix 5" that included emails from the PBIS-social skills teacher to the parents and other members of the administration or IEP team with updates on the student's behavior and staff responses. Emails submitted as evidence by the district show that the district updated the parents via emails on the following dates during the 2023-24 school year: August 21, 23, 25, and 29, 2023; September 1, 5, 7, 19, 27 and 29, 2023; October 5, 24 and 30, 2023; and November 2, 2023. Parent teacher conferences were held with each of the parents on October 12, 2023.

In a response to an emailed question, the district responded that the academic content teachers "make an effort" to visit the student weekly to encourage him to come back to class and to offer instruction.

Conclusion

In this case, the student has extreme problems with attending classes and the district has communicated with the parents regularly to revise the IEP and the BIP. The resulting program

is found to be that the student attends the PBIS social skills class and that he does not attend his elective, ELA or math classes for instruction, nor has he done so since the end of September, 2023. Instead, the student remains in or returns to the PBIS classroom (Room D5), which is also the space designated for him to use when dysregulated.

The student's parents have repeatedly asked for unfinished work to be sent home and for assurances that academic work is being done when the student is in the D5 classroom during unscheduled (TG) periods. In this case, academic content teachers have been specifically instructed by administrators to send work that can be completed independently. The PBIS-social skills teacher in Room D5 reported that there was work available for the student from class "or similar" and she was responsible for teaching other students during the student's TG attendances. Neither the academic content teachers nor the PBIS-social skills teacher is regularly providing ELA or math instruction in Room D5. It cannot be determined the extent to which the academic content teachers sent work for the student to complete in the D5 classroom before a system to convey work was established by the district. It is clear that the student is not attending those classes or his elective, as required by the amended IEP which calls for special education services in special education settings, and described in the IEP amendment and PWN dated September 13, 2023 provided to the parents as "resource" 5 days per week for Math, ELA, PBIS, and an elective.

Parents could reasonably conclude that specialized instruction in academic content would occur in the student's scheduled special education resource and ELA and math classes. While a change of instructional methodology would not be defined as a material change in services, a change from having the work or similar work "available" without specialized instruction in either ELA or math is not in compliance with the student's IEP or the PWN provided to the parents.

The parent also expressed concerns regarding the lack of daily communication from the school about the student's behavior and the perceived lack of clarity in how the BIP strategies are applied. The parent believed he was assured that daily communication would occur due to communication with the 8th grade principal, and the district administrators were aware of the request for communication on methods and behavior on or before August 25, 2023. It is noted that the district frequently communicated with the parent and attempted to respond to his concerns. No reference to daily communication was found in the student's current IEP or amendments; only the quarterly reporting of progress on goals is required. It is noted that the district acknowledged their error in failing to provide all progress reports required by the IEP. It is recommended that when the district provides the missing progress reports that it also takes the opportunity to clarify its communication content and frequency with the parent.

With regard to implementation of the BIP, daily data was taken on the student's movement, activity and communication and staff notes were sometimes recorded. District staff and supervisors report that they implement the BIP and that they use the methods listed in the student's IEP. Daily data recording does not show what methods the staff use to prevent or

react to student problem behavior specified in the BIP. Discipline reports provided do not show how the BIP was used when the student refused, eloped, or aggressed, but the social worker's notes provide evidence of instances when de-escalation or processing methods mentioned in the BIP were used. Practices in the school and email updates on the student's behavior also mention how the BIP methods were used with the student.

Based on the foregoing, ***it is not substantiated*** that USD #437 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP in providing specifically by implementing the student's behavior intervention plan. ***It is substantiated*** that the district failed to implement the IEP by providing academic support to the student.

Issue Three

The USD #437 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide appropriately trained staff capable of implementing the student's IEP during the past 12 months.

Applicable Law

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) require 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.

In addition, in Kansas 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.

Analysis: Findings of Fact

The parent alleged that the persons providing the special education services in the child's program were not properly trained. The parent alleged that despite having been asked for the specific treatment approach being used in the PBIS classroom, the district did not provide

specific information on the models of positive behavior support being used or the training in that model for district staff.

The district responded that all the teachers providing specially designed instruction during the 2022-23 and 2023-24 school years were certified special education teachers. One of the 2023-24 teachers had experience working in a psychiatric facility, and another had experience in special day school. The school social worker is a licensed clinical social worker and the building administrators are licensed school administrators. The district responded that three team members who work most closely with the student are trained in Collaborative Problem Solving "a model for addressing challenging behavior focused on addressing skill deficits in students and working collaboratively to identify solutions to recurring problems," and one of the three is a fully certified trainer in the model.

The district also responded that the certified staff participated in annual PD focused on mental health as mandated by KSDE (such as de-escalation training), a district wide professional learning community, and the social worker and school psychologist participate in additional yearly behavior-based PD. Classified staff (paraeducators) have annual PD focused on mental health as mandated by KSDE, monthly meetings with the special education teacher focused on individual student needs and PD on strategies related to working with students with emotional and behavioral challenges.

The findings of Issue One and Issue Two are incorporated by reference. Based on the documents provided by the parent and the district, and interviews of the parent and district staff, additional findings are listed below.

The student's IEP requires staff to have: basic de-escalation training, awareness of the students BIP at least quarterly, common language, and awareness of toolbox strategies.

The district reported the following qualifications for the student's teachers and service providers.

Staff person and role	Degree - Special Experience	Years	Professional Development
Courteny Applehanz 7th grade SPED Math Teacher	Master's High Incidence Special Education Pk-12	7	Suicide Awareness, De-escalation
Tracie Bauer, Social Worker	Master's Social Work	5	Suicide Awareness, De-escalation Coll. Prob. Solving, Level 1 Quarterly behavior-based training
Patrick Cook, 8th grade SPED ELA Teacher	Master's High Incidence Special Education 6-12 Exp. in special day school	4	Suicide Awareness, De-escalation

Staff person and role	Degree - Special Experience	Years	Professional Development
Caroline Spalding, PBIS Social Skills Teacher	Master's Adaptive Special Education 6-12 Exp in special day school	8	Suicide Awareness, De-escalation Coll. Prob. Solving, Level 1 Quarterly behavior-based training
Howard Tush Behavior Interventionist Dean of Special Programs	Master's Adaptive Special Education 6-12, Building Leadership Exp in psychiatric facility	11	Suicide Awareness, De-escalation Coll. Prob. Solving, Level 1 & 2 Quarterly behavior-based training
Kimberly Dorr, Paraeducator	NA	2	20 hours PD: Secondary Methods Audacious Behavior Suicide Awareness, De-escalation Related Service overview
Rennesa Williams Paraeducator	CPR & CNA Certified	6	10 hours PD: Secondary Methods Suicide Awareness, De-escalation

The district provided the professional licenses of the student's special education teachers, school social worker, 8th grade principal, school psychologist, Dean of Behavioral Services, and Dean of Special Programs who provided direct services to the student. In addition to the training listed above, the 7th and 8th grade principals had basic de-escalation training.

The district reported and provided a record of the occurrence of at least three team meetings called by the Dean of Behavioral Services focused on the student's program and needs, in addition to reporting monthly meetings with classified staff who work with the student.

Conclusion

In this case, the staff at the school had proper credentials and training required by the state for their positions, which included key training included in the IEP or was related to the student's BIP. The student's school team met internally to discuss and problem solve the student's program, in addition to meeting with the parents at the previously mentioned IEP team meetings. The district provided a report of the training of each of the staff involved with the student.

Based on the foregoing, ***it is not substantiated*** that USD #437 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide appropriately trained staff capable of implementing the student's IEP during the past 12 months.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 CFR 300.304(c)(6) and (7), 34 CFR 300.324(a) and 34 CFR 300.327 was not found, based on the facts enumerated above. Corrective action is not required.
2. ISSUE TWO: A violation of 34 C.F.R. 300.323(c)(2) was found, based on the facts enumerated above. Corrective action is required (as follows):
   a. CORRECTIVE ACTION:
      i. Within 30 days 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. 300.323(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.
      ii. The district shall immediately, within 30 days of the date of this report, take steps to ensure that the student's IEP, specifically the specialized instruction in his special education resource ELA, Math and Elective, is provided to the student.
      iii. The district shall immediately, within 30 days of the date of this report, calculate the days of missed instruction to date and offer compensatory instruction to the parents, who may accept none, some, or all of the offered services. The offer shall be no less than 1,518 minutes of ELA instruction (33 absences for 46 minute periods) and 1,518 minutes of math instruction (33 absences for 46 minute periods), based on the attendance data provided in this investigation. The district may deduct 46 minutes for each period when it can document that the ELA teacher, the PBIS teacher, the math teacher or a properly directed paraeducator provided academic instruction to the student in the PBIS room. The district shall provide a copy of the offer to SETS as evidence of its completion.
      iv. The parents shall have 15 days to accept none, some, or all of the compensatory education offer. The district will provide PWN to the parents resulting from the parents' response to the compensatory education offer. The district shall submit the PWN to SETS as evidence of its completion 50 days after the date of this report.
      v. Dates due: Issue 2 (a)(i, ii, and iii) due on January 10, 2024; (a)(iv) due on January 30, 2024.
3. ISSUE THREE: A violation of 34 C.F.R. 300.156(a) was not found, based on the facts enumerated above. Corrective action is not required.

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).

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 NOVEMBER 17, 2023

DATE OF REPORT DECEMBER 26, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ----- by his mother, -----. In the remainder of the report, ----- will be referred to as "the student." ----- will be referred to as "the complainant" or "the mother" or "the parent."

The complaint is against USD #259, Wichita Public Schools. In the remainder of the report, USD #259 will be referred to as "the district".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on November 17, 2023 and the 30-day timeline due to a one day state holiday ends on December 18, 2023. Subsequently the complaint investigator requested and received a one-week extension due to personal reasons and due to an additional state holiday, the ending date is December 26, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham reviewed all evidence and documentation, which was provided by both the district and the complainant(s). Interviews with the mother and district were conducted. The following documentation and information were used in consideration of the issue(s):

1. Individualized Education Program, dated October 25, 2022
2. Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated October 25, 2022 and signed by parent on October 25, 2022
3. Student Discipline Profile dated between December 4, 2022 and March 2, 2023
4. Individualized Education Program amended, dated March 8, 2023
5. IEP Amendment Between IEP Meetings dated March 8, 2023
6. Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated March 8, 2023 signed by the parent March 8, 2023
7. Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated March 20, 2023 signed by parent March 28, 2023

8. Notice of Meeting dated May 5, 2023
9. Excusal from Attendance at IEP Meetings of Required IEP Team Members dated May 17, 2023 consent signed May 17, 2023
10. Individualized Education Program, dated May 17, 2023
11. Multidisciplinary Team Report (MTR) dated May 17, 2023
12. Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated May 23, 2023 consent signed May 23, 2023
13. IEP Progress Period Detail dated May 24, 2023
14. Student progress report Comparison chart between May 2023 and October 2023
15. Woodman Tiered Behavior Chart Revised August 1, 2023
16. 2023-2024 [student] Notes dated between August 18, 2023 and November 6, 2023
17. Daily Behavior Data Sheet dated August 18, 2023, August 29, 2023, and August 31, 2023
18. 2023-2024 [student] General Ed Student Contact Log dated between August 31, 2023 and November 15, 2023
19. Student Discipline Profile dated August 18, 2023 through November 9, 2023
20. Email between parent and principal dated between August 30, 2023 at 1:14 p.m. and September 12, 2023 at 4:34 p.m.
21. Email from mother to principal dated August 31, 2023, at 6:24 p.m.
22. Email from principal to school team dated September 1, 2023 8:08 a.m.
23. 2023-2024 [student] Special Ed Student Contact Log dated between September 1, 2023 and November 20, 2023
24. Email from principal to parent dated September 7, 2023 at 2:07 p.m.
25. Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated September 8, 2023, consent signed September 11, 2023
26. Email from school counselor to parent dated September 11, 2023 at 7:58 p.m.
27. Email from IR Special Education Teacher to Principal dated September 11, 2023 at 9:25 p.m.
28. Email from principal to school team dated September 14, 2023 6:23 p.m.
29. Email from parent to principal dated September 14, 2023 at 6:12 p.m.
30. Request for Tier 3 Behavior Consult dated September 18, 2023
31. Email between principal and parent dated September 20, 2023 between 9:09 a.m. and 9:45 a.m.
32. TASN Technical Assistance Action Plan dated September 27, 2023
33. TASN Meeting Notes dated September 27, 2023
34. IEP Progress Report – Annual Goal dated October 12, 2023
35. Quarter 1 Elementary Progress Report 2023-2024 school year

36. Social Worker message history between October 28, 2023 and November 28, 2023
37. Recovery Room Guidelines updated November 8, 2021
38. Notice of Meeting dated November 17, 2023
39. Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated November 20, 2023
40. Functional Behavior Assessment (FBA) dated December 6, 2023
41. Multidisciplinary Team Report (MTR) dated December 6, 2023
42. Protocol for Responding to Behavior and the Investigative Processes (undated)
43. Recovery Room description (undated)
44. Reset Room description (undated)
45. 2023-2024 Behavioral Programming Change Packet
46. Regulations Board Policy – P1464 student behavior
47. IR Teacher Fall 2023 Conference notes
48. 2023-2024 School schedule (Instructional, Specials and Assembly Seating)
49. 2023-2024 District schedule
50. District response to complaint dated December 7, 2023

Background Information

The student attends USD #259 as a second grader at a district elementary school and receives special education and related services under the exceptionality category of Autism. The student first started receiving Infant-Toddler services (Part C) and later was determined to be eligible for special education services under the primary exceptionality of Autism.

The student receives special education services in general education and is also pulled out. His IEP team has met several times in the twelve months to discuss his behavior and amount of time with general education peers. The student transferred to a different elementary school during the course of this investigation.

Issues Investigated

1. ISSUE ONE: 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 the general education service minutes, thereby denying the student access to general education peers during the 2023-2024 school year.
2. ISSUE TWO: USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to call an IEP meeting in response to lack of student progress during the 2023-2024 school year.
3. ISSUE THREE: USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to complete an FBA within timelines during the 2023-2024 school year.

4. ISSUE FOUR: USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to develop an appropriate annual individualized education plan (IEP) based on student food allergies and behaviors resulting in suspensions during the past twelve months.

Issue One

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 the general education service minutes, thereby denying the student access to general education peers during the 2023-2024 school year.

Applicable Law

Federal regulations 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. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

The parent allege that the district did not meet the provisions on the student's IEP to keep the student in a general education classroom and instead was kept in a cubicle in a special education classroom away from his peers.

The district acknowledge that although they were not always implementing the general education service minutes as written into the IEP, the IEP accommodation of a soft start to the school year allowed them to serve the student based on his changing behavioral needs in his least restrictive environment at any given time. They further respond that the soft start to the school year documents that behavioral data collection would guide the amount of time the student spends with peers in the general education setting and they used that to make decisions.

The Multidisciplinary Team Report (MTR) dated May 17, 2023 describes the Student's response to interventions in the general education setting: "At the beginning of the school year, [student's] IEP was written for him to receive special education services in the general education classroom with non-exceptional peers for the majority of the school day. This setting appeared to be overwhelming for [student] as he was frequently displaying disruptive behaviors such as blurting out, property destruction (pulling materials off shelves and throwing to the ground), and eloping. When extremely dysregulated or overstimulated, [student] exhibits aggressive behavior towards staff and peers such as hitting, kicking, and in one instance, purposely urinating on property. [Student] displayed these behaviors in both the

general education and special education classrooms, and in less structured settings such as recess. As a temporary placement and upon parent request, [student's] services during core were moved into the special education classroom with support from the special education teacher and various paraeducators. [Student's] behaviors impacted fewer students in this setting, but he continued to have difficulties regulating his emotions."

The MTR dated May 17, 2023 lists a recommendation "To accommodate [student's] aversion to change and difficulty with transitions, initially he will have a soft start to his school year next year, spending more time in the special education classroom as he transitions back to school and acclimates to 2nd grade expectations."

The IEP dated May 17, 2023 (in effect at the beginning of the 2023-2024 school year) shows an accommodation of a "Soft start when transitioning to a new year or a new program" with a rationale allowing the student to adjust to changes in his routine and recognizing that starting the school year is a big change for him. The frequency was listed as at major transition times and in all school settings throughout the day and for the first 30 - 60 days.

The IEP dated May 17, 2023 shows "[Student] will receive Speech and Language services twice a week for 15 minutes. Services will be provided individually or in group setting. The student will receive special education services in a special education classroom without non-exceptional peers for English/Language Arts (Pull Out). He will receive special education services with non-exceptional peers for the remainder of the day including Math and specials, with the exception of lunch and recess. These services are for the same duration and frequency as his grade level peers."

The PWNP dated May 23, 2023 and signed by the mother on May 23, 2023 states that while the Student has made good progress with the current level of support and staffing, he still struggles with transitions, and the Team anticipates that he would need extra support at the beginning of the 23-24 school year to acclimate back to school expectations and his new classroom/peer group.

The PWNP dated May 23, 2023 and signed by the mother on May 23, 2023 recorded, "Time without nonexceptional peers was increased to 110 minutes/daily; support in the general education classroom was decreased."

The district reported in their response that the student's school schedule shows that English/Language Arts, lunch, and recess total 150 minutes daily in pull-out special education without access to nondisabled peers. Additionally, twice a week for 15 during speech and language service time the student is pulled out without access to nondisabled peers.

The district's response to the complaint stated, "while on any given day, the school may have had to exceed the amount of time the Student's IEP called for him to be away from general education peers, it was to meet his unique needs and to try to serve him appropriately in a way and setting in which he could receive the services at that time. The school was not denying the

student access to general education peers during the 2023-2024 school year, but serving him in his least restrictive environment on a moment's notice as his behaviors required, during this re-evaluation period."

Conclusion

Although the student minutes dictate the number of minutes the student receives services with general education peers the accommodation, "soft start to school year" as defined in the MTR dated May 17, 2023 allows for the alternative of minutes to provide the student the level of support to be successful within the first 30-60 days of the school year. Based on the foregoing, ***it is not substantiated*** that USD #259 failed to implement the student's IEP, specifically the general education service minutes, thereby denying the student access to general education peers during the 2023-2024 school year.

Issue Two

USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to call an IEP meeting in response to lack of student progress during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.324(b)(1)(ii)(A) and state statute at K.S.A. §72-3429 states that the IEP team is obligated to review the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate.

Analysis: Findings of Fact

The parent allege that she was told her student was failing and was suspended four times this school year for his behavior.

The district respond that the student was progressing during the 2023-2024 school year, as evidenced by his Elementary Progress Reports and the first quarter IEP Progress Report. Further, the district scheduled an IEP meeting on December 6, 2023 after allowing time to conduct a functional behavior assessment (FBA) and offered an IEP meeting earlier during the fall semester.

The findings of Issue One is incorporated herein by reference.

The October 17, 2023 Quarter 1 Elementary Progress Report shows that the student is rated emerging for grade level behavior and work habits, emerging and partial success for grade level English Language Arts, emerging for grade level mathematics, developing and proficient for grade level physical education, emerging for grade level science, developing and proficient for grade level visual arts and developing for grade level vocal music.

The Progress Reports dated May 24, 2023 and October 12, 2023 shows:

Student goal	May 24, 2023	October 12, 2023
Orally produce simple narrative	child did not work on this goal during the reporting period	Progress has been made towards reaching the goal by the annual IEP.
Produce /R/ and vocalic /R/	child did not work on this goal during the reporting period	Progress has been made towards the goal, but the goal may not be met by the annual IEP.
Breathe slowly & deeply, relax tense body, ask calmly to be by self when angry	child did not work on this goal during the reporting period	Progress has been made towards the goal, but the goal may not be met by the annual IEP.
Answer complex WH questions	child did not work on this goal during the reporting period	Progress has been made towards reaching the goal by the annual IEP
Keep hands to self and stay in assigned area	child did not work on this goal during the reporting period	Progress is not sufficient to meet this goal by the annual IEP.
Write sentences using graphic organizer	child did not work on this goal during the reporting period	Progress has been made towards the goal, but the goal may not be met by the annual IEP.
Develop skills to regulate emotions	child did not work on this goal during the reporting period	Progress has been made towards the goal, but the goal may not be met by the annual IEP.

The October 12, 2023 Parent-Teacher Conference Teacher notes document meeting with the parent and describing new supports being implemented from the TASN action plan.

The Tier 3 Request Form dated September 18, 2023 describes academic and behavior successes along with level of support.

The emails describe the coordination of the TASN consultation and resultant Action Plan along with follow-up team meeting discussing their implementation and student changes document the IEP team met during the 2023-2024 school year.

The consultation between the IEP team and TASN for behavior intervention show that ideas generated during the meeting assisted the team to develop an Action Plan with new ideas to address the Student's behaviors.

An email dated September 20, 2023 from the principal to the mother states, "let us know if you wanted an IEP meeting before the TASN meeting and/or if you'd like to wait and hold the IEP when we finalize the FBA as part of the re-evaluation."

The TASN action plan and teacher notes from the TASN meeting document the instructional changes recommended. Teacher notes and emails detail the resultant student progress from implementing the recommendations.

Conclusion

Review of the documentation shows that the student was progressing in the grade level standards and IEP goals. While the student was struggling behaviorally the parent requested and the district consented to conduct social-emotional evaluation and functional behavior assessment for the student as well as use the outside expertise of TASN. Both the complainant and district agreed to meet the IEP at the conclusion of the re-evaluation on December 6, 2023 and the IEP team met regularly to discuss and improve the student's behavioral supports as evidenced by meeting notes and emails. Based on the foregoing, ***it is not substantiated*** that USD #259 failed to call an IEP meeting in response to lack of student progress during the 2023-2024 school year.

Issue Three

USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to complete an FBA within timelines during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.301(c)(1)(i) and K.A.R. §91-40- 17(a) states the initial and re-evaluation must be conducted within 60 school days of receiving parental consent for the evaluation. The activities that must be completed during the 60 school days include: 1) conduct an evaluation of the child; 2) conduct a meeting to determine if the child is an exceptional child and if so, develop an IEP, and finally; 3) give notice of this meeting.

Analysis: Findings of Fact

The parents allege that they requested a behavioral plan and IEP meeting on August 31st but the first dates they were offered were in December. Further, as of November 15, 2023 they had not been notified that the FBA was completed.

The district responds that after receiving the request for the reevaluation to conduct a FBA on August 31, 2023 they examined the existing data collected as part of the school's Child Study Team and on September 8, 2023 sent home a PWN agreeing to conduct the FBA and evaluation, noting the potential to revise the IEP based on the evaluation findings. The content for evaluation was signed on September 11, 2023 and the school began conducting the evaluation. During the evaluation TASN was brought in and they helped design some of the FBA data collection tools. During October and mid-November evaluation data was collected and the social worker attempted to collect evaluation data and conduct social histories with

the family. After failing to reach the family to set a date for the re-evaluation and IEP discussion the school sent a Notice of Meeting on November 17, 2023 for December 6, 2023. The district reported that this meeting occurred, and an IEP review meeting was held on December 11, 2023, meeting the 60 school day timeline for completing a re-evaluation.

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

The parent log recorded that on August 31, 2023 at 6:02 a.m. the mother called the principal and the "Mom requested IEP meeting & FBA to address behavior."

The Prior Written Notice for Evaluation or Reevaluation and Request for Consent (PWNE) dated September 8, 2023 proposed to use existing data and collect new data to determine Social/Emotional Status/Behavioral Status. The explanation recorded, "Following a parent request, the team is proposing to conduct a limited scope social/emotional reevaluation to determine if [student] is eligible for any additional special education supports or services. Additionally, if applicable the team will determine if [student] needs an FBA and behavior plan as a result of the social/emotional reevaluation." Parental consent was signed on September 11, 2023.

Staff notes documented on August 31, 2023 "Wrapping up FBA observations"

The Special Education Logs show school staff contacted parents by phone or face-to-face on September 26, September 29, October 3, October 18, and October 26, 2023 to collect re-evaluation data.

Documentation shows that on November 2, 2023 at 10:36 a.m. the social worker contacted the mother "I was contacting you to schedule [student's] staffing for his re-evaluation. We are proposing December 6th or December 8th at 2:30 p.m. Let know if either of those dates work for you and/or your husband. I tried to stick to that after 2 p.m. time." to which the parent replied, "Let me check with everyone and get back to you."

Documentation showed that on November 13, 2023 at 11:30 a.m. the social worker contacted the mother and left a message, "Hey checking back in on the date to schedule [student's] meeting. Does 12/6 or 12/8 at 2pm (work)?

Documentation showed that on November 18, 2023 at 3:00 p.m. the Mediation/Due Process Supervisor called the mother. During the conversation, the following was reported, "she [mother] said they had [contacted her] and offered two December dates, but she had not responded to the school because of the recent incident. She asked how she would know when they would meet, and I shared that the school would be sending a meeting notice, but if the date they selected is not one that works for her, to let the school know and they can try to accommodate."

Documentation showed that the district sent the parents a Notice of Meeting dated November 17, 2023 for a meeting on December 6, 2023.

The district report that the meeting occurred on December 6, 2023 and an FBA and Evaluation report were distributed. The district reported that an IEP meeting was held on December 11, 2023 to discuss changes based on the reevaluation containing the FBA evaluation.

Conclusion

A functional behavioral assessment can be requested and conducted as part of an initial evaluation or reevaluation in order to develop a BIP when the student exhibits behaviors that impact their performance at school. If that is the case in Kansas, the district has 60 school days from the time the parent signs consent to complete the initial or reevaluation.

The district is only obligated to conduct an FBA to develop a BIP if change of placement is considered due to discipline action. In this case the student has not been suspended ten days in order to evaluate if a change of placement has occurred. It is found that the parent signed consent to examine existing data and conduct new evaluation for social-emotional and conduct an FBA on September 11, 2023. According to the district's 2023-2024 school year calendar, sixty school days end on December 11, 2023. Based on the foregoing, ***it is not substantiated*** that USD#259 failed to complete an FBA within timelines during the 2023-2024 school year.

Issue Four

USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to develop an appropriate annual individualized education plan (IEP) based on student food allergies and behaviors resulting in suspensions during the past twelve months.

Applicable Law

Federal regulations at 34 C.F.R. §300.324(a)(1)(ii), 34 C.F.R. §300.324(a)(1)(iv), and 34 C.F.R. §300.324(a)(2)(i) and state statutes at K.S.A. §72-3429 state that when developing the student's IEP, the IEP team shall consider the strengths of the child, the concerns of the parents, the results of the most recent evaluation of the child, the academic, developmental and functional needs of the child and in the case of a child whose behavior impedes the child's learning or that of others, the use of positive behavioral interventions and supports and other strategies to address that behavior.

Further, federal regulations at 34 C.F.R. §300.530 (f)(1)(i) states that if the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP team must either conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child.

Analysis: Findings of Fact

The parent alleges two issues were not appropriately addressed in the student's IEP. The mother states that the student was suspended from school four times this year for behaviors and a behavioral plan has not yet been set up for the student. As well the student is not able to eat lunch at school because his dietary restrictions cannot be accommodated with school lunches and the district will not warm up food sent from home for him.

The district responds that the student's IEP over the past 12 months was developed to address the student's needs related to food allergies and that they were unaware of the request to warm food sent from home. They respond that they are happy to honor that request.

The district responds that they have used data and outside behavioral consultants to address the student's behavior and completed an IEP meeting following a reevaluation and FBA on December 6, 2023 to address the behavior concerns. They state that the student's transition to the new school year was a trigger and the IEP team anticipated that with the accommodation for a soft start to the school year and school day. They acknowledge that the student's behavior has been volatile, but the assert that the IEP was developed appropriately addressing the behavior of the student at the time of development as evident by the reevaluation.

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

Food Allergies

The IEP dated May 17, 2023 lists a parent concern as to how little the student eats at school and would like the student to have extra time to eat. The IEP lists an accommodation, "extra time at lunch or at snack time to eat" initiated 10/25/22 due to sensory sensitivity causing him to eat very slowly. This accommodation is to be accessed daily throughout the school day.

The Health Assessment portion of the Multi-Disciplinary Report (MTR) dated 5/17/23 states: "[Student] is a 5 year-old male with diagnoses of Asthma, Autism, Food allergies/Anaphylaxis, GI Reflux. He has Albuterol inhaler and EpiPen at school. He is 48.5 inches tall (97%), weighs 43 pounds. He has known food allergies of dairy, eggs, nuts, and shellfish. He is current on childhood immunizations and passes hearing and vision screenings."

The MTR dated May 17, 2023 includes the following from a Social History dated April 22, 2022, "Sensory/Adaptive: [Student] does not like loud sounds, dirty hands, certain clothing textures, has skin sensitivities, and has aversion to suit and food textures. [Student] will only eat 7 foods which are chicken nuggets, fries, oatmeal, blue tortilla chips, original sun chips, vanilla wafers, and orzo noodles. If [student] is given something other than the seven foods, he will eat he will vomit." Later in the same MTR, parent reports that "[student] does not eat or attempt to eat non-preferred items that are offered to him. He brings his own snacks and lunch to school."

The IEP dated May 17, 2023 shows some of the Health/Physical present level section changed, but the food allergy was not changed. However, the Health/Physical Needs as they Affect

Learning section did change to include: "[Student] is allergic to shellfish, nuts, dairy and eggs. [Student] knows this and will often say he can't eat something because he is allergic to it. He has a limited diet of things he likes to eat hence he is very thin. We encourage him to take extra time after lunch to finish any of his food that is left over from his lunch that is packed for him from home," The May 17, 2023 IEP nor MTR do not document a parent request nor team determination that the student's disability required the school to warm his food.

The district reports in their response that during a November 17, 2023 phone conversation between the mother and Mediation/Due Process Supervisor that the student has several food allergies, is a picky eater, and that the school says they cannot warm up food that he can and will eat, such as spaghetti, so they just send cold snacks from home. Further, the grandmother reported she believes it is disability-related to a certain degree because the student participated in a swallow study and received eating therapy.

The Special Education Student Contact Log shows that the Mediation/Due Process Supervisor assured the Parent that she would speak to the Principal about heating up food sent from home on November 17, 2023.

The Principal reported that the school agrees to warm the food that family sends to school for the student.

Behavior

The March 8, 2023 IEP Amendment documents that data from behavior charts and incident reports were used to revise special education service minutes to best meet the student's behavior needs in his least restrictive environment. Keeping the service minutes the same was considered but rejected due to the student's challenges without the additional supports.

A PWNE dated March 20, 2023 with parent signed consent on March 28, 2023 documents a re-evaluation (with boxes checked for existing and new data), will include "assessment of social/emotional/behavioral development in relation to the child's learning, interpersonal relationships, feelings and/or physical symptoms as well as a functional behavioral assessment or evaluation to determine appropriate positive behavioral supports."

A MTR dated May 17, 2023 reports the student struggled with behaviors early during the 2022-2023 school year and that his parents had "requested a (limited scope) behavioral re-evaluation to determine appropriate positive behavior supports, accommodations and placement/services in order to help him progress."

The May 17, 2023 IEP includes goals and accommodations for behavior and the progress reports from quarter 4 of the 2022-2023 school year to Quarter 1 of the 2023-2024 school year show improvement. One accommodation, "starts the school day with a soft start where the adult can assess his behavior for the day. An accommodation was added to the IEP when transitioning to a new year or a new program to allow [student] time to adjust to changes in his routine throughout the day and for the first 30 - 60 days.

Issue Three found that the timeline for the conducting a functional behavior assessment to develop a behavior intervention plan is December 6, 2023. At this time, the district is on track to meet that timeline.

The school Principal reported during the interview that she met with Mother on November 27, 2023 and agreed to her request for the student transfer to another USD #259 elementary school, one that has behavioral supports in the school to be able to meet the Student's needs, for a fresh start per their proposed solution in their Formal Complaint, and will work with the new school as [school] team completes the re-evaluation and subsequent IEP review on December 6, 2023 to aid in as smooth a transition as possible.

Conclusion

In regard to the allegations about developing an appropriate IEP based on food allergies and sensitivities it is found that the district is in compliance and the district consented to warm the student's food in the school setting based on a parent request. Additional accommodations are in place to provide additional time to eat.

In regard to developing an appropriate IEP for the past twelve months in regard to a behavior plan the district demonstrated they have evaluated and implemented many strategies and accommodations for the student's behavior and revised the IEP in anticipation of a transition. During the 2023-2024 school year the behavior intervention plan development was dependent on the PWN for reevaluation of behavior to develop the plan. The timeline of 60 school days as investigated in Issue three was in effect. Based on the foregoing, ***it is not substantiated*** that USD #259 failed to develop an appropriate annual individualized education plan (IEP) based on student food allergies and behaviors resulting in suspensions during the past twelve months.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was not found based on document review. Corrective action is not required.
2. ISSUE TWO: A violation of 34 C.F.R. §300.324(b)(1)(ii)(A) and K.S.A. §72-3429 was not found based on document review. Corrective action is not required.
3. ISSUE THREE: A violation of 34 C.F.R. §300.301(c)(1)(i) and K.A.R. §91-40- 17(a) was not found based on document review. Corrective action is not required.
4. ISSUE FOUR: A violation of 34 C.F.R. §300.324(a)(1)(ii), 34 C.F.R. §300.324(a)(1)(iv), 300.530 (f)(1)(i) and 34 C.F.R. §300.324(a)(2)(i) and state statutes at K.S.A. §72-3429 were not found, based on review of documents and interview with staff. Corrective action is not required.

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).

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 # 382
ON NOVEMBER 20, 2023

DATE OF REPORT DECEMBER 21, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ------, by his father, ------. In the remainder of the report, ------ will be referred to as "the student." ------ will be referred to as "the complainant" or "the father."

The complaint is against USD #382, Pratt Public Schools. USD #382 contracts with South Central Kanas Special Education Cooperative (SCKSEC) for special education services. In the remainder of the report, USD #382 and SCKSEC will be referred to as "the district".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on November 20, 2023 and the 30-day timeline ends on December 21, 2023 with the inclusion of one day for a state holiday.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham reviewed all evidence and documentation, which was provided by both the district and the complainant. The Complaint Investigator interviewed the father on December 17, 2023 and exchanged emails with the director of special education to clarify issues and evidence. Although all evidence provided was reviewed the following documentation and information were used in consideration of the issue(s):

1. Email between school psychologist, elementary teacher, director of special education, mother and father dated August 4, 2023 between 10:11 a.m. and 3:20 p.m.
2. IEP Contact log dated between August 24, 2023 and November 10, 2023.
3. Email between mother and director of special education dated November 3, 2023 between 3:12 p.m. and 4:10 p.m.
4. Email between elementary teacher and director of special education dated November 3, 2023 between 4:14 p.m. and 4:15 p.m.
5. Email from elementary teacher to father and mother dated November 3, 2023 at 5:20 p.m.
6. Screenshot of text message to father dated November 3, 2023 at 5:30 p.m.

7. United Postal Service receipts to father and mother's home addresses dated November 4, 2023 at 10:56 a.m.
8. Email from special education director to mother and father dated November 9, 2023 at 9:42 a.m.
9. Email between special education director, father and mother dated November 9, 2023 between 3:08 p.m. and 3:51 p.m.
10. Notice of Special Education Meeting dated November 10, 2023
11. Manifestation Determination Review dated November 14, 2023
12. Individualized Education Plan dated November 14, 2023
13. Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated November 14, 2023
14. Email between mother, director of special education, school psychologist, father and elementary teacher dated between November 14, 2023 and November 15, 2023 between 9:53 p.m. and 4:40 a.m.
15. Email between elementary teacher, school psychologist, director of special education, mother and father dated November 16, 2023 at 4:04 p.m.
16. Email from occupational therapist to mother and father dated November 30, 2023 at 2:01 p.m.
17. Email from elementary teacher to father and mother dated November 30, 2023 at 4:20 p.m.
18. Child Complaint Investigation Report for 24FC382-002 dated December 9, 2023

Background Information

The fourth grade student attends a behavior day school administered by the special education cooperative that provides services to the students in the district. The student began receiving early childhood special education services at age three in the district. He continued to receive special education services when he transitioned to kindergarten. At the end of first grade, the student was placed in a 45 day interim alternative educational setting (IAES) at the behavior day school as a result of physical aggression towards a staff member. During second, third and fourth grades the student primarily attended the behavior day school where he received specialized instruction, speech therapy, paraeducator support, counseling, occupational therapy, and autism support services. The student has been medically diagnosed with ADHD, combined type, and Autism spectrum disorder.

The father's complaint addressed receiving discipline and behavior paperwork for his son. At the time the parent signed the complaint on November 11, 2023 the student had not missed ten days of special education services due to disciplinary actions and paperwork related to the student being sent home were not addressed by IDEA regulations. A similar complaint was investigated on behalf of the student's mother in child complaint 24FC382-002 and the finding

was that the student had not missed ten days of special education due to disciplinary actions and was a general education issue. The father's complaint was received by KSDE on November 20, 2023. Therefore, November 20, 2023 is the recorded first day of the child complaint.

Several events occurring between November 11, 2023 and November 20, 2023 impact the investigation of this complaint. A manifestation determination review and IEP were held on November 14, 2023. These special education actions are addressed by IDEA and therefore investigated.

Issues Investigated

1. ISSUE ONE: USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide parent notice of school discipline or student behavior actions during the 2023-2024 school year.

Issue One

The USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide parent notice of school discipline or student behavior actions during the 2023-2024 school year.

Applicable Law

IDEA does not specifically address providing documentation of student discipline notice to parents; that is instead guided by district practice. However, if a district is considering a suspension or an expulsion of a child with a disability, school districts must follow the requirements of K.S.A. § 72-6115 and also provide parents the required notice, under K.S.A. § 72-3433(d), of the school's decision to make a disciplinary change of placement as well as a copy of the Parent Rights document 34 C.F.R. § 300.523(a)(1).

K.S.A. § 72-6115, states a suspension may be for a short term not exceeding 10 school days, or for an extended term not exceeding 90 school days. No suspension for a short term shall be imposed upon a pupil without giving the pupil notice of the charges and affording the pupil an opportunity for a hearing thereon. The notice may be oral or written and the hearing may be held immediately after the notice is given. The hearing may be conducted informally but shall include the following procedural due process requirements: (A) The right of the pupil to be present at the hearing; (B) the right of the pupil to be informed of the charges; (C) the right of the pupil to be informed of the basis for the accusation; and (D) the right of the pupil to make statements in defense or mitigation of the charges or accusations. Refusal of a pupil to be present at the hearing will constitute a waiver of the pupil's opportunity for a hearing. A short-term suspension may be imposed upon a pupil forthwith, and without affording the pupil a hearing if the presence of the pupil endangers other persons or property or substantially disrupts, impedes, or interferes with the operation of the school. A written notice of any short-term suspension and the reason therefor shall be given to the pupil involved and to the pupil's

parent or guardian within 24 hours after the suspension has been imposed and, in the event the pupil has not been afforded a hearing prior to any short-term suspension, an opportunity for an informal hearing shall be afforded the pupil as soon thereafter as practicable but in no event later than 72 hours after such short-term suspension has been imposed. Any notice of the imposition of a short-term suspension that provides an opportunity for an informal hearing after such suspension has been imposed shall state that failure of the pupil to attend the hearing will result in a waiver of the pupil's opportunity for the hearing. No suspension for an extended term and no expulsion shall be imposed upon a pupil until an opportunity for a formal hearing thereon is afforded the pupil. A written notice of any proposal to suspend for an extended term or to expel from school, and the charges upon which the proposal is based shall be given to the pupil proposed to be suspended or expelled from school, and to the pupil's parent or guardian. Any notice of a proposal to suspend for an extended term or to expel from school shall state the time, date, and place that the pupil will be afforded an opportunity for a formal hearing, and that failure of the pupil and the pupil's parent or guardian to attend the hearing will result in a waiver of the pupil's opportunity for the hearing. The hearing shall be held not later than 10 days after the date of the notice. The notice shall be accompanied by a copy of this act and the regulations of the board of education adopted under K.S.A. 72-6116, and amendments thereto. Whenever any written notice is required under this act to be given to a pupil or to a pupil's parent or guardian, it shall be sufficient if the notice is mailed to the address on file in the school records of the pupil. In lieu of mailing the written notice, the notice may be personally delivered. A formal hearing on a suspension or expulsion may be conducted by any person or committee of persons authorized by the board of education to conduct the hearing.

Analysis: Findings of Fact

The father alleged that he learned of behavior incidents that resulted in the student being sent home from school from the student's mother. He stated as the student's father he should have received those notifications as well. Instead, after hearing of the instance in which the police were called about his son, he had to call the school to learn about it. He stated that until the November 14, 2023 IEP and manifestation determination meeting the only paperwork, he received from the school are the student's IEPs.

The district responded that they sent notice of school discipline and discipline referrals located in the ESI/Incident Report Folder home to the parents of the student in paper form. They additionally state that the father has been provided the same documentation about special education actions as the mother during the 2023-2024 school year. In regard to incidents in which the mother alleged that the student was sent home for behavior the district responded that the mother requested that she be notified when the student was having a behavior problem and then the mother would come to the school and proceed to take the student

home. "When [mother] has chosen to take [student] home, without being suspended, those days are not counted as OSS [out of school suspension]."

The father stated in an interview on December 17, 2023 that he received a copy of his student's IEP at the beginning of the 2023-2024 school year. He stated that he heard about behavior instances at school from the student's mother, but he was not called, nor received notification through email or mail.

An email from the school psychologist scheduled a meeting on August 8, 2023 with the student's mother. The elementary teacher later that day emailed the school psychologist that the father had not been included in the meeting. The school psychologist then added the father to the meeting invite.

An email from the mother to the director of special education dated November 3, 2023 at 3:12 p.m. stated,

> *After yesterday's conversation, you guys determine that [student] was being kicked out for the rest of the day of 11/2/23. Then I received a (sic) phone call at 3:06 p.m. that I miss you left a brief voice-mail where I called back at 3:07 and was informed that [student] for sure is kicked out for 11/3/23 and you weren't sure about next week for you were at a conference. Where I inform you that is fine but we needed to set up an iep meeting because [student] has been kicked out for more than 10 days. Where you told me he has not but we can set up an iep meeting and you'll get with [school psychologist]. I received a phone call today 11/3/23 at 2:01 p.m. informing me that [student] was kicked out of school till November 14th where we will have an iep meeting and a manifestation meeting at 2:15pm that day. That [elementary teacher] was getting the paperwork done up to get to me. Am I understanding this correctly?*
>
> *Also it is my understanding Charles was not contacted either day or at all besides by me and I have asked multiple times that he been contacted because we have joint custody and by law he has to know these things rather it be by email or phone call or mail. He has not received any seclusion or anything from you guys and I have signed them up with registration.*

An email dated November 3, 2023 at 3:39 p.m. from the special education director to the mother stated,

> *After reviewing the incident and having a staff member with severe bodily harm sent to the hospital, we have decided to move forward with OSS until November 14th when we will reconvene and meet as a team. We will also conduct a MDR then since we will be near the 10 days of OSS at that time. I am contacting [student's] dad as well today…He will be notified of the meeting as well. We have been documenting the OSS days. You have requested previously that we contact you to let you know when [student] is having a crisis. Then you have been coming to the school and picking him up without OSS being assigned. The formal letters that you have received are the documented OSS days that we have. Any day that you have come to pick him up on your own without us giving him OSS is not OSS as we did not ask you to*

> *come or take him. We are just following your request to be notified of his meltdown. I hope this helps with understanding.*

An email from the elementary teacher to the special education director on November 3, 2023 at 4:14 p.m. stated, "I have an email and phone number for his father. I will send the meeting notice via email since we have electronic consent and will text also as you directed for his mother."

An email dated November 3, 2023 at 5:20 p.m. from the elementary teacher to the mother and father stated, "Attached you will find a notice of meeting for an IEP (sic) meeting and manifestation determination review to be held on November 14, 2023 at 2:15 p.m. at [school's] Principal's office. A Google Meet Link will also be provided via email. A copy of your parent rights are also attached."

A text message from the elementary teacher to the father dated November 3, 2023 at 5:30 p.m. stated, "This is [elementary teacher] at [school]. I have sent an email including a meeting notice for an IEP and manifestation determination review for [student] November 14, 2023 at 2:15 p.m. at [school]. A separate email contains a calendar invitation and Google meet link to attend virtually. Please confirm receipt of the email meeting notice and parent rights. Thank you."

An email sent to the father on November 9, 2023 at 9:42 a.m. stated, "This is a friendly reminder that we will be meeting to hold an IEP and MDR meeting for [student] next week on Tuesday, November 14, 2023 at 2:15 p.m.

An email from the director of special education to the mother and father dated November 9, 2023 at 3:51 p.m. stated,

> *The team can discuss various options, but one option on the table for moving forward with his education could include a 45 day change in placement or alternative education setting due to the severe bodily harm he inflicted on our staff member. The staff member also has the right to file criminal charges with the law against the student if they choose to do so from a personal standpoint due to the significant nature of the injury. I have seen situations where students are sent to juvenile detention centers in cases similar to this due to the applicable laws on the criminal side. That decision would not be up to his IEP team if that happened. That decision would come through the judge. If a 45 day change in placement for education occurs or an alternative education setting is determined, it would typically come directly through the hearing officer. Typically, I am the hearing officer as I function similar to the superintendent would at a school district. We will also be including the [home district] superintendent and [school] principal since he is enrolled as a [district] student.*

The Notice of Meeting dated November 10, 2023 proposed meeting for November 14, 2023 at 2:15 p.m. is addressed to father and included the Parent Rights document.

The father stated during an interview on December 17, 2023 that he received a copy of the Notice of Meeting for the November 14, 2023 meeting.

The father stated during an interview on December 17, 2023 that he attended the November 14, 2023 meeting.

The Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated November 14, 2023 stated, "Following the Manifestation Determination Review, held on 11/14/2023, [student] was placed in a 45 School Day Interim Alternative Educational Setting (this is not a parent consent item), due to serious bodily injury, and the team determined [student] will receive the following services and supports throughout this 45 School Day Interim Alternative Educational Setting. The team will reconvene, prior to the end of the 45 School Day Interim Alternative Educational Setting, to determine [student's] educational services and placement, upon the expiration of the 45 School Day Interim Alternative Educational Setting."

The PWN dated 11/14/23 showed the father was emailed a copy of the PWN on December 11, 2023.

The IEP dated 11/14/2023 and initiated 11/15/2023 recorded input by the father.

The parent communication log showed that a Google Calendar invite was sent to both parents for the IEP meeting on November 3, 2023 via email.

The parent communication log showed the Notice of Meeting and parent rights were sent to both parents via email in Webkids and by mail.

An email from the mother to the director of special education, the school psychologist, father and elementary teacher sent on November 14, 2023 at 9:53 p.m. stated, "I understand he has to be under a remote learning environment, I understand I have 3 days to appeal, you will have our determination by Thursday 11/16/23 by 5pm of which of 3 options you have given us. Which are [different school program] where he will still get provided ot, speech, etc through you guys, or zoom through [school], or you sending information and me being his para.

On November 16, 2023 at 4:04 p.m. the mother emailed the elementary teacher, the director of special education, the school psychologist, and father stating, "The decision that has been made is [student] will continue to what we are doing for now with [school] while I'll look into other options and speak with his doctor." As more information comes up with his doctor I will keep you guys informed.

Documentation showed that on November 30, 2023 the Occupational Therapist and elementary teacher checked on student progress with the mother and father.

Conclusion

K.S.A. 72-3433(d)(1) states that 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 Parent Rights notice. The email exchanges between the district and the family show that the district notified the family of the student's suspension, provided the parents their procedural rights and arranged for a meeting on November 14, 2023 to conduct a manifestation determination. At this meeting, the decision was documented on a PWN that the behavior was not a manifestation of the student's disability, and the student received a 45 day interim alternative education setting through virtual instruction. Additionally, a schedule was determined for the student to continue to receive special education services during those 45 days.

In the case if parents are divorced, regardless of which parent has primary custody, the school must provide Prior Written Notice of any special education action to both parents. It is found in this case that the district provided prior written notice to both parents and both parents attended the November 14, 2023 meeting.

Based on the foregoing, ***it is not substantiated*** through IDEA that USD #382 failed to provide parent notice of school discipline or student behavior actions during the 2023-2024 school year.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of K.S.A. § 72-6115, K.S.A. § 72-3433(d), 34 C.F.R. § 300.523(a)(1) was not found, based on review of IDEA regulation and documentation. Corrective action is not required.

Right to Appeal

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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)

SAKANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #453
ON NOVEMBER 29, 2023

DATE OF REPORT JANUARY 8, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ------- by his mother, -------. In the remainder of the report ------- will be referred to as "the student" and ------- will be referred to as "the complainant", "the mother", or "the parent".

The complaint is against USD #453 (Leavenworth Public Schools). In the remainder of the report, this public agency may also be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 60-day timeline to investigate a complaint and allow for an appeal from the date on which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE received the complaint on November 29, 2023 and the deadline to make a final determination regarding compliance will be January 28, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation, which was provided by both the district and the complainant. The following documentation and information were used in consideration of the issues:

1. Individualized Education Program (IEP) dated April 25, 2023
2. IEP dated September 21, 2023
3. IEP Teacher Packet for the student
4. Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services/Placement dated September 21, 2023 and signed by the parent
5. Guidance Office Log for the 2023-24 school year
6. Learning Lab Log for the 2023-24 school year
7. USD #453 Response to the Allegations dated December 12, 2023
8. BIP Documentation form [Teacher Checklist]
9. BIP Fidelity Checks and anecdotal observations dated August 23, September 6, October 31, November 9, November 13, November 27, and November 28, 2023
10. The 2023-24 School Year PowerSchool Attendance Record for the student

11. The student's class schedules before and after the schedule change on November 29, 2023
12. Paraprofessional Schedule for 2023-24 school year
13. Special Education Teacher Schedule for 2023-24 school year
14. Telephone interview with the following USD #453 staff on December 15, 2023: Cathy Redelberger, Director of Special Education; Rebekah Varvel, Assistant Director of Special Education; Stephanie Ferney, Board Certified Behavior Analyst; Mike Wilson, Guidance Counselor; Kelsey Stimatze, Assistant Principal; and Shawn Miller, School Psychologist
15. Telephone interviews with the parent on December 4 and 18, 2023
16. Response to written questions from Dr. Redelberger dated January 4, 2024
17. Email dated August 18, 2023 at 10:45 AM written by Mr. Longberg to general education teachers: Mary Riccio, Jerald Gross, Elizabeth Woodman, Amanda Drinkard, Julie Heinking, Sarah Padilla, Jennifer Smith; and special education teacher, Robin Kraus
18. Emails between a variety of general education teachers, special education teachers, support staff, and administrators regarding implementation of the student's IEP dated between August 18, 2023 and November 27, 2023
19. Staff Directory for USD 453 on the district's website
20. Communication Log dated between November 21, 2017 and October 18, 2023
21. Office Referrals dated between November 9, 2015 and October 4, 2023
22. The 2023-24 District Calendar for USD #453
23. Suspension Letters dated September 18, September 26, October 16, October 25, and December 15, 2023 which document a total of nine days of out-of-school suspension

Background Information

The student is currently enrolled in the seventh grade in USD #453 and attends Richard Warren Middle School. According to the September 21, 2023 Prior Written Notice for Identification, Initial Services, Placement, Change in Services/Placement signed by the parent, the most recent reevaluation for special education and related services was conducted on that same date. The team determined the student continued to be eligible under the exceptionality category of Emotional Disturbance with a secondary eligibility found under the exceptionality category of Other Health Impaired due to a medical diagnosis of Attention Deficit Hyperactivity Disorder. The student's IEP was reviewed and revised on September 21, 2023 with the parent in attendance.

Issues Investigated

Based on the written complaint and an interview with the parent, five issues were identified and investigated.

Issue One

USD #453, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the behavior intervention plan (BIP) for providing a "safe space" for the student to de-escalate during the 2023-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.323(c)(2) requires 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.

Analysis: Findings of Fact

The parent believes USD #453 has not implemented the student's BIP during the 2023-24 school year by not providing him with a "safe space" when he becomes overwhelmed and starts to act out in the classroom as required by his IEP. This has resulted in multiple office referrals for disciplinary action.

Two IEPs were in effect during the 2023-24 school year. The first IEP was dated April 25, 2023 and included a BIP. This BIP does not reference a "safe space" but states, "*Option to work in alternate location if too overwhelmed in the gen ed classroom*." This BIP includes a "Reactive Plan" which outlines the staff response to when the student becomes argumentative or becomes physically aggressive by utilizing an alternate location within the classroom prior to moving to an alternate location outside of the general education classroom.

The most current IEP was developed on September 21, 2023 and includes a behavior intervention plan (BIP). And again, the BIP does not reference a "safe space" but states, "*Allow the student to use alternate locations away from the classroom to reset himself emotionally if he starts to escalate. (Counselor's office)*". *Ensure that he understands that taking a break is not a punishment, but a chance to re-regulate himself. May ask for a Break (Break Cards).*

The BIP also includes a "Reactive Plan" with specific steps to follow when the student choses to not use an alternate location away from the classroom to reset himself emotionally when he is displaying escalated behavior in the classroom. These steps include:

- Provide quiet, direct feedback on what he is saying or how he is saying it
- If he continues problem behavior, give the nonverbal signal and then come back to class. (Tap on his desk)
- Staff walks away for 1 min unless behavior is disruptive to classroom
- If he does not stop behavior or escalates behavior, ask him if he can go on his own or if he needs someone to walk him.
- Wait 15 seconds, and if he does not either leave classroom or de-escalate on own, call for office assistance.

- After de-escalation, listen to and document his account of what happened.
- If appropriate for the situation, hold a restorative circle or similar intervention to begin repairing the relationships between all parties

USD #453 provided copies of anecdotal notes and BIP Fidelity Check rating forms completed by Renee Collins, Behavior Technician, on two dates and in two different classroom settings. A rating of "1" meant the observation did not reflect the BIP component; a rating of "2" meant the observation reflected some of the BIP components; and a rating of "3" meant the observation reflected all of the BIP components. The rating forms included the following requirement from the student's BIP:

> *Allow the student to use alternate locations away from the classroom to reset himself emotionally if he starts to escalate. (Counselor's office). Ensure that he understands that taking a break is not a punishment but a chance to re-regulate himself. May ask for a Break (Break Cards).*

This requirement was rated a "3" on November 27, 2023 in the Social Studies class. It was noted that the student requested to take a break and the teacher responded by contacting the counselor's office and then allowing the student to go to the counselor's office.

However, this requirement was rated a "1" on November 28, 2023 in the Math class. It was noted that the student never asked to take a break to go to the counselor's office and the teacher never offered a break as an option to reset himself emotionally. The anecdotal notes showed the student was becoming dysregulated and escalating his behavior beginning at 8:39 AM and he was offered the classroom accommodation to work in an alternate setting at 9:11 AM with administration being called to escort the student from the classroom at 9:13 AM.

Conclusion

Federal regulations at 34 C.F.R. 300.323(c)(2) requires 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, the September 21, 2023 IEP includes a BIP which requires that the student be allowed to use alternate locations away from the classroom to reset himself emotionally if he starts to escalate. (Counselor's office) and to ensure that he understands that taking a break is not a punishment but a chance to re-regulate himself. He may request a break to reset himself emotionally by using break cards or school staff may request that he take a break per the Reactive Plan.

Documentation provided by the district based on an anecdotal observation and the BIP Fidelity Check conducted on November 28, 2023 in the Math class showed this BIP component was not implemented as written. The teacher never offered the student to take a break as an option to reset himself emotionally when the student became dysregulated and began to escalate his behavior; instead, the teacher offered the student the opportunity to work in an

alternate setting. The anecdotal notes showed the student was becoming dysregulated and escalating his behavior beginning at 8:39 AM. He was offered the classroom accommodation to work in an alternate setting at 9:11 AM with administration being called to escort the student from the classroom at 9:13 AM.

Based on the foregoing, USD #453 *did not comply* with the federal regulations to implement the student's IEP as written, specifically the BIP, as required on November 28, 2023.

Issue Two

USD #453, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the behavior intervention plan (BIP) for providing triage with a trusted adult on September 19, 2023 and October 24, 2023.

Applicable Law

Federal regulations at 34 C.F.R. 300.323(c)(2) requires 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.

Analysis: Findings of Fact

Again, the parent is concerned that the multiple office referrals for discipline are the result of USD #453 not implementing the student's BIP as written. She believes that if the student had been allowed to triage with a trusted / preferred adult on September 19, 2023 and again on October 24, 2023, the disciplinary incidents could have been prevented.

The findings in Issue One are incorporated herein by reference.

The BIP in the April 25, 2023 IEP requires, "*When possible, pair the student with adults he has relationships with.*" This IEP also includes an accommodation which requires, "*The student will receive triage with a trusted/preferred staff member every school morning and after unstructured classes (such as specials, lunch, and recess)*".

The BIP in the September 21, 2023 IEP requires, "*Check-in/Check-out for each class period and brief reminder of his options if he is struggling as well as review of classroom expectations.*" This IEP also includes an accommodation which requires, "*The student will receive triage with a trusted/preferred staff member every school morning.*"

It is noted that the parent's allegations were related to the student not receiving triage with a trusted adult on two specific dates. While the parent believed this requirement was included in the student's BIP, it is actually required by an IEP accommodation; regardless, the IDEA requires the IEP to be implemented as written. Please note that this investigation will focus on the implementation of the IEP accommodation on the two dates specifically referred to by the

parent in her original complaint rather than the implementation of the Check-In/Check-out for each class required by the BIP.

It is noted that the student transferred from the intermediate school setting to the middle school setting at the beginning of the 2023-24 school year and that the student's schedule was changed on several occasions during the first semester. The student's classes and general education teachers are as follows:

- Pride Time (Jason Longberg)
- Language Arts 7 (Jennifer Smith)
- Math 7 (Julie Heinking – before November 29, 2023 / Kyle Becher – after November 29, 2023)
- Science 7 (Elizabeth Woodman)
- Beginning Art (Sarah Padilla)
- Computer Tech (Michele Edwards)
- Social Studies 7 (Jerald Gross / Lillyanna Webster)
- Career Exploration (Amanda Drinkard)

USD #453 reported the student has an opportunity to triage each morning during PRIDE, which is first hour. USD #453 noted, "*Sometimes he triages with Mr. Longberg, his PRIDE teacher, and sometimes he triages with Ms. Stimatze, his assistant principal. On September 19, 2023, the student was tardy to school, so he missed his triage time. Multiple adults, including Mr. Longberg and the student's mother (via phone) ended up triaging with the student after he arrived at school in order to get him on the right track for the day. On October 24, 2023, the student had an unexcused absence for first hour and again missed his triage time*".

The student's PowerSchool Attendance Record for the 2023-24 school year confirms the student was not in attendance during his first period PRIDE class on Tuesday, September 19, 2023 and on Tuesday, October 24, 2023.

Conclusion

Federal regulations at 34 C.F.R. 300.323(c)(2) requires 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, both the April 25, 2023 and September 21, 2023 IEPs include a requirement for triage each morning with a trusted adult. Interviews and documentation found that USD #453 had a procedure and practice for providing triage with a trusted adult each morning during the first hour PRIDE class. This triage was not provided during first hour on September 19, 2023 and again on October 24, 2023 due to the student being absent from school on those dates and unavailable to participate in the triage.

On September 19, 2023, the student's IEP dated April 25, 2023 was in effect and that IEP also required triage after unstructured classes. While USD #453 did not describe a specific procedure for providing triage with a trusted adult after unstructured classes, the district did describe how multiple adults, including Mr. Longberg and the student's mother, triaged with the student to "get him back on the right track" on September 19, 2023.

Based on the foregoing, a finding is made that USD #453 ***is in compliance*** with the IDEA requirement to implement the student's IEP as written because the lack of services on the two specific dates was due to the absence of the student rather than any failure on the part of the district.

Issue Three

USD #453, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by not providing paraprofessional support during the 2023-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.323(c)(2) requires 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.

Analysis: Findings of Fact

The parent stated that she believes the student requires access to a paraprofessional at all times throughout his school day to provide supervision and support for the implementation of the student's IEP and BIP. USD #453 reported the IEP does not require paraprofessional support for the student but instead requires the student to receive special education instructional support for but only during the general education math class.

The findings of Issues One are incorporated herein by reference.

Both the IEP dated April 25, 2023 and the IEP dated September 21, 2023 IEP require direct special education instructional support in the general education classroom for 90 minutes two days per week and for 44 minutes for one day per week. A rationale and additional service details are included on the services summary in both IEPs and states, "*The student would benefit from behavioral support in Math*".

Dr. Redelberger explained that the instructional support can be provided by any special education staff person, teacher or paraprofessional in the general education classroom setting. It is noted that the student's IEP does not include any needed supports to assist the student to meet his daily personal needs such as toileting, feeding, dressing, etc.

Interviews with LEA staff found instructional support for the student's behavior was originally provided in the seventh grade math class through a co-teaching model. The student was

transferred to another seventh grade math class taught by a different general education teacher with instructional support provided by a paraprofessional on November 29, 2023.

In addition, USD #453 provided copies of the student's classroom schedule showing the student was assigned to the seventh grade math class co-taught by general education teacher, Julie Heinking, and special education teacher, Robin Krause until November 28, 2023. Beginning on November 29, 2023, the student was transferred to the seventh grade math class taught by general education teacher, Kyle Becher. The paraprofessional schedule for Gloria Montes documents that she is currently assigned to provide support to the student during Mr. Becher's seventh grade math class.

Conclusion

Federal regulations at 34 C.F.R. 300.323(c)(2) requires 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, both of the student's IEPs in effect during the 2023-24 school year require special education instructional support for 90 minutes two days per week and for 44 minutes for one day per week and clarify that this support should be provided for behavior in the general education Math classroom setting. Interviews and documentation found that USD #453 has practices in place for providing this instructional support required by the IEP during the student's assigned seventh grade math class during the 2023-24 school year. Prior to November 29, 2023, this instructional support was provided using a co-teaching model by a special education teacher. Following that date, the instructional support was provided by the assignment of a paraprofessional to the student's math class.

Based on the foregoing, a finding is made that USD #453 ***is in compliance*** with the IDEA requirement to implement the student's IEP as written.

Issue Four

USD #453, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the accommodations related to and addressing the student being easily overwhelmed during the 2023-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.323(c)(2) requires 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.

Analysis: Findings of Fact

The parent again reported she is concerned with the number of times the student has had office referrals during the 2023-24 school year. She believes this is because the district is failing to implement his IEP, specifically proactively providing accommodations when the student becomes overwhelmed in the classroom setting.

The findings of Issue One are incorporated herein by reference.

The student's IEPs dated April 25, 2023 and September 21, 2023 both include the following accommodations related to the student being overwhelmed in the classroom setting:

- The student will be able to ask for a break when he is feeling overwhelmed and/or hungry
- Work in an alternate location (ie. learning lab) if needed during lengthy or difficult assignments or assessments

The district stated,

> *The student has utilized these accommodations throughout this school year in a robust manner. Towards the beginning of the year, the student primarily relied on the learning lab as an alternate space to take a break or work. He has also independently gone to the office ("white room") and the ISS [In School Suspension] room on multiple occasions when that was seemingly his preferred location. For the last several weeks, he has frequently used the guidance office as his alternative work and break space. At times, the student has been offered alternative locations within his classroom to complete his work. The student is not hesitant to take a break if he feels like he needs it. He often initiates going to an alternate location. On the occasions when he does not, staff prompt him to take a break. When staff prompt him to take a break or go to an alternate location, he commonly refuses it. If there was any occasion that the student did not take a break or utilize an alternative location to work, it was not due to the fact that the accommodation was not available to him or that he was unaware of how to utilize it.*

Interviews with school staff noted that the student frequently requests to take breaks when he is feeling overwhelmed; however, when a break or alternate location to work is offered by a school staff member, he often refuses and the Reactive Plan in the BIP is then implemented.

The district provided copies of sign-in logs from the Learning Lab and the Counselor's Office showing the student took breaks and worked in these alternate locations on ten separate occasions between August 21, 2023 and September 19, 2023.

Conclusion

Federal regulations at 34 C.F.R. 300.323(c)(2) requires 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, the student's IEPs in effect during the 2023-24 school year include accommodations to allow the student to take breaks when he is feeling overwhelmed and to work in an alternate location on assignments when he is overwhelmed. Interviews and documentation found that USD #453 has practices in place for providing these accommodations to the student.

Based on the foregoing, a finding is made that USD #453 ***is in compliance*** with the IDEA requirement to implement the student's IEP as written.

Issue Five

USD #453, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to inform the general education teachers of their responsibilities for implementing the student's IEP during the 2023-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300. 300.323(d)(2) requires school districts to ensure that each general education teacher, special education teacher, related services provider, and any other service provider is informed of their responsibilities for implementing the student's IEP and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the child's IEP.

Analysis: Findings of Fact

The parent believes the student's general education teachers are not consistently implementing the student's IEP because they are unaware of the requirements of the BIP as well as the accommodations required by his IEP.

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

USD #453 reported it has procedures is in place to notify each general education teacher of a particular student's IEP and their responsibility for its implementation. Documentation showed the first day of the 2023-24 school year for the student was August 15, 2023.

The district reported the school psychologist, Shawn Miller, personally reached out to all of his teachers to see what additional information or guidance could be provided in order to support the student at the beginning of the school year. The Communication Log included the following entry regarding this contact:

> *Miller – On 8/17/23 I sought feedback from teachers about how the student was doing in his classes. Feedback showed that he was struggling a little bit in most classes. I forwarded these emails to Dr. Jokerst [Special Education Coordinator], Stephanie Ferney [Board Certified Behavior Analyst], and Jason Longberg [Special Education Teacher] on 8/18 to see if they could provide teachers with any additional information about how to best support the student.*

In addition, interviews and documentation showed that the Board Certified Behavior Analyst, Ms. Ferney, and her team conducted multiple ongoing BIP fidelity checks in the classrooms and met with the student's classroom teachers beginning on August 23, 2023. In addition all of the student's classroom teachers were provided with a chart for implementing the student's BIP with fidelity.

The district also noted that all of the student's teachers were invited to the September 21, 2023 IEP; however, the IEP Participant section of that IEP only documents that Ms. Woodman, the science teacher, and Mr. Longberg, the special education teacher, attended the IEP team meeting.

On August 18, 2023, Mr. Longberg emailed a copy of the IEP Teacher Packet to all of the general education teachers listed on the student's class schedule with the exception of Michele Edwards, the long-term substitute teacher for the Computer Tech class. This IEP Teacher Packet included the classroom accommodations, the BIP, and the required special education services. It was noted that several subsequent emails between staff regarding the student's IEP included Ms. Edwards in the correspondence so that she was aware of updates and changes in the student's IEP.

It is noted that USD #453 changed the general education Math 7 teacher assignment from Ms. Heinking to Mr. Becher beginning on November 29, 2023. During the interview, school staff reported that the Mr. Becher was provided with information about the student's IEP; however, no documentation was provided to show Mr. Becher received a copy of the IEP Teacher Packet or reviewed the students' IEP. There was also no documentation showing that Ms. Monses, the paraprofessional assigned to provide instructional support in the Math 7 class, was provided with any information regarding the student's IEP upon the change in his class schedule.

Conclusion

Federal regulations at 34 C.F.R. 300. 300.323(d)(2) requires school districts to ensure that each general education teacher, special education teacher, related services provider, and any other service provider is informed of their responsibilities for implementing the student's IEP and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the child's IEP.

In this case, interviews and documentation confirm that most of the student's general education teachers were aware of the student's IEP. However, there is no documentation to confirm when the long-term substitute teacher and the new general education math teacher were provided with information regarding their responsibilities for implementing the student's IEP. In addition, there is no documentation to show the paraprofessional responsible for providing instructional support for behavior during the newly assigned Math 7 class was provided with this information.

In addition, documentation showed that the student was "struggling a little bit in most classes" on August 17, 2023 and that a copy of the IEP Teacher Packet was not provided to the student's teachers until August 18, 2023 despite the fact that the first day of the 2023-24 school year was August 15, 2023.

Based on the foregoing, a finding is made that USD #453 *is not in compliance* with the IDEA requirement to ensure that all USD #453 staff responsible for implementing the student's IEP were informed and aware of their responsibilities during the 2023-24 school year.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of Federal regulations at 34 C.F.R. 300.323(c)(2) which requires 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 is found. In this case, a BIP Fidelity Check on November 28, 2023 in the Math class found the student was not allowed to use alternate locations away from the classroom to reset himself emotionally when he started to escalate. (Counselor's office) and the steps in the Reaction Plan were not followed as required by the BIP.
    a. CORRECTIVE ACTION:
        i. USD #453 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will ensure that special education and related services are made available in accordance with the student's IEP.
            1. No later than February 15, 2024
        ii. USD #453 shall provide training to the student's general education math teacher, the paraprofessional who provides instructional support, the school counselor, and building administrators regarding the implementation requirements of the student's BIP. USD #453 shall conduct at least weekly BIP Fidelity Checks earning ratings of 3 for implementation of the BIP through the end of the third quarter and provide copies of this documentation to SETS.
            1. No later than March 31, 2024
2. ISSUE TWO: It appears USD #453 complied with the federal regulations which require the LEA to implement the student's IEP as written, specifically in regards to providing triage with a trusted adult during the 2023-24 school year; therefore no violation is substantiated.
3. ISSUE THREE: It appears USD #453 complied with the federal regulations which require the LEA to implement the student's IEP as written, specifically in regards to providing instructional support in the student's math class during the 2023-24 school year; therefore no violation is substantiated.
4. ISSUE FOUR: It appears USD #453 complied with the federal regulations which require the LEA to implement the student's IEP as written, specifically in regards to providing

accommodations for taking breaks and working in alternate locations when the student is feeling overwhelmed during the 2023-24 school year; therefore no violation is substantiated.

5. ISSUE FIVE: USD #453 is found to be in violation of federal regulations at 34 C.F.R. 300.323(d)(2) which requires school districts to ensure that each general education teacher, special education teacher, related services provider, and any other service provider is informed of their responsibilities for implementing the student's IEP as well as the specific accommodations, modifications, and supports that must be provided to the student.
    a. CORRECTIVE ACTION:
        i. USD #453 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will ensure that each general education teacher, special education teacher, related services provider, and any other service provider is informed of their responsibilities for implementing the student's IEP as well as the specific accommodations, modifications, and supports that must be provided to the student.
            1. No later than February 15, 2024
        ii. USD #453 shall provide documentation to SETS that all of the staff responsible for implementing the student's IEP during second semester including, but not limited to Mr. Becher and Ms. Monses, have been provided with this information.
            1. No later than February 1, 2024
        iii. USD #453 shall review procedures, and practices related to notifying all school district staff members of their responsibilities for implementing student IEPs. Based on that review, USD #453 shall develop a procedure to consistently share this information with appropriate school district staff in a timely manner and document that the information has been shared. USD #453 will provide SETS with a copy of the updated procedure as well as documentation this information has been shared with special education case managers and school psychologists throughout the school district.
            1. No later than February 15, 2024

Investigator

Nancy Thomas

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).

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 #336
ON OCTOBER 6, 2023

DATE OF REPORT NOVEMBER 13, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ---------- by his mother, ----------. In the remainder of the report ---------- will be referred to as "the student." ---------- will be referred to as "the complainant", "the mother", or "the parent".

The complaint is against USD #336 (Holton Public Schools). In the remainder of the report, this public agency may also be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on October 6, 2023 and the 30-day timeline ended on November 5, 2023; however, KSDE granted an extension until November 13, 2023 to allow for the parent to provide additional information.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation, which was provided by both the district and the complainant. It is noted that the parent provided additional documentation that was reviewed but did not directly pertain to the issue being investigated. The following documentation and information were used in consideration of the issue:

1. Individualized Education Program (IEP) dated October 28, 2022 and amended on January 27, 2023
2. Procedures for the English class including class rules, late assignments, absences and grades
3. English Class Score Detail for the student dated between August 18, 2023 and October 31, 2023
4. Timeline created by USD #336 staff dated between August 24, 2023 and September 29, 2023
5. Email exchange between Corrin Tanking, English Teacher, and the complainant dated August 28, 2023 at 12:43 and 12:47 PM

6. August 28, 2023 Assignment Details
7. Student Not in Good Standing (SNIG) letters to the parent dated September 5, 12, 19, and 26, 2023
8. Parents written concerns for mediation which was held on September 8, 2023
9. Formal Complaint Request Form signed by the complainant on October 6, 2023
10. Response to the Allegations dated October 24, 2023 written by Amy Haussler, Director of Special Education
11. Interview with Michael Kimberlin, Building Principal; Addie Larson, School Psychologist; Eunice Klahr, Special Education Teacher; Bob Davies, Superintendent; and Ms. Haussler, on October 26, 2023
12. Interview with the complainant on October 27, 2023 and November 8, 2023
13. English 8 Procedures for Class written by Ms. Tanking
14. Holton Middle School Handbook Attendance Policy

Background Information

The student is currently enrolled in the eighth grade in USD #336 and attends Holton Middle School. The student was most recently reevaluated on October 26, 2021 and was found eligible for special education and services under the exceptionality category of Autism. Relevant medical information includes diagnoses of Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ODD), and Generalized Anxiety Disorder (GAD).

The student began receiving early childhood special education services at age three in USD #336 and continued his educational career in USD #336 until he was homeschooled in fourth grade. In fifth grade, he participated in virtual instruction in USD #336. He enrolled at Holton Middle School at the beginning of sixth grade and has received special education and related services in that school building through the present time.

Issues Investigated

Based on the written complaint, only one issue was identified and investigated.

Issue One

USD #336, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to ensure the student had an equal opportunity to participate in program options, nonacademic and/or extracurricular activities and services offered by the district during the 2023-24 school year, specifically the "Not Quite Homecoming Dance" on September 29, 2023.

Applicable Law

Federal regulations at 34 C.F.R. 300.107 requires school districts to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities and equal opportunity for participation in those services and activities, including the provision of supplementary aides and services determined appropriate and necessary by the student's IEP team.

Analysis: Findings of Fact

The parent reported that USD #336 failed to provide the student with an equal opportunity to participate in the "Not Quite Homecoming Dance" on September 29, 2023. The parent stated,

> *The student's disability hinders his ability to stay in the classroom when he becomes dysregulated or is unable to cope with the social and educational demands. When this occurs, the student leaves the classroom and goes to a 'calm down area'. On 8/28/23, this occurred in English class. The teacher recorded a zero in PowerSchool [the computerized grading system for the district] for the assignment, which resulted in him having an "F" in the class and being placed on the SNIG [Student Not in Good Standing] List . . . It is like he is being punished twice for something caused by his disability. First, he doesn't receive the direct instruction from the teacher while he is in the "calm down area", but is still required to complete the assignment. Keep in mind, going to the calm down area is a coping strategy outlined in his IEP. Secondly, the zeros for those assignments cause Fs and that prevents him from participating in activities with his peers . . .*

The parent reported that because the student was on the SNIG List, he was not allowed to attend the "Not Quite Homecoming Dance" on Friday, September 29, 2023. The parent indicated that the student did not cope well with not being able to go to the dance because it was an event that he had been planning to attend and was very excited about. The parent stated that she decided to keep him home from school on that Friday, the day of the dance, because he was so dysregulated.

USD #336 reported the student's IEP does allow him to leave the classroom when dysregulated for use of the calm down area for up to 5 minutes; however, the district believes the IEP does not excuse the student from completing work or the teacher having to accept incomplete or substandard work. The student was given multiple opportunities to complete his work and bring his grade up just as all students who are on the SNIG list. The student failed to follow the appropriate procedures to address the grade of zero in the English class and be removed from the SNIG list prior to the dance.

The English class Late Assignment procedure states that up to 75% credit can be earned on assignments which are one day late. After two to five days, the assignment can only be worth 60% credit and, all assignments more than one week old must still be completed but can only

be worth 50% of possible points. It is noted that grades are cumulative as the quarter progresses.

The IEP in effect between the first day of the 2023-24 school year and September 29, 2023 is dated October 28, 2022 and was amended on January 27, 2023. This IEP requires 30 minutes per week of specialized instruction in social skills in the special education setting and 45 minutes per day of special education support in the general education setting for his core classes. The IEP also includes accommodations regarding behavior management (breaks, use of break cards, use of calming strategies, etc.) and reducing the amount of work on classroom assignments. However, the IEP does not include any accommodation for extended time to complete assignments.

The parent reported that on August 24, 2023, the student refused to stop working on an assignment from another class as directed by the English teacher. The student reported to his mother that the teacher grabbed his papers causing something like a tug of war until the student let go. This caused him to become dysregulated and he ran out of the classroom. He was given a zero for that day's assignment which caused him to be placed on SNIG list and ultimately be ineligible to attend the dance on September 29, 2023.

USD #336 reported the student was in class for instruction on August 24, 2023 and did not miss to go to the calm down area. The English teacher had modified an assignment to reduce it from the original 10 items to four items. However, when the assignment was given, and the student refused to do it.

On August 28, 2023 the parent and Corrin Tanking, English Teacher, emailed regarding making up the August 24, 2023 assignment. Ms. Tanking stated, ". . . If he turns in the 4 to me today I will give him up to 75% on the assignment . . ."

The August 28, 2023 English class Assignment Detail in PowerSchool stated, "*I only needed 4 discussion topics written down from him. The rest of the class needed 10. He stormed out and left the paper I gave him to write on and never came back*." The grade record shows the student received a zero on that assignment.

Documentation showed the parent was notified the student was on the SNIG List for four consecutive weeks prior to the dance on September 5, 12, 19, and 26, 2023. The SNIG List letter states,

> *You are receiving this email because your student is currently failing one or more classes and is on the SNIG List (Student Not in Good Standing). Please take a look at your student's grades or have your student log into PowerSchool to show you their grades. Until removed from the SNIG List, your student is ineligible for sports competition (but should still be attending practice) and extracurricular activities. We at HMS [Holton Middle School] want to give all students the opportunity to attend after-school activities, so we encourage your student to turn in missing work or to talk with the teacher about their failing grades. To*

receive extra help, your student may also participate in after school tutoring during Powerhour which runs Mon - Thurs, 3:00-4:00. The SNIG list is run each Tuesday and your student will be on the list until the individual class grade is back above "passing" which is a 60% or D. To remove oneself from the SNIG List, students should follow the steps listed:

1. Resolve your failing grades (turn in missing work or complete assignments for a grade).

2. Have the teacher sign a note for the office or email Mrs. Nott and Mr. Kimberlin stating that your failing grade has been resolved.

3. Turn in this note or email to the office by the end of the school day. If a note or email is turned in after the end of the school day, it will need to be approved by the principal before you may participate in a school activity that evening.

School staff reported that despite these notifications provided to the parent, the student did not take advantage of the opportunities offered to address the failing grade in English even though he followed the procedures for other classes during the month of September. The parent acknowledged that the student had successfully been removed from the SNIG List in other classes by following these procedures during September 2023.

On September 29, 2023, USD #336 indicated that student was passing all of his classes with the exception of the English class which was caused by a combination of missing assignments and low scores on assignments and tests. The PowerSchool scores for English class prior to the dance reflect a total of 11 grades. The student earned A's on two assignments, a B on one assignment; C's on two assignments; D's on two assignments; F's on three assignments, and zero points on one assignment. As of September 29, 2023, his score was 56% and failing in the English class.

The district also noted that the student generally missed the last 15-20 minutes of every English class due to the parent picking him up early from school. The school has repeatedly requested that the student stay the entire day for consistency in routine and expectations. This early departure results in lost opportunities to work on the assignments in class, as well as prevents the child from accessing the after school assistance offered during Power Hour.

School staff reported the student did not attend school on September 29, 2023 which was the last day he would have had an opportunity to increase his grade to passing in the English class. For this reason, even if the student had earned a passing grade in his English class, he would not have been eligible to participate in the dance because the student was absent from school on the day of the dance. The Holton Middle School Student Handbook includes a description of the attendance policy and the consequences. The policy states,

Attendance and Extracurricular Activities: Any student that is absent after 12 p.m. due to illness or for any "unexcused" reason shall NOT be eligible to attend and or participate in any extra-curricular activing scheduled during that particular day.

School staff noted that the student had an excused absence and were unaware that the student was not sent to school on September 29, 2023 because of dysregulation until this complaint was filed.

Conclusion

Federal regulations at 34 C.F.R. 300.107 requires school districts to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities and equal opportunity for participation in those services and activities, including the provision of supplementary aides and services determined appropriate and necessary by the student's IEP team.

In this case, the student was not eligible to attend the "Not Quite Homecoming Dance" on September 29, 2023 for two reasons. First, he was earning a failing grade in his English class even though the original August 24, 2023 assignment resulting in the zero grade was shortened as required by the IEP. There was no accommodation allowing extended time for him to complete and turn in assignments so he was given until the next class period on August 28, 2023 to turn in the assignment for up to 75% of the grade. The student could have turned the completed assignment in up to one week later to earn up to 50% of the grade following the English class late assignment procedures. The student could have followed the SNIG List procedures between September 5 and September 29, 2023 to be removed from the SNIG List because of his English grade. However, on the date of the dance, the student was ineligible to participate because of his English grade just as any other student in the same circumstances.

It is noted that the student was also ineligible to participate in the dance because of the attendance policy which requires the student to have been in attendance at school after 12 p.m. on the day of any extracurricular activity. While the parent chose to initially keep the student home on September 29, 2023 because of his dysregulation, he did not return to school in the afternoon and school staff reported they were unaware of the reason the student was kept home on that date until the complaint was filed.

Based on the foregoing, USD #336 *did not fail* to ensure the student had an equal opportunity to participate in program options, nonacademic and/or extracurricular activities and services offered by the district during the 2023-24 school year, specifically the "Not Quite Homecoming Dance on September 29, 2023.

Investigator

Nancy Thomas

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).

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 #481
ON DECEMBER 15, 2023

DATE OF REPORT JANUARY 12, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ------- by her mother-------. In the remainder of the report, ------- will be referred to as "the student." ------- will be referred to as "the complainant" or "the parent" or "the mother." ------ will be referred to as "the mother's friend."

The complaint is against USD 481. In the remainder of the report, USD 481 will be referred to as "the district", "the local education agency (LEA)", or "the school."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on December 15, 2023 and the 30-day timeline ends with this the publication of this report.

Evidence Reviewed

During the investigation, the Complaint Investigator, Gwen Beegle, reviewed all evidence and documentation provided by both the district and the complainant. On December 17, 2023, the mother and the mother's friend were interviewed to clarify the issues of the complaint, after which the concerns on the written complaint (a) preceding the investigation period of 12 months, (b) pertaining to a second child, (c) questioning academic grading policies, (d) accessing the student's school email, and (e) relating to retaliation by the school fall outside IDEA were excluded from the investigation. The parent was provided additional resources for their use to address concerns outside the bounds of this complaint's authority. On January 5, 2024, the following staff of USD 481 were interviewed: Darlene Griffiths (White City Schools Superintendent and Principal); Dallas Friedli (Student's Current Special Education Teacher), Casey Bell (Special Education Coordinator), Edie Bollinger (School Psychologist), Kane Hensley (White City Schools Assistant Principal), and Debbie Fairbanks (Student's Previous Special Education Teacher). The parent was interviewed a second time on January 5, 2024. Emails were exchanged between the investigator and the district through January 9, 2024.

In addition to the interview noted above, the following documentation and information were used in consideration of the issue(s):

1. Reevaluation and Eligibility Report for the student dated April 1, 2022

2. Discipline Alert Log Entries for the student with entries dated April 20, 2021 to December 8, 2023
3. IEP Conference Summary dated January 24, 2023
4. Prior Written Notice (PWN) dated February 24, 2023 for a meeting dated February 24, 2023 and signed by the parent giving consent on February 27, 2023.
5. IEP Amendment dated February 27, 2023 with parent signature agreeing to amend the IEP without a meeting on the same date
6. Notice of Meeting dated April 25, 2023 for a meeting on April 28, 2023
7. Student's IEP dated April 28, 2023 with signature page signed by the parent on the same date
8. IEP Conference Summary dated April 28, 2023
9. Prior Written Notice (PWN) dated April 28, 2023 for a meeting on April 28, 2023 for a material change in special education services, a substantial change in placement, and other additions, changes or modifications to the IEP, with parent signing to give consent on the same day
10. Email from Marion Boyd (Social Worker, St. Frances After Care Permanency Specialist) to Darlene Griffiths (Principal, White City Schools) and Mia Efaw (St. Frances After Care Staff) dated August 30, 2023 at 3:31 p.m.
11. Notice of Meeting dated August 31, 2023 for a meeting on September 7, 2023, signed by the parent acknowledging her receipt of parental rights, waiving 10 day notice and indicating her planned attendance at the meeting.
12. IEP Amendment dated September 7, 2023 with parent signature on the same date
13. Prior Written Notice (PWN) for a material change in services and substantial change in placement dated September 7, 2023 for a meeting on September 7, 2023 with parent signature giving consent on the same date
14. Email from Marion Boyd to Darlene Griffiths and Mia Efaw dated September 11, 2023 at 8:16 a.m.
15. Email from Darlene Griffiths to Marion Boyd dated September 12, 2023 at 10:28 a.m. and Marion Boyd's replay at 10:38 a.m.
16. Medical Statement to Request Meal Modification signed by C. Palmer (APRN) on September 22, 2023 with release of information signed by the parent on October 10, 2023
17. Email from Christina Allenbaugh (Head Dietitian) to Kane Hensley (White City Schools Assistant Principal), Kathy Hubka (School Nurse), Dallas Friedli (Student's Special Education Teacher), and Darlene Griffiths dated October 18, 2023 at 8:43 a.m.
18. Emailed notes of Wraparound Team Meeting from Darlene Griffiths to Ben Schierling (Music Teacher), Diana Newey (Science Teacher) Dallas Friedli, Kane Hensley, Lorri Kasten (Counselor), Kathy Hubka, Mackenzie Boltwood (Physical Education Teacher), and Vernetta Hammersmith (Title 1 Teacher) dated October 19, 2023 at 3:31 p.m.
19. Student Progress Report dated October 23, 2023

20. Email from the mother to Dallas Friedli dated October 27, 2023 at 9:17 a.m.
21. Email from Dallas Friedli to Vernetta Hammersmith, Diana Newey and Darlene Griffiths dated October 27, 2023 at 9:43 a.m.
22. Email from Darlene Griffiths to White City Certified Staff, White City Classified Staff and White City Special Education dated October 27, 2023 at 10:21 a.m.
23. Email exchange between Dallas Friedli, the mother and Darlene Griffiths dated October 27, 2023 beginning at 10:28 a.m. and ending at 11:06 a.m.
24. Notice of Meeting dated November 21, 2023 for a meeting on November 28, 2023, unsigned by the parent
25. IEP Conference Summary dated November 28, 2023 with parent in attendance
26. Prior Written Notice (PWN) to change the IEP dated November 28, 2023 for a meeting on November 28, 2023 and unsigned by the parent.
27. Notice of Meeting dated December 18, 2023 for a meeting on December 20, 2023 and signed by the parent on December 20, 2023
28. IEP Amendment Meeting Signature Page dated December 20, 2023 and signed by the parent on the same date
29. Prior Written Notice (PWN) to change the IEP dated December 20, 2023 for a meeting December 20, 2023 and signed by the parent giving consent on the same date
30. Diabetes Medical Management Plan for 2023-24 School Year (undated)
31. Student's Grade Report for Semester 1 of 2023-24 School Year
32. Student Progress Report dated January 5, 2024
33. Training Explanations for Special Education Staff

Background Information

The student is 13 years old and in the seventh grade, attending the Pre-8 Elementary School in USD #481. In her sixth-grade year, the student had behavior problems of refusing to work, disruptiveness in school, inappropriate response to adult directions, and refusing to attend classes, particularly physical education. The student was diagnosed in the spring of 2022 with two DSM 5 diagnoses of (a) Other specified trauma and stressor-related disorder and (b) Other reactions to severe stress by a local mental health service provider. Her special education re-evaluation was conducted on April 1, 2022, determining that the student was eligible for special education in the category of Emotional Disturbance. At that time, the student had clinically significant scores in externalizing and internalizing behaviors, including hyperactivity, aggression, conduct disorder, anxiety, depression, and somatization. The evaluation determined that the student had academic delays in math, reading and written language, and her "behavior problems appear to be the primary reason for learning difficulties." She was placed in foster care from May, 2022 to March, 2023, during which time she was diagnosed with Type Two Diabetes. Her current IEP dated April 28, 2023 and amended on September 7, 2023 includes goals in reading, written language, math and social emotional development. She

receives both special education services in special education settings and special education support in general education classes.

Issues Investigated

1. ISSUE ONE: The USD #481 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop the student's IEP, specifically by designing an IEP that accommodates the student's health or behavioral needs.
2. ISSUE TWO: The USD #481 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by implementing behavioral support or implementing health related procedures.
3. ISSUE THREE: The USD #481 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the parent procedural safeguards, specifically by (a) responding to a parent's request for an IEP meeting or scheduling the IEP meeting within a reasonable period of time (b) providing prior written notice following parental requests for changes to the IEP, (c) providing the parent a copy of the IEP.
4. ISSUE FOUR: The USD #481 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide staff who are properly trained to implement the student's IEP.

Issue One

The USD #481 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop the student's IEP, specifically by designing an IEP that accommodates the student's health or behavioral needs.

Applicable Law

The development of the IEP begins with the evaluation. Federal statutes and regulations at 34 CFR 300.304(c)(4) require that the child be assessed in all areas related to the suspected disability, and 34 CFR 300.304(c)(6) and (7) require that the evaluation be sufficiently comprehensive to identify all the child's special education and related services needs and that tools and strategies provide relevant information to directly assist in determining the educational needs of the child are used.

Federal statutes and regulations at 34 CFR 300.324(a) require that in developing the child's IEP, the IEP team shall consider the following: the strengths of the child, the concerns of the parents, the results of the child's evaluation, the academic and functional needs of the child, the use of positive behavior interventions and supports if the child's behavior impedes learning, the need for braille or the impact of limited English proficiency, the child's

communication needs, and the need for assistive technology. Federal regulations at 34 CFR 300.327 and state regulations at K.S.A. 91-40-25(a)(1) and (2) require that the district allow the parents to participate in any meeting with respect to the identification, evaluation, or educational placement of the child, and that the agency take steps to ensure that the parents are present and afford the opportunity to participate in each meeting concerning their child.

Analysis: Findings of Fact

The claimant alleged that the district failed to address all the student's needs in her IEP, as evidenced by the health problems the student experienced due to her Type 2 Diabetes. The parent alleged that the district failed to meet the student's behavioral needs at school and that the student was stealing food and self-harming due to dislike of therapy sessions and lack of supervision. The parent alleged that she wanted the school to assign a one to one paraprofessional to prevent food theft and self harm and the school refused to include it in the IEP. The parent alleged that the school denied her request to have the student sent to a special day school that would meet her needs. The parent alleged that the student was advanced to Grade 7 despite excessive absences during Grade 6.

The district responded: "U.S.D. 481 denies this allegation. Prior to the beginning of the 2023-2024 school year, [the principal] requested that [the student] be moved from [the former special education teacher's] elementary special education caseload to [the current special education teacher's] junior high and high school special education caseload. As you can see from [the student]'s student discipline report from the previous years, [the student] was refusing to do her work and refusing to go to class prior to this school year. [The principal] was hopeful that a change in special education teacher would help [the student] be more successful at school. This change has been very positive for [the student]. She has good grades, attends classes without refusal, and has been awarded 6 positive office referrals since August 2023. [The student] does not have any discipline referrals this school year. The district is following her IEP and what they are doing is working well for [the student]." The district also responded that the IEP team, with required members, has met at least annually and additionally to address parental concerns and requests.

Findings based on a review of the documentation showed the following:

The student was reevaluated April 1, 2022 during the second semester of her fifth grade year. The parent participated as one of the assessment raters and attended the evaluation meeting. The evaluation included social-emotional assessment to assist the team in developing a behavioral intervention plan. The student was receiving mental health services from the local mental health center. The evaluation noted the student's vision and hearing testing results and stated that "no other educationally relevant medical conditions are reported." No new cognitive testing was conducted and the previous 2019 testing was reviewed. No concerns were noted in motor skills or communication. Reading, math, written language and social emotional

assessments were conducted and summarized. The evaluation included interviews with the student and with the special education teacher along with a forced choice reinforcer survey and a summary of daily data taken by the teacher on peer interactions, mood, adult interactions, somatic complaints and office referrals. The greatest focus in the evaluation was on the student's social emotional status. The student's evaluation by the mental health provider was considered and the BASC-3 test scores were reviewed. The student was found to have clinically significant scores in externalizing (hyperactivity, aggression, conduct problems), internalizing (anxiety, depression, somatization), and behavioral symptoms (atypicality and withdrawal). She was rated as either at risk or clinically significant for school problems (attention and learning problems). At risk or clinically significant scores were found for adaptability, social skills, study skills, and leadership. She was found eligible for special education in the category of Emotional Disturbance. Her learning problems were considered a result of environmental reasons, cultural differences, or emotional disturbance. The evaluation stated that it was hand delivered to the parent on April 1, 2022, the day of the conference.

When asked why the student's diabetes was not included in the April 1, 2022 evaluation, the school psychologist reported that the student's condition was not diagnosed until sometime between May, 2022 and March, 2023 when the student was in foster care. The school psychologist reported that, at the time of the evaluation, the student had numerous health complaints and sought the nurse's office frequently, avoiding classes.

According to the district, the student returned to USD 481 from foster placement on March 27, 2023. The district provided a notice of meeting dated April 25, 2023 for the student's annual IEP meeting. Her annual IEP was held on April 28, 2023, and the IEP team reviewed assessment and observational data in order to determine that the student had needs in reading, math, written language, and social emotional development. The IEP included 90 minutes of special education services in a special education setting that included 45 minutes of special education mathematics each day, and special education support in general education classes for social studies, ELA, science, FACS, and keyboarding. Social work services were dropped but the IEP noted that the student could visit the social worker as needed. Four IEP goals were written: improve reading comprehension, improve mathematical computation, improve spelling, and decrease her refusals to complete tasks. A behavior intervention plan (BIP) was included in the IEP, noting that the student's defensive language with peers and adults impeded her learning at school. The BIP listed: (a) Preventive interventions were to avoid power struggles, to use a token economy, and to provide praise and reinforcements from the reinforcement survey. (b) Replacement skills were to complete her school work and to communicate more respectfully. (c) Interventions were to teach coping strategies, leave the room to self-calm, complete unfinished work, and follow the school's code of conduct. The IEP included 6 accommodations relating to academic work, such as the use of a calculator, reducing the number of test or assignment items, and other accommodations on tests and assignments. The parent signed that she participated and that she received a copy of the parent rights document on the day of

the conference, April 28, 2023. The district provided a PWN dated April 28, 2023 for the material changes in services, substantial change in placement, and other changes to the IEP, which the parent signed giving her consent on April 28, 2023.

When asked about the student's theft of food, the district stated and the discipline report showed that in May 2023 the student took food from a staff person's desk one time. The district reported that there has been no incident of food theft during the current school year.

The district reported in its response that the special education teacher was changed from the elementary to the junior high caseload at the beginning of the school year due to the number of students on the caseload and to make a better match with the student. The district provided notice of meeting on August 31, 2023 for a meeting on September 7, 2023. At this meeting, the IEP was changed to increase special education services in the special education setting, adding Study Skills and Life Skills and dropping keyboarding and "FACS" to give more behavioral and academic support to the student. The district provided PWN for the changes dated September 7, 2023 and the parent signed giving her consent on the same date.

Documentation from emails (September 11 and 12, 2023) showed that the school discussed the student's dietary concerns with the student's After Care Permanency Specialist, showing that the school had requested but not received medical documentation about the student's medical needs from the parent. The district reported that the student's team was notified prior to September 12, 2023 that the student had diabetes and should not receive candy at school. The district provided a copy of a medical release showing a health professional's signature on September 22, 2023 and parental consent for exchange of medical records dated October 10, 2023 for the student's diet. The district reported that the head dietitian provided accommodated meals for the student within a few days of receiving the medical orders in mid-October, 2023. Email evidence showed that the meal plan was in place on or before October 18, 2023.

According to the district, the school received information from a behavior day school that the parent had visited approximately on November 21, 2023. At that time, the school confirmed that the parent was requesting an IEP meeting to discuss placement in that school. The district provided notice on November 21, 2023 and held a meeting on November 28, 2023 at which the student's behavior problems at home were discussed; the parent shared that the student had treatment through the local mental health center and the parents were on the waiting list for family services, according to the IEP conference summary of the meeting. According to the IEP conference summary dated November 28, 2023 the district explained and provided school data that showed that the student was not having problems at school that would require a separate day school placement. The district provided prior written notice (PWN) dated November 28, 2023 for its refusal of the parent request for change of placement. On the PWN, the district documented that they sent the PWN home with the student on November 28, 2023 and subsequently emailed it on December 15, 2023 at the time of the complaint.

The district reported they initiated a meeting following the receipt of an email from the parent to the assistant principal on December 15, 2023 which stated that the parent had previously requested a one to one paraeducator and that the school was not addressing the student's dietary restrictions. At an IEP meeting dated December 20, 2023, documents showed that the parent's request for a one to one paraeducator and a health care plan were addressed. The district provided a copy of the Diabetes Medical Management Plan put into place on December 20, 2023. The parent attended the meeting and signed the IEP Amendment dated December 20, 2023. The district provided PWN dated December 20, 2023 signed by the parent on the same day, which stated that the health plan would be placed in the nurse's office, that the team discussed the diet and restriction being followed at school, and that the district refused the parent's request for a one to one paraeducator due to the student's appropriate behavior at school. In the PWN, the district also agreed that the student would return to the resource room after therapy to address the parent's concerns regarding self harming although the PWN and interviews with school personnel noted that the district saw no evidence that the student was reluctant to attend or disturbed by therapy periods at school.

Conclusion

The development of the IEP begins with the evaluation which should be sufficiently comprehensive to identify all the child's special education and related services needs and use tools and strategies that provide relevant information to directly assist in determining the educational needs of the child. In this case, the district conducted an evaluation in April, 2022 preceding the student's diagnosis with diabetes that assessed the student in known areas of need (reading, written language, math and social emotional development) and developed an IEP and BIP reasonably designed to meet the student's needs. The district reported that it changed the special education teacher in an effort to make the student's educational program more successful in the fall, 2023. The district held IEP meetings with the participation of the parent, to develop the IEP (April 28, 2023), to consider placement at the behavioral day school (November 28, 2023) and to consider one to one para educator and school health plan (December 20, 2023). The parent agreed to change the IEP without a meeting on September 7, 2023. Thus, it is found that the IEP was developed appropriately with the parent's participation and after the student's evaluation in all areas of the suspected disability, with tools and strategies to provide relevant information.

When the student returned to the district from foster care in spring, 2023, she had been diagnosed with Type 2 Diabetes. Upon the mother's request, the school notified all personnel not to provide candy or sugared treats to the student. Upon acquiring consent for medical release of information from the parent (signed October 10, 2023) the school provided accommodated meals and directed staff not to provide candy to the student at school. The district did not see the student's health condition as affecting her performance at school during the end of the 2023 spring semester or during the fall of the 2023-24 school year.

While the health care plan was not formalized until December 20, 2023 nor placed within the student's IEP, the student's diet was accommodated through direction to the dietary and teaching staff at the school.

Based on the foregoing, ***it is not substantiated*** that USD #481 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop the student's IEP, specifically by designing an IEP that accommodates the student's health or behavioral needs.

Issue Two

The USD #481 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by implementing behavioral support or implementing health related procedures.

Applicable Law

Federal statutes and regulations at 34 CFR 300.39 define special education as specially designed instruction at no cost to the parent to meet the unique needs of a child with a disability. Further 34 CFR 300.320(a)(4) requires that the IEP include "a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child: (i) To advance appropriately toward attaining the annual goals; (ii) To be involved in and make progress in the general education curriculum. . . and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and nondisabled children."

Federal regulations 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. Unless they exit from special education, special education and related services in the IEP are to be available to all children residing in the State between the ages of 3 and 21 according to 34 C.F.R. 300.101(a).

Analysis: Findings of Fact

The complainant alleged that the district was failing to implement the student's IEP, specifically her behavior support plan. The parent alleged that the student was eating improperly and self-harming at school and that the school failed to prevent or acknowledge these and other behavior problems. The parent alleged that the district failed to accommodate the student's dietary needs at school.

The district responded: "U.S.D. 481 denies this allegation. [The student] has a BIP in her IEP and it is addressed through a behavior goal." The district response stated that the student's educational program has been effective as demonstrated by her grades, daily behavior records, and the office referral data. The district further responded that it had requested the doctor's order from the parent and notified staff of the student's health concerns prior to September 12, 2023. The district responded that the meal modification plan was put into place upon receipt of the doctor's orders. The district stated that in a wraparound meeting dated October 19, 2023, district "staff were again informed about [the student's] diabetes, her testing, the location of her glucose monitor, and the requirement not to provide candy to her." The district stated that on October 27, 2023 all staff were sent an email informing them that they were not to give the student candy; the student's teachers were reminded on December 14, 2023 after a parent notification that she believed the student was getting candy at school. Finally, the district responded that on December 20, 2023 " A health plan for [the student's] Type 2 Diabetes was developed at a meeting, per the parent's request."

The findings of Issue One are incorporated by reference. Based on the documents provided by the parent and the district, and interviews of the parent and district staff, additional findings are listed in the following paragraphs.

Included in the student's April 28, 2023 IEP, the student's BIP listed: (a) Preventive interventions - to avoid power struggles, to use a token economy, and to provide praise and reinforcements from the reinforcement survey. (b) Replacement skills - to complete her school work and to communicate more respectfully. (c) Interventions - to teach coping strategies, to leave the room to self-calm, to complete unfinished work, and to follow the school's code of conduct

According to documentation provided during the 2023-24 school year, the student's teachers rated her behavior three times per class period or about every 15 minutes on: (a) completion of student work (star) (b) redirections given (c) wandering, (d) eloping, and (f) refusals to work. The student's behavior was rated in both special education settings (math, study hall, life skills), special education supported general education classes (science, social studies, language arts) and general education settings without special education support (lunch and physical education). In addition, each day the student self-reported on her mood, feelings, and self-evaluation of her behavior.

Daily behavior ratings from August 18, 2023 to December 19, 2023 indicate that the student frequently self-reported positive affect and positive attitude toward school ("I am happy to be at school today"). Teachers' behavioral ratings were predominantly positive completion of work with needing redirection in one or two class periods on eight (8) days and needing redirection and refusing to follow a direction on three (3) days. The student completed work and avoided the problematic behaviors on all other days, in each rating period. The district reported that the student reviewed the report daily during the last period and that the stars for completed work earned time for a game. The special education teacher reported that the student

frequently chose to complete her homework rather than play a game. The school stated and the parent agreed that the student's daily behavior ratings are regularly brought home by the student.

The student's grade report for Semester 1 of the 2023-2024 school year showed that the student received 4 A's (Physical Education, Life Skills, Instructional Music, and Study Hall), 3 B's (Social Studies, Language Arts, and Science) and one C (Math). The student's progress monitoring report showed that the student made adequate progress to meet her goals on each of her four IEP goals for the October 13, 2023 reporting period and on one of the goals for the prior May 15, 2023 period. The student's progress report for December 20, 2023 showed continued progress in each of her four goals. Notably, the student is starting the 5.0 grade reading passages. Her refusals have decreased dramatically from the April, 2023 baseline average of 21 refusals (13 refusals/8 somatic refusals) per day to a current level of zero for December, 2023.

Discipline records show no reports of food theft or self harm for the 2023-24 school year. There are no discipline incidents in the student's discipline report for the 2023-24 school year except for two incidents originating with the parent. There was one incident of food theft in May, 2023, according to the discipline report. In interviews, the teachers and administrators reported that the student's previous year's (2022-23) behavior problems (failing to complete work, refusing to follow adult directions, refusing to attend classes) have not been in evidence during this school year. The district reported that she had six positive office commendations. In addition, the principal reported the student was named "star pupil" for the middle grades, a school wide positive acknowledgment, during the fall, 2023.

The district reported and documentation showed that the district (a) requested medical records on or before September 12, 2023 in order to accommodate the student's diet for school lunches, (b) notified the student's teachers on or before September 12, 2023 of the parent's wish for the student not to have sugared candy, (c) accommodated the student's school meals following receipt of medical records on October 10, 2023, through direction to the dietary staff (d) met with a wraparound team and notified the student's teachers of the student's condition and monitoring requirements, October 19, 2023 and (e) notified all classified, certified and special education staff that the student was to have no candy at all on October 27, 2023. The district reported and documentation showed that at the parent's request, the district put into place a health plan Diabetes Medical Management Plan in the nurse's office on December 20, 2023 following the filing of the formal complaint.

The special education teacher stated that if the student felt ill during classes, she was taken to the nurse's office to monitor her blood sugar. The parent reported that the student should not be permitted to say when she needs monitoring; rather the adults should direct her. The parent reported that she believed that food theft and other behavior problems occurred at school this year.

When asked why the district used a separate health plan rather than placing the information in the student's IEP, the district replied that the student's health condition did not affect her learning in the classroom. Thus, they provided the accommodations needed but did not include the health plan within the student's IEP.

Conclusion

Daily behavioral data, student grades and progress reports, school personnel interviews and office referral documentation show the student's program has been followed and effective at meeting the student's identified academic and behavioral needs. Similarly, the school has accommodated the student's health needs at school; the student has not been hindered academically or behaviorally at school by her medical condition. It is noted that the school could have amended the IEP to include the student's health condition rather than a separate school health plan.

At school, there is no evidence of the behavioral problems associated with the complaint. The parent's assertion of concern for the appropriate treatment of her child is noted. However, there is reason to believe that the student's educational program is in place and effective at this time.

Based on the foregoing, ***it is not substantiated*** that USD #481 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by implementing behavioral support or implementing health related procedures.

Issue Three

The USD #481 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the parent procedural safeguards, specifically by (a) responding to a parent's request for an IEP meeting or scheduling the IEP meeting within a reasonable period of time (b) providing prior written notice following parental requests for changes to the IEP, (c) providing the parent a copy of the IEP.

Applicable Law

Federal and state statutes and regulations at CFR 300.324(b)(1)(ii)(c) and KSA 72-3429(f) require that the IEP team meets at least annually and that it revises the IEP as appropriate to respond to a parent's request for an IEP meeting to address a lack of progress, evaluation, the child's anticipated needs, information provided to or by the parents, or other matters. In Kansas, a reasonable time to respond to parental requests such as the request for an evaluation or for an IEP meeting is three weeks, or 15 school days.

According to federal regulations at 34 CFR § 300.503(a)(2) and state regulations at 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.

According to state regulations at KAR 91-40-18 (d) a copy of the IEP is to be given to parents at no extra cost. According to KAR 91-40-25 (a) the agency shall allow parents an opportunity to inspect and review all educational records and participate in any meeting concerning their child with respect to the special education placement or provision of services to their child.

Analysis: Findings of Fact

The complainant alleged that she had asked three times for a one to one paraeducator due to her safety concerns for the student. The parent alleged that the district was not providing her with copies of the IEPs, prior written notice, or parent rights document. The complainant alleged that she had asked for IEP meetings which had not been scheduled.

The district responded: "U.S.D. 481 denies this allegation. (a) The District is aware of two separate instances where [the mother] asked for an IEP meeting. The first one was to discuss sending [the student] to Opportunity Now, a special day school. [The mother] called [Name omitted] the Principal at Opportunity Now, on November 21, 2023, requesting that [the student] attend that school. [The Principal of Opportunity Now] passed the information onto White City School personnel. A meeting was held on November 28, 2023, at 10:30 am, to discuss [the parent's] request for [the student] to attend Opportunity Now. The team did not find data that would warrant sending [the student] to Opportunity Now. The second request was received via email on December 15, 2023, at 8:11 am for a one-on-one para for [the student]. A meeting was held to discuss this on December 20, 2023, at 9 am. The team did not find evidence to support the request for a one-on-one para for [the student]. (b) Meeting notices were provided for both meetings. Likewise, PWNs were provided following both meetings. (c) For each IEP team meeting, the parent was provided the option of a paper copy of the IEP or an electronic copy that is sent via email."

The findings of Issue One and Issue Two are incorporated by reference. Based on the documents provided by the parent and the district, and interviews of the parent and district staff, additional findings are listed in the following paragraphs.

In an interview and in an email to the assistant principal dated December 15, 2023, the parent reported that she had three times previously asked the school to institute a one to one para and that the school continued to fail to accommodate the student's diet. When asked, the parent could not provide documentation, dates or the person given the paraeducator

requests. The school acknowledged receipt of the parent's written emailed request on December 15, 2023 and scheduled an IEP meeting on December 20, 2023 to address the parent's request for a one to one para and to address the parent's concerns regarding the student's diet at school.

Documentation showed that each of the listed IEP meetings and IEP changes were held with the participation of the parent. Notes on documents show delivery as shown on the following chart. Prior written notice (PWN) was provided to the parent in each instance as noted:

IEP Team	Document and Purpose	Document delivery	PWN
April 28, 2023	Reevaluation, eligibility and annual IEP	Not listed	Dated April 28, 2023 Signed April 28, 2023
September 7, 2023	IEP amendment without a meeting to change schedule) (IEP amendment and PWN)	Hand Delivered September 7, 2023	Dated September 7, 2023 Signed September 7, 2023
November 28, 2023	Parent requested behavior day school and at home behavior (PWN)	Sent with student November 28, 2023 Emailed December 15, 2023	Dated November 28, 2023 Unsigned
December 20, 2023	Parent requested one to one paraeducator and health plan (PWN)	Hand Delivered December 20, 2023	Dated December 20, 2023 Signed December 20, 2023

The IEP dated April 28, 2023 did not have a document delivery note nor did the PWN of the same date. When asked about the practices of providing parents copies, the district reported that its practice is for parents to be provided a marked up or corrected copy at the time of the meeting. When interviewed and asked about her recollection of delivering a copy of the IEP, the special educator indicated that to the best of her recall she provided a copy of the IEP at the time.

The district reported that the parent requested copies of all the student's special education documents at the time of the December 20, 2023 meeting and that all (paper) copies were provided to her at that time.

Conclusion

In this case, the parent participated in each of the IEP meetings and IEP amendments without a meeting held since the student returned to the district. Twice the district held meetings at the parent's request to discuss issues of concern. The district promptly scheduled meetings from the time at which they were clearly made aware of the parent's wish, either in writing or as a follow up to another agency's alert. It is noted that the parent may have intended oral

communication to mean that she wished to have an IEP meeting but that it was not received as a request by the district.

Additionally, the parent participated in the IEP meetings and signed three of four PWNs associated with IEP meetings or an amendment without a meeting. The district hand delivered three of four of the PWNs. The district's practice is to make a copy and hand deliver to the parent and it is likely this also occurred at the time of the April 28, 2023 IEP. When the parent requested paper copies of all the special education documents, she was provided them December 20, 2023.

Based on the foregoing, ***it is not substantiat***ed that USD #481 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the parent procedural safeguards, specifically by (a) responding to a parent's request for an IEP meeting or scheduling the IEP meeting within a reasonable period of time (b) providing prior written notice following parental requests for changes to the IEP, (c) providing the parent a copy of the IEP.

Issue Four

The USD #481 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide staff who are properly trained to implement the student's IEP.

Applicable Law

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), require 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 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.

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 (PD) annually

Analysis: Findings of Fact

The parent alleged that the student needed the separate behavior day school placement because the staff at the district did not have the necessary training to deal with the student's behavior problems.

The district responded "U.S.D. 481 denies this allegation. All staff working with [the student] are trained professionals with licenses through the Kansas State Department of Education or paraprofessionals trained through CKCIE."

The findings of Issue One, Issue Two and Issue Three are incorporated by reference. Based on the documents provided by the parent and the district, and interviews of the parent and district staff, additional findings are listed in the following paragraphs.

Three paraprofessionals are assigned or substitute in the student's daily schedule.

Para CD has a high school diploma and has completed 8 hours of professional development during the 2023-24 school year. They have 1.5 years experience with the district and will be expected to have 20 hours of PD by the end of the school year. PD topics include: classroom management, CPR training, and student specific behavior plans.

Para CW has a high school diploma and has completed 12 hours of professional development during the 2023-24 school year. They have 1 year experience with the district and will be expected to have 20 hours of PD by the end of the year. PD topics include: classroom management, CPR training, student specific behavior plans and Mandt training recertification.

Para AC has a high school diploma and has completed 6 hours professional development during the 2023-24 school year. They have 1 year of experience with the district and will be expected to have 20 hours of PD by the end of the year. PD topics within orientation include de-escalation, supporting student needs, safety precautions, managing student behavior, dealing with difficult behavior, top 10 para "need to knows".

The student's special education teacher's current professional license is dated 2022-2027, with licensure in Adaptive Special Education (PreK-12) and Early-Late Childhood Generalist (K-6). She has had recent professional development in the following topics: recent topics in special education, Mandt training (de-escalation), neurodiversity, self and co-regulation, autism supports. In 2020-21 she had professional development in Collaborative Problem Solving.

Conclusion

In this case, three paraeducators work with the student on a regular or substitute basis. Each of these individuals have been provided professional development during the school year

appropriate to their position. The special education teacher is fully certified and licensed to teach adaptive special education at the student's grade and has current professional development related to her position.

Based on the foregoing, ***it is not substantiated*** that USD #481 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide staff who are properly trained to implement the student's IEP.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 CFR 300.324(a) was not found, based on the facts of proper development of the IEP above. Corrective action is not required.
2. ISSUE TWO: A violation of 34 C.F.R. 300.323(c)(2) was not found, based on the facts of implementation listed above. Corrective action is not required.
3. ISSUE THREE: A violation of CFR 300.324(b)(1)(ii)(c), 34 CFR 300.503(a)(2), KAR 91-40-18, and KAR 91-40-25 (a) was not found, based on facts above. Corrective action is not required.
4. ISSUE FOUR: A violation of 34 C.F.R. 300.156(a) was not found, based on facts above. Corrective action is not required.

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).

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 AUGUST 28, 2023

DATE OF REPORT SEPTEMBER 29, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of -------, by her father, ----------. In the remainder of the report, ----------. will be referred to as "the student." ----------. will be referred to as "the complainant" or "the parent" or "the father." ----------. will be referred to as "the mother." Together, ----------. and ----------. will be referred to as "the parents."

The complaint is against USD #260, Derby Public Schools. In the remainder of the report, USD #260 will be referred to as "the district", "the local education agency (LEA)", or "the school."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on August 28, 2023 and the 30-day timeline ended on September 28, 2023. However, due to an addition to the complaint from the parent on the same issue, the complaint timeline was extended.

Evidence Reviewed

During the investigation, the complaint investigator, Gwen Beegle, reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The complaint investigator spoke with the complainant to clarify the concerns and issue for the complaint on August 28, 2023. On September 15, the following persons were interviewed: Dawn Gresham, Special Education Director, USD #260; June Henkelman, Director of Special Services for Secondary Schools, and the parent. On September 18, 2023, Sean Pearson, PBIS teacher and IEP case manager was interviewed. The complaint investigator received emails from the district from August 29, 2023 to September 22, 2023.

Due to the addition to the complaint dated September 15, 2023, the complaint investigator interviewed the following people on September 21, 2023: the parent, Dawn Gresham, and Emily Williams (History Teacher). On September 22, 2023, Sean Pearson was interviewed.

The following documentation and information were used in consideration of the issue:

1. Prior Written Notice for Reevaluation and Request for Consent dated September 14, 2022 and signed by the mother giving consent on September 15, 2022.
2. Notice of Meeting dated September 11, 2022 for a meeting on October 12, 2022

3. The student's special education reevaluation dated October 12, 2022
4. Student's IEP dated October 12, 2022
5. PWN for Identification, Special Education and Related Services, Educational Placement dated October 12, 2022 for a meeting on October 12, 2022.
6. Email from Jordyn Baker (School Psychologist) to the parent, Shawn Pearson (PBIS Teacher and IEP Case Manager), Nicole Perez (Assistant Principal), Dawn Gresham (Special Education Director) , and Tonia Stoehr (School Social Worker) dated October 18, 2022 at 10:23 a.m.
7. Mentor-Mentee agenda dated November 15, 2022
8. Email from the parent to Dawn Gresham dated January 4, 2023 at 10:54 a.m.
9. Email from Shawn Pearson (PBIS Teacher - IEP Case Manager) to the student's second semester teachers dated January 4, 2023 at 7:01 (n.d.)
10. Email from Dawn Gresham to Shawn Pearson and June Henkelman (Director of Special Services for Secondary Schools) dated January 4, 2023 at 11:25 a.m.
11. Notice of meeting dated January 9, 2023 for a meeting on January 9, 2023 signed by the parent waiving 10-day notice on January 9, 2023
12. IEP amendment dated January 9, 2023, signed by the parent giving consent on January 9, 2023
13. Prior Written Notice for a material change to the IEP dated January 9, 2023 for a meeting on January 9, 2023 signed by the parent giving consent on January 9, 2023
14. IEP amendment dated March 7, 2023
15. Prior Written Notice for a material change in services and other changes to the IEP dated March 7, 2023 for a meeting on March 7, 2023 signed by the parent on March 7, 2023
16. Office referral list, last entry date April 19, 2023
17. IEP meeting notes dated April 27, 2023
18. IEP for the student with no updates dated April 27, 2023
19. IEP at a Glance for the student for October 12, 2022 IEP updated April 27, 2023
20. Para Training announcement and training agenda for August 7, 2023 8:00 am till noon.
21. Paraeducator orientation and confidentiality 2023-24 presentation
22. Email from the father to Dawn Gresham and the mother dated August 9, 2023 at 4:29 p.m.
23. Email from Shawn Pearson dated August 14, 2023 at 4:47 p.m. to Tonia Stoehr and the students teachers: Michael Moseley, Venus Bishop, Lindsay Jones, Jude Schreiner, Bill Ross, Brett Flory, Lexie Dill, Brian White, Haley Hutchinson, and Emily Williams
24. Email from the father to Shawn Pearson, the mother, Dawn Gresham and June Henkelman dated August 16, 2023 at 7:04 (n.d.)
25. Meeting Invitation dated August 16, 2023 at 3:05 p.m for a meeting on August 25, 2023 at 2:30 p.m. from Shawn Pearson to the parent, Dawn Gresham, June Henkelman, Tonia Stoehr and the student's teachers.

26. Notice of canceled meeting dated August 17, 2023 for a meeting scheduled for August 25, 2023
27. Notice of meeting dated August 17, 2023 for a meeting on August 24, 2023 at 2:30 p.m.
28. Email from the father to Shawn Pearson, the mother, Dawn Gresham and June Henkelman dated August 17, 2023 at 8:23 a.m. with Shawn Pearson's reply to the group at 9:01 a.m.
29. Email from Dawn Gresham to Shawn Pearson, June Henkelman, Gretchen Pontious (Derby High School Principal) and Cheryl Parks (Derby High School Assistant Principal) dated August 17, 2023 at 11:41 a.m.
30. Email from the father to Shawn Pearson, Dawn Gresham and the mother, dated August 17, 2023 at 2:51 p.m. and Dawn Gresham's reply to the group August 17, 2023 at 3:09 p.m.
31. Email from Tonia Stoehr to the father, the mother, Shawn Pearson and Dawn Gresham dated August 18, 2023 at 1:29 p.m.
32. Email from Shawn Pearson to Tyler Morris dated August 21, 2023 at 10:26 a.m.
33. Message from Venus Bishop (Special Education Math Teacher) to the parent dated August 23, 2023 at 3:06 a.m.
34. Email from the parent to Shawn Pearson, the mother, Dawn Gresham, and June Henkelman dated August 23, 2023 at 8:01 am and Shawn Pearson's reply to the group dated August 23, 2023 at 9:01 a.m.
35. Email from Shawn Pearson to the parents, the student, Tonia Stoehr, and Cheryl Parks, dated August 23, 2023 at 2:41 p.m.
36. Email from Emily Williams to Shawn Pearson dated August 24, 2023 at 1:04 p.m.
37. Meeting Invitation from Shawn Pearson for a meeting on August 24, 2023 at 2:30 p.m. dated August 23, 2023 at 9:05 p.m. to the parent, Dawn Gresham, June Henkelman, Tonia Stoher and the student's teachers.
38. IEP amendment dated August 24, 2023
39. Prior Written Notice for changes to the IEP dated August 24, 2023
40. Email from Shawn Pearson to Tonia Stoehr, Michael Moseley, Venus Bishop, Lindsay Jones, Jude Schreiner, Bill Ross, Brett Flory, Lexie Dill, Haley Hutchinson, Jennifer Morris, Emily Williams, Cheryl Parks, June Henkelman, Amber Chapman, Heather Brooks dated August 25, 2023 at 1:22 p.m.
41. Email from Venus Bishop to Gretchen Pontius, Dawn Gresham, Shawn Pearson, Charles Gladfelter (Teacher) on August 27, 2023 at 1:23 p.m.
42. Email from Dawn Gresham to the mother, the father, Gretchen Pontious and June Henkelman dated August 28, 2023 at 3:30 p.m.
43. Email from the father to Dawn Gresham and the mother dated August 29, 2023 at 9:21 a.m.
44. Email from Shawn Pearson to the mother, the father, and Tonia Stoehr on August 29, 2023 at 11:04 p.m.

45. Email from Shawn Pearson to Sam Pinkerton dated August 29, 2023 at 12:14 p.m. and Sam Pinkerson's reply at 12:25 p.m.
46. Email from Shawn Pearson to Dawn Gresham and June Henkelman dated August 29, 2023 at 12:33
47. Email from Shawn Pearson to Charles Reed, Dawn Gresham, June Henkelman and Cheryl Parks dated August 30, 2023 at 12:08 p.m.
48. The student's schedule, dated September 6, 2023
49. District Response to the Allegations, dated September 12, 2023
50. Email from Emily Williams to Shawn Pearson dated September 14, 2023 at 7:55 a.m.
51. Text exchange between Emily Williams and Shawn Pearson dated September 15, 2023 at 8:44-8:47 a.m.
52. 2022-23 Progress Report for the student dated September 15, 2023
53. Grades for the student Fall 2023 dated September 15, 2023
54. IEP Expectations slide presentation undated
55. Text exchange between Emily Williams and Shawn Pearson dated September 19, 2023 at 8:23-8:33 and 9:51-9:52 a.m.
56. Email from Emily Williams to the parent and Shawn Williams dated September 19, 2023 at 8:51 a.m.

Background Information

The student is a 16-year-old who attends 11th grade at Derby High School in USD #260. The student was reevaluated in October 2022, and she continued to be eligible for special education services as a student with learning disability. Her special education services include pull out special education services for homeroom and math classes, special education support for English, science and social studies classes, and social work services once per week. The student is on track to graduate with a general education diploma in May 2025.

The student does not have a Behavior Intervention Plan; however, many accommodations/ supplementary aids and services and special considerations are written in her IEP to support her behavior as well as her academic learning. Her goals include socially appropriate coping skills and strategies, accurately completing reading and written language assignments in English classes, and accurately completing math assignments. Her IEP case manager is on the PBIS team in the building.

Issue Investigated

ISSUE ONE: The USD #260 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP, specifically the behavior intervention plan, thereby denying the student a free appropriate public education (FAPE).

Issue One

The USD #260 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP, specifically the behavior intervention plan, thereby denying the student a free appropriate public education (FAPE).

Applicable Law

Federal statutes at C.F.R. 300.320 (a)(4) and state statutes require that a student's IEP include a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general curriculum, and to be educated and participate with children with disabilities and without disabilities. Supplementary aids and services are defined at C.F.R. 300.42 and at K.A.R. 91- 40-1(ttt) as aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate. Additionally, federal regulations at C.F.R.300.324 (a)(2)(i) require that in the case of a child whose behavior impedes the child's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

Finally, federal regulations 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.

Analysis: Findings of Fact

The complainant alleged that the student's IEP was not followed. Specifically, the student's IEP stipulated that the father should be called when the student refuses to use the accommodations in her IEP or when she is causing trouble in class. The complainant alleged that, within a few days of the beginning of the 2023-24 school year, a teacher called him after an incident with the student in class rather than at the time of the incident. The complainant alleged that the teacher had not read the student's IEP and that she was unaware of and did not follow the student's accommodations and special considerations with regard to her behavior. The parent asserted that the parent must be called at the time of a behavioral problem with the student before other actions are taken by the district, such as to send the student to the PBIS room.

In an addition to this investigation, the complainant alleged that another teacher had failed to follow the IEP by failing to call him when the student was using her cell phone before the student was sent to the PBIS room. The complainant alleged that failing to follow the IEP was a

systemic and cultural problem in the district because the district did not provide information and training to the teachers on following the IEP.

The district responded that the parent wants what is best for his daughter and that the district works hard to accommodate the parent's wishes and to communicate with him. This includes having multiple meetings during the school year at his request, as well as the annual IEP meeting. The meetings included: (a) August 15, 2022 to discuss the IEP with the scheduled teaching staff for the fall semester of the 2022-2023 school year, (b) October 12, 2022 to review the triennial reevaluation and conduct the annual IEP, (c) January 9, 2023 to discuss the student's IEP with second semester staff, (d) March 7, 2023 for an IEP amendment to address the student's behavior, (e) April 27, 2023 to address parental concerns in extracurricular activities, and (f) August 24, 2023 to discuss a trial change of the student's behavioral escort plan. The district further replied that the student's teachers were emailed informing them of the student's IEP and accommodations prior to the Fall 2022, Spring 2023 and Fall 2023 semesters. The district responded that paraeducators were trained in August, 2023 on IEP accommodations and specifically provided with information on the accommodations, goals and services of students they support. The district also responded that the teacher involved in the first (August, 2023) incident was no longer with the district and that the replacement teachers have been informed of the student's IEP and accommodations. The district offered a plan to resolve the complaint issues with the parent.

With regard to the specific behavioral issue in the first complaint, the district responded: "[The father] stated in the complaint that the student was sent to the PBIS room from class. One of our accommodations in the IEP is that the student has a PBIS Fast Break Pass (agreed-upon service). We were following the IEP when the student was allowed to leave the classroom and go to the PBIS room."

With regard to the addition to the complaint, the district replied that it provided training and mentoring to all new teachers that included implementation of students' IEPs. The district replied that the student's teachers were aware of the student's IEP, and made every effort to follow it. The district responded that communication with the parent regarding the student's behavioral issues and use of accommodations happened as quickly as possible during the school day schedule.

Findings of the investigation upon review of the evidence and conducting the interviews listed above are:

- The student's IEP dated October 12, 2022 and amended on January 9, 2023, March 7, 2023, April 27, 2023 and August 24, 2023 presently includes 19 accommodations/ supplementary aids and services. Accommodations relevant to this complaint include:
    - The student is allowed to listen to music with one earbud when working independently during independent practice not during lecture or when a para or teacher is helping her with her assignments or assessment

  - The student has access to her earbuds during independent work time. That does not include group work, lectures or assessments
  - PBIS Fast Break Pass when the student is stressed, anxious, or angry or when the teacher notices she needs a break; the student may return directly to the PBIS classroom
  - Redirect rather than reprimand when getting distracted; the redirection will always be given in private. Watch tone and approach to ensure not threatening or loud enough so that others hear, when redirection is needed do it privately and verbalized as a redirection with a therapeutic approach and tone (never threatening)
  - Set clearly defined expectations and classroom protocols as positive behavior supports, and
  - Full escort during the school day.
- The complainant reported that he believes that the IEP states that he is to be called immediately upon a disruption in the classroom.
- Prior to August 23, 2023, two references were made to phone calls to the parent in the special considerations section of the IEP: (a) "Update 10-12-22. If [the student] refuses to use an accommodation, please call her dad who will require her to use the accommodation" and (b) "If [the student] is refusing an accommodation or misbehaving in class, please call her dad" as an update on April 8, 2022, which was carried forward from the 2021-22 school year.
- The district reported and provided documentation that the student had no discipline referrals during the 2023-24 school year and had met her behavioral goal during the last two quarters of the 2022-23 school year. The district reported and provided documentation that the student met her academic goals during the last three quarters of the 2022-23 school year and was making satisfactory grades in her classes.
- The district provided paraeducator training on August 7, 2023, during which each para was provided a binder containing the "IEP at a glance" (the accommodations - supplementary aids and services, special considerations, special education services, and goals in the student's IEP) for each student they support. The district reported that it is the practice of the PBIS case manager to do a binder update and check with each paraeducator monthly. The district reported and provided documentation of their new teacher mentoring and training about IEPs and accommodations in the general education classroom.
- The district reported and provided documentation that, on August 14, 2023 two days before the start of the 2023-24 school year, each of the student's 2023-24 teachers received an email informing them of the student's IEP, attaching a copy of the student's "IEP at a glance" (accommodations - supplementary aids and services, special considerations, special education services, and goals in the student's IEP). The district reported that each teacher replied that they received the email. The district reported and

provided documentation that additional teachers were provided the same email when the student's schedule changed and when long term substitute teachers changed.

- The parent reported that, within the first week of school on an unspecified date before August 23, 2023, the special education math teacher called him to report that the student was disruptive in her class. The parent reported and the district agreed that the paraeducator had left the room for a bathroom break when the disruptive incident occurred. The district and the parent agreed that the student went to the PBIS classroom briefly as a result of this incident and then the student returned to the class with no additional behavioral consequence. The parent and the district agreed that there was no discipline referral for the incident.
- The district reported that the PBIS classroom staff, who did not witness the interactions in the math class, believed that the student had used the "PBIS Fast Break Pass," which allowed the student to go to the PBIS room whenever the student feels "stressed, anxious, angry or when the teacher notices [the student] needs a break." The district reported and the parent agreed that it is the district's practice for the PBIS teacher - IEP case manager to contact the parent as quickly as possible when the student declines to use an accommodation in her IEP.
- The parent reported and provided a forwarded message from the special education math teacher dated August 23, 2023 which included a list of classroom expectations and stated: ". . . The IEP summary I received did not have the behavior plan attached. I will get a copy of that. I will touch her desk with one finger without drawing attention to her, then I will call you as directed in our phone call. Just please, let me know if you want to make changes to this." In an email to the district dated August 23, 2023, the parent asserted that the teacher's message indicated that she had not received IEP training from the district.
- The district reported and provided documentation that the special education math teacher had been sent an email with the student's IEP at a glance attached on August 14, 2023 at 4:47 p.m. The district reported that the teacher correctly stated that there was no behavior plan attached for the student because the IEP summary included the student's behavioral supports as accommodations/ supplementary aids and services. The district reported that the special education math teacher was a special education teacher who had retired from the district in 2021 and who had been hired as a long-term substitute for the student's math class. The district reported and provided documentation that the special education math teacher resigned the position on August 27, 2023.
- The district reported and provided documentation that an IEP meeting for the student was held on August 24, 2023 to update the accommodations to allow a trial change of the student's escort during lunch period. Following that meeting, the PBIS teacher - IEP case manager, in an email dated August 25, 2023 at 1:22 p.m., alerted the student's teachers to her updated accommodations list that included, "if she is being non-compliant or refusing to work (get off her phone), we are to call [the parent]." The email

also announced the scheduling of additional training for the student's accommodations. No other changes were made to the IEP at that time.

- The history teacher did not attend the IEP conference on August 24, 2023 but she provided an emailed statement to the PBIS teacher - IEP case manager stating that the student had been late to class, missed a few assignments, and that "I would also like to see her keep her cell phone put away during instruction. If she is doing independent work, I do not mind her listening to music, but when I'm instructing or she is working with peers on an activity, it needs to be put away."
- On September 14, 2023, the history teacher notified the PBIS teacher - IEP case manager of her concern that the student's cell phone use during class had begun to affect her history grade. In a text conversation with the history teacher on September 15, 2023, the PBIS teacher - IEP case manager affirmed that the history teacher should contact the parent. The history teacher telephoned the parent on September 15, 2023 to discuss the student's cell phone use in class, leaving a message.
- On September 19, 2023 during the first period (8:00-9:24 a.m.), the teacher sent the parent an email at 8:51 a.m. which stated: "The purpose of this email is to follow-up on my phone call of Friday, September 15 in which I left you a voicemail regarding inappropriate cell phone behavior during class. While I have no problem letting [the student] listen to music on her phone whenever she is working independently on an assignment, I ask that she (and all students) keep her phone put away and earbuds out of her ears when I am instructing, lecturing, having students work collaboratively, or showing historical films to the class." The teacher reported that email was sent during the student's history class when the student was using her cell phone during history instruction, which was watching a film while taking notes on a provided worksheet with peer discussions interjected at points during the film. The history teacher reported that she asked all the students to put away their cellphones during instruction. The teacher reported that she could not call the parent during the class due to being responsible for all the students in the class. The history teacher reported, documentation showed, and the parent agreed that she called and spoke to the parent by phone during the second period and before 9:51 a.m. on September 19, 2023. The PBIS teacher-IEP case manager reported and documentation showed that the parent called the PBIS teacher-IEP case manager in response to the history teacher's email prior to 9:51 a.m. on September 19, 2023.

In this case, the IEP team met frequently during the year to design positive behavior supports in response to the student's behavioral and academic needs as required by federal regulations at C.F.R.300.324 (a)(2)(i). These were not considered a separate behavior intervention plan (BIP) but were conceived as supplementary aids and services or accommodations provided in the special and general education classrooms as required by C.F.R. 300.320 (a)(4) and defined at C.F.R. 300.42 and at K.A.R. 91- 40-1(ttt). As noted in the findings, as many as 19 supplementary aids and services were included in the student's IEP during the investigation period. Further, the IEP team added additional instructions in the student's IEP related to the supplementary aids and

service, such as the student's passing times for her escorts between classes, and related to this complaint, a reference to making a call to the parent when the student is disruptive in class or declines to use an accommodation. Evidence showed that the district provided the student's IEP accommodations, services and goals to each of the student's teachers prior to Spring 2023 and Fall 2023 semesters, and the district updated the student's teachers following the August 24, 2023 IEP meeting and offered future training for the student's accommodations. Additionally, the district provided evidence that it routinely provides training to new teachers on following student's IEPs and how it specifically prepares its paraeducators to be aware of and to implement student's IEPs.

Two behavioral issues and the district's communication with the parent around them are the subject of this complaint. The first happened within the first week of school, on or before August 23, 2023 with a special education math teacher in the student's special education math class. The second occurred within the first month of school in the student's general education history class; her related communication occurred between September 14, 2023 and September 19, 2023.

The first behavioral issue that occurred in the special education math classroom was not witnessed by current district staff. The email and interview evidence indicate that the special education math teacher both called and emailed the parent regarding the student's behavior in class. In the email message, the special education math teacher relayed how she intended to implement two of the positive behavior support strategies listed as supplementary aids and services in the student's IEP: (a) that she posted behavioral expectations in the classroom [*Set clearly defined expectations and classroom protocols as positive behavior supports*], and (b) that she would provide a private non-verbal gesture (touch the student's desk) as a cue to redirect the student [*Redirect rather than reprimand when getting distracted; the redirection will always be given in private. Watch tone and approach to ensure not threatening or loud enough so that others hear*].

The parent reported that the special education math teacher told him that she did not read the student's IEP. While it cannot be determined if the teacher did or did not read the IEP summary that she received, it is clear that the district provided the student's accommodations to this teacher. Additionally, the teacher's message to the parent indicated that the teacher understood how to implement two of the supplementary aids and services. The special education math teacher was a retired special educator from the district who had experience in following the IEP requirements of students in the district.

The second behavioral issue occurred in the student's first period history class and concerned whether the student was using an accommodation or if the student was using her cell phone during history instruction. The IEP states: "The student is allowed to listen to music with one earbud when working independently during independent practice not during lecture or when a para or teacher is helping her with her assignments or assessment." The parent was especially concerned about prompt communication with him surrounding the student's behavior and the use of her accommodations.

Records of the history teacher's communication with the PBIS teacher-IEP case manager and the parent show that she was aware and implementing the student's IEP accommodations while expressing her concerns for the student's behavior and academic performance. She did this in three ways: (a) an emailed statement for input into the student's IEP team meeting on August 24, 2023; (b) communication with the IEP case manager to consult on the student's emerging behavioral and academic issues surrounding cell phone use during instruction and the parental communication required, and (c) communication with the parent by email and telephone as the problem was emerging over time and then during and after a class period during which the problem occurred. To the parent and the IEP case manager, she clearly communicated the distinction between using the cellphone for the accommodation during independent work and using it inappropriately during instruction. When the history teacher relayed her concern to the parent about inappropriate cell phone use, she also stated that she was willingly following the student's accommodation to use her phone and earbud during independent work. To the parent, she also defined the activities that comprised history instruction ("instructing, lecturing, collaborating with peers or showing historical films during class"). Further, to address the parent's concern regarding prompt communication, she emailed at the time of the student's class and telephoned immediately following it.

The evidence reviewed in this investigation shows that the district implemented the accommodations of the IEP, including the special consideration to call the parent when the student misbehaves in class. The district provided each teacher a copy of the IEP at a glance and evidence shows that the history teacher consulted with the PBIS teacher - IEP case manager to clarify the requirements of the IEP as she sought to implement them. Therefore, it is found that the district complied with 34 C.F.R. 300.323(c)(2) to implement the special education and related services, including the supplementary aids and services in the student's IEP.

Conclusion

Based on the foregoing, it is not substantiated that the USD #260 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP, specifically the behavior intervention plan, thereby denying the student a free appropriate public education (FAPE)

Summary of Conclusions/Corrective Action

ISSUE ONE: A violation of federal regulations at C.F.R. 300.320 (a)(4) (supplementary aids and services), C.F.R. 300.324 (a)(2)(i) (positive behavior intervention support) and C.F.R. 300.323(c)(2) (implement the IEP) was not found based on the facts above. Corrective action is not required.

CORRECTIVE ACTION: Not Required

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).

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

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

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

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

(A) The issuance of an accreditation deficiency advisement;
(B) the withholding of state or federal funds otherwise available to the agency;
(C) the award of monetary reimbursement to the complainant; or
(D) any combination of the actions specified in paragraph (f)(2)

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #260
ON DECEMBER 8, 2023

DATE OF REPORT JANUARY 9, 2024

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 parent." USD #260 will be referred to as "the district."

Investigation of Complaint

On December 13 and 14, 2023 and on January 4, 2024, the investigator spoke by telephone with Dawn Gresham, Director of Special Services for the the district. The investigator spoke by telephone with the student's mother on December 21, 2023.

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

- Neuropsychological Evaluation dated June 23, 2022
- 504 Accommodation Plan for the student dated September 30, 2022
- IEP for the student dated October 11, 2022 (later amended on January 18, 2023)
- IEP Amendment Form for Minor Changes Not Requiring a Full IEP Team Meeting dated January 18, 2023
- Email dated September 15, 2023 from the special education department head to the student's parents
- IEP for the student dated September 19, 2023
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated September 19, 2023
- Email dated September 28, 2023 from the building principal to the student's parents
- 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 12, 2023
- Email dated January 4, 2024 from the student's case manager to the director of special education
- Daily toilet schedule for the student for the first semester of the 2023-24 school year

Background Information

This investigation involves a 14-year old boy who is in the 8th grade in his neighborhood middle school. By report of the parent, the student was adopted from an orphanage in Ukraine at age four and a half and arrived in the United States weighing 24 pounds. When his adoptive parents first met the student, he was nonverbal and could not feed himself. According to the parent, food insecurity was a major problem at the orphanage, and the student - though now well fed - continues to hoard food. Unless closely monitored, the student will seek out food from classmates and can become very sick from consuming too much food or food that is inappropriate for his dietary limitations.

The student has been diagnosed with RAD (Reactive Attachment Disorder) secondary to the care he received and environment he was raised in prior to his adoption. (RAD is a condition where a child does not form healthy emotional bonds with their caretakers (parents or parental figures), often because of emotional neglect or abuse at an early age.) The parent reports that she and the student have an especially conflictual relationship. In the school setting, however, the student's behaviors do not impede his learning or the learning of others. According to his September 2022 IEP, the student participates well in group social work settings and does what he is asked to do.

The student also has diagnoses of Spina Bifida and hydrocephalus. He has a VP (ventriculoperitoneal) shunt. His mobility is primarily supported through the use of a wheel chair. According to the student's September 2023 IEP, he has good functional mobility using his wheel chair and other adaptive equipment. He uses bilateral ankle foot orthotics. His left leg was broken multiple times before adoption, and his left ankle has been broken as well. His left femur head is detached.

The student wears glasses to correct his vision.

In her complaint, the parent states that the student has also been diagnosed with FASD (fetal alcohol spectrum disorders), a group of conditions that can occur in a person who was exposed to alcohol before birth. According to a neurological evaluation report completed in June 2022, the student was "probably exposed to alcohol prenatally." According to the parent, the student's social development is significantly delayed. The June 2022 neurological evaluation report stated that the student met diagnostic criteria for Mild Intellectual Disability.

The student has received services from the district since the Spring of 2016 when he transferred to the district from out of state and was determined to be eligible to receive special education services under the disability category of Other Health Impaired (OHI). Currently, the student receives special education services to address needs in the areas of reading, math, and written language.

Issues

In her complaint, the parent identified two special education-related issues. In outlining facts in support of her complaint, the parent also cited concerns related to the implementation of the student's Section 504 Accommodation Plan as well as the content of one of the accommodations in that plan.

Pursuant to federal regulations at 31.C.F.R. 300.153, a state department of education may only investigate allegations of a violation of special education laws and regulations. Special education statutes and regulations state that a formal complaint must allege that a district has - within not more than one year prior to the date the complaint is received and filed with the commissioner of education - violated a state or federal special education law or regulation. (See K.A.R. 91-40-51(b).) This investigator does not have the authority to investigate allegations related to Section 504, so only the special education issues contained within this complaint will be addressed in this report.

In the course of this investigation, an additional special education issue related to the provision of prior written notice was identified and will be addressed below under Issue One.

Issue One

The Assistant Director of Special Services refuses to put the 504 accommodations onto the IEP.

Parents' Position

The parent contends that the district has - perhaps in an effort to avoid IDEA-related implementation requirements - refused to include the accommodations listed in the student's 504 Accommodation Plan in his IEP.

District's Position

The district does not believe that the two accommodations specified in the student 504 Accommodation Plan reflect needs associated with the student's disability and should not be incorporated into the student's IEP.

It is the position of the district that the student's food obsession is a result of his early environmental deprivation during the years spent in the orphanage, not his disability. The district acknowledges that the parents have reported that a failure to follow dietary restrictions can lead to bowel problems for the student. However, the parents have not provided the district with any medical statement related to these bowel issues. The district believes that the need for a staff member to keep the student from trying to obtain food from classmates is not a special education issue but rather a health care need appropriately addressed through the student's Accommodation Plan.

While the 504 accommodation designed to restrict the student's unsupervised access to the internet was included in the student's Accommodation Plan at the request of the parents, the district asserts that this restriction is not required to address special education needs associated with the student's disability. The district further asserts that the student has spent only minimal time accessing non-academic sites on the internet while at school and notes that the student is currently a participant in a district pilot program that limits student access to non-academic YouTube content, so supervision would not be needed.

Applicable Statutes and Regulations

It is not unusual for all of a student's needs to be addressed through the development an IEP. As stated in the Kansas State Department of Education's July 2023 Eligibility Indicators:

> *"Once a child is identified as a child with a disability, determination of services to be provided are based on the child's needs, not on the child's label. In other words, children do not need to be identified with a label for each related service they receive. For example, a child with a learning disability does not need to have a secondary label as emotionally disturbed to receive counseling for emotional issues...For children determined to be eligible for special education and related services as a child with an exceptionality, the Present Levels of Academic Achievement and Functional Performance (PLAAFPs) of the IEP should contain the evaluation information that describes the child's needs. The PLAAFPs must include information regarding academic achievement, functional performance, and the impact of the exceptionality on the child's ability to access and progress in the general education curriculum."*

However, special education laws do not specifically prohibit the development of both a 504 Accommodation Plan and an IEP for the same student. A student may have an IEP to address his/her special education needs and a 504 Plan for additional accommodations.

"Special education" means specially designed instruction (K.A.R. 91-40-1(kkk); 34 C.F.R. 300.39(a)(1)), and, that specially designed instruction means adapting the content, methodology or delivery of instruction to address the unique needs of a child that result from the child's exceptionality to ensure access of the child to the general education curriculum in order to meet the educational standards that apply to all children (K.A.R. 91-40-1(lll); 34 C.F.R. 300.39(b)(3)(i), (ii)). This implies that in order to have a need for special education, the child has specific needs which are so unique as to require specially designed instruction in order to access the general education curriculum.

When developing an IEP, the student's IEP team must consider his or her need for "supplementary aids and services." Federal regulations, at 34 C.F.R. 300.42 define "supplementary aids and services" as

> *"aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable*

children with disabilities to be educated with nondisabled children to the maximum extent appropriate..."

Special education supplementary aids and services are sometimes referred to informally as "accommodations." The term "accommodation" is often used to describe an alteration of environment, curriculum format, or equipment that allows an individual with a disability to gain access to content and/or complete assigned tasks. Accommodations allow students with disabilities to pursue a regular course of study.

It is the responsibility of a student's IEP team to determine what - if any - supplementary aids or services the student needs. If accommodations or modifications needed by the child do not include specially designed instruction, the child's needs may be met through a Section 504 plan or other means instead of an IEP.

Kansas statutes, at K.S.A. 72-3404, identify the members of a properly constituted IEP team. The team should include, among other individuals, a representative of the local education agency (LEA) representative who:

- is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of exceptional children;
- is knowledgeable about the general curriculum; and
- is knowledgeable about the availability of resources of the agency. (See K.S.A. 72-3404(u)(4)).

The primary responsibility of the school representative or designee is to commit school resources and ensure that services written in the IEP will be provided. The school representative must have the authority to commit school resources and be able to ensure that whatever services are described in an IEP will actually be provided because the school will be bound by the IEP that is developed at an IEP meeting (Federal Register, August 14, 2006, p. 46670).

If, during the meeting, the IEP team cannot reach agreement on a given issue, then the LEA representative at the meeting has the ultimate authority to make a decision and then to provide the parents with appropriate prior written notice of the district's proposed action. By having a properly qualified LEA representative at the meeting, decisions regarding services for a student can be made by the team, obviating any need to discuss those decisions with parties outside of the IEP team.

Prior Written Notice must be provided when the school refuses a parent's request to initiate or change the identification, evaluation, or educational placement of the child, or to make a change to the provision of special education and related services (FAPE) to the child (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.503(a)(2)). When parents make a request for an evaluation (whether oral or written), KSDE has determined that, unless there is an unusual circumstance, 15 school days is a reasonable time for providing parents with a Prior Written Notice of the district's

proposal to conduct the evaluation or the district's refusal to conduct the evaluation (See KSDE Memo, "Reasonable Time" to respond to parent request for evaluation, January 8, 2002, at https://www.ksde.org/Default.aspx?tabid=614). KSDE also applies this same standard with regard to any parent request related to identification, evaluation, placement, or the provision of FAPE. Accordingly, 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 identification, evaluation, placement or the provision of a FAPE for their child.

Investigative Findings Regarding Accommodations

Both the district and the parent agree that at the student's annual IEP Team meeting on September 19, 2023, the team discussed the parent's request to incorporate the two accommodations included in the student's current 504 Accommodation Plan into the student's new annual IEP. These accommodations were designed to address two areas of parent concern: the student's food obsession and the parents' belief that the student has been "wasting time" watching prank videos during class time.

With regard to his food obsession, the student's Accommodation Plan includes the following statement:

> *"[The student] has difficulty not asking for food from his classmates. He is not allowed to eat sugary or fatty foods as it causes gastrointestinal issues. He does this anyway and will self-harm by sitting in a dirty diaper, leading to sores and potential sepsis...The impulsivity of taking food and getting things that can hurt him in other ways are of grave concern to the parents and the team."*

The "Supplementary Aids and Services/Accommodations" section of the student's Accommodation Plan includes the following:

> *"[The student] will have a staff member accompany him to assist him with making good choices and avoiding actions that are harmful to self...at all times during the school day..."*

The student has a daily toileting plan which is developed collaboratively each semester by the parent and the school nurse. The toileting plan is the "Health Care Plan" referenced in the student's October 11, 2022 amended IEP and in the IEP proposed by the district on September 19, 2023. The plan is designed to ensure that the student sees the nurse three times a day in the nurse's office. These visits provide the student with a private location for him to check for and when necessary to change soiled clothing in order to reduce the chances of the student developing sores. No evidence was provided to indicate that this plan has failed to meet the student's needs.

The student's Accommodation Plan includes the following accommodation related to computer access:

> *"[The student] will not have individual access to a computer without someone with direct supervision of him at all times. Computer access should be limited to course content only and NO YOUTUBE (sic)."*

The Accommodation Plan does not contain any explanation as to why the 504 team felt an accommodation regarding computer access was needed. The parent stated in her complaint that the student has no access to computer or other devices in the home whereby he could access the internet. In her complaint and during a telephone conversation with the investigator the parent also reported that, during the 2021-22 school year, the student googled "girl abuse" when he was mad at his sister. The district made a report to CPS (Child Protective Services) regarding the situation.

According to the district, the student's computer searches during school hours were analyzed between the period of September 20 and December 11, 2023. During that period, less than 1% of the student's computer searches at school have been for YouTube and at least one of those searches appeared to be associated with a class assignment.

No meeting minutes, recordings, or contemporaneous notes from the September 19, 2023 IEP team meeting were provided by either party to reflect the content of the team discussion regarding the parent's request for the inclusion of 504 accommodations into the student's proposed IEP. Both parties report that no decision was reached by the team during the September 19, 2023 IEP team meeting regarding the inclusion of those accommodations. The building principal was in attendance at the IEP meeting and acting in the role of LEA representative. In an email to the director of special education dated January 4, 2024 the student's case manager stated that, during the meeting, the parent was told by the social worker that because the director of special education had "initially approved the 504 with the one-on-one para, we would need to discuss with [the director] about combining the two documents."

By report of the parent, she was subsequently told by the building principal that the assistant special services director was "not willing to put the 504 accommodations into the IEP." The parent stated in her complaint that she had asked to speak to the assistant director, but the assistant director did not reach out to the parent. The parent stated that she made no attempt to contact the assistant director.

On September 28, 2023, the building principal sent an email to the parent stating:

> *"I spoke to...the [district]Special Education Coordinator about your request to combine [the student's] IEP and 504. She shared back that combining them is not a possibility. Because of the rules and regulations with each we will not be able to combine them at this time."*

To date, no additional IEP team meetings have been held to discuss the parent's request.

Investigative Findings Regarding Prior Written Notice

At the end of the September 19, 2023 IEP team meeting, the parent was provided with a copy of the student's revised IEP and prior written notice of proposed changes in placement and services reflected in that IEP. The prior written notice form did not, however, provide the parents with information regarding the district's refusal to incorporate the student's 504 accommodations into the student's IEP since no decision had been made on that action by the end of the meeting. The district stipulates that the parent was not provided with prior written notice of refusal of the request for inclusion of 504 accommodations until December 12, 2023, after this complaint was filed.

The amended prior written notice provided to the parent on December 12, 2023 included the following statements with regard to refusal:

> *"...Parents requested that [the student's] 504 document and IEP be combined. The district is not granting the request at this time. [The student] will still receive the benefits of both they will just not be combined into the same document (sic)."*

Under the section of the prior written notice entitled "Explanation of Why the Action Is Proposed or Refused," the form states:

> *"[The student] will continue to receive the benefits of both the 504 and IEP accommodations and services."*

Under "Options Considered and Why the Options Were Rejected," the form states:

> *"Combination of the 504 and IEP, this was considered and rejected. Based on [the student's] needs, the district felt it was not best to combine the documents at this time."*

Summary and Conclusions

While it is not unusual to have all of the services an exceptional student might need spelled out in his or her IEP, special education statutes and regulations do not specifically require all of the accommodations specified in a student's 504 Accommodation Plan to be included in the IEP. It is up to the IEP team to determine what special education services - including supplementary aids and services (accommodations) - are needed to allow the student to access and progress in the general education curriculum and to be educated with nondisabled children to the maximum extent appropriate. When developing a student's IEP, the IEP team is required to consider the needs of the student but may choose to address some needs unrelated to a student's disability through an accommodation plan.

At the annual IEP review for the student, the team discussed the parent's request to incorporate the student's 504 accommodations into his IEP. However, the team did not reach a decision regarding those accommodations, determining that - although an LEA representative attended the meeting - the decision would need to be made by the director of special education who was not present. Once the director had made the decision not to incorporate the 504 accommodations into the IEP, the building principal sent the parent an

email to inform them. No prior written notice was provided to the parents until after this complaint was filed.

An IEP team's decision not to include the student's 504 Accommodations in his IEP would not in and of itself constitute a violation of special education statutes and regulations. Therefore, a violation of special education statutes and regulations *is not substantiated* on this aspect of this issue.

However, in this case, the decision to reject the parent's request was not made by the IEP team which had considered the request. Rather, the decision was made by the director of special education who was not present at the IEP team meeting. While the parent was subsequently informed via email of the director's decision, the parent was not provided with prior written notice of refusal in a timely manner. It was only after this complaint was filed that prior written notice of refusal was provided - months after the IEP decision was made. Additionally, the prior written notice form did not provide the parent with meaningful information regarding why the parent's request to include the 504 accommodations was refused, only that it was "not best to combine the documents at this time."

Because the district failed in a timely manner to provide the parent with prior written notice that clearly explained the reasons why the parental request was refused, a violation of special education statutes and regulations *is substantiated* on issues identified during the course of this investigation.

Issue Two

The district failed to provide the parent with a copy of a revised draft of the student's IEP within 10 days of the annual review meeting.

Applicable Statutes and Regulations

Special education statutes and regulations do not require districts to provide parents with a draft of a proposed IEP prior to an annual review, though many if not most districts find it helpful to do so. Districts are required, however, to - within a reasonable time (15 school days as described above under Issue One) - provide the parents with a copy of the IEP proposed by the district upon completion of the annual review.

Investigative Findings

In preparation for the annual review of the student's IEP scheduled for September 19, 2023, the special education teacher sent an email to the student's parents. Attached to the email was a copy of the Draft IEP to be discussed at the meeting as well as additional assessment information requested by the parent.

At the conclusion of the annual review meeting on September 19, 2023, the parent was given a copy of the completed proposed IEP, prior written notice regarding changes in services and

placement (not including the refusal of the parent's request to include the student's 504 accommodations in the student's new IEP), and a Medicaid consent form.

Because the parent did not provide written consent for changes to placement and services outlined in the proposed IEP, services to the student are currently being delivered as described by his October 11, 2022 IEP as subsequently amended on January 18, 2023.

Summary and Conclusions

The parent was timely provided with a copy of the district's proposed IEP at the end of the annual review meeting on September 19, 2023. 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 determined that there was noncompliance with special education statutes and regulations on issues associated with this complaint. Specifically, a violation has been substantiated with regard to K.S.A. 72-3430(b)(2) and 34 C.F.R. 300.503(a)(2) which require that parents be provided with prior written notice when a district refuses a parental request for a change in services to their child. Therefore, USD #260 is directed to take the following actions:

1) Submit to Special Education and Title Services (SETS) within 21 calendar days of the date of this report, a written statement of assurance stating that it will comply with K.S.A. 72-3430(b)(2) and 34 C.F.R. 300.503(a)(2) by timely providing prior written notice of refusal when denying a parent's request for a change in services.
2) By no later than 21 calendar days of the date of this report, schedule an IEP team meeting to review the parent's request for the inclusion of the student's 504 accommodations into his IEP.
    a. Attendees at the meeting should include all parties necessary to make a final decision as to whether or not the district will take the action requested by the parent.
    b. At the conclusion of the meeting, USD #260 shall present to the parent prior written notice of the district's acceptance or refusal of the request.
    c. If USD #260 opts to reject the parent's request, the prior written notice must clearly explain the specific reasons for the rejection of the request.
3) Within 5 school days of the IEP team meeting referenced above under Corrective Action 2, the district shall submit to SETS a copy of the notice of meeting for the scheduled IEP team meeting and the relevant prior written notice form showing either a rejection of the parent's request or a request for consent for proposed changes to the student's IEP.
4) By no later than February 2, 2024, provide to SETS verification that administrative and special education staff at the student's school have been provided training regarding

the proper refusal of a parental request for changes to their child's IEP. Training should specifically address the following:

a. the importance of having an LEA in the IEP meeting who can make decisions regarding services to the student;

b. timelines for providing parents with prior written notice of refusal; and

c. content of the prior written notice, specifically the importance of clearly stating the reason(s) for the district's refusal.

5) Further, USD #260 shall, within 20 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



Diana Durkin
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).

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 AUGUST 29, 2023

DATE OF REPORT SEPTEMBER 21, 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 parent."

Investigation of Complaint

On August 31, 2023, the complaint investigator spoke via telephone with Tom DeBauche, Assistant Director of Special Education for the Twin Lakes Educational Cooperative. On September 1, 2023, the investigator spoke by telephone with the Director of Special Education for the Cooperative, Anita Breen. The investigator spoke by telephone with the parent on September 5, 2023.

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

- IEP for the student dated September 21, 2021
- Individualized Education Program (IEP) Amendment dated August 18, 2022
- Prior Written Notice for Special Education and Related Services, Educational Placement, Changes in Services, Change in Placement, and Request for Consent dated August 18, 2022
- IEP for the student dated September 7, 2022
- Prior Written Notice for Special Education and Related Services, Educational Placement, Changes in Services, Change in Placement, and Request for Consent dated September 7, 2022
- Email exchanges between the parent and special education teachers dated April 5, 2023
- Email dated April 10, 2023 from the parent to the building principal
- IEP for the student dated April 10, 2023
- Email exchanges between the parent and special education teacher and building principal during the period of April 12, 2023 through
- IEP Addendum dated May 10, 2023
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated May 10, 2023

- Email dated August 17, 2023 from the student's case manager to the parent
- Email dated August 18, 2023 from the parent to the student's case manager
- Email dated August 18, 2023 from the assistant principal to the parent
- Email dated August 18, 2023 from the parent to the assistant principal
- Handbook for the student's high school
- Log entries covering the period of March 9 through August 17, 2023
- IEP Progress Report for the student covering the period of December 19, 2022 through April 6, 2023
- Additional material provided by the parent in support of Issue Two

Background Information

This investigation involves a 16-year old boy who is enrolled in the 11th grade in his district high school. He transferred into the current district at the beginning of the 2022-23 school year. The student has a diagnosis of Autism.

Issues

In her complaint, the parent raised three issues:

Issue One

> The student was given detention because he asked the special education teacher if she was gay on the first day of school. The school did not respond to the parent's request for a meeting to discuss this disciplinary action.

Parent's Position

The parent alleges that the district acted inappropriately when assigning the student a detention simply because he asked a question regarding his special education teacher's sexual orientation during a first-day-of-school activity.

District's Position

The district asserts that special education statutes and regulations do not apply to this situation because the assignment of a detention as a disciplinary consequence is not a special education action. The district also asserts that special education statutes and regulations do not apply to meetings that are unrelated to the provision of special education services to the student.

Applicable Statutes and Regulations

The IDEA allows schools to implement customary disciplinary techniques such as detention or the restriction of privileges for students with disabilities so long as those forms of discipline are

also used with nondisabled children and do not violate the provisions of a child's Individualized Education Program (IEP) or the child's right to a free appropriate public education (FAPE).

Special education statutes and regulations specifically address those disciplinary actions – such and suspension or expulsion – which result in a student's removal from the educational environment and change in the student's placement.

The parents of a child with an exceptionality have the right to request an IEP meeting at any time.

Investigative Findings

Section IV B of the student handbook for the student's high school states:

> *"The following information will give general guidelines for assigning consequences as a result of various behavior infractions. Administrators will use their discretion in assigning consequences other than those listed."*

According to the handbook, detentions may be assigned for any of the following infractions:

- Cafeteria violation
- Clothing violation
- Display of affection
- Parking violation
- Skipping teacher assigned/school assigned detention
- Profanity
- Hall/grounds violation
- Office referral
- Electronic violation
- Class disturbance
- Being in the parking lot without permission
- Leaving class without permission
- Insubordination/refusing a reasonable request
- Inappropriate displays of temper
- Throwing snowballs
- Forging/altering passes
- Lying

The handbook does not include any appeal process regarding the assignment of detentions. However, according to the director of special education, the superintendent of schools outlined the following process for the voicing of a complaint regarding such actions:

> *"[The student] was given the detention by the assistant principal, so the first person [the parent] should talk to is the principal, and then the superintendent, if she feels [the parent] still did not get her answers, and finally the school board."*

The student's April 2023 IEP does not address the implementation of disciplinary consequences for the student nor does it include a behavior plan.

On August 17, 2023, the first day of the 2023-24 school year, while engaged in a "get to know you activity" in a study skills class led by the student's special education case manager, the student asked the teacher if she was gay. According to the parent, the student had seen a picture of the teacher and another teacher with a baby that reminded the student of pictures of his family when he was young. The teacher told the student that she was "married to my husband."

The special education teacher sent an email to the parent at 3:54 PM on August 17, 2023 describing the incident. The teacher did not make an office referral regarding the exchange with the student but did make a log entry in the Powerschool program which provides information to the principal and assistant principal regarding what happens in the classroom. After viewing the entry, the principal and assistant principal discussed the exchange and the timing of the student's question and determined that the student's question warranted a detention.

At 2:35 PM on August 18, 2023, the parent sent an email stating:

> *"I am going to need more information on what exactly happened that warranted a detention. Because this email doesn't show me anything that warranted a detention. I need more context please."*

According to an August 18, 2023 email sent from the assistant principal to the parent at 4:00 PM, he had assigned the 20-minute after school detention because he "did not feel it was appropriate nor relevant to ask [the teacher] in front of the class if she was gay." The student had by that time already served the detention after school on August 17, 2023.

In his August 18, 2023 email to the parent, the assistant principal stated:

> *"If you have any further questions I would be happy to meet with you on Monday."*

The parent responded to the principal by email at 5:43 PM on August 18, 2023, writing:

> *"So yes, we all can meet on Monday afternoon after school. If that time doesn't work for everyone then let me know what will work... you can not give my child detention for asking a question without any ill intent. OR tell him that verifying sexual orientation is wrong. Plus not inform the parent until after the detention is over..."*

According to the assistant principal, he was prepared to meet with the parent after school on August 21, 2023 to discuss the detention but the parent did not come to the school that afternoon as planned and did not call to let anyone at the school know she would not be

coming. According to the assistant principal, he did not contact the parent to reschedule the meeting.

Summary and Conclusions

Unless the imposition of a disciplinary consequence violates the provisions of a child's IEP, impacts the child's right to a FAPE, or results in the student's removal from the educational environment, schools are allowed to implement customary disciplinary techniques such as detention or the restriction of privileges for students with disabilities so long as those forms of discipline are also used with nondisabled children.

The student handbook for the student's high school states that "detention" is used as a disciplinary consequence at the school and administrators will "use their discretion in assigning consequences…"

In this instance, the principal and assistant principal determined that the assignment of a detention was warranted for the student's question. The detention was not prohibited by the student's IEP. The 20-minute detention was served after school and did not remove the student from the educational environment or impact the student's access to a FAPE. District staff confirmed that detentions are assigned to both disabled and nondisabled students at the school. A violation of special education statutes and regulations ***is not substantiated*** on this aspect of this issue.

With regard to the district's alleged failure to conduct a meeting requested by the parent, no evidence was provided by either party that shows that the meeting requested by the parent and scheduled for August 21, 2023 was to be an IEP team meeting. Rather, the purpose of the meeting was to discuss the imposition of the disciplinary consequence of a detention for the student. As stated by the parent in her email to the special education teacher, she was seeking additional "context" to demonstrate why a detention was warranted. The assistant principal offered to meet with the parent to answer her questions, and a date and time for the meeting was established by the parties.

Because no evidence was provided to show that the parent requested an IEP team meeting, a violation of special education statutes and regulations ***is not established*** on this aspect of this issue.

Issue Two

The district grading scales are inaccurate and teachers are biased.

Parent's Position

The parent contends that the scale used by the special education teacher to give a course letter grade to the student for his Study Skills classroom was arbitrary and that the student was given daily grades based on inaccurate information.

District's Position

The district asserts that neither the assignment of course grades nor alleged teacher bias are covered under special education laws and are not properly addressed through the formal complaint process.

Applicable Statutes and Regulations

A formal complaint must allege a violation of state or federal special education laws or regulations (K.A.R. 91-40-51(a)(1). Neither the Individuals with Disabilities Education Act (IDEA) nor Kansas special education statutes or regulations contain specific provisions regarding grading on student report cards. The establishment of grading policies and practices for a given school district fall under the authority of the local school district and local Board of Education. While an IEP team may include specific accommodations or modifications regarding grading in a student's IEP in order to provide the student a free appropriate public education (FAPE), complaints regarding general grading practices unrelated to such accommodations or modifications should be directed through a normal chain-of-command process at the building and district level. An issue regarding a course grade is not considered to be a violation of special education statues and regulations unless the student's IEP contains modifications or accommodations related to those grading practices which have not been implemented.

In the case of this student, none of the IEPs for the student which have been in place during the 12-month period covered by this complaint have included accommodations or modifications related to course grades. Therefore, the investigator did not address this aspect of this issue as a part of this investigation.

Neither state nor federal special education statutes address the issue of bias. However, while the Office for Civil Rights (OCR) has no enforcement authority under IDEA, OCR does have enforcement responsibilities under two of the applicable federal laws: Title II of the Americans with Disabilities Act of 1990 (Title II) and Section 504 of the Rehabilitation Act of 1973 (Section 504). Title II prohibits discrimination on the basis of disability by public entities, including public elementary and secondary school systems, regardless of federal financial assistance. Section 504 prohibits discrimination on the basis of disability in programs or activities receiving federal financial assistance. This means that with respect to grades, class ranking, honor roll, graduation, and diplomas, students with disabilities must be treated the same as all other students.

A complaint investigator has no authority to investigate complaints regarding discrimination. Complaints regarding discriminatory grading practices or bias in Kansas 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 Three

The student was lectured by the principal and told several times, "Do not tell your mom."

Special education statutes and regulations do not address this type of interaction between a district administrator and a student. Therefore, this issue was not investigated. The parent may, of course, challenge the elements of this exchange through a district's normal chain-of-command complaint process discussed above under Issues One and Two.

Corrective Action

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

Investigator



Diana Durkin
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).

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

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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 DECEMBER 28, 2023

DATE OF REPORT JANUARY 29, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of --------- by his mother, ---------. In the remainder of the report, --------- will be referred to as "the student." --------- will be referred to as "the complainant," 'the mother," or the parent."

The complaint is against USD #233. In the remainder of the report, USD #233 will be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on December 28, 2023 and the 30-day timeline ends on January 29, 2024 with a one day state holiday.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham reviewed all evidence and documentation, which was provided by both the district and the complainant(s). Additionally, the Complaint Investigator interviewed the following during a school interview on January 17, 2023 Catherine Wormus, Speech Language Pathologist & Case Manager, Anne Otroszko, Math Teacher, Kathryn Feightner, School Social Worker, Alexis Wilkerson, Assistant Principal, Jenny Spears, School Psychologist and Ashley Enz, Special Services Coordinator. The Complaint Investigator interviewed the parent on January 20, 2024 and the student on January 21, 2024.

The following documentation and information were used in consideration of the issue(s):

1. Evaluation Report dated December 10, 2020
2. Eligibility Determination Speech or Language Impairment dated December 10, 2020
3. Notice of Meeting (NOM) dated November 16, 2022
4. Individualized Education Program (IEP) dated December 6, 2022
5. Prior Written Notice (PWN) for Identification, Initial services, Placement, Change in Services, Change of Placement, and Request for Consent dated December 6, 2022
6. District Transition Planning Services Notice dated December 6, 2022

7. Related Service Provider Service Log 2023-2024 for student for August -May, includes table of dates and handwritten log dated between August 17 through December 12 2023
8. The "I" in IEP: Considering Individual Student Needs in Required Processes PowerPoint presented to School Psychologist dated September 6, 2022
9. Emails between special education coordinator and parent dated November 10, 2023 between 1:30 p.m. and 2:34 p.m.
10. NOM dated November 15, 2023
11. Emails among case manager, parent and school psychologist dated November 27, 2023 between 2:10 p.m. and 3:20 p.m.
12. Emails between special education coordinator and parent dated December 1 between 9:06 p.m. and 12:40 p.m.
13. Emails between parent and school psychologist dated December 1 between 2:10 p.m. and 2:24 p.m.
14. IEP dated December 1, 2023
15. PWN and Request for Consent dated December 1, 2023
16. Emails between school psychologist and parent dated December 5, 2023 between 11:02 a.m. and 8:16 p.m.
17. Emails between parent and social worker dated December 6, 2023 between 8:19 a.m. and 12:32 p.m.
18. Table of eHallpass Record dated from December 11, 2023 through January 5, 2024. Included location and time in and location and time out.
19. Emails between social worker to parent dated December 12, 2023 between 8:25 a.m. and 12:37 p.m.
20. PWN for Evaluation or Reevaluation and Request for Consent dated December 12, 2023
21. Student progress report for Algebra II dated December 18, 2023 includes 14 lines of handwritten notes at end of report.
22. Formal Complaint District Written Response received by complaint investigator on January 12, 2024
23. Email from complaint investigator to district dated January 19, 2024 at 2:04 p.m.
24. Email from district to complaint investigator dated January 23, 2024 at 4:50 p.m.

Background Information

The student attends Olathe South High School and is a junior. According to past evaluation reports the student first began receiving special education and related services as a preschooler under the categories of Autism and Speech language impairment in another state. When he moved to this district as a first grader, he had an active IEP. The last evaluation report dated December 10, 2020 documents the student as eligible for special education as a student with a speech or language impairment. It further documented the student has had previous

diagnoses and health concerns including autism, ADHD, and dyslexia. The student is enrolled in general education classes and receives special education services 45 minutes every two weeks. Additionally, he has accommodations for instruction and assessment.

Issues Investigated

1. ISSUE ONE: USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to conduct a three-year reevaluation of a special education student during the 2023-2024 school year.
2. ISSUE TWO: USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP specifically, the accommodation, to aid in executive functioning teacher will monitor task completion and send pass to [student] to work in advisory or refer to learning support during the 2022-2023 school year.

Issue One

USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to conduct a three-year reevaluation of a special education student during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.303(b)(20 state statutes at K.S.A. §72-3428(h)(2)(B) state an agency shall conduct a reevaluation of a child at least once every three years, unless the parent and the agency agree that a reevaluation is unnecessary.

The Federal register on August 14, 2006 further explains the federal regulations and state statutes as, "Prior to conducting a reevaluation the parent and the school shall determine whether a reevaluation is needed. They must consider the child's educational needs, which may include whether the child is participating in the general education curriculum and being assessed appropriately. The parent and the school will discuss the advantages and disadvantages of conducting a reevaluation, as well as what effect a reevaluation might have on the child's educational program" (p. 46640, 46641).

The Kansas Special Education Process Manual lists circumstances when a reevaluation is not required:

1. Before the termination of a child's eligibility due to graduation with a regular diploma.
2. Exceeding the age of eligibility for FAPE, which would be the end of the school year in which the student becomes 21 years of age.
3. When the school and parent agree that a reevaluation is not needed.

Analysis: Findings of Fact

The parent alleged that neither student nor parent were considered in the decision to waive the triennial evaluation until receiving an email six school days prior to the annual IEP and ten school days prior to the triennial evaluation due date.

The student's case manager reported that previous conversations with the student and parent led her to believe a reevaluation would not be wanted. In preparation of the December 1, 2023 annual IEP the case manager proposed waiving the evaluation in an email on November 27, 2023 to which the parent stated she would not agree. Upon receiving this information, the case manager contacted the school psychologist, who contacted the parent the same day, to further understand her concerns. The district has since received consent from the parent to proceed with the reevaluation and report it will be completed within the 2023-24 school year.

The student's last triennial evaluation is dated December 10, 2020.

The case manager stated during an interview on January 18, 2023 that during meetings with the mother during the spring of the 2022-2023 school year and during a conference near the end of the first quarter they talked, and the parent had not expressed a concern about evaluation, instead discussed the educational piece and an accommodation for when the student has migraines.

An email from the case manager to the parent on November 27, 2023 at 2:10 p.m. requested, "This is [student's] re-eval IEP….are you okay with waiving the re-eval? Typically, if we are not changing placement, then at high school we will waive the re-evaluation."

The parent responded to the case manager on November 27, 2023 at 2:50 p.m. in an email., "We should have discussed his need for reevaluation 60 school days prior to his triennial date of Dec 9th and will be out of compliance. …but will not agree to waive [student's] triennial evaluation.

The student's case manager during interview on January 18, 2024 and in a follow up email on January 19, 2024 clarified her comment about reevaluation as follows:

> *When talking with the School Psychologist about attending the meeting on December 1st, she asked me if I needed any additional testing or was changing placement. I told her that I didn't need any more testing and Mom hadn't indicated any need for testing or change of placement. She said we would need to do the waiver for no testing needed at the IEP. I assumed that this was the route we would take since in our correspondence at conferences and in email, the parent never indicated that she wanted to do a re-evaluation. On November 26, 2023, I e-mailed Mom asking if she would be okay with signing the waiver for no testing needed. My wording was intended to reflect my understanding from our school psychologist and to let the parent know when we would typically request to conduct a re-evaluation – I was attempting to imply that those circumstances (additional testing or possible change of placement) didn't apply to the student at this time, but was leaving it open*

> *for input on the recommendation. On November 27th , heard back from Mom that she did not want a waiver and wanted a re-evaluation. That was the first time that I heard of her wanting additional testing. I immediately contacted our school psychologist, and she e-mailed Mom to find out what kind testing she wanted. Mom agreed to have the IEP on December 1st as scheduled and we would address the re-evaluation after the IEP meeting.*

The email dated November 27, 2023 at 3:30 from the school psychologist to the parent states, "…Are you suspecting that we need an exceptionality change, to specific learning disability for [student]s dyslexia? Or would you just like some supplemental reading assessments to guide speech and language services?" to which the parent responded on December 1, 2023 at 12:37 with, "…I don't feel [case manager] and I agree on this, as does [student], that SLP describes [student's] learning needs at all. [Student]s is dyslexic with ADHD and his needs are associated with [student] lagging skills in EF/reading and Math, specifically phonological and orthographic processing disorders. I want to ensure [student] needs are accurately assessed and documented in order to make informed decisions for [student] post secondary transition.

The student, during an interview on January 21, 2024 stated he would like any reevaluation to help him learn how to focus and learn better so he can be more successful as he goes to college.

The PWN dated December 1, 2023 records, "Team will be reviewing records to determine if any additional testing needs to be completed before [student] graduates from High School." And [Student's] triennial evaluation is due December 9th. The parent is requesting the district complete [student's] triennial evaluation to determine identification as a disabled student with dyslexia and ADHD in need of specially designed instruction."

The PWN for Evaluation or Reevaluation and Request for Consent dated December 12, 2023 proposed to use existing data to evaluate health/motor ability, vision, hearing, social/emotional status/behavioral status, general intelligence, academic performance, communicative status, and transition skills to conduct a reevaluation. The PWN states, "It was considered to collect additional data to determine whether the specific learning disability label due to dyslexia and/or the other health impairment label due to concerns with ADHD were appropriate for [student]. However, [student] has participated in a variety of formal and informal assessments over the years. [Student] has (sic) been diagnosed with both dyslexia and ADHD by medical professionals and the team has sufficient data and information to make an eligibility determination without any additional formalized assessments." It is recorded in Other Factors considered relevant to the proposed action: "As a result of this reevaluation, the team may determine that different services due to dyslexia and/or ADHD are more appropriate than [student's] current special education services for speech and language difficulties. This determination could potentially change service providers, add services, or remove special education services." Consent was obtained from the parent on December 12, 2023.

As a part of this complaint an allegation was made generally that high school student's triennial evaluations are routinely waived based on the complainant's experience in her role as an family advocate for students in the district. Although this complaint is first, a child specific complaint, the complaint investigators reviewed IEP documentation of the other two students during the last 12 months. Of these two additional students, student one was reevaluated during September 2021 and is currently a twelfth grader and student two was reevaluated during February 2022 and is currently a tenth grader.

The training PowerPoint dated September 6, 2023 presented to all school psychologists in the district reviewed guidelines and procedural steps for reevaluations, guidance from KSDE and recent court cases affecting evaluation and reevaluation.

Conclusion

The student is a junior and has one more year in high school so the district does not meet the August 14, 2006, p. 46644 Federal register statement that the district is not required to conduct a reevaluation for a child to meet the entrance or eligibility requirements of a post-school institution or agency because to do so would impose a significant cost on the school. Therefore, the district has three years from the date of the most current evaluation, (December 10, 2020) to conduct a new evaluation unless the parent and district agree to waive the evaluation. Documentation shows that the district had a belief that the parent would waive the reevaluation, but as evidenced by the email dated November 27, 2023 the parent asserts that she does not agree to waive the re-evaluation, and therefore the district has the obligation to conduct a triennial evaluation. It is noted that the district has proceeded to conduct a reevaluation and consent was provided by the parent on December 12, 2023.

Based on the foregoing, ***it is substantiated*** that USD #233 failed to conduct a three-year reevaluation of a special education student during the 2023-2024 school year as the district did not have agreement with the parent to waive the reevaluation or provide new evaluation every three years from the date of the previous evaluation.

Issue Two

> USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP specifically, the accommodation, to aid in executive functioning teacher will monitor task completion and send pass to [student] to work in advisory or refer to learning support during the 2022-2023 school year.

Applicable Law

Federal regulations 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. K.A.R. §91-40-16(b)(2) further specifies

those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

The parent alleges that the IEP accommodation, to aid in executive functioning the teacher will monitor task completion and send pass to [student] to work in advisory or refer to learning support whenever [student] is behind two or more assignments" is not followed as indicated by the synergy grade book (missing 17 assignments in Math), present levels of performance as well as student report and parent inquiry. It is noted that the SLP will monitor missing assignments.

The district responds that the student's teachers and case manager (SLP) have implemented this accommodation as evidenced by eHallpass records and the case manager's service log.

The December 6, 2022 and December 1, 2023 IEPs read, "Classroom teacher, [student], and SLP will monitor missing assignments" and includes the following rationale, "To aid in executive functioning teacher will monitor task completion and send pass to student to work in advisory or refer to learning support." The frequency indicates this should occur whenever [student] is behind two or more assignments. The district states that the case manager's service log specifically notes when she monitored his grades and missing assignments.

The district, student and parent agree that the eHallpass system is schoolwide, generally occurring on Tuesdays where students or teachers can initiate an appointment to meet to discuss assignments, get additional instruction, get answers to questions, or complete assignments.

The district reports that the accommodation is an "overlay" to the eHallpass system for the student to guide him to prioritize which classes to use the eHallpass.

The student reports during interview that after the parent filed the complaint the district started to meet with the student to let the student know he was behind at least two assignments and it has really helped. He stated that even though he can see his assignment and grade status it is hard for him to keep track of that and having a regular check in with that feedback really helps him keep on track. He stated that his English II teacher did it and it was really helpful.

He described that when he is sent more than one eHallpass he tends to choose English because they are often big projects and because of his dyslexia he needs the face-to-face time with the teacher about all the written aspects of the assignment, whereas in Math they are often missed assignments and those require his focus and concentration. He states that he can work on those missed assignments during his concentrated time with the case manager rather than meet with the math teacher.

The parent reports that the accommodation, along with some of the other accommodations are the specially designed instruction for the student that support the student's IEP goal of, "When given his weekly grade update, [student] will analyze his grades, tests and missing assignments to list and prioritize what further actions is needed and explain how to implement it with 90% accuracy on three out of four sessions by November 30, 2024.

The district notes that the student's math grade began to decline on October 31, 2023 due to missing assignments accumulated from several days of excused absences and therefore sent an eHallpass to the student on 11/7 (student absent); 11/9 (student declined pass); 11/10 (student went to different location than eHallpass location); 11/13 (student utilized pass); 11/27 (student absent); 11/28 (student utilized pass); 11/30 (student utilized pass). In addition, eHallpass records show that the student initiated passes to make up work or talk with a teacher on 11/13, 11/17, 12/1, and 12/12.

The eHallpass record and Service Log report that the student either met with the case manager or teacher or student on 8/21, 8/22, 8/28, 8/29, 9/1, 9/11, 9/25, 10/2, 10/5, 10/9, 10/12, 10/12, 10/16, 10/23, 10/27, 11/10, 11/13, 11/17, 11/28, 11/30, 12/1, 12/7, 12/12 to review missing assignments and to direct him to a teacher when in need of assistance.

An email from the district to the complaint investigator on January 23, 2024 clarified, "After checking with Ben's teachers, his case manager reported that during 10/30-11/3, he did not have 2 missing assignments in any single class. His teachers confirmed 1 missing assignment in American History and 1 missing assignment in Math (both from the day he was absent, 10/31)."

The district report that the student's math teacher and case manager also follow up with the student whenever an eHallpass is created, but not used, going beyond what is required by the accommodation to support him. Both also report they developed a plan with Student to allow him to get caught up in a reasonable time. His math teacher reports she created a pass for him on January 5, 2024 to begin this plan.

An email from parent to special education coordinator states, "[student] hasn't been using [student] time with [case manager] and has been preferring to work during guided study or has been staying in advisory. It seems [student] is needing to spend time with [student] Math teacher perhaps in guided study or be reminded of the lab in the library when [student] can also access help. I don't think [student] is using the tools there.

Conclusion

Special education means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a verified disability, including classroom instruction, home instruction, instruction in hospitals and institutions and in other settings and instruction in physical education. The term includes travel training, vocational education, speech-language pathology, occupational therapy, and physical therapy. Conversely, an accommodation serves

to provide students with opportunities to achieve the same outcomes and to obtain the same benefits as students without disabilities.

The accommodation as written specifies that an eHallpass is to be generated by a general educator, the case manager, or the student when the student has two or more missing assignments. It is found that at least one eHallpass was generated weekly during the 2023-2024 school year. Further, the teachers and case manager described how they monitored assignments. The parent and student describe that feedback and assistance in how to plan based on missing assignments is necessary for the student to succeed in his school career.

Based on the foregoing, ***it is not substantiated*** that USD #233 failed to implement the student's IEP specifically, the accommodation, to aid in executive functioning teacher will monitor task completion and send pass to [student] to work in advisory or refer to learning support during the 2022-2023 school year. It is likely that the parent and student priority to receive feedback and assistance to plan when falling behind on assignments be addressed through specially designed instruction rather than an accommodation.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. §300.303(b)(20 and K.S.A. §72-3428(h)(2)(B) was found for the student based on review of timelines in the documentation. Corrective action is required as follows:
    a. CORRECTIVE ACTION:
        i. 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 C.F.R. § 300.303(b)(20 and K.S.A. § 72-3428(h)(2)(B) by ensuring that case managers or school psychologists of high school aged students contact families with enough time to explain the role of re-evaluation for high school aged students to complete a reevaluation within three years or document the decision to waive the reevaluation.
        ii. Date due: Within 30 calendar days of the date of this report, January 25, 2024
2. ISSUE TWO: A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was not found, based on review of documentation and interviews with district staff, parent, and student. Corrective action is not required.

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).

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 JANUARY 5, 2024

DATE OF REPORT FEBRUARY 5, 2024

This report is in response to a complaint filed with our office by ------- on behalf of his son, -------. For the remainder of this report, ------- will be referred to as "the student." ------- will be referred to as "the parent." USD #229 will be referred to as "the district."

Investigation of Complaint

On January 9, 2024, the investigator spoke by telephone with Dr. Mark Schmidt, Assistant Superintendent for Special Education for the district. The investigator spoke by telephone with the parent on January 11, 2024. On January 12, 2024, the investigator participated in a Zoom conference with the Assistant Superintendent and the Chief Legal Officer for the district, Melissa Hillman.

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

- Email dated August 14, 2023 from the Chief Legal Officer for the district to the parent
- Notice to Conduct a 504 Evaluation dated September 1, 2023
- Daily Attendance Profile for the student
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated November 30, 2023
- Attachments to the complaint submitted by the parent which included the following:
    - Letter dated January 3, 2024 from the parent to the complaint investigator
    - Letter dated August 8, 2023 from the student's private counselor
    - Email dated February 12, 2023 from the building principal to parents of students at the school
    - Email dated February 13, 2023 from the building principal to parents of students at the school
    - Email dated February 19, 2023 from the attorney for the student's parents to the Chief Legal Officer for the district
    - Email dated February 20, 2023 from the building principal to parents of students at the school
    - Email dated April 21, 2023 from the parent addressing the executive director of school administration for the district

- Email dated May 6, 2023 from the student's mother to executive director of school administration for the district
- Undated email from executive director of school administration for the district to the student's parents
- Email dated May 8, 2023 from the student's mother to executive director of school administration for the district
- Email dated May 23, 2023 from the parent to the principal of the student's brother's school regarding the student's brother
- Email dated May 31, 2023 from the parent to the principal of the student's brother's school regarding the student's brother
- Email dated June 3, 2023 from the parent to the principal of the student's brother's school regarding the student's brother
- Meeting notes dated November 29, 2023
- Email dated December 4, 2023 from the school psychologist to the student's parents
- Email dated December 8, 2023 from the building principal to the student's parents
- Email dated December 11, 2023 from the building principal to the student's parents
- Email dated December 12, 2023 from the building principal to the student's parents
- Email exchange dated December 13 and 14, 2023 between the Chief Legal Officer for the district and the parent
- Email exchange dated December 14, 2023 between the building principal and the student's mother
- Email exchange dated December 14, 2023 between the school psychologist and the student's mother
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated December 14, 2023
- Email dated December 15, 2023 from the building principal to the student's mother
- Email exchange dated December 17, 2023 between the building principal and the student's mother
- Email dated December 18, 2023 from the building principal to the student's mother
- Email dated December 20, 2023 from the building principal to the student's parents
- Notice of in-school suspension dated December 20, 2023

- Additional materials provided by the parent to the investigator via email including the following
    - Email dated January 4, 2024 from the building principal to the student's parents
    - Email dated January 5, 2024 from the student's mother to the building principal
    - Email dated January 6, 2024 from the building principal to the student's mother
    - Email dated January 24, 2024 from the building principal to the parents
    - Email exchange dated January 25, 2024 between the student's mother and the building principal
    - Email dated January 28, 2024 from the student's mother to the building principal
    - Email dated January 29, 2024 from the building principal to the student's parents
    - 14 video recordings of the student

Background Information

This investigation involves a 9-year old boy who is in the 4th grade in his neighborhood elementary school. The student and his family moved to the district at the beginning of his third grade year having previously attended school in Hawaii. At the time of his enrollment, the student was granted a transfer from his neighborhood elementary school in order to participate in a Chinese Immersion program at another district school.

The parent reports that the student has been diagnosed by a local mental health agency with an "anxiety disorder" and has truancy/school avoidance issues. According to a letter written by the private counselor who treats the student, he has been diagnosed with Social Anxiety Disorder. The therapist stated that the student has difficulty with following directions and staying on task and sometimes displays anxious behaviors. During counseling sessions, the student and his therapist focus on "self-advocating, confidence, and conflict resolution."

During February of the student's third grade year, the student was accused of having a "murder list." While it was subsequently determined that no such list existed, the student's transfer was revoked, and he moved to his neighborhood elementary school. However, according to the parent, the student's anxiety regarding interactions with peers in the new setting escalated. According to the parent, he and the student's mother felt that the environment at the neighborhood school was not safe for the student. The student did not attend school in April and May of the 2022-23 school year.

In an effort to provide their son with a "fresh start," the student's parents purchased a home in another attendance area in the district, and the student started the 2023-24 school year in his current building. The student's parents requested that he be evaluated to determine his eligibility for support under a Section 504 Accommodation Plan and gave written consent for a 504 evaluation on September 3, 2023.

The student was absent for 5 days during August 2023 and 5 more days during September 2023. The parent asserts that the student has been "seen and treated as a disruptive student...from day one. Therefore, he again became truant and missed school during the entire October and November, 2023."

The district reported the student as truant, and a guardian ad litem was appointed by the truancy court. The student returned to school on December 1, 2023. The building principal sent a series of emails to the student's parents regarding a series of incidents between December 8 and 12, 2023.

Issues

The parent's complaint was received by Special Education and Title Services (SETS) on January 5, 2024. The parent's complaint included a number of attachments in support of his complaint including a letter to the complaint investigator dated January 3, 2024. That letter identified two issues:

1. The student's special education evaluation has been skewed by an incorrect disciplinary record, which prejudices and misguides the IEP team. This is most likely to result in a wrong, inappropriate IEP plan for the student; and
2. The restriction the district has imposed on the parent bar him from meaningfully participating in the student's evaluation process, as well as from receiving some of the notices by email.

In his written complaint, the parent cited violations of three federal regulations. One of these regulations (34 C.F.R. 300.304(c)(1)(iii)) relates to Issue One. The other two citations (34 C.F.R. 300.322(a) and 34 C.F.R. 300.505) are associated with Issue Two.

In his letter to the investigator, the parent also referenced issues related to the referral of the student for a Section 504 evaluation and the implementation of the student's 504 Plan. However, pursuant to federal regulations at 34 C.F.R. 300.153, a state department of education may only investigate allegations of a violation of special education laws and regulations. This investigator does not have the authority to investigate allegations related to Section 504, so only the special education issues contained within this complaint will be addressed in this report.

In his written complaint and attached letter to the investigator, during a subsequent phone call with the investigator, and in additional emails to the investigator dated January 29, 2024, the parent asserted that building staff are biased in their treatment of the student and are unfairly targeting the student for disciplinary consequences because the parent filed this complaint. It is important to note that, at the time this complaint was submitted by the parent, the student had not been determined through a comprehensive district evaluation to be an exceptional child. While the parent and student are entitled to certain special education protections related to the evaluation process, the investigative actions of the principal and the

determination of disciplinary consequences for a general education student are not issues properly addressed through a formal special education complaint.

Issue One

The student's special education evaluation has been skewed by an incorrect disciplinary record, which prejudices and misguides the IEP team. This is most likely to result in a wrong, inappropriate IEP plan for the student.

Parents' Position

The parent alleges a violation of 34 C.F.R. 300.340(c)(1)(iii), asserting that the evaluation process for the student has been "skewed" by an incorrect disciplinary record, which prejudiced the IEP team members.

The parent objects to the district's proposal to include a Functional Behavior Assessment (FBA) as a part of a comprehensive assessment to determine whether the student is eligible for and in need of special education services. The parent asserts that the proposal to conduct an FBA represents an effort on the part of the district to prove the student is disruptive and that he - not other students - is the source of the conflicts that have resulted in the student's school avoidance. The parent contends that by having a Behavior Analyst complete the FBA, the district is attempting to focus on punishment and consequences for the student rather than looking outside the student for the source of this behavior.

It is the position of the parent that the police report filed against the student and additional video footage from two recent incidents involving the student should be shared with the student's IEP team in order to ensure that the evaluation process is not "misguided by prejudice and rumors."

Applicable Statutes and Regulations

Special education statutes and regulations state that a formal complaint must allege that a district has - within not more than one year prior to the date the complaint is received and filed with the commissioner of education - violated a state or federal special education law or regulation. (See K.A.R. 91-40-51(b).)

In support of his position on this issue, the parent cites 34 C.F.R. 304(c)(1)(iii) which states that when conducting an evaluation of a student, the assessments and other materials used to assess the child must be

"...used for the purposes for which the assessments or measures are valid and reliable."

Investigative Findings

On September 3, 2023, the parent participated in a meeting held to discuss the referral of the student for a 504 Evaluation. The parent gave his written consent for that evaluation on the

date of that meeting. However, the student was not in attendance at any time between September 21 and December 1, 2023 and the district was unable to conduct the evaluation.

In conversations with district staff while the student was absent, the parents reported on newly obtained diagnoses for the student including social anxiety disorder which resulted in negative peer interactions and school avoidance. In light of the information provided by the parents as well as the student's therapist, the district began discussions with the student's parents regarding a special education evaluation.

A meeting was held on November 29, 2023 to plan for the student's return to school. Present were the student's parents and his private therapist, a guardian ad litem appointed due to a truancy report, the assistant superintendent for special education, the building principal, the counselor, the school social worker, and the student's classroom teacher. Among other topics, the group discussed the student's diagnosis of Social Anxiety Disorder and the assessment of the student to determine his eligibility to receive support under Section 504 and /or special education.

Prior written notice of the district's proposal to conduct a special education evaluation was emailed to the parent on November 30, 2023, and the parent provided written consent for the evaluation on that same date.

According to the prior written notice form, the district proposed the evaluation because the student had "been diagnosed with Social Anxiety Disorder and has concerns with social skills and executive functioning." The district proposed to gather new and existing data with regard to the student's "social/emotional status/behavioral status," his "general intelligence," his "academic performance," and his "communicative status."

With regard to "social/emotional status/behavioral status," the prior written notice form stated that the assessment

> *"May include assessment of social/emotional/behavioral development in relation to the child's learning, interpersonal relationships, feelings and/or physical symptoms. May include a functional behavioral assessment or evaluation to determine appropriate positive behavioral support."*

An FBA is a process for gathering information about behaviors of concern, whether the behaviors are academic, social, or emotional. FBAs are rooted in the theory that behavior is functional (that it has a purpose), predictable, and changeable. Understanding the function or purpose underlying a student's behavior can help a school team develop a plan to teach the child more appropriate replacement behaviors or provide support for the development of more desirable behaviors.

On December 4, 2023, the school psychologist sent an email to the student's parents to let them know that their signed consent for evaluation had been received. The school

psychologist told the parents which staff members would be conducting the various assessments included in the evaluation:

- The special education teacher would conduct the academic assessment;
- the speech/language therapist would evaluate social language;
- the school psychologist would administer a cognitive assessment, conduct classroom observations and parent/teacher interviews, and would send behavior and social responsiveness rating scales to the parents and staff for completion; and
- the classroom teacher would complete and return teacher interview forms and rating scales.

The school psychologist noted in her email that the building principal and school counselor (who was coordinating the 504 evaluation for the student) would also be members of the team. The student's parents were provided with rating scales and a parent questionnaire for them to complete and return. The email also included attached notes from the November 29, 2023 meeting and suggested a date (February 13, 2024) for the team to meet at 1:00 PM if that time worked for the parents.

The assistant superintendent for special education subsequently realized that the plan that had been sent to the parents did not include the designation of an individual who would be responsible for the development of the FBA and asked the school psychologist to provide the parents with that information.

On December 14, 2023, the school psychologist sent another email to the student's mother. The school psychologist wrote:

> *"In reviewing this evaluation plan, I left out an important part of the evaluation:...[the] Board Certified Behavior Analyst. She will be walking the team through the Functional Behavioral Assessment data collection. We would also like to propose adding the occupational therapist to the evaluation team looking at both his fine motor skills and sensory needs. The consent to add these additional areas will be available in ParentVue shortly for your review. If you have any questions, please let me know."*

The student's mother wrote back to the school psychologist on December 14, 2023, stating:

> *"We do not understand the rationale behind these two additions. Could you please enlighten us?..."*

Attached to the school psychologist's email was a prior written notice and request for consent. The document stated that the district was proposing the following:

> *"A fine motor and sensory profile evaluation are proposed to be added to the current Special Education evaluation to provide a comprehensive assessment of [the student's] strengths and needs."*

The school psychologist responded on December 15, 2023, writing:

> *"The fine motor and sensory profile evaluation are proposed to be added to the current Special Education evaluation as part of a comprehensive evaluation of his strengths and needs, to rule out points of concern. The functional behavioral assessment will assist the team in understanding from [the student's] perspective the function or the why some behavior are occurring.*
>
> *These assessments will guide the team in supporting [the student] with necessary accommodations and/or additional executive functioning tools to manage his reactions to others in a healthy way, communicate with others and how to work through conflicts with peers."*

On December 19, 2023, the assistant superintendent sent an email to the student's parents stating:

> *"While [the school psychologist] marked box [sic] for Social/Emotional Status/Behavioral Status that included the functional behavioral assessment (FBA) below [in the included screenshot] she didn't include the information in the [subsequent email] narrative about who would be doing the FBA. This is an important piece of the evaluation as it helps the team develop an effective positive behavioral support plan that will reinforce positive behaviors and replacement behaviors. The Occupational Therapist (OT) was added because we want to investigate whether [the student] has any sensory concerns that are impacting him at school. I ask that you provide consent on the new request to test as they are important pieces and of [sic] the comprehensive evaluation we discussed in our meeting."*

Because the student's parents have not provided written consent for the district to include an OT evaluation in the current comprehensive evaluation, no motor assessment was conducted. Further, because the student's parents objected to the inclusion of an FBA in the comprehensive evaluation after being presented with details of the assessment plan, the district did not conduct an FBA - even though the student's parents had given written consent for an FBA on November 30, 2023.

Summary and Conclusions

When requesting consent for the comprehensive evaluation of the student on November 30, 2023, the district specified that the evaluation could include an FBA. However, when the school psychologist provided the parents with an assessment plan that included the names of individuals who would be responsible for various components of the evaluation, the name of the Behavior Analyst who would be leading the development of the FBA was inadvertently omitted. At the direction of the assistant superintendent, the school psychologist sent a follow-up email to the parents calling out that omission and offered an explanation as to why an FBA had been included in the proposed evaluation. In a separate email, the assistant

superintendent also provided the parents with an explanation as to why an FBA was included in the district's proposed evaluation.

No evidence was provided by the parent to show that the FBA proposed by the district was to be used for any purpose other than would be considered appropriate. FBAs are designed to assist a team in understanding the function or purpose underlying a student's behavior - such as this student's school avoidance - and can help the team develop a plan that would provide interventions and positive supports for the student in the school setting. FBAs are commonly used by teams to explore the context in which behaviors occur. The parent has asserted that the district included an FBA in their proposed evaluation only because of a biased disciplinary record which unfairly prejudiced the IEP team members. However, FBAs are commonly used to help teams take a closer look at what might be causing a student to exhibit behaviors that hinder his/her success in the school setting.

Because the parent subsequently objected to an FBA being included in the student's evaluation plan, the district opted not to complete an FBA as a part of the comprehensive evaluation - even though the parent had initially provided consent for an evaluation that could include an FBA. Therefore, the issue of the improper use of an FBA is moot. A violation of special education statutes and regulations *is not substantiated* on this issue.

Issue Two

The restrictions the district has imposed on the parent bar him from meaningfully participating in the student's evaluation process, as well as from receiving some of the notices by email.

Parent's Position

Citing 34 C.F.R. 300.322(a), the parent contends that the district violated federal special education regulations by failing to take steps to ensure that he has been afforded an opportunity to participate in the evaluation process of the student. The parent further asserts that federal regulations at 34 C.F.R. 300.505 have been violated because the district has restricted his access to school property and limited his communication with district staff. Specifically, the parent states that the district has blocked his ability to communicate directly with the student's current and former teachers and other non-administrative staff. He further states that he is not allowed to come to the school to observe the student.

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).

Federal regulations, at 34 C.F.R. 300.322, state

> *"Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including—*
>
> - *Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and*
> - *Scheduling the meeting at a mutually agreed on time and place."*

At 34 C.F.R. 300.505, federal regulations state:

> *"A parent of a child with a disability may elect to receive notices required by 300.503, 300.504 and 300.508 by an electronic mail communication, if the public agency makes that option available."*

The notices referenced under this regulation include

- Notice of the district's proposal to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
- notice of the district's refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
- the provision of procedural safeguards available to the parents of a child with a disability; or
- information regarding the filing of a due process complaint.

Neither federal nor state statutes and/or regulations limit a district's ability to establish policies and practices regarding classroom observations. Districts are also not limited in their ability to establish guidelines regarding communication between parents and staff so long as those guidelines do not keep the parent of a child with a disability from participating in educational decision-making on behalf of the child.

Additional case law has addressed this issue. Recently, for example, in L.F. v. Lake Washington Sch. Dist., 75 IDELR 239 (9th Cir. 2020), the court ruled on a case wherein the school imposed a communication plan prohibiting the parent from any communication in any form with any district employee aside from a bi-weekly meeting with designated administrators. This was later lengthened to monthly meetings because the parent did not abide by this requirement. The court said communication restrictions on a parent were not retaliatory because they were put in place due to a pattern of "sen[ding] incessant emails to staff accusing them of wrongdoing; ma[king] presumptuous demands; level[ing] demeaning insults; ... and in face-to-face interactions, act[ing] in an aggressive, hostile, and intimidating manner." District employees complained that L.F.'s extraordinarily time-consuming communications made District staff feel threatened and intimidated. and was unrelated to any protected activity. The parent also alleged that the communication plan was a violation of his First Amendment right of free speech. The court disagreed, saying "it is not a constitutional violation to require that

parents, if they wish to be heard, communicate only with particular staff members or do so only at a specified time and place. Because schools are not a forum for public expression, the district can set reasonable limits of the time, place, and manner of a parent's communications. In addition, the district plan also stated that school employees would no longer respond to the parent's communications. This was, the court said, regulation of the district personnel conduct, not the conduct of the parent. Because the government is under no constitutional obligation to respond to such views, there is no violation where a government entity such as a school district ignores (or threatens to ignore) communications from outside the specified channels.

Investigative Findings

On August 14, 2023, the Chief Legal Officer for the district sent an email to the parent which stated:

> *"We request you cease communication with any staff member at [the student's previous district elementary schools]. In addition, you shall not enter the premises of those schools. As we have already conveyed to you, the events at [the student's school of enrollment when entering the district] were thoroughly investigated and the resulting disciplinary consequences will stand, as well as the grade assigned by [the student's teacher at that school]. All future communication from you should be directed solely to school administrators who are currently serving your children. Your failure to comply with this direction will result in further remedial action, including a complete ban on your access to [district] property and personnel. "*

The parent was emailed prior written notice of the district's proposal to conduct a special education evaluation on November 30, 2023, and the parent provided written consent for the evaluation via email on that same date.

On December 4, 2023, the school psychologist sent an email to the student's parents to let them know that consent for evaluation had been received and providing information regarding who would be responsible for completing various elements of the assessment. In her email, the school psychologist also proposed a possible date (February 13, 2024) for the evaluation team to meet with the parents.

On December 13, 2023, the Chief Legal Officer for the district sent the following email to the parent:

> *"It has come to my attention that you have resumed sending harassing emails to [district] staff and Board of Education members. Your emails are perceived as uncivil and threatening. On August 14, 2023, I instructed you to limit your communications to school administrators who are currently serving your children. I cautioned you that your failure to comply with that instruction could result in further remedial action, including a complete ban on your access to [district] property and personnel. Your continued communication to teachers and school staff members is in direct violation of that instruction. Because your*

> *conduct has caused substantial distress for [district] staff, you are no longer permitted to be on the premises at [the student's elementary school] for any purpose other than to transport [the student] to and from school. I am again instructing you to cease communication with any [district] staff member except school administrators who currently serve your children. Should you fail again to comply with this instruction, your access to [district] schools and staff will be terminated altogether.*
>
> *I understand you are requesting an observation at [the student's current school]. Based on your threatening behavior, we will not agree for you to conduct an observation at the school. [The student's mother] and [the student's] therapist will be permitted a 30 minute observation opportunity upon [the student's mother's] request to [the building principal]."*

The student's mother and the school psychologist exchanged additional emails about the evaluation process on December 14 and 15, 2023.

On December 14, 2023, the Chief Legal Officer for the district sent an email to the parent writing:

> *"Your access to staff has been restricted due to the harassing and intimidating nature of your emails. I have addressed your uncivil conduct with you in the past, and I am again forced to take this issue up at the present. You may only communicate with [the principal of the student's brother's school], [the student's building principal] and the administrators you have engaged with at District Office such as [the assistant superintendent for special education], Amy Farthing, and me."*

In a subsequent email to the parent on December 14, 2023, the Chief Legal Officer for the district wrote:

> *"Your communication at [the student's elementary school] is limited to [the building principal]. I do not intend to have continued dialogue on this matter."*

In an email to the student's parents dated December 19, 2023, the assistant superintendent for special education wrote:

> *"One final issue. I want you both to be able to ask questions to the appropriate person as we go through the evaluation process. We also need to follow the communication restrictions that are in place from...our [chief legal officer]. I believe that [the parent] is restricted to emailing only [the building principal at the student's neighborhood school], and she will share your questions with the appropriate staff member. You can also email me or anyone else indicated by [the chief legal officer] with any questions or concerns. I don't believe [the student's mother] has any restrictions."*

In his email of December 19, 2023, the assistant superintendent encouraged the parent to provide consent for the district to include an OT evaluation in the student's comprehensive special education evaluation.

On page 9, the Parent/Student Handbook for the student's elementary school contains the following section:

"Classroom Visits/Observations

Providing and ensuring quality, uninterrupted instructional time for students and staff is very important at [the elementary school].

1. *Classroom visits by parents/legal guardians are allowed under these circumstances:*
    1. *To attend an event such as a party or a play.*
    2. *To conference with the teacher in the classroom when other students are not present. Conferences during school day hours must be prearranged.*
    3. *To be a classroom volunteer. The teacher must prearrange and approve the volunteer's tasks and schedule. Volunteers must follow all guidelines outlined by the principal.*
2. *To make classroom observations during instructional time, requests and approvals must be processed through the principal in advance. The principal reserves the right to accompany the parent to the classroom and to limit the observation to no more than one hour. Observations will not be scheduled during student assessments."*

In an email exchange over the period of January 5 and 6, 2024, the student's mother and the building principal discussed the scheduling of an observation by the student's mother and the scheduling of an opportunity for the parent to view video footage of an incident that occurred in the student's PE class in December 2023.

At the time of the writing of this report, the comprehensive evaluation of the student was still in process.

Summary and Conclusions

The parent gave written consent for the district to conduct an evaluation of the student. As demonstrated through documents provided by the district and the parent, information regarding the evaluation plan was conveyed to one or both of the student's parents by both the school psychologist and the assistant director of special education. The consent of the parent(s) was sought for changes to the initial request for consent for evaluation, and the parent exercised his decision-making power by declining to allow those changes to be made.

While the parent had expressed his interest in observing the student in the school setting during the evaluation, the comprehensive evaluation proposed by the district did not require that the parent complete an observation.

Special education statutes and regulations do not limit a district's ability to establish protocols related to observations by parents in the school setting. The student handbook for the student's elementary school addresses the topic of classroom observations, noting that

observations are subject to the approval of the building principal and are limited to one hour. Although the district had restricted the parent's access to the student's building, the student's mother and his therapist have been allowed access.

Documents provided by the district and by the parent show that there has been ongoing email communication between the parties. While the parent's email access to district staff has been limited by the district's actions, there is no evidence that these restrictions have deprived the parent of his right to any special education notice or limited his participation in educational decision-making regarding the comprehensive evaluation. 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 any violation of special education statutes or regulations***. Therefore, no corrective actions are warranted.

Investigator



Diana Durkin
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).

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 JANUARY 11, 2024 AND JANUARY 17, 2024

DATE OF REPORT FEBRARY 9, 2024

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." ------ will be referred to as "the father," "the parent," or "the complainant." ------ will be referred to as "the mother." Together, ------ and ------ will be referred to as "the parents."

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 complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on January 11, 2024 and an additional complaint on January 17, 2024, both of which were combined in this investigation. The 30-day timeline ends with the publication of this report on February 9, 2024.

Evidence Reviewed

During the investigation, the complaint investigator, Gwen Beegle, reviewed all evidence and documentation, which was provided by both the district and the complainant(s). Emails were exchanged between the complainant, KSDE and the investigator between January 17, 2024 and January 18, 2024. An interview with the complainant was conducted by email submission of questions on January 29, 2024 with his written reply to each question by email on January 31, 2024. The complaint investigator received emails from the district from January 17, 2024 to February 2, 2024. The following persons were interviewed on February 2, 2024: Margaret Barilleaux (IVE Special Educator), Karen Veneble (Indian Valley Elementary (IVE) Principal) and Mark Schmidt (Assistant Superintendent Special Education). The following documentation and information were used in consideration of the issue(s):

1. The student's IEP dated April 20, 2023
2. [The student] IEP goals, scanned google doc dated October 12, 2023 at 8:54 a.m.
3. IEP Progress Report for the student dated October 13, 2023
4. Acadience Online Parent Report for the student dated December 14, 2023
5. T-Bird Times (weekly newsletters) dated December 15, 2023 and January 5, 2024

6. IEP Progress Report for the student dated December 20, 2023
7. Email from Margaret Barilleaux (IVE Special Educator) to the father, the mother, Karen Veneble (IVE Principal), Mark Schmidt (Assistant Superintendent Special Education), and Crista Grimwood (KSDE Education Consultant) dated January 17, 2024 at 10:23 a.m.
8. Email from the father to Margaret Barilleaux, Karen Veneble, Mark Schmidt, and Crista Grimwood dated January 17, 2024 at 10:27 p.m.
9. Email from Margaret Barilleaux to the father, the mother, Karen Veneble, Mark Schmidt, and Crista Grimwood dated January 17, 2024 at 1:56 p.m.
10. Email from the parent to Margaret Barilleaux dated January 17, 2024 at 2:04 p.m.
11. Email from Mark Schmidt to the parent dated January 17, 2024 at 2:21 p.m.
12. Email from the parent to Mark Schmidt, Crista Grimwood, Gwen Beegle, Margaret Barilleaux, Samantha Lovgren-Uribe (Speech Language Pathologist), Carol Lujano (School Psychologist) and Bailee Greenhaw (School Social Worker) dated January 18, 2024 at 3:06 p.m.
13. The district's response to the complaint dated January 24, 2024
14. The student's schedule showing services provided, 2023-2024 school year
15. The elementary structured literacy lesson plan template
16. The students 2023-24 grade card with first and second quarter grades

Background Information

This investigation involves a nine year-old male student currently enrolled in the third 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 recent re-evaluation 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 Investigated

ISSUE ONE: The USD #229 in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide the parent progress reports, specifically the report due on January 10, 2024

ISSUE TWO: The USD 229, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to address the student's lack of

progress on two IEP goals specifically by creating and using a "mitigation plan and report."

ISSUE THREE: The USD 229, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide FAPE by implementing the IEP, specifically "did fail on addressing two [IEP] goals on 2 consecutive quarters of the 2023-24 school year"

Issue One

The USD #229 in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide the parent progress reports on January 10, 2024.

Applicable Law

Federal statutes and regulations at 34 CFR 300.320(a)(3) require that the IEP include a description of how the student's progress toward meeting the IEP's annual goals will be measured and when periodic reports on the student's progress will be made, such as through the use of quarterly or other periodic reports concurrent with the issuance of grade cards.

Analysis: Findings of Fact

The parent alleged that the district did not provide a progress report for the student on January 10, 2024. The parent alleged this is a violation of IDEA because the principal promised the parent that the progress report was due on that date.

The district responded: "The District Disagrees with the parents' accusation that it failed to provide a quarterly progress report. "As noted on page 7 of the student's IEP "*Progress on goals will be reported with the same frequency as the general education report cards*." As noted below, both the general education grade card and special education progress report were released at the same time and in the same way. [the parent] and all other parents received access to both general education report cards, and for parents with students on IEPs, special education progress reports, on January 12, 2024 via ParentVue, the student management information system utilized in the District. This is the system used for reviewing schedules, grade reports, progress monitoring, accessing IEP's, paying fees and lunch, enrollment, etc. Originally the general education and special education reports were scheduled to be released on January 10, 2024, but because of a technology glitch, the release of both were delayed until January 12, 2014. Parents were notified by T-Bird Times (weekly newsletter) prior to winter break.

The district response continued: "The Special Education Teacher sent an email 1st quarter to families with directions on accessing progress reports. She sent a second email on January 17, 2024 also for accessing 2nd quarter dates along with the 2nd quarter progress report

requested by [the parent]. January 17 was the first day back to work after the snow days and the MLK holiday."

The district responded: "While [the parent] claims he never uses ParentVue, he logged on most recently on 1/09/2024. . . We understand that [the parent] would prefer not to use the system that the district purchased to streamline communication, but it is clear that he does have access. While the district tries to honor [the parent]'s special request to send home a PDF of his progress reports, this attempt to improve parent/school relationships, does not create an additional burden on the school district for IDEA compliance."

Findings based on the documentation listed above include the following:

The district reported and documentation showed that the parent was alerted along with school students and families that the report cards would be available in Parent Vue on Friday, January 12, 2024 in school newsletters that provided directions for accessing the grades in ParentVue. The district reported that the parent infrequently used ParentVue and documentation showed a log on to the system.

The district reported and documentation showed that on Wednesday, January 17, 2024, the teacher provided an email directly to the parent stating that the progress reports were available in ParentVue. This email followed three missed days of school (one holiday and two snow days). Additionally, documentation showed that the teacher emailed the progress reports in pdf format to the parent on January 17, 2023 and notified the parents that she would send a paper copy home with the student when he returned to school following his absence. In addition, an email reply by the parent showed that the parent received the teacher's email regarding the progress report's delivery to him.

Conclusion

In this case, the district's technology precluded the anticipated January 10, 2024 release of grades and progress reports. The student's IEP requires that progress on goals will be reported on the same frequency as general education report cards, which occurred through ParentVue on January 12, 2024. The district is not obligated to provide the progress reports in the parent's preferred format, and yet it did so for the parent at his request within a few days of its electronic availability. The slight delay in releasing grades and progress reports is not a violation of IDEA. The district is commended for its assistance in providing the progress reports to the parent in a preferred format.

Based on the foregoing, ***it is not substantiated*** that USD #229 in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide the parent progress reports on January 10, 2024.

Issue Two

The USD 229, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to address the student's lack of progress on two IEP goals specifically by creating and using a "mitigation plan and report."

Applicable Law

Federal/State statutes and regulations at CFR 300.324(b) state that the district must ensure that the IEP team meets to review the IEP periodically (at least annually) to determine whether the annual goals are being achieved, to revise the IEP as appropriate to address an lack of expected progress toward annual goals and in the general education curriculum if appropriate, special education evaluations, information provided by the parent for evaluations, the child's anticipated needs, or other matters.

Analysis: Findings of Fact

The parent alleged that the student's general education data showed that the student had not made progress in two IEP goals. From the written complaint:

Concern: "Blue Valley District failed to provide [IEP] goals on 1/10/24 as described for the [the student's] school"

Facts: "At the end of school year 07 2022-2023, there are two goals IEP went down to 40% in the report to Fall 2023 compare with First Quarter of 2023-2024 and Second Quarter of 2023-2024 and MAZE score has been [decreasing]"

Steps to resolve: "BV has not taken actions plan to mitigate these 2 [IEP] goals"

The district responded: "The District disagrees that the student is not making progress on the IEP Goals. In addition, even if the student was not making progress, the IDEA does not recognize a "mitigation plan and report" as a remedy. The IEP (4/20/2024) and the 2nd quarter progress report clearly demonstrate that the student has made progress on the IEP goals."

The following findings are based upon a review of documentation and interviews listed above.

The findings of Issue One are incorporated herein by reference.

The student's most recent evaluation and IEP meeting was held on April 20, 2023. The student's IEP of that date included the following goals:

1. In written language, when writing, [the student] will use encoding skills by saying the word, tap the word phoneme by phoneme to accurately spell the word on 4/5 opportunities with 80% accuracy.
2. In reading, following a reading passage at his instructional level, [the student] will write a five part retell providing (who/what/when/where/why) providing accurate information with 80% accuracy for 4/5 data points.

3. In reading, when given a list of words with closed syllable consonant combinations, silent E and open syllable, soft c, g, s, tch, dge, vowel team syllables, and vowel R syllables [the student] will read the words on 4/5 opportunities with 95% accuracy.
4. In language, during speech-language therapy tasks, [the student] will follow 3-step commands with at least 1 modifier (spatial or temporal) in 80% of opportunities without repetition in 2 out of 3 data collection days.
5. In language, [the student] will listen to a 3rd grade level short story and will answer "what happened" and "when" questions with 80% accuracy when given a visual cue for 2 out of 3 data days.
6. In language, with a visual cue, [the student] will listen to a 3rd grade level short story and will retell the story in sequential order with grammatically correct sentences using nine story grammar elements (character, setting, problem, feeling, plan, attempt to solve, consequence, ending, and ending feeling) with 80% accuracy for 2 out of 3 data days.

The IEP stated that, for district testing such as the Math Map and Reading Map, the student can take the test in a quiet, non-competitive setting. The student's IEP did not include further supplementary aids and services or accommodations in the classroom.

The parent reported and the Acadience OnLine Learning Parent Report showed that the student had a MAZE score of 4 (well below benchmark) at the beginning of the year and a MAZE score of 2 (well below benchmark) at the midpoint of the year. The MAZE "assesses the student's ability to construct meaning from text" according to the report.

The district reported that the MAZE assessment tests late developing reading skills in an unfamiliar way (leaving words blank in a reading passage for students to complete). The district reported that this is an area of weakness for the student and only one aspect of the student's reading performance as measured by the five indicators on the district test (Acadience).

On the same district testing (Acadience) report, the student's reading composite score was 246 (at benchmark) at the beginning of the year and 258 (below benchmark) at the midpoint of the year; the student's oral reading fluency -words correct score was 74 (at benchmark) at the beginning of the year and 76 (below benchmark) at the midpoint of the year. The report showed that the student's oral reading fluency-accuracy was above benchmark for both reporting periods, and his retelling score was at benchmark for both reporting periods. In summary, the student's second quarter Acadience test status was that one indicator was above benchmark, one indicator was at benchmark, two indicators were below benchmark and one indicator was well below benchmark.

The district reported and the student's progress reports showed that the student made progress toward each of his six IEP goals for each of the regular school year progress reporting periods since the April 20, 2023 IEP was developed, on May 23, 2023; October 13, 2023; and

December 20, 2023. In addition, the student attended Extended School Year. His progress on Goal 1 (writing) and Goal 3 (reading words) was judged as making progress toward his goals on June 29, 2023.

The parent reported that progress reports showed a decrease for two goals. When interviewed, the district reported the following explanations:

On Goal 1 (written language) at the spring of last year, scores on isolated syllable types were provided, showing the student's success at encoding the syllables when presented one type at a time ranging from 73% to 100% accuracy. During ESY, the goal was taught but not scored in the same way. During the first quarter of the year, the district presented the syllable types in a mixed format, and the student scored 40% accuracy on the more difficult presentation task. During the second quarter of this year, the student's score on mixed syllables was 81% accuracy; the district rechecked the student's score for the purposes of the complaint on February 2, 2024 and reported 86% on mixed presentation. The district reported and documentation showed that the student is performing above his goal at this time.

Similarly, for Goal 3 (reading), the skill was tested by presenting the syllable types in isolation then providing an average on May 26, 2023 and June 26, 2023, when the student scored from 86% to 100% accuracy for an average of 93% across subskills. During the first quarter of the current school year, the student scored 80% on a mixed presentation list, showing generalization of the skill on a harder task. During the second quarter the student scored 88% accuracy on this task. The district rechecked the students' score for the purposes of the complaint on February 2, 2024 and reported 95% on mixed presentation. The district reported and documentation showed that the student is performing above his goal at this time.

When asked, the district reported that they had no concerns about the student's progress, describing it as "closing the gap." The district reported that the student has increased his work ethic with the new teacher since the beginning of the year, knows the rules of phonics, and needs more practice in applying his reading skills.

The district provided a copy of the student's 2023-24 grade report on first and second quarter grades, which showed that the student is performing at standard (3.0) in science and social studies, and at standard in two of three math standards. In reading, the student was graded at standard (3.0) in writing, speaking and listening, and between progressing toward and at standard for reading foundations (2.0), reading - informational (2.80) and reading-literature (2.83).

Conclusion

In this case, it is found that the student made progress on each IEP goal for each quarter of the school year since the IEP was put into place in April, 2023. The IEP team met for the annual IEP on April 20, 2023 and progress reports have documented the student's progress toward mastery of each of the IEP goals since that time. The parent expressed concerns on two fronts,

that the student's IEP progress reports seemed to show decreasing scores and the student's scores on a general education assessment did not show equal progress on each benchmark across reporting periods. As noted above, the progress monitoring reports showed progress throughout the school year. While it is understandable that the parent wishes the student to make equal progress across all achievement indicators, it is found that the student is making progress in both general and special education curricula according to the student's progress reports, grades, and district testing. The district is correct that a mitigation plan and report are not remedies required by IDEA in any case.

Based on the foregoing, ***it is not substantiated*** that USD 229, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to address the student's lack of progress on two IEP goals specifically by creating and using a "mitigation plan and report."

Issue Three

The USD 229, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide FAPE by implementing the IEP, specifically "did fail on addressing two [IEP] goals on 2 consecutive quarters of the 2023-24 school year"

Applicable Law

Federal regulations 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.

Analysis: Findings of Fact

The complainant alleged that the district did not address two IEP goals for two quarters of the year. The complainant alleged that two IEP goals were of concern, Goal 1 on writing and Goal 3 on reading. The complainant alleged that the lack of progress on these two goals indicated that the district "did fail on addressing" these two goals. The complainant alleged that "FAPE was at issue" in the second written complaint.

The district responded that it disagreed that it failed to provide FAPE or to fail on addressing two IEP goals on two quarters of the 2023-24 school year, pointing to the student's IEP dated April 20, 2023 and second quarter progress report to show that the student made progress on all his IEP goals.

The following findings are based upon a review of documentation listed above.

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

The student's April 20, 2023 listed the following IEP services, in addition to transportation: 20 minutes, two times each week of direct language therapy in a special education setting

individually or with a small group; 60 minutes five times a week of Special Education services in a general education classroom to help support his goals; and 30 minutes five times a week of Special Education services in the special education classroom. This service "may include but is not limited to the following: small group or one on one work on reading/spelling/writing skills."

The district provided a copy of the student's 2023-2024 schedule showing direct language therapy twice a week for 20 minutes; student's special education pull out for 60 minutes five times a week, and special education support in the general classroom 30 minutes five times a week.

The student's special education teacher provided a description of her structured literacy lesson from the student's special education class and a template of the structured literacy lesson plan. According to the teacher, the structured literacy lesson included components that address the student's goals. Documentation showed the lesson plan includes writing, letter sounds, blending sounds, phonemic awareness, syllabification, reviewing reading words and teaching new words, reading phrases, spelling, multisensory new concept or focused reteaching, oral reading, sentence dictation, and a reflection on the lesson. The teacher reported that she recorded notes on the student's errors throughout the lesson and reviewed them with the student at the end of the lesson. Error words were practiced on the next day's lesson.

The principal reported informal observations the teacher and the classroom informally and conducted a formal observation of the teacher in October, 2023.

Conclusion

In this case, it is found that the student is receiving instruction according to his IEP services and that those services directly address his IEP goals. Further, as noted in Issue Two, the student is making progress in the general curriculum and on his special education goals.

Based on the foregoing, ***it is not substantiated*** that USD 229, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide FAPE by implementing the IEP, specifically "did fail on addressing two [IEP] goals on 2 consecutive quarters of the 2023-24 school year."

Summary of Conclusions/Corrective Actions

1. ISSUE ONE: A violation of 34 CFR 300.320(a)(3) was not found, based on facts listed above. Corrective action is not required.
2. ISSUE TWO: A violation of CFR 300.324(b) was not found, based on facts listed above. Corrective action is not required.
3. ISSUE THREE: A violation of 34 C.F.R. 300.323(c)(2) was not found, based on facts listed above. Corrective action is not required.

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).

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 January 11, 2024 and January 17, 2024
Against Unified School District No. 229

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on January 11, 2024, by ------- on behalf of his child, -------. In the remainder of the decision, ------- will be referred to as "the parent", and ------- will be referred to as "the student". An investigation of the complaint was undertaken by complaint investigator, Gwen Beegle, 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 February 9, 2024. That Complaint Report concluded that there were no violations of special education laws 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 parent's appeal and supporting documents, the original complaint filed by the parent, the complaint report, and the district's response 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.

Parents' Appeal

The parent argues the investigator erred in her finding of no violation under issue one, issue two, and issue three. Each issue will be reviewed separately. The following issues in this complaint have been addressed by the Appeal Committee:

Issue One: The UDS #229 in violation of state and federal regulations implementing the Individuals with Disabilities Act (IDEA), failed to provide the parent progress reports on January 10, 2024. [Pg. 2]

Issue Two: The UDS #229 in violation of state and federal regulations implementing the Individuals with Disabilities Act (IDEA), failed to address the student's lack of progress on two IEP goals specifically by creating and using "mitigation plan and report". [Pg. 4]

Issue Three: The UDS #229 in violation of state and federal regulations implementing the Individuals with Disabilities Act (IDEA), failed to provide FAPE by implementing the IEP, specifically "did fail on addressing two [IEP] goals on 2 consecutive quarters of the 2023-24 school year". [Pg. 6]

Issue One

> The UDS #229 in violation of state and federal regulations implementing the Individuals with Disabilities Act (IDEA), failed to provide the parent progress reports on January 10, 2024.

Under issue one, the parent argues the progress report "were stated to be released by 12/20/2023." He further contends that he had no "interaction when maintenance from the school needs to be done or when uncertain weather related will affect or interfere [with the] school's operations". Additionally, the parent argues the district called the parent a "liar in email interactions when the parent did not access the system they referred [ParentVue] on the date 1/09/2024", stating that "it is the job from the district to send hardcopy documentation on every [IEP] report."

In response the district states, "snow days happen", further contending that IDEA is silent on a district's responsibility to maintain previously announced grade/progress report releases when inclement weather closes school. Finally, the district notes that progress reports were released to the parent in the same manner and time as all general education grades.

In the report, the investigator found the parent was alerted, along with all school students and families, that grade reports/progress reports would be available for view on January 12, 2024, rather than the originally set release date of January 10, 2024. The change in date occurred because of a technology glitch, prompting the district to notify all families. Documents further reveal that on January 17, 2024 (following two snow days and one holiday) the district sent the parent a personal email again explaining that the student's progress report was available in ParentVue, along with a pdf version of the student's progress report and notification that a hard

copy would be sent home with the student that day. A reply from the parent showed the parent received the email.

Under IDEA, an IEP must include a description of how the student's progress toward meeting IEP goals will be measured and when periodic reports will be given to the parent. (34 C.F.R. 300.320(a)(3)). In this case, according to documents, the student's IEP states, "Progress on goals will be reported with the same frequency as the general education report cards." Report cards were presented on January 12, 2024, including the student's progress report. Further, as stated by the investigator, the district is not obligated to provide the progress reports in any manner the parent dictates. Yet, in this case, the district did comply with the parent's request for a hardcopy as soon as school resumed following two snow days and a holiday. Therefore, the Appeal Committee finds the district did provide the parent with progress reports as stated in the student's IEP and affirms the investigator's finding.

Conclusion Issue One

Based on a review of the above, the Appeal Committee affirms the investigator's finding that a violation of special education statutes and regulations *is not substantiated.*

Issue Two

> The UDS #229 in violation of state and federal regulations implementing the Individuals with Disabilities Act (IDEA), failed to address the student's lack of progress on two IEP goals specifically by creating and using "mitigation plan and report".

Under issue two, the parent argues the district never mentioned "the syllable types in a mixed format", or new methodology in meeting Goal 1 (writing) of the student's IEP. Additionally, the parent argues that the student dropped in average accuracy on Goal 3 (reading) from 89% at the end of the 2022-2023 school year to 88% at the end of the 2nd quarter of the 2023-2024 school year.

The district did not provide a specific response to this appeal issue.

The parent's first argument, that the district failed to mention a new methodology in meeting Goal 1 is not an issue that was addressed in this report, and as such will not be considered by the Appeal Committee.

Regarding the second part of the parent's argument, in the report, the investigator lists each of the student's IEP goals and details progress made by the student. The investigator noted that following ESY 2023, the student went from being assessed on isolated syllable type format to a more challenging mixed syllable type format. Although the format used to assess the student's progress changed, the student's goal did not change. As noted in the report, following the presentation of a more difficult format, the student's accuracy did momentarily decline. However, documents show

that following continued work on Goal 1, the student's accuracy on the more challenging mixed presentation format lists rose to 81% at the end of the 2nd quarter and then to 86% on February 2, 2024. Therefore, the student did make progress toward Goal 1.

For Goal 3, documents show the student was similarly tested using isolated syllable types and then subsequently tested using a more challenging mixed syllable presentation list. The student's scores rose from 80% accuracy when first presented with the mixed syllable type list to 88% accuracy when retested on February 2, 2024. Therefore, the student did make progress on Goal 3.

Under 34 C.F.R. 300.324(b), an IEP team must meet, at least annually, to determine whether the annual goals are being achieved and revise the IEP, as appropriate, to address any lack of expected progress. In this case, there is ample evidence in the record to support the investigator's finding that the district monitored the student's progress, adjusted the testing of the goals as appropriate given the student's progress, and that the student made progress. Additionally, while the student did have a momentary decrease in accuracy when presented with a more challenging format, the student's overall progress toward the goal did progress. Therefore, the Appeal Committee affirms the investigator's finding under issue two.

Conclusion Issue Two

Based on a review of the above, the Appeal Committee affirms the investigator's finding that a violation of special education statutes and regulations *is not substantiated*.

Issue Three

> The UDS #229 in violation of state and federal regulations implementing the Individuals with Disabilities Act (IDEA), failed to provide FAPE by implementing the IEP, specifically "did fail on addressing two [IEP] goals on 2 consecutive quarters of the 2023-24 school year".

Under issue three, the parent presents the same argument as under issue two, that the district never mentioned "the syllable types in a mixed format", or new methodology in meeting Goal 1 (writing) of the student's IEP, and that the student dropped in average accuracy on Goal 3 (reading) from 89% at the end of the 2022-2023 school year to 88% at the end of the 2nd quarter of the 2023-2024 school year.

The district responded, in part, by stating that methodologies are not a parent consent item.

As stated above, the parent's first argument is not an issue that was addressed in this report and as such will not be considered by the Appeal Committee.

Regarding the second part of the parent's argument, the investigator noted the student did make progress toward all Goals in the 2nd Quarter of 2023-2024 school year. Documents further reveal that the student's special education teacher created extensive lesson plans that included writing, letter sounds, blending sounds, phonemic awareness, syllabification, reviewing reading words and

teaching new words, reading phrases, spelling, multisensory new concept or focused reteaching, oral reading, sentence dictation, and a reflection lesson. In this case, the investigator found that not only was the district providing specialized instruction to the student, but that the student was, and is, making progress toward goals listed in the IEP. There is nothing in the record to show that the district was not addressing the student's IEP goals. Therefore, the Appeal Committee affirms the investigators finding under issue three.

Conclusion Issue Three

Based on a review of the above, the Appeal Committee affirms the investigator's finding that a violation of special education statutes and regulations *is not substantiated*.

Summary of Conclusions

The Appeal Committee affirms the investigator's finding of no violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) under issue one, two, three.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 28th day of February 2024.

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: Dispute Resolution Coordinator

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #443
ON JANUARY 15, 2024

DATE OF REPORT FEBRUARY 20, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ---------- by her mother ----------. In the remainder of the report, ---------- will be referred to as "the student." ---------- will be referred to as "the complainant" or "the parent" or "the mother." ---------- is the student's father. In the remainder of the report, ---------- will be referred to as "the father" and together ---------- and ---------- will be referred to as "the parents."

The complaint is against USD #443. In the remainder of the report, USD #443 will be referred to as "the district", "the local education agency (LEA)", or "the school". It is noted that Southwest Kansas Area Cooperative District - USD #613 (SKACD) Interlocal provides special education services for USD#443. In the remainder of the report," the "school," the "district", and the "local education agency (LEA)" shall refer only to USD #443. The student's school of attendance is Sacred Heart Parochial School in Dodge City. In the remainder of the report, Sacred Heart Parochial School will be referred to as "the parochial school," or "the private parochial school."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on January 15, 2024 and the 30-day timeline ended on February 15, 2024. An extension was granted for the completion of the report.

Evidence Reviewed

During the investigation, the Complaint Investigator, Gwen Beegle, reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The parent was contacted on January 17, 2024 to clarify the issues of the complaint and interviewed on February 7, 2024. In addition, emails from the parent were received from January 17, 2024 to February 15, 2024. Jason Wright (Deputy Director of Special Education - SKACD), Sharon Stockton (Gifted Coordinator - SKACD), Bryan Quillen (Gifted Teacher - SKACD), and Trina Schmidt (Director of Special Education - SKACD) were interviewed on February 2, 2024. In addition, emails were received from the district from January 24, 2024 to February 6, 2024. Lynee Habiger (Principal of Sacred Heart Parochial School) was interviewed on February 1, 2024 and emails exchanged from February 1, 2024 to February 6, 2024.

The interviews and the following documentation and information were used in consideration of the issue(s):

1. Student Schedule, 2022-2023 school year
2. Re-evaluation Not Needed Agreement Waiver Request dated November 16, 2022 and signed by giving consent parent November 21, 2022
3. Student IEP dated November 21, 2022, with parent signature for attendance
4. Student Schedule and Bus Transportation, 2023-24 School Year
5. Principal and Superintendent Welcome Back August, 2023 Powerpoint Presentation
6. SKACD #613 Board of Directors Policy Approved October 10, 2023 on LEA Representative
7. Student IEP Goal Progress Report for the November 21, 2022 IEP dated October 13, 2023 postmarked October 17, 2023 with progress updates dated December 21, 2022, March 9, 2023, May 16, 2023 and October 12, 2023
8. Multiclass Progress Report (ELA) for S-1 (8/17/23-12/21/23) dated November 8, 2023
9. Notice of Meeting dated November 8, 2023 for a meeting on November 15, 2023 unsigned by parent
10. Postmarked Envelope dated November 15, 2023
11. Draft Student IEP dated November 15, 2023
12. IEP Meeting Participant Signature sheet signed by the parent on November 15, 2023
13. Audio recording of November 15, 2023 IEP meeting
14. Transcript of November 15, 2023 IEP meeting
15. Undated teacher created rubric for Acids and Bases unit
16. Undated District Monitoring and A-Reading Score Report for the student with quarterly benchmarks from Fall 2021 through Winter 2023.
17. Notice of Meeting dated November 16, 2023 for a meeting on November 28, 2023 signed by the parent on November 28, 2023
18. Certified mail receipt dated November 16, 2023
19. Draft Student IEP dated November 28, 2023
20. IEP Meeting Participant signature page, signed by the parent on November 28, 2023
21. Audio recording of November 28, 2023 IEP meeting
22. Prior Written Notice (PWN) dated November 28, 2023 for a meeting on November 28, 2023 for material change in services and other changes to the IEP
23. Prior Written Notice (PWN) dated November 28, 2023 for a meeting on November 28, 2023 for other changes to the IEP
24. Letter from the district to the parent dated December 4, 2023
25. Certified mail receipt dated December 4, 2023
26. Prior Written Notice (PWN) for a change to the IEP dated February 1, 2024 for a meeting on November 28, 2023

27. Student IEP Goal Progress Report for the November 28, 2023 IEP with progress update dated December 19, 2023
28. Proposed Resolution from the district to KSDE dated January 25, 2024
29. Audio recording of phone call dated January 26, 2024
30. Email from parent to investigator dated January 30, 2024 at 12:49 a.m.
31. Email from parent to investigator dated January 30, 2024 at 11:01 a.m.
32. Email from parent to investigator dated January 30, 2024 at 11:55 a.m.
33. Document explanations from Jason Wright to the investigator received January 31, 2024
34. Document entitled Response to Parent Questions, undated
35. Document entitled Re: LEA Representative (Private Schools in Member Districts)
36. Student notes from chemistry unit on acids and bases
37. SKACD website (https://www.skacd.com/331219_2) retrieved February 1, 2024
38. Prior Written Notice (PWN) dated February 1, 2024 for a meeting on November 28, 2023 for a change to the IEP
39. Email exchange between the parents, Bryan Quillen, Sharon Stockton, and Jason Wright with the subject title "Additional Blocks of Time" beginning January 29, 2024 at 11:22 a.m. and ending February 9, 2024 at 9:00 p.m.

Background Information

The student attends Sacred Heart Catholic School in Dodge City for her general education program and she has transportation services to Dodge City Middle School where she receives gifted education services. The student's IEP dated November 21, 2022 included 120 minutes of gifted education services and two IEP goals, one in reading and one in math. The student's IEP stated that she had no other health, vision, hearing, communication, adaptive living, social emotional or written language needs. The student participates in general assessments with no accommodations and/or modifications, supports for school personnel, or use of technology. The IEP stated this student, "has been identified as a child with giftedness. Her rate of learning is faster and higher than typical peers her age. [The student] is able to learn new skills and concepts with less direct instruction, exposures, and practice than typical peers. [The student] is able to learn a curriculum that is more complex than what is provided through regular grade level curriculum. [The student] needs differentiated instruction that moves at a faster pace, is at a higher level, and has more depth and complexity, in order to learn new things and be challenged."

Issues Investigated

1. ISSUE ONE: The USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to properly develop the student's IEP, specifically by: (a) having the required persons attend the IEP meeting and (b) developing appropriate goals related to each academic area of need, and (c)

providing baseline performance assessments against which progress on goals can be measured. [page 5]

2. ISSUE TWO: The USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to implement the student's IEP, specifically (a) teaching to the IEP goals and (b) the full number of IEP service minutes were not provided during the 2023-24 school year. [page 12]
3. ISSUE THREE: The USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to afford parental participation and consent when changing the student's IEP, including by decreasing the number of IEP service minutes. [page 15]
4. ISSUE FOUR: The USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to afford the parent procedural safeguards, specifically by providing and delivering 10 day Notice of Meetings and Prior Written Notice when changing the students level of service or placement. [page 16]

Issue One

The USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to properly develop the student's IEP, specifically by: (a) having the required persons attend the IEP meeting and (b) developing appropriate goals related to each academic area of need, and (c) providing baseline performance assessments against which progress on goals can be measured.

Applicable Law

K.S.A. 72-3429(b)(1) states: "Except as otherwise provided in this section, 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. 72-3404(u)(4)(A)-(B) defines the IEP team as a group of individuals composed of: "(1) The parents of a child; (2) at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment; (3) at least one special education teacher or, where appropriate, at least one special education provider of the child; (4) a representative of the agency directly involved in providing educational services for the child who: (A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of exceptional children; (B) is knowledgeable about the general curriculum; and (C) is knowledgeable about the availability of resources of the agency; (5) an individual who can interpret the instructional implications of evaluation results; (6) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (7) whenever appropriate, the child."

K.S.A. 72-3429(c)(2) requires that the IEP include a statement of measurable annual goals, including academic and functional goals designed to "(A) Meet the child's needs that result from the child's disability or giftedness, to enable the child to be involved in and make progress in the general education or advanced curriculum; and (B) meet each of the child's other educational needs that result from the child's disability or giftedness."

K.S.A. 72-3429(c)(3) requires "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, such as through the use of quarterly or other periodic reports issued concurrently with general education report cards."

Analysis: Findings of Fact

The parent alleged that at the November 15, 2023 IEP meeting, an administrator or designee capable of designating resources was not present; therefore the IEP meeting did not have the required members in attendance. The parent alleged that the district's failure to have required members of the IEP team present is a systemic problem, having occurred throughout her experience with the district. Because of this oversight, another meeting on November 28, 2023 had to be scheduled to complete the IEP and to remedy the problem of not providing the full number of service minutes on the student's November 21, 2022 IEP. Additionally, the parent alleged that she was asked to waive the participation of a general education teacher at the November 15, 2023 meeting, which she declined. The parent alleged that the district dropped the literacy goal from the student's 2023 IEP without justification for its elimination. The parent alleged that the baseline data comparable to the progress monitoring data provided were not present in the IEP.

The district responded: "The attendance page of the draft IEP (presented 11/15/23) clearly indicates that [the parochial school principal] was present and properly identified as the "Administrator/Designee". As such her attendance and participation in the IEP meeting allowed her to speak to (and allocate) available resources." The district responded that the October 13, 2023 progress report showed that the student had "advanced reading skills," completed her project at 90% accuracy or above, and was marked "yes" for making adequate progress toward meeting her reading goal. The district responded that the October 13, 2023 progress report showed that the student had the ability to "evaluate and solve higher order problems" at 90% accuracy or above, and the progress report was marked "yes" for making adequate progress toward meeting her math goal. The district also responded that "IEP goals are developed by professional educators and are not subject to parental consent. Goals are designed to be specific, measurable, and targeted to a child's needs. The school created goals and monitored progress toward those goals as outlined in KSA 72-3429(c)(2) et seq." Finally, the district responded that baseline performance measures were reported for each of the goals at the November 15, 2023 meeting.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD # 443.

Required IEP Member Attendance

At the November 21, 2022 IEP meeting, documentation showed that the following persons were present for the entire meeting: the gifted teacher, the parent, the general education teacher, and the parochial school principal.

The parent reported that she was asked to waive the participation of a general education teacher at the November 15, 2023 meeting, which she declined.

At the November 15, 2023 IEP meeting, documentation showed that the following persons were present for the entire meeting: the gifted teacher, the parent, and the parochial school principal. The student's homeroom/science teacher from the parochial school was present for part of the meeting; the parochial school principal reported that the ELA teacher had been invited but did not attend. At this meeting, a proposed IEP dated November 15, 2023 was presented and discussed; another meeting was later scheduled to complete the IEP.

The district reported that the parochial school principal signed as the administrator/designee and served as the LEA Representative at the November 15, 2023 IEP meeting. The district provided the SKACD Board Policy dated October 10, 2023 as evidence. The Board Policy stated: "The LEA representative is a required member of every IEP team. In order to serve as the LEA representative or designee, the member of the LEA must meet these requirements: be qualified to provide or supervise special education services; be knowledgeable of the general education curriculum; be knowledgeable of the availability of the school's resources [K.S.A. 72-3404(u)(4)]. The LEA representative must have the authority to commit school resources and be able to ensure that whatever services are described in the IEP will actually be provided because the school will be bound by the IEP that is developed at an IEP meeting (Federal Register, August 14, 2006, p. 46670." The Board policy goes on to state that the SKACD administrators would serve as the LEA representative when they are present at IEP meetings and when they are not present, the member district administrator would assume that role.

The SKACD website (https://www.skacd.com/331219_2) lists USD #443 as a member district. The district reported that "any private school in the boundaries of one of our districts falls under the public school where they are located. Therefore, [the student's school] in Dodge City, falls under USD 443. As an interlocal, we are the LEA and we have delegated that responsibility to our building administrators when we are not in attendance." The district reported and provided a copy of a presentation on special education LEA responsibilities given to member district principals and superintendents annually.

The parochial school principal reported that she is generally the program supervisor for services housed in her building, with specific limitations on the roles of the public school staff there. The parochial school principal stated that she does not allocate special education

resources that belong under the educational cooperative's administrative responsibilities, like special education or gifted education pull out programs. The parochial school principal stated that she does not have "access or supervise their resources but supervise here as best I can," providing logistical arrangements and support for IEP services.

At the November 28, 2023 IEP meeting, documentation showed that the following persons were present for the entire meeting: the assistant director of special education, the gifted education coordinator, the gifted teacher, the parent, and the parochial school principal. The student's homeroom/science teacher from the parochial school was present for part of the meeting, and the parochial school principal left the meeting to get input from the student's ELA teacher, who had been invited but did not attend the meeting.

Developing Appropriate Goals

The IEP dated November 21, 2022 included two goals: (a) "In one instructional year given multidisciplinary learning extensions, [the student] will demonstrate advanced reading skills by interpreting text from various sources, she will construct one authentic project with a score of 90% or above on a teacher made rubric," and (b) "In one instructional year given multidisciplinary learning extensions, [the student] will apply mathematical applications to evaluate and solve higher order problems with 90% or above on a teacher made rubric."

The proposed IEP dated November 28, 2023 stated that the student did not have needs in reading that require special education or related services "based on the student's most recent evaluation and ongoing data collection." The IEP stated the student's "score on Fastbridge aReading is 551 which is a broad assessment of reading skills and is higher than 95% of the students in the same grade across the nation." The district reported that the gifted education teacher conferred with the student's ELA teacher prior to the November 15, 2023 IEP meeting; the district provided the student's FastBridge score report dated November 8, 2023 and the student's ELA grade report as evidence that the student's needs were being met in the classroom. At the November 28, 2023 meeting, the audio recording showed that the ELA teacher's comments were reported, stating that the student did not receive enrichment during her ELA class, taking the entire period to complete the regular class work.

The proposed IEP dated November 28, 2023 stated that math is an area of strength for the student whose score on Fastbridge aMath is 236, which is higher than 97% of the students in the same grade across the nation. The IEP stated this student, "will benefit from advanced curriculum and extensions in Mathematics. Her participation in learning will serve to maintain intellectual engagement. This engagement will allow her to explore the material in greater depth."

The proposed IEP dated November 28, 2023 stated that the student did have needs in mathematics that required special education or related services, and it included 45 minutes of gifted education services and the following goal: "In one instructional year given the

enrichment class, [the student] will conduct one research project per quarter in multiple areas of the curriculum through a variety of extensions using technology, research and STEM and will create and deliver one product per quarter of her choice with a score of 90% or above on a teacher made rubric." The district reported that the interdisciplinary nature of the enrichment class would also entail reading above grade level, although it declined to write a goal for the student in reading.

Measurable Goals, Baselines and Progress Measures

On the November 21, 2022 IEP, the student had two goals, one in reading and one in math. The baseline for the reading goal stated, "[the student's] aReading score is 548, which puts her in the 97% in the nation. Due to [her] advanced abilities in reading, [the student] needs to be challenged beyond what grade level content can provide." The evaluation procedure stated, "Teacher made rubric." The benchmarks for the reading goal included (a) to determine a research project, (b) to use books and online resources to formulate questions and gather information on the topic, (c) to gather and summarize information, culminating in a restatement of the student's annual goal (d) In one instructional year given multidisciplinary learning extensions, [the student] will demonstrate advanced reading skills by interpreting text from various sources, she will construct one authentic project with a score of 90% or above on a teacher made rubric."

On the November 21, 2022 IEP, the baseline for the math goal stated, "[the student's] aReading score is 230, which puts her in the 95% in the nation. Due to [her] advanced abilities in math, [the student] needs to be challenged beyond what grade level content can be provided." The evaluation procedure stated, "Teacher made rubric." The benchmarks for the math goal included for the student to evaluate and solve higher order mathematical problems (a) with a score of 82.5% or better on a teacher designed rubric, (b) with a score of 85% or better, (c) with a score of 87.5% or better, culminating in a restatement of the goal's criteria (d) with a score of 90% or better on a teacher designed rubric.

As stated above, the student's IEP dated November 28, 2023 included only one goal in the area of mathematics, which was: "In one instructional year given the enrichment class, [the student] will conduct one research project per quarter in multiple areas of the curriculum through a variety of extensions using technology, research and STEM and will create and deliver one product per quarter of her choice with a score of 90% or above on a teacher made rubric."

The baseline for this goal stated: [The student] has demonstrated advanced mathematics skills by using scientific notations and conversions in the areas of chemistry from various sources. Completion of her final project within enrichment time is currently at 90%." According to the gifted teacher this baseline referred to the student's performance during the fall semester of the 2023-24 school year. Benchmarks for the goal were that the student would, for each quarter of the school year, complete one of four "project based activities as an extension to

her Mathematics curriculum. Completion of her final project [for each quarter] within the enrichment time will be 90% accuracy on the rubric assessment or higher."

Conclusion

In this case, the parent had three areas of concern regarding the development of the IEP, that the proper team members had not been present, that the district did not adequately support the decision to eliminate the student's reading goal, and that the goals were not measured using baselines and progress measured that related to each other.

For the first concern, the district asserted that the private parochial school principal was the LEA representative and provided policy and practice evidence supporting its claim that the private parochial school principal had the authority to act as the LEA designee in this case. The district policy clearly states that member district administrators can act as the LEA representative on IEP Teams when the interlocal administrators are not present. However, the application of this policy to private school administrators is incorrect. K.S.A. 72-3404(u)(4)(C) requires that the LEA representative be "knowledgeable about the resources of the agency." Because the parochial school principal was not acting in the designee role, the finding is that there was no LEA representative present at the November 15, 2023 meeting and that the district is in violation of ensuring that all required team members were present at the student's IEP meeting.

As a secondary matter, the parent declined to waive the participation of a general education teacher. A general education teacher partly attended the November 15, 2023 and November 28, 2023 IEP meetings and the input of a second general educator was given at the 2023 meeting. While the district did provide a general education teacher for input in the student's IEP conferences, it was not full participation of an IeP team member because only gathering input from the teacher dismisses the requirement that general education teachers assist in the development, review, and revision of an IEP (K.A.R. 91-40-17(h)).

For the second concern, the district showed that it collected reading information from the student's general education teacher and when a disagreement with the parent about the reading goal arose at the IEP meeting, the district asserted its decision making authority and eliminated the goal based on their professional expertise. According to the Kansas Special Education Process Handbook, the IEP team should work toward consensus and 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. While it is understandable that the parent would have liked a greater explanation than was provided at the meeting when this decision was made, it is within the district's authority to make the final decision at the IEP meeting in this situation. Therefore it is found that the district was not out of compliance in eliminating the student's reading goal.

For the third concern, the parent's complaint about the measurement of progress points to a question of measurability of the student's IEP goals. For the goals associated with the November 21, 2023 IEP, the student's Fastbridge scores were used as the baseline and both goals had benchmarks that addressed the goal's academic content, either by percentage accuracy increases "to evaluate and solve higher order mathematical problems" or by subskill elaboration to "demonstrate advanced reading skills by interpreting text from various sources." Thus, both goals center on progress in the advanced curriculum through academic performance with an academic test as baseline and teacher made rubric as evaluation. While the baseline and the teacher made rubrics are not aligned, both address the underlying goal purposes of measurable academic growth.

However, the goal on the November 28, 2023 IEP targeted the student's participation in the enrichment class to "conduct one research project per quarter" as measured by a teacher made rubric, using the previous project's rubric rating as the baseline measure for the four future quarterly projects to come. Here, the goal does not address progress in the advanced curriculum but only participation in the activities of the enrichment course. K.S.A. 72-3429(c)(2)(A) requires that measurable annual goals are designed to enable the child to be involved in *and make progress* in the general education or advanced curriculum (italics added). While it is noted that the activities of conducting research through choosing and creating products as described by the district is an academically enriching course of study in gifted education, the goal failed to show how the goal's design enabled the child in both elements of the statute, to be involved in AND make progress in the advanced curriculum. Therefore it is found that the district did not meet the standard of K.S.A. 72-3429(c)(2)(A) in writing the IEP goal in the November 28, 2023 IEP.

Based on the foregoing, ***it is substantiated*** that USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to properly develop the student's IEP, specifically by having the required persons attend the IEP meeting and by providing baseline performance assessments against which progress on goals can be measured. ***It is not substantiated*** that the district failed to develop appropriate goals related to each academic area of need.

Issue Two

The USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to implement the student's IEP, specifically (a) teaching to the IEP goals and (b) the full number of IEP service minutes were not provided during the 2023-24 school year.

Applicable Law

State statutes and regulations at K.S.A. 72-3429(c)(4) require that the IEP include a statement of the special education and related services to be provided to the child to be involved in and advance in the general curriculum, and K.S.A. 72-3429(c)(7) requires that the IEP includes the projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications. State regulations at KAR 91-40-16(b)(2) require "Those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown." State regulations at KAR 91-40-16(b)(3) require that an IEP is in effect for each exceptional child at the beginning of each school year.

Analysis: Findings of Fact

The parent alleged that the instruction during the current school year was reported as a unit on acids and bases and that the description provided of instruction during the November 15, 2023 meeting did not disclose how that unit was addressing the student's IEP goals of reading and math. The parent alleged that the teacher-made rubric for the unit did not pertain to advanced reading or solving higher order math problems. The parent alleged that when she inquired about future instruction, the district did not provide how the student's goals would be addressed. Finally, the parent alleged that the student's IEP had not been implemented in that the number of service minutes had been reduced from 120 to 45 minutes per week since the beginning of the 2023-24 school year.

The district responded that with regard to teaching to the IEP goals, "Instructional methodologies are developed by professional educators and are not subject to parental consent. Special education services were in place which are designed to assist [the student] in meeting her IEP goals. We find no fault of the instructional methods used during the 11/21/22 IEP year." The district acknowledged its error in reducing the amount of special education service minutes during the 2023-24 school year.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD # 443. The findings of Issue One are incorporated herein by reference.

Teaching to the IEP Goals

The student's progress report for the November 21, 2022 IEP, which included progress monitoring dates of December 21, 2022, March 9, 2023, May 16, 2023 and October 12, 2023,

briefly described the work the student had completed each quarter and stated that the student met all sub skill benchmarks for the reading goal and all percentage accuracy benchmarks for the math goal.

The student's progress report for the 2023-24 academic year, which included progress monitoring on December 20, 2023, stated that the student learned about wind turbine aerodynamics, pitch and gear ratios with a rubric score of 90% accuracy.

The district reported that the student's IEP goals had been adequately addressed in the multidisciplinary instruction provided in the gifted education enrichment class. The district provided the student's class notes documenting the reading difficulty and mathematics applications in the chemistry unit on acids and bases.

Amount of Services Provided

The district and the parent agree that the proper number of service minutes were not provided during the 2022-23 school year.

The district acknowledged its error in providing the amount of special education service minutes during the 2023-24 school year. The parent and the district agreed that the student was entitled to 120 service minutes per week from the beginning of the school year through the November 15, 2023 IEP meeting, when the district proposed reducing the services to 45 minutes per week. The parent and the district agree that no resolution was reached at this meeting and that another IEP meeting was satisfactorily scheduled on November 28, 2023.

At the November 28, 2023 meeting, the district and the parent agreed that the parent did not consent to the material reduction of the special education services from 120 service minutes agreed to in 2022 to 45 minutes in the district proposed IEP. The district and the parent agree that the district proposed a remedy to the parent and both parties agree that they continue to attempt to negotiate a solution to meet the requirement of 120 minutes for the current school year.

Conclusion

In this case, the district provided evidence that it had addressed the student's IEP goals through the student's progress reports and providing student work samples showing advanced reading and math applications in the chemistry unit taught in the middle school enrichment class.

The district acknowledged and sought to remedy its error in scheduling the student's gifted education services. It is found that the district did not meet its obligation in providing the amount of special education services required in the November 21, 2022 IEP.

Based on the foregoing, ***it is not substantiated*** that USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to

implement the student's IEP, specifically teaching to the IEP goals. ***It is substantiated*** that the district failed to provide the full number of IEP service minutes during the 2023-24 school year.

Issue Three

The USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to afford parental participation and consent when changing the student's IEP, including by decreasing the number of IEP service minutes.

Applicable Law

State statutes and regulations at KAR 91-40-17(a)(1) require each agency to take steps to ensure parental participation at each IEP team meeting, and KAR 91-40-17(a)(2) requires providing written notice to the parents at least 10 days in advance of the IEP meeting.

According to 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. K.S.A. 72-3430(b)(2)(A)-(B) states that parents have the right to written prior notice whenever an agency 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.

KAR 91-40-27(a)(3) requires that each agency shall obtain parental consent when making a material change in services to or a substantial change of the placement of an exceptional child. Material change in service means an increase or decrease of 25 percent 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, according to KAR 91-40-1(mm). Substantial change in placement means 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, according to KAR 91-40-1(sss).

Analysis: Findings of Fact

The following findings are based upon a review of documentation and interviews with the parent and staff in USD # 443. The findings of Issue One and Issue Two are incorporated herein by reference.

The parent and the district agree that the district enacted a more than 25% change to the student's IEP at the beginning of the 2023-24 school year without first seeking parental participation and consent.

Conclusion

Based on the foregoing, ***it is substantiated*** that USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to afford parental participation and consent when changing the student's IEP, including by decreasing the number of IEP service minutes.

Issue Four

The USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to afford the parent procedural safeguards, specifically by providing and delivering 10 day Notice of Meetings and Prior Written Notice when changing the students level of service or placement.

Applicable Law

State statutes and regulations at KAR 91-40-17(a)(1) require each agency to take steps to ensure parental participation at each IEP team meeting, and KAR 91-40-17(a)(2) requires providing written notice to the parents at least 10 days in advance of the IEP meeting.

According to 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. K.S.A. 72-3430(b)(2)(A)-(B) states that parents have the right to written prior notice whenever an agency 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.

Analysis: Findings of Fact

The parent alleged that the district did not provide a ten day notice of meeting for the November 15, 2023 meeting. The parent alleged that the district did not provide prior written notice to change the IEP as proposed at the November 15, 2023 or subsequent November 28, 2023 IEP meeting.

The district responded that it contacted the parent by phone on October 27, 2023 to schedule the meeting at an agreeable time, 19 days before the meeting was to be held on November 15, 2023. The district responded that it mailed the notice of meeting on November 8, 2023, seven days before the meeting was to be held, and hand delivered the notice of the meeting on the

day of the meeting. The district reported that it sent, by certified mail, a letter apologizing and proposing a resolution that included two prior written notices pertaining to the November 28, 2023 IEP meeting.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD # 443. The findings of Issue One, Issue Two, and Issue Three are incorporated herein by reference.

The parent reported that she received the notice of meeting in the regular mail on November 18, 2023 and the parent provided a copy of the envelope postmarked on November 15, 2023.

The district and the parent agreed that the November 28, 2023 meeting was scheduled at a mutually agreeable time with satisfactory notice of meeting.

The parent report and documentation of the November 28, 2023 meeting showed that the parent asked for a written copy of the district's proposal to remedy the student's scheduled gifted education time during the 2023-24 school year.

The district reported and provided a certified mail receipt dated December 4, 2023 for the letter and two prior written notice statements dated November 28, 2023. The parent reported that she did not receive the certified mail.

The district reported and provided a copy of a prior written notice dated February 1, 2024 for a meeting on November 28, 2023. In it, the district refers to a change of the IEP to eliminate the student's reading goal.

The district and the parent agreed that they communicated in order to resolve the disagreements in the IEP. These communications included a phone call on January 25, 2023 and email exchanges from January 29, 2024 and February 8, 2024.

Conclusion

In this case, the district failed to provide procedural safeguards when it changed the student's level of service at the beginning of the 2023-2024 school year (Issue Three). Also, the district arranged a mutually agreeable time to meet but failed to effectively convey a 10 day notice of meeting for the November 15, 2023 IEP meeting. In addition, the district provided a delayed PWN for the change in IEP goals dated February 1, 2024 for the meeting held on November 28, 2023. Without providing prior written notice to change the student's IEP goals, which was a subject of disagreement at the student's November IEP meetings, the district erred in implementing the changed goals in November 28, 2023 proposed IEP. In Kansas, a reasonable length of time to provide prior written notice is 15 school days, or three weeks.

Based on the foregoing, ***it is substantiated*** that USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to afford the parent procedural safeguards, specifically by providing and delivering 10 day Notice of Meeting and Prior Written Notice when changing the students level of service or placement.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of K.S.A. 72-3429(b)(1), K.S.A. 72-3404(u)(4)(A)-(B) and K.S.A. 72-3429(c)(2) was found, based on facts listed above. Corrective actions are required (as follows):
    a. CORRECTIVE ACTION for KSA 72-3429(b)(1), K.S.A. 72-3404(u)(4)(A)-(B)
        (i) Within 21 days, by March 12, 2024, USD #443 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state regulations at K.S.A. 72-3429 (b)(1), K.S.A. 72-3404(u)(4)(A)-(B) which require that the required members of the IEP team are present for IEP team meetings.
        (ii) Within 21 days, by March 12, 2024 USD #443 will disseminate information on the required members of an IEP team, including participation of general education teachers, to all persons involved in special education and gifted education IEP team meetings.
    b. CORRECTIVE ACTION for K.S.A. 72-3429(c)(2)
        (i) Within 21 days, by March 12, 2024, USD #443 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state regulations at K.S.A. 72-3429(c)(2) which require that IEPs contain measurable annual goals that enable the child to be involved in and progress in the general or advanced curriculum.
        (ii) Within 21 days, by March 12, 2024 USD #443 will disseminate information on the requirements of measurable annual goals to all persons involved in special education and gifted education IEP team meetings
        (iii) Within 30 days, by March 21, 2024 USD #443 shall reconvene the IEP team to ensure that the present levels and measurable annual goals are developed correctly.
    c. Dates due: a. (i) and (ii) March 12, 2024; b. (i) and (ii) March 12, 2024 (iii) March 21, 2024.
2. ISSUE TWO: A violation of KAR 91-40-16(b)(2) was found, based on the reduction of service minutes in the student's November 21, 2022 IEP. Corrective actions are required (as follows):
    a. CORRECTIVE ACTION for KAR 91-40-16(b)(2)
        (i) The district shall immediately, by March 12, 2024, submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state regulations at KAR 91-40-16(b)(2) which require that services for which parental consent has been given are provided.
        (ii) The district shall immediately, within 21 days, by March 12, 2024, schedule the IEP services for which permission has been given.

(iii) The district shall, within 30 days by March 21, 2024, offer compensatory instruction of its choosing to the parents, who may accept none, some, or all of the offered services. The offer shall be no less than 1500 minutes of compensatory education (calculated at 75 minutes for 20 weeks) directed toward the IEP goals in advanced reading and mathematics on the November 21, 2022 IEP.

(iv) The parents shall have 10 days to accept none, some, or all of the compensatory education offer. The district will provide PWN to the parents resulting from the parents' response to the compensatory education offer.

(v) The district shall submit the PWN to SETS as evidence of its completion within 70 days by May 3, 2024.

b. **Dates due**: (i) and (ii) March 12, 2024; (iii) March 21, 2024; and (v) May 3, 2024.

3. ISSUE THREE: A violation of KAR 91-40-17(a)(1), KAR 91-40-17(a)(2), K.S.A. 72-3430(b)(2)(A)-(B), and KAR 91-40-27(a)(3) was found, based on the district's change of the IEP without parental participation and required consent at the beginning of the 2023-24 school year. Corrective action is required (as follows):

   a. CORRECTIVE ACTION:

      (i) The district shall immediately, within 21 days, by March 7th, 2024, submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state statutes and regulations at KAR 91-40-17(a)(1), KAR 91-40-17(a)(2), K.S.A. 72-3430(b)(2)(A)-(B), and KAR 91-40-27(a)(3) which require that services for which parental consent has been given are provided.

   b. **Date due**: (i) March 12, 2024.

4. ISSUE FOUR: A violation of KAR 91-40-17(a) (2) and K.S.A. 72-3430(b)(2)(A)-(B) was found based on the district's failure to provide adequate notice of meeting and timely prior written notice for changes in the IEP as enumerated above. Corrective action is required (as follows):

   a. CORRECTIVE ACTION for KAR 91-40-17(a) (2) and K.S.A. 72-3430(b)(2)(A)-(B)

      (i) The district shall immediately, within 21 days, by March 12, 2024, submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state regulations at KAR 91-40-17(a)(2) and K.S.A. 72-3430(b)(2)(A)-(B) which require a 10 day notice of meetings and prior written notice for IEP changes proposed or refused by the district.

      (ii) The district shall, within 21 days by March 12, 2024, disseminate information on the requirements of adequate notice of meetings and the requirements of PWN, including timely methods to convey these to parents.

   b. **Dates due**: (i) and (ii) March 12, 2024

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).

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 #298
ON JANUARY 23, 2024

DATE OF REPORT FEBRUARY 22, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of -------- by his parents, -------- and --------. In the remainder of the report -------- will be referred to as "the student." -------- and -------- will be referred to as "the complainants" or "the parents", and as "the mother" or "the father" respectively.

The complaint is against USD #298 (Lincoln Public Schools) and the USD #273 Beloit Special Education Cooperative (BSEC). In the remainder of the report, these two responsible public agencies may also be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on January 23, 2024 and the 30-day timeline to investigate the allegations ends on February 22, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation, which was provided by both the district and the complainants. The following documentation and information were used in consideration of the issues:

1. Enrollment packet for the student dated February 9, 2023
2. Discipline Report for the student dated between April 10 and October 11, 2023
3. Email dated April 25, 2023 at 1:26 PM written by Derek Knopp, School-based Clinical Services Coordinator at the Central Kansas Mental Health Center, to the mother regarding services
4. Email dated July 3, 2023 at 3:06 PM written by the mother to Mr. Knopp regarding the application for the Serious Emotional Disturbance Medicaid Waiver
5. The 2023-24 School District Calendar for USD #298
6. Emails dated August 28, 2023 at 4:39, 4:42, 5:54, and 7:19 PM between the mother and Megan Habiger, Second Grade Teacher, regarding the student's behavior and a request for a 504 plan
7. Behavioral observations in the classroom dated between September 7 and October 12, 2023, handwritten by Barb Holtz, Lincoln Elementary Paraprofessional

8. Email dated September 20, 2023 at 9:43 AM written by Delaney Hamel, School-based Mental Health Counselor and Liaison, to the parent arranging a meeting to discuss a behavior plan for the student
9. The Alternative School Day Schedule which went into effect on October 16, 2023
10. Mother's handwritten request for a "504 evaluation" due to mental health diagnoses and medication dated October 31, 2023
11. Letter to parents dated November 7, 2023 acknowledging the 504 request
12. Team Meeting Notes dated December 5, 2023 written by Hillary Holeman, Elementary School Counselor
13. Email dated December 13, 2023 at 2:34 PM written by Ms. Hamel to the mother regarding an updated schedule
14. Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent dated December 15, 2023 and signed by the parent on January 2, 2024
15. The Alternative School Day Schedule which went into effect on January 2, 2024
16. Formal Complaint Request Form signed by the complainants on January 22, 2024
17. Email dated January 26, 2024 at 9:13 AM written by Ms. Hamel to the mother regarding an updated schedule
18. The Alternative School Day Schedule which went into effect on January 29, 2024
19. Response to the Allegations dated February 5, 2024, written by Scott Crenshaw, Superintendent of USD #298
20. Interview with the complainants on January 25 and February 6, 2024
21. Notice of Special Education Meeting dated February 8, 2024
22. Interview with the following district staff on February 9, 2024: Mr. Crenshaw; Nikki Flinn, K-12 Principal; Christie Gerdes, Special Education Director for the Beloit Cooperative; Ms. Hamel; Ms. Habiger; Felisha Bland, Beloit Cooperative School Psychologist; and Ms. Holeman
23. Counselor Notes for the 2023-24 school year written by Ms. Hamel
24. Blank Student Improvement Team / Multi-Tiered Systems of Support form used by USD #298
25. List of Tier II Interventions provided to the student during the 2023-24 school year
26. The student's district assessment data for the 2023-24 school year
27. Email dated February 19, 2024 at 9:15 PM written by Susan Severin, School Psychologist / Specialized Learning Services Supports Consultant for Greenbush Education Services Center, to Mr. Crenshaw regarding professional development training
28. Note that the mother requested and granted consent for an interview with Katrina Blalock, Case Manager at Central Kansas Mental Health Center (CKMHC); however, an interview was not able to be arranged within the investigation timeline

Background Information

The student is an eight-year old male currently enrolled in the second grade in USD #298 and attends Lincoln Elementary School. Records and interviews show that he transferred into the district from USD #299 during the second semester of first grade during the 2022-23 school year without any special services or supports in place.

Positions of the Parties

The parent reported that USD #298 failed to suspect the student may be a child with a disability in need of special education and related services even though there were a number of ongoing behavioral concerns. The parent indicated school staff first shared concerns regarding the student's behavior at the end of first grade and suggested the parent seek additional services for the student during the summer between first and second grade. These services were obtained and information regarding these services was shared with school staff in August 2024. The mother reported she asked for a 504 evaluation for special services to help the student at the beginning of second grade; however, the district failed to respond until the end of October 2023 when the student was placed on a shortened day schedule and the mother put her request for a 504 evaluation in writing. The parents indicated they were unfamiliar with what services to specifically request for their student but knew some type of special services were becoming necessary to support the student with being successful in the school setting due to the increase in inappropriate behaviors resulting in the student being partially excluded from second grade.

The district acknowledged that the student transferred into USD #298 during the second semester of the 2023-24 school year. The district stated,

> *The student had no issues with academics or behaviors during the Spring semester of 2023. In the fall of 2023 when the student entered 2nd grade, there were behaviors of not following directions, breaking pencils, expressing profanities, and not staying on task. The school counselor attended the classroom to observe the student in a classroom setting. During those observations, the counselor was not concerned with the student's classroom behavior in the context of needing a SPED evaluation for behavior. Parents were contacted for a meeting to discuss behaviors and implement a behavior plan for this student based on the classroom teacher's request. As a result of this meeting, parents agreed to have the student meet with our school counselor once a week. In October 2023, the student's behavior escalated to include inappropriate touching of female students. Parents were contacted and attended a meeting to discuss these behaviors and to seek information on how to best support this student. This meeting took place on Friday, October 12. Based on the student's behavior, he was suspended for the day Friday. As a result of the parent meeting, an alternative schedule was agreed upon by the parents and the team. The parents requested that the student not be allowed to participate in recess, PE, and library. On October 31,*

2023, parents requested a 504 plan for this student. The district assembled a team to review the request on November 6, 2023. No documentation of a physical impairment or diagnosis was provided by the parents, therefore the 504 team determined that a 504 plan was not appropriate at this time. On December 5, 2023, the district met with parents, staff and the Director of Special Education to discuss the current behavior plan and a special education evaluation. On December 13, 2023, a follow up meeting was held with staff to discuss the start of second semester. The district feels that appropriate measures were taken providing accommodations and monitoring the student's behaviors until the time that the district recommended an evaluation for possible qualifiers for an IEP.

Because of the internal investigation regarding this child complaint, Christie Gerdes, Special Education Director for the Beloit Cooperative, and Scott Crenshaw, Superintendent of USD #298, shared that all school staff would be trained regarding the topics of student improvement teams, child find under the IDEA, and Section 504 eligibility procedures. This training is scheduled for April 17, 2024 and will be provided by Susan Severin, School Psychologist / Specialized Learning Services Supports Consultant for Greenbush Education Services Center.

Issues Investigated

Based on the written complaint and an interview with the complainants, four issues were identified and investigated.

Issue One

USD #298, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow required child find procedures by not suspecting the student may be a student with a disability and in need of special education and related services during the past 12 months.

Applicable Law

Federal regulations at 34 C.F.R. 300.111(a)(1) requires school districts to ensure that all children with disabilities residing within the district boundaries and who are in need of special education and related services, are identified, located and evaluated, regardless of the severity of their disability.

Federal regulations at 34 C.F.R. 300.301(b) allows either the parents of the student or the school district to initiate a request for an initial evaluation to determine if the child is a child with a disability and in need of special education and related services.

Analysis: Findings of Fact

The following findings of fact are based on interviews and documentation provided by both parties during this investigation. Please note that the parents and the district specifically

referred to Section 504 of the Rehabilitation Act throughout the interviews and documentation. This investigation will not address any requirements related to Section 504 but instead will focus on the IDEA child find obligation which requires districts to follow the initial special education evaluation process when a disability is suspected that would require special education and related services in order to provide the student with a free appropriate public education (FAPE). The Office of Civil Rights is the agency which has jurisdiction to investigate Section 504 complaints if the parents chose to make specific allegations of noncompliance.

Hillary Holeman, Elementary School Counselor, stated that she saw the student on a weekly basis during first grade beginning in March 2023 due to dysregulation, verbal and physical outbursts, and lying. She and the parents both reported that a referral was made to the Central Kansas Mental Health Center (CKMHC) in May 2023 so the student could continue to receive counseling services during the summer between first and second grades.

The parents reported and documentation shows the CKMHC began providing services to the student in July 2023 under the Serious Emotional Disturbance (SED) Medicaid Waiver due to mental health diagnoses of Disruptive Mood Dysregulation Disorder (DMDD) and Attention Deficit Hyperactivity Disorder (ADHD). These services included case management, counseling, and medication management.

August 17, 2023 was the first day of the 2023-24 school year for USD #298. The parents indicate the CKMHC interventions were shared with school staff at the beginning of the school year but school staff indicate that they were not made aware of these services being provided to the student outside of school until much later in the school year. It is unclear when the district first became aware of these outside services and the mental health diagnoses; however, documentation shows this information was shared in writing with school staff on October 31, 2023.

Megan Habiger, Second grade Teacher, emailed the mother at 4:39 PM stating,

> *The student had an okay day. He talks a lot out of turn. He is talking and making noises when I'm trying to teach. Since he is talking he gets lost and is not getting his work done. He had some issues with getting along with others in the bathroom today. We will be having him use the bathroom separately instead of using it when we go as a class. He is breaking several of his pencils in half and pulling the erasers off of them. He does have a hard time following the rules/directions but when I remind him he does try to comply.*

The mother responded in an email that same date stating, "*And this is why I am pushing for a 504 behavioral plan to be done asap!*" Ms. Habiger then responded by asking if the parent had contacted school administrators regarding this request and the mother replied, "*Yes. But I haven't heard anymore.*"

Discipline Reports show three office referrals on August 29, September 1, and September 5, 2023 for inappropriate verbal behavior. Hand written informal observation notes by the classroom paraprofessional dated between September 7 and October 12, 2023 describe more than 15 incidents of inappropriate verbal and physical behaviors causing classroom disruptions.

Interviews and documentation found Delaney Hamel, School-based Mental Health Counselor and Liaison, first contacted the parent on September 20, 2023 in order to schedule a meeting to develop a behavior plan. This meeting was held on September 21, 2023 resulting in a behavior plan consisting of a behavior chart with rewards for appropriate behavior and the student receiving 30 minutes per week of school-based mental health counseling.

On October 10, 2023, the student was sent home because of inappropriate behavior in the classroom. The October 10, 2023 Discipline Report states,

> *The student has been extremely disrespectful to the classroom and has caused students the inability to learn by his actions and behavior in the classroom . . . The student has been impeding on the learning of the other students in the classroom. He blurts out inappropriate things. Like I hate you. I hate this school. You are stupid. You are dumb. Most of the time these blurts have foul language and usually uses the F word regularly.*

On October 11, 2023, the student was accused of inappropriate touching of a female peer and an investigation found this had happened to nine different female classmates at recess, in line, at specials and lunch. The Discipline Report dated October 11, 2023 documents the student was out-of-school suspended for two days and unilaterally placed on a shortened school day beginning October 16, 2023. The Discipline Report stated,

> *The continued behavior plus the additional acting out and foul language that has caused continuous disciple actions and office referrals. The student will now follow an alternative scheduled for the protection and safety of the other students in the classroom. The student will come to school at 12:30. He will receive math instruction, therapy, and library time during this time and will leave at the completion of this scheduled. This will be the alternative schedule until progress is made in therapy to help with his behaviors and the classroom could possibly be safe again.*

Both the parents and district reported a written request for a 504 evaluation was made on October 31, 2023. In the request, the parent shared the student's mental health diagnoses of DMDD and ADHD and that the student was taking medication for these diagnoses.

The district responded by convening a meeting on November 6, 2023 with a 504 team for the student including the superintendent, the elementary principal, the mental health counselor, the classroom teacher, and the school counselor. The 504 team sent a letter to the parent dated November 7, 2023 acknowledging the request for a 504 plan for the student and indicating the team had met and was working on a plan.

The parents, the members of the 504 team and Christie Gerdes, Director of Special Education for the Beloit Cooperative met on December 5, 2023. Meeting Notes written by Ms. Holeman, indicate the parents shared information about CKMHC services, the student's mental health diagnoses, and information about medication. The team discussed a special education evaluation and the shortened school day schedule. The parents requested a plan to have the student gradually return to full-day school attendance. The notes state, "*The student will meet w/Beloit School Psychologist – Felicia Bland – an evaluation to find out his skills and needs*."

The 504 team then met on December 13, 2023 and developed a schedule which added English/Language Arts instruction and lunch to the student's shortened schedule and emailed a copy of this updated schedule to the mother on that same date. The email also stated,

> *At the end of January, our team will meet and reevaluate how the student is doing on the schedule and if there needs to be any change made at that time. Hopefully, by the end of January, we will have heard from the Beloit Special Education Cooperative and know if the student has qualified for those services as well.*

The parents reported and documentation shows that USD #298 provided prior written (PWN) requesting consent for an initial special education evaluation on December 15, 2023. The mother provided written consent for this initial special education evaluation on January 2, 2024. The parents reported the student has been evaluated and that an eligibility determination meeting has been scheduled for February 21, 2024.

On January 26, 2024, the teachers and administration at USD #298 met to develop a new schedule for the student. The mother was emailed a copy of an updated scheduled for a full-day of school which limited contact with his same grade peers and continued to provide the three 30-minute counseling sessions per week on that same date.

USD #298 provided a copy of a blank Student Improvement Team / Multi-Tiered Systems of Support (MTSS) form which includes background information, assessment scores, as well as examples of Tier I, Tier II and Tier III levels of support offered by the district. However, a completed form for this student was not provided; instead a listing of Tier II supports was provided for the 2023-24 school year showing multiple academic interventions focusing on targeted instruction in small group settings and the use of a couple of behavior plans.

USD #298 also provided copies of ongoing district assessments of academic growth. At the beginning of the second grade school year, the student scored at the 1st percentile with a below Kindergarten reading level on the STAR Reading Assessment. Mid-year testing showed the student had made progress and scored at the 18th percentile and at the 1.8 [First Grade – Eighth Month] reading level.

Conclusion

According to federal regulations at 34 C.F.R. 300.111(a)(1), school districts are required to ensure that all children with disabilities residing within the district boundaries and who are in need of special education and related services, are identified, located and evaluated, regardless of the severity of their disability.

In this case, documentation shows that USD #298 first noted concerns with the student's behavior at the end of first grade and provided support through school counseling and a referral to an outside agency, CKMHC, for additional support services. The parent followed up on the referral and obtained case management, medication management, and counseling services starting in July 2023.

Documentation shows the parent suspected the student was a student with a disability and was in need of a "504 Plan" to support appropriate behavior at school in an email exchange with the second grade teacher as early as August 28, 2023. However, while there is no documentation to show the district responded to this request for a 504 plan at that time or that the parent pursued the request. Further, the district did proceed with interventions through MTSS including paraprofessional support in the general education classroom setting.

Discipline Reports show three office referrals on August 29, September 1, and September 5, 2023 for inappropriate verbal behavior. Hand written informal observation notes written by the paraprofessional dated between September 7 and September 15, 2023 describe ongoing incidents of inappropriate verbal and physical behaviors causing classroom disruptions. The parents met with school staff on September 21, 2023 and the district developed a behavior plan and began to provide 30-minutes per week of mental health counseling with Ms. Hamel.

On October 10, 2023, the student was out-of-school suspended for one day due to inappropriate behavior in the classroom setting. The Discipline Report noted that the student's behavior was impeding the learning of others in the classroom setting. On October 11, 2023, the student was accused of inappropriately touching female peers and an investigation substantiated this accusation. The student was suspended for two additional days and USD #298 then unilaterally shortened the student's school day beginning October 16, 2023 noting the alternate schedule would remain in effect "*until progress is made in therapy to help with his behaviors and the classroom could possibly be safe again*".

It appears USD #298 provided early intervention services related to the behavior of the student beginning at the end of first grade. When the student's behavior had not changed and became more frequent and intense during second grade, USD #298 provided a series of more intense additional supports through MTSS including access to a classroom paraprofessional, a positive behavioral support plan, and added mental health school-based counseling from Ms. Hamel. The data showed these MTSS interventions were not successful and ultimately the student was placed on an alternative schedule for school which significantly decreased the student's access to the general education curriculum and instruction from a highly qualified teacher.

Documentation shows that USD #298 also provided early intervention services through MTSS for academics during the second grade. Data shows the student responded to these interventions and was making some progress academically although still displaying below grade level skills as compared to his peers.

As stated previously, no findings related to the parent's request for a 504 evaluation will be made. However, based upon the increase in the frequency and intensity of the student's inappropriate behaviors and the district's conclusion that the student's behaviors were impeding the learning of others in the general education classroom, the district should have suspected the student may be a student with a disability and in need of special education and related services when it suspended the student on October 11, 2023 and unilaterally placed the student on an alternative schedule "*until progress is made in therapy to help with his behaviors and the classroom could possibly be safe again*".

It is unclear if the student's mental health diagnoses of DMDD and ADHD from CKMHC was provided to USD #298 at the beginning of the 2023-24 school year; however, the mental health diagnoses were shared in writing with school staff on October 31, 2023 and again verbally at the December 5, 2023 parent meeting. At this point, the parent had put the evaluation request in writing and the district had direct knowledge of mental health diagnoses. These factors combined with the previous data from the district's MTSS interventions showing the student's continued behavioral problems and lack of success were even more reason for the district to suspect that the student may be eligible under the exceptionality categories of Emotional Disturbance or Other Health Impaired and might require special education and related services. Documentation shows the district did finally proceed with obtaining parent consent for an initial special education evaluation on December 15, 2023.

Based on the foregoing, ***it is substantiated*** that USD #298 failed to follow child find procedures when it failed to identify, locate, and evaluate the student when the district had substantial knowledge and data to suggest that the student may be a student with a disability and in need of special education and related services beginning on October 10, 2023.

Issue Two

USD #298, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow required initial evaluation procedures by not responding appropriately to the parent's request for a special education evaluation during the 2023-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.301(a) require school districts to conduct a full and individual initial evaluation in accordance with 34 C.F.R. 300.304 through 34 C.F.R. 300.306 to determine if the student is a student with a disability under the IDEA and to determine if the student is in need of special education and related services.

Federal regulations at 34 C.F.R. 300.301(b) allows either the parents of the student or the school district to initiate a request for an initial evaluation to determine if the child is a child with a disability and in need of special education and related services.

Analysis: Findings of Fact

The findings of Issue One are incorporated herein by reference.

There is multiple evidence that the parent suspected the student was a student with a disability and in need of classroom accommodations under a Section 504 plan beginning as early as August 28, 2023. But again, this investigation will not address any issues related to compliance with Section 504 requirements and procedures as this falls under the authority of the Office of Civil Rights and not the KSDE.

Documentation shows that, while the parent made multiple request for a 504 plan, the parent never requested an initial special education evaluation in writing. However, the parent's concerns with the increased frequency and intensity of the student's inappropriate behavior at school as well as the student's mental health diagnoses were discussed at the December 5, 2023 meeting with the MTSS team. The December 5, 2023 Meeting Notes from Ms. Holeman indicate there was discussion regarding an evaluation to be conducted by the school psychologist from the Beloit Cooperative.

USD #298 provided the parents with prior written (PWN) requesting consent for an initial special education evaluation on December 15, 2023. The PWN included an explanation of why the action was proposed stating,

> *The student was referred for a special education evaluation by the Lincoln elementary MTSS team due to concerns with social/emotional skills. Additional data is required in order to make appropriate educational recommendations.*

Conclusion

According to federal regulations at 34 C.F.R. 300.301(b), a request for an initial special education evaluation to determine if the child is a child with a disability and in need of special education and related services may be made by either the parents of the student or the school district.

In this case, there is no clear documentation that the parents ever requested an initial special education evaluation for the student but instead consistently requested an evaluation for a 504 plan for accommodations in the general education setting. The district appeared to be following district procedures for providing multiple intervention services through the MTSS process to address the behavioral concerns of the student.

The district had no obligation to respond to a parent request for an initial special education evaluation when no request was ever made by the parent. In this case, the parent consistently requested and referred to Section 504 and the need for a 504 Plan. Again, no findings related to the district's response to the request for services under Section 504 will be made as this falls under the jurisdiction of the Office of Civil Rights.

Based upon the foregoing, a violation of federal regulations at 34 C.F.R. 300.301(b) *is not substantiated* because there is no clear documentation that the parent ever requested a special education evaluation so the district was not required to respond.

Issue Three

USD #298, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow required initial evaluation procedures during the past 12 months.

Applicable Law

Federal regulations at 34 C.F.R. 300.304(a) requires that parents are provided with prior written notice that describes any evaluation procedures the school district proposes to conduct.

Federal regulations at 34 C.F.R. 300.300(a) require school district to obtain parent consent prior to conducting any proposed initial special education evaluation.

Federal regulations at 34 C.F.R. 300.301(c) require school districts to complete initial evaluation for special education within 60 days of receiving parental consent. State regulations at K.A.R. 91-40-8(f) clarify the timeline to complete the initial evaluation and determine eligibility is 60 school days.

Analysis: Findings of Fact

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

Documentation shows the parents and school staff discussed an initial special education evaluation at the meeting on December 5, 2023 and provided the parents with a PWN proposing additional assessments in the areas of general intelligence, social/emotional/behavioral status, and academic performance. The mother provided written consent for this proposed evaluation on January 2, 2024.

Both the parents and school staff indicated that the special education evaluation has been completed. The parent was provided with a Special Education Meeting Notice dated February 8, 2024 scheduling an eligibility determination meeting for February 21, 2024. Based on the 2023-24 school calendar, USD #298 will have completed the evaluation and determined eligibility for the student within 36 school-days of obtaining written parent consent.

Conclusion

According to federal regulations at 34 C.F.R. 300.304(a) and 34 C.F.R. 300.300(a), school districts are required to provide parents with prior written notice describing any evaluation procedures the school district proposes to conduct and to obtain parent consent prior to conducting any proposed special education evaluation.

According to federal regulations at 34 C.F.R. 300.301(c) school districts must complete initial evaluation for special education within 60 days of receiving parental consent. State regulations at K.A.R. 91-40-8(f) clarify the timeline to complete the initial evaluation and determine eligibility is 60 school-days.

In this case, the parent provided the district provided the parents with PWN proposing a special education evaluation on December 15, 2023. The parents then provided the district with written consent for the proposed special education evaluation on January 2, 2024. Interviews and documentation show the evaluation was conducted and an eligibility determination meeting is scheduled for February 19, 2024, which is well within the required timeline to complete the evaluation. Based on the foregoing, a finding of noncompliance *is not substantiated.*

Issue Four

USD #298, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate disciplinary procedures for a student suspected of having a disability by unilaterally shortening the student's school day as a result of disciplinary incidents during the 2023-24 school year.

Applicable Law

Federal regulations implementing the IDEA at 34 C.F.R. 300.536 states 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 regulations at 34 C.F.R. 300.534 states that a child who has not yet been determined eligible for special education and related services and has engaged in behavior that violated a code of student conduct may assert the protections available under the IDEA if the school district had knowledge that the child was a child with a disability before the behavior resulting in the disciplinary action occurred.

The IDEA at 34 C.F.R. 300.530 allows school officials to discipline students with disabilities for violations of the student code of conduct and requires that specific procedures are followed whenever a student with a disability is subject to a disciplinary change of placement.

Analysis: Findings of Fact

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

The Disciple Report for the 2023-24 school year shows the student was suspended out-of-school for three consecutive school days on October 10, 11, and 12, 2023 for inappropriate behavior including disrespectful language and inappropriate touching of peers which resulted in a disruption of learning in the general education classroom.

Conclusion

According to federal regulations implementing the IDEA at 34 C.F.R. 300.536, 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 during a school year constitutes a disciplinary change of placement. School staff make the determination if a pattern of behavior exists. According to federal regulations at 34 C.F.R. 300.530, school officials are allowed to discipline students with disabilities for violations of the student code of conduct and requires that specific procedures are followed whenever a student with a disability is subject to a disciplinary change of placement.

In this case, the student was suspended out-of-school for a total of three consecutive days during the 2023-24 school year which does not constitute a disciplinary change of placement. While the shortened school day could be seen as a significant change in the educational placement of the student, it appears the district was not imposing the alternative schedule as a disciplinary action but rather as either an intervention through the MTSS or as an accommodation during the Section 504 process.

Based on the foregoing, a disciplinary change of placement was not imposed by the school district; therefore *no special disciplinary procedures were required* at that time even if the student was suspected of having a disability.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of federal regulations at 34 C.F.R. 300. 300.111(a)(1) is substantiated because the district failed to ensure the student was identified, located, and evaluated as required by Child Find, specifically by not initiating a request for an initial special education evaluation of the student when there was ample reason to suspect the student may be a child with a disability and in need of special education and related services on October 10, 2024. Corrective action is required as follows:
    a. CORRECTIVE ACTION:
        i. USD #298 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will ensure that all students who may have a disability and be in need of special education and related services will be identified, located, and evaluated as required by IDEA's child find requirements.
            1. No later than March 15, 2024
        ii. USD #298 shall complete the initial evaluation of the student and determine eligibility within 60 school-days of January 2, 2024 and provide the parent with appropriate prior written notice regarding eligibility. If the student is found eligible for special education and related services, an IEP will be developed to provide the student with a free appropriate public education (FAPE). USD #298 will offer compensatory services to the parent for a total of eight weeks to offset the delay between October 10, 2023 and December 15, 2023 for providing the parent with PWN proposing the initial special education evaluation. USD #298 will provide SETS with documentation of whether the parent accepted all, part, or none of the offered compensatory services.
            1. No later than April 1, 2024
        iii. USD #298 will provide training to all school staff involved in the student improvement team process including, but not limited to, school counselors and school administrators, on the child find requirements under the IDEA, specifically when a disability should be suspected and a

referral for an initial evaluation should be made. USD #298 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 #298 will provide SETS with any handouts and/or a copy of the presentation.

1. No later than May 1, 2024

2. ISSUE TWO: A violation of federal regulations at 34 C.F.R. 300.301(b) is not substantiated because there is no clear documentation that the parent ever requested a special education evaluation. Instead, documentation shows the parents consistently referred to a Section 504 plan. In the future, the district may want to review its procedures to include a process for clarifying the difference between a 504 accommodation plan and an IEP to parents who may not be familiar with the differences in these special services programs.
3. ISSUE THREE: A violation of federal regulations at 34 C.F.R. 300.304(a) and 34 C.F.R. 300.300(a) as well as 34 C.F.R. 300.301(c) and state regulations at K.A.R. 91-40-8(f) is not substantiated as interviews and documentation indicate that parent was provided with PWN describing the proposed initial special education evaluation and provided USD #298 with written consent to proceed with that evaluation. In addition, interviews and documentation show the evaluation has been completed and an eligibility determination meeting has already been scheduled well within the required 60 school-day timeframe.
4. ISSUE FOUR: A violation of 34 C.F.R. 300.530 and/or 34 C.F.R. 300.536 was not found for failing to follow appropriate disciplinary procedures during the 2023-24 school year as no disciplinary actions resulting in a disciplinary change of placement have been imposed during that time frame.

Investigator

Nancy Thomas

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).

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 #227
ON JANUARY 24, 2024

DATE OF REPORT FEBRUARY 27, 2024

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 parent." The Southwest Kansas Area Cooperative District (SKACD) provides special education services for USD #227. USD #227 and SKACD will be referred to jointly as "the district."

Investigation of Complaint

On January 26 and February 16 and 21, 2024, the investigator spoke by telephone with Trina Schmidt, Executive Director for SKACD. The investigator spoke by telephone with the parent on February 2, 2024. On February 20, 2024, the investigator spoke by telephone with Doug Chaney, Superintendent and Principal of the student's elementary school.

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

- Special Education Referral Notification dated October 20, 2022
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated November 4, 2022
- Notice of Special Education Meeting dated December 1, 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 8, 2022
- Voicemail recording dated November 9, 2023 from the executive director of special education to the parent
- Letter dated November 13, 2023 from the executive director of special education to parents of students enrolled in the early childhood special education preschool
- Email dated November 28, 2023 from the speech/language pathologist to the parent
- Minutes of the November 2023 Board of Education meeting for the district
- 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 7, 2023
- Ready, Willing, and Able letter dated December 13, 2023 from the SKACD to the student's parents

- Email dated December 19, 2023 from the speech/language pathologist to the parent
- Audio recording of a telephone conversation on January 11, 2024 between the parent and the superintendent/building principal
- Email exchanges dated January 11, 2024 between the parent, the early childhood coordinator to the parent, and the executive director of special education
- Another email exchange dated January 11, 2024 between the early childhood coordinator and the parent
- Email dated January 11, 2024 from the parent to the receptionist for the special education cooperative
- Email dated January 12, 2024 from the receptionist for the special education cooperative to the parent
- Email exchange dated January 19, 2024 between the receptionist for the cooperative and the parent
- Copy of an email dated January 23, 2024 from the parent to the superintendent/building principal, the executive director of special education, and the early childhood coordinator
- Letter dated February 8, 2024 from the executive director to the parent
- Kansas State Department of Education Parent Rights in Special Education (Procedural Safeguards) - February 2020 version
- Timeline prepared by the parent
- Copies of text messages between the parent and district staff

In addition to the documents listed above, the investigator reviewed several audio recordings of telephone conversations between the parent and district staff as well as voicemail messages left for the parent by district staff. The parent also presented audio recordings made prior to and following an executive session of a district board meeting on January 15, 2024.

Background Information

This investigation involves a 4-year old boy who in October 2022 was referred to the district by an area medical clinic for evaluation due to his speech needs. The district sent the parent a referral notification letter and instructions on how to contact the district if she wanted to pursue evaluation to determine eligibility for special education services. The parent subsequently provided written consent for the student to be evaluated.

The student was determined eligible for and in need of special education services. He began receiving those services through a district Early Childhood Special Education program in December 2022. IEP goals were developed to address speech intelligibility and basic readiness skills.

On October 31, 2023, the parent made a referral to the Department for Children and Families alleging that the student had been abused by his preschool teacher. The parent took the

student out of school on October 31, 2023. The parent reports that she spoke with the early childhood coordinator for the district on November 3, 2023, and the coordinator offered to provide speech/language services to the student in the home. The parent reports that on November 9, 2023, she and the executive director of the cooperative spoke by telephone. According to the parent, the executive director offered in-home speech services, but the parent declined.

According to the parent, the speech/language pathologist emailed her information regarding resources for outside speech services on November 12 and 14, 2023. The parent reports that the speech/language teacher also contacted her via text on November 27 and 28, 2023 to offer alternative speech services and notified the parent that the student's IEP was due for review by December 7, 2023. According to the parent, the speech/language pathologist contacted her again on December 1, 2023, but the parent told the therapist that she was not interested in bringing the student into the school setting for services. Dismissal paperwork was sent to the parent on December 19, 2023. In a follow-up telephone call to the parent on December 20, 2023, the executive director discussed the dismissal paperwork and offered the parent the opportunity to come to observe the early childhood special education classroom now being led by a new teacher.

On January 11, 2024, the parent sent an email to the executive director regarding the scheduling of an opportunity to observe the early childhood special education classroom which was now under the direction of a new teacher. The executive director referred the parent to the early childhood coordinator who proposed an observation during the week of January 22nd.

As of the writing of this report, the student had not returned to school.

Issues

The parent's complaint specified nine concerns:

1. The student was abused at the hands of his special education preschool provider;
2. Information about the abuse of my child is being hidden from me;
3. Formal complaint of abuse was not conveyed, in truth, to state officials by the district;
4. The early childhood teacher was allowed to retire while under an active investigation of abuse;
5. The student's information is currently in the hands of his abuser;
6. Our parents' rights were withheld from us;
7. The early childhood teacher has attempted to contact, harass and intimidate the family;
8. The early childhood teacher has demonstrated guilty behavior; and
9. The district has demonstrated disregard for the severity of the parent's situation.

However, pursuant to federal regulations at 31.C.F.R. 300.153, a state department of education may only investigate allegations of a violation of special education laws and regulations. This investigator does not have the authority to investigate issues related to the alleged abuse of the student or to address district personnel issues. This investigation focused only on the special education issues contained within this complaint, and this report will address only those issues.

When presenting facts associated with Concern 5 above, the parent stated that she had not been given access to the student's records as required under the Family Educational Rights and Privacy Act (FERPA). This issue was investigated and will be addressed below as will the parent's assertion under Concern 6 that parental rights have been withheld. Concerns 1, 2, 3, 4, 7, 8, and 9 were not investigated.

Issue Five

(amended to address only the special education-related component):
The district has failed to provide the parent with access to the student's records.

Parent's Position

The parent asserts that the district did not promptly make available to her all records related to the student. The parent further contends that the district has told her that some of the records requested by the parent are no longer available.

Applicable Statutes and Regulations

Confidentiality of education records is a basic right shared by all students in public schools and their parents. These fundamental rights are described in the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended. The federal regulations relating to FERPA are available at https://www2.ed.gov/policy/gen/reg/ferpa/index.html as well as at https://www.ksde.org/Default.aspx?tabid=337. In addition, Kansas Special Education Regulations at K.A.R. 91-40-50 have adopted by reference provisions in 34 C.F.R. 300.612 through 300.624, regarding parental access to education records and confidentiality of those records.

Each school district must annually notify parents of their rights under the Federal Education Rights and Privacy Act (FERPA). This notice must inform parents or adult students that they have the right to:

1. Inspect and review the student's education records;
2. Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;

3. Consent or refuse to consent to disclosures of personally identifiable information contained in the student's education records, with some exception (34 C.F.R. 99.310); and
4. File a complaint under 34 C.F.R. 99.63 and 99.64 concerning alleged failures by the educational agency or institution to comply with the requirements of FERPA.

   Additionally, the notice must include all of the following:

   - The procedure for exercising the right to inspect and review education records.
   - The procedure for requesting amendment of records.

The school district may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.

At K.A.R. 91-40-50, state regulations define "education records" as "any document or medium on which information directly related to one or more students *is maintained by a participating agency* [emphasis added]..."

Under certain circumstances, a teacher's working file would not be considered to be part of the child's record. FERPA regulation 34 C.F.R. 99.3, states 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.

A district must comply without unnecessary delay with a parental request to review their child's education records 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. (See 34 C.F.R. 300.613.)

Investigative Findings

The handbook for the student's elementary school contains the following statement under the section entitled "Student Records:"

> *"[The district] regards all pupil records, except directory information, to be confidential. The Board has established procedures and safeguards which assure that parents are able to see and review their child's school records and that those records are not open to other people who should not see them."*

The investigator was unable to locate the referenced Board procedures regarding access to records and contacted the superintendent/building principal on February 20, 2024 to determine how parents were informed about these procedures. According to the superintendent/building principal, FERPA information is provided annually to parents in the student enrollment packet for all students in grades K-12. However, the superintendent/building principal stated that FERPA information has not been included in the enrollment packet for preschool students such as the student at the center of this complaint.

The superintendent/building principal also reported that FERPA information had been included in the handbook for the elementary school in which the student's early childhood special education preschool program is located. However, that information was inadvertently omitted from this year's version of the handbook.

Absent any specific guidance on how to request access to the student's records, the parent contacted the superintendent/building principal on January 11, 2024 to make her request. According to the parent, the superintendent/building principal told her that the records were managed by the cooperative, and he would have the early childhood coordinator contact the parent.

In an email to the parent dated January 11, 2024, the early childhood coordinator references the parent's request for the student's records, noting that she had been informed of the parent's request by the superintendent/ building principal. The early childhood coordinator wrote:

> *"You can easily obtain these records by contacting the [cooperative] office...They will be more than happy to assist you."*

The parent sent an email to the receptionist for the special education cooperative on January 11, 2024 writing:

> *"I am the mother of [the student] and would like to make a request for his school records and any info you may have on him..."*

The receptionist responded to the parent via email on January 12, 2024 writing:

> *"...here is the form can you please fill out, sign it and return to me with a copy of you [sic] ID or Drivers Licence [sic]."*

In a telephone conversation with the investigator on February 2, 2024, the parent acknowledged that she had received the student's special education records but stated that in an effort to gain a clearer understanding of an event that occurred in the Spring of 2023, she had sought to obtain additional records from the school. According to the parent, the student had come home from school with a "goose egg" on his forehead and a "split lip." The parent stated that she had spoken with the former early childhood special education teacher about the incident, and the teacher had told her that a disciplinary office referral would be made regarding the student. The parent believed that there should have been a record of that referral or other records documenting the events.

On January 19, 2024, the parent left a voicemail for the superintendent/building principal asking about attendance and disciplinary records for the student. In a telephone call to the parent, the superintendent/building principal stated that he was unable to access attendance records for the student through the student database. According to the superintendent/building principal, information on the student's attendance had been kept in a

handwritten attendance book maintained by the former early childhood teacher for her personal use. The parent states that she then sent an email to the superintendent/building principal submitting a formal request for access to the student's records.

On January 19, 2024, the parent also sent an email to the receptionist for the special education cooperative stating:

> *"Was the IEP the only info in his file? I am not seeing any disciplinary reports or his school attendance record."*

The receptionist responded on January 19, 2024 writing:

> *"...you will need to contact his school for the information you are requesting. We just have the special education records and I do not see any of that in his file."*

In an email dated January 23, 2024 sent to the superintendent/building principal, the executive director of special education, and the early childhood coordinator, the parent wrote:

> *"I was informed that all of my student's records were not in your possession. I did not give permission for those records to go anywhere out of your possession. I am entitled to my child's records for 5 years after they graduate. These records are put into a [student information system] to make sure that they are tracked in case of movement of districts. Why did [the superintendent/building principal] inform me on 1/19/24 that [the student's former early childhood special education teacher] is still in possession of my son's records, when in reality it appears you do not wish to give me access to them...Below is straight from the Kansas Special Education handbook:*
>
> *Each school must annually notify parents of their rights under FERPA. The notice must inform parents or adult students that they have the right to: 1. Inspect and review the student\'s education records; 2. Seek amendment of the student\'s education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student\'s privacy rights; 3. Consent or refuse to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA, 34 C.F.R. 99.31, authorizes disclosure without consent; and 4. File a complaint under 34 C.F.R. 99.63 and 99.64 concerning alleged failures by the educational agency or institution to comply with the requirements of FERPA. Additionally, the notice must include all of the following: • The procedure for exercising the right to inspect and review education records. • The procedure for requesting amendment of records. The school district may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights. The school shall effectively notify parents who have a primary or home language other than English. (34 C.F.R. 99.7) This notice should adequately inform parents prior to any identification, location, or evaluation activity taking place."*

On February 8, 2024, the executive director sent a letter to the parent in response to the parent's request for the student records. According to the executive director, the district had already provided the parent with all educational records related to the student except for his attendance record. The executive director wrote:

"[The student's school] has not been keeping attendance for prek students into their student database. Therefore, all attendance records were simply kept in the prek classroom. When [the former early childhood special education teacher] left, she left the attendance records book on her desk for the new teacher to use. (This was verified by [the former teacher], the new staff, and [the early childhood coordinator]). Unfortunately, in the transition, the attendance book was accidentally thrown in the trash as they were cleaning the room.

You asked for attendance and discipline records. [The superintendent/building principal] has no disciplinary record on [the student]. As far as attendance, [the student's school] will be entering all students in their student database and moving forward all attendance is kept in the main office..."

Summary and Conclusions

The parent requested access to the student's educational records on January 11, 2024. The superintendent/building principal promptly asked the early childhood coordinator to contact the parent regarding her request. The parent contacted the cooperative office, reiterated her request, and was timely provided copies of the student's special education records. The parent has acknowledged to the investigator that she received the student's special education records prior to the filing of this complaint.

When the parent determined that the records she had been given did not include either attendance records or discipline records, she again contacted district staff to request those specific records.

It was subsequently determined that the district had not maintained an educational record regarding the attendance of students in the early childhood special education classroom. The only attendance-related document that was being kept was a personal record maintained by the former special educational classroom teacher. When she left the district, the former teacher left that record in her classroom where it was observed by staff who came into the classroom over the ensuing days. When the parent made her request to access attendance records for the student, staff searched the classroom for the teacher's record but determined that the teacher's personal record had been discarded during the process of cleaning the classroom in preparation for the new teacher.

The parent also sought discipline records regarding the student, but it was determined that no discipline records regarding the student were maintained by the district.

Because the district in a timely manner provided the parent with all educational records being maintained on this student, a violation of special education statutes and regulations *is not substantiated* regarding parental access to the student's educational records.

However, in the process of investigating this issue, the investigator determined that the district failed to provide the parents of students in the early childhood classroom - including the

parent who filed this complaint - with the required annual FERPA notice which would have provided guidance to these parents regarding how they could request access to their children's educational records. Under these circumstances, a violation of special education statutes and regulations *has been identified.*

Issue Six

Our parent rights have been withheld from us.

Parent's Position

The parent asserts that the district did not provide her with a copy of her parent rights until 7 weeks after the parent had decided to keep the student out of school. The parent contends that the district provided her with a prior written notice form without offering an opportunity for a meeting, mediation, or due process.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.504, specify when parents must be provided with notice regarding their procedural safeguards (Parent Rights). A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents—

- Upon initial referral or parent request for evaluation;
- Upon receipt of the first State complaint and upon receipt of the first due process complaint in a school year;
- In accordance with the discipline procedures in § 300.530(h); and
- Upon request by a parent.

While many districts provide parents with a copy of their procedural safeguards more frequently than specified above, these are the only times when special education law requires that they be provided.

Parents may elect to receive the Parent Rights Notice by electronic mail communication, if the school makes that option available (34 C.F.R. 300.505). If the Parent Rights Notice is provided electronically, the school should have a copy of the email sent to the parent and documentation that the notice was received.

At K.A.R. 91-40-51, Kansas statutes address the filing of a formal complaint. The formal complaint must be in writing and signed by the person or organization making the complaint. The complaint must state that the school is not complying with the requirements of the Individuals with Disabilities in Education Act (IDEA), the Kansas Special Education for Exceptional Children Act, or the corresponding federal or state regulations and give the facts upon which the statement is based. When the complaint involves a specific child, the complaint must also include the following:

- The child's name and address of residence, or other contact information if the child is a homeless child or youth;
- the name of the school the child is attending;
- a description of the problem involving the child; and
- a proposed resolution to the problem, if a possible resolution is known and available to the complainant.

A complaint must be mailed or hand-delivered to the Kansas State Department of Education (KSDE), Special Education and Title Services, Landon State Office Building, 900 SW Jackson, Suite 620, Topeka, KS 66612. Alternatively, complaints may be emailed to formalcomplaints@ksde.org. Emailed complaints are filed when KSDE staff open the email. Additionally, a copy of the complaint must be sent to the school district against which the complaint is filed.

The due process hearing provides another avenue whereby disagreements about the identification, evaluation, educational placement, and/or provision of a free appropriate public education for students with exceptionalities may be adjudicated.

To make their request for a due process hearing, the party filing the due process complaint, or the attorney for that party, must send a copy of the Due Process Complaint Notice to the other party and to the Kansas State Department of Education (KSDE), Special Education and Title Services (SETS). This notice is confidential and must contain the following information:

- Name of the child;
- address of the child's residence (or in the case of a homeless child or youth, available contact information for the child);
- name of the school the child is attending;
- description of the nature of the problem and the facts that form the basis of the complaint; and
- a proposed resolution of the problem. (K.S.A. 72-3415(a)(1)(B))

When the school receives this request for a due process hearing, school personnel are required to:

- inform parents about mediation;
- inform parents of free or low-cost legal services (34 C.F.R. 300.507); and
- provide a copy of the Parent Rights document for the first due process complaint in the school year (34 C.F.R. 300.504).

Investigative Findings

The district received a referral regarding the student from the area infant-toddler program and sent the parent a prior written notice letter regarding that referral as well as a packet of additional information on October 20, 2022. Included in the referral packet was a copy of procedural safeguards. The parent signed and returned a referral form to the district on November 8, 2022.

An additional copy of procedural safeguards was given to the parent when she was provided with prior written notice of the district's proposal to conduct an initial evaluation on November 11, 2022. According to the prior written notice form:

> *"The legal education decision-maker was provided a copy of Parents Rights in his/her native language on 11/11/2022 by the following method: hand delivered."*

On December 8, 2022, upon completion of an initial evaluation to determine the student's eligibility to receive special education services, a meeting was conducted to review the results of that evaluation. The parent was provided with written notice of that meeting on December 1, 2022. According to the "Notice of Meeting Acknowledgement" section of the meeting notice form, the parent acknowledged on December 8, 2022 that she had been provided with a copy of the "Parents' Rights/Procedural Safeguards in [her] native language."

After the student was determined to be eligible for and in need of special education services, the district proposed an Individual Education Plan (IEP) for the student. In the section of the proposed IEP entitled "Parent Notifications," the box indicating that "parents/legal education decision makers with the same listed address were given/sent/offered one copy of the Parental Rights (Procedural Safeguards) in their Primary Language" was checked "Yes." That checked section documented that the parents were given their procedural safeguards "in person."

At the meeting on December 8, 2022, the district presented the parent with prior written notice (PWN) of a proposal regarding the provision of special education services to the student. The parent gave written consent for the implementation of the district's proposed services by checking a box on the PWN form which stated:

> *"I give consent for the special education placement and services action(s) specified in this notice...I have been provided and/or offered a copy of my parental rights (procedural safeguards) in my native language."*

On October 31, 2023, following an incident of alleged abuse of the student by his preschool teacher, the parent contacted the superintendent/building principal. According to a timeline prepared by the parent, she informed the superintendent of the alleged abuse and told the superintendent/building principal she would be "pulling" the student from school as of October 31, 2023 following the class Halloween party which she would be attending. While the student did not return to school on November 1, 2023, the parent did not complete any formal

withdrawal of the student from school and did not at that time withdraw consent for the provision of special education services.

According to the parent's prepared timeline, she spoke with the early childhood coordinator on November 1, 2023. The parent wrote in her timeline that the early childhood coordinator "would be making a formal report" regarding the parent's concerns and report of abuse of the student.

The parent reports that she was called by the former early childhood special education preschool teacher on November 1, 2023. According to the parent, the teacher left voicemails for the parent regarding school attendance.

On November 9, 2023, the executive director left a voicemail message for the parent in which she stated that she would like to explore options for providing the student with special education services at a location other than the student's neighborhood school.

In a telephone conversation with the investigator on February 2, 2024 , the parent stated that she considered having the student return to school for his speech services, but felt that being in the building might further traumatize the student. The parent decided that the student's needs were best served through a combination of home schooling and outside private speech therapy.

On December 19, 2023, the speech/language pathologist sent the parent an email with forms verifying that the student "was taken out of school for the remainder of the year." Attached to the email was a prior written notice form regarding the parent's withdrawal of the student from special education services. Also attached to the email was a "ready, willing, and able" letter telling the parent that the district was prepared to provide the student with the special education and related services outlined in his current IEP. A copy of the parent rights document was also attached to the email.

The parent did not provide written consent for the discontinuation of special education services to the student. However, in her written complaint, the parent stated that she had received a copy of her parent rights on December 19, 2023. The parent subsequently confirmed the December 19, 2023 receipt of rights during a telephone call with the investigator on February 2, 2024.

The parent exchanged emails with the early childhood coordinator on January 11, 2024 regarding the scheduling of an observation in the student's former classroom where a new early childhood teacher was in place. In an email sent at 1:02 PM on that date, the parent asks the following:

> *"If were to wait until the 22nd [for the observation], where does that put us with the timeline of the formal complaint process I started with you on 11/1/23? I have not received any details or update of my due process complaint or the state complaint. I did receive "ready,*

> *willing and able" paperwork from the speech teacher...the final school day before winter break...[b]ut that is the first I have received information of my parental rights."*

The early childhood coordinator replied:

> *"Do you have time for me to call you now? I must not have all the information."*

Later that same day, the early childhood coordinator sent an email to the parent stating:

> *"Regarding the due process complaint you mentioned, I have forwarded your email to our director...for such matters are directly handled by our director."*

On January 23, 2024, the parent sent an email to the superintendent/building principal, the executive director of special education, and the early childhood coordinator stating:

> *"I would like to file an official complaint against [the district] for not protecting my child's safety and rights. They have violated our rights and freedoms and I would like the information on how to file a formal complaint with the State. This is required that you give me access to this information...*

On January 23, 2024, the parent sent the district an email in which she made a request for a state complaint. The executive director sent the parent the form she would need to complete in order to make a formal complaint.

A formal complaint by the parent was received by the Dispute Resolution Coordinator for the department of Special Education and Title Services (SETS) at the Kansas State Department of Education (KSDE) on January 24, 2024. No previous complaint nor any previous request for a due process hearing had been submitted by the parent prior to the receipt of this complaint. On January 24, 2024, the Dispute Resolution Coordinator sent a letter via email to the parent and the district acknowledging receipt of this complaint. In her email, the coordinator attached a copy of parent's rights in special education "in compliance with 34 C.F.R. 300.504."

No evidence was presented to show that the parent had made any specific request for a copy of parent rights during either the 2022-23 or the 2023-24 school years. No disciplinary actions were initiated against the student during either school year that would have required the district to present the parent with procedural safeguards.

Summary and Conclusions

During the 2022-23 school year, the district provided the parent with copies of parent rights/procedural safeguards on three occasions:

1) On October 20, 2022 when the parent was notified that the district had received a referral regarding the student from the area infant-toddler agency;
2) on November 11, 2022 when consent for the initial evaluation was requested; and
3) on December 8, 2022 when a meeting was conducted to review the results of the evaluation and to subsequently develop an IEP for the student.

The parent's receipt of procedural safeguards was documented on the consent for evaluation, the notice of meeting form, the December 8, 2023 IEP for the student, and the prior written notice wherein the parent gave consent for the implementation of special education services to the student.

In speaking with the parent on February 2, 2024, it was apparent to the investigator that the parent did not have a clear understanding of the difference between a formal complaint, a due process hearing, and a district level complaint. The parent shared her concerns regarding the alleged abuse of the student with the early childhood coordinator on November 1, 2023, and the coordinator told the parent she would take those concerns to others. The parent appears to have believed that a formal complaint or due process had been initiated by that conversation and that she should have been provided with procedural safeguards. However, absent the filing of specific paperwork by the parent with SETS and absent notice from SETS that the parent had filed a formal complaint or requested a due process hearing, the district did not at that point have a requirement to provide the parent will a copy of her parent rights.

On December 19, 2023, the speech/language pathologist sent an email to the parent that included prior written notice of the district's proposal to honor the parent's request to dismiss the student from special education services. Along with the prior written notice form, the speech/language pathologist included a copy of the procedural safeguards/parent rights document. While the parent did not give consent for the district's proposed action, the parent acknowledged in her complaint and during a telephone conversation with the investigator on February 2, 2024 that she did receive the procedural safeguards document.

Evidence shows that the parent received copies of procedural safeguards more than once during both the 2022-23 and 2023-24 school years. The district provided the parent with procedural safeguards when requesting consent for the student's initial evaluation in 2022 as required. SETS provided the parent with a copy of those safeguards when this complaint - the first formal complaint from this parent during this school year - was received. 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 determined that there was noncompliance with special education statutes and regulations on issues associated with this complaint. Specifically, a violation has been identified with regard the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended, and to K.A.R. 91-40-50 adopted by reference to provisions in 34 C.F.R. 300.612 through 300.624, regarding parental access to education records and confidentiality of those records.

Therefore, USD #227 is directed to take the following actions:

1) Submit to Special Education and Title Services (SETS) within 21 calendar days of the date of this report, a written statement of assurance stating that it will comply with FERPA and K.A.R. 91-40-50 by providing parents with annual notice regarding their right to access the educational records of their student(s).
2) By no later than 21 calendar days of the date of this report, provide to SETS a plan to ensure that the parents of all current preschool students in this district including all early childhood special education preschool students have been provided with an annual FERPA notice.
3) By no later than March 30, 2024, provide to SETS verification that strategies are in place to ensure that annual FERPA notification will be provided to all parents in the district for the 2024-25 school year and subsequent years.
4) By no later than September 1, 2024, submit to SETS evidence that annual FERPA notice has been provided to all parents in the district for the 2024-25 school year.
5) Further, USD #227 shall, within 20 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



Diana Durkin
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).

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 #470
ON FEBRUARY 1, 2024

DATE OF REPORT MARCH 8, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ---------- by his mother, ----------. In the remainder of the report, ---------- will be referred to as "the student." ---------- will be referred to as "the complainant" or "the parent" or "the mother."

The complaint is against USD #470. In the remainder of the report, USD #470 will be referred to as "the district", "the local education agency (LEA)", or "the school". It is noted that Cowley County Special Services Cooperative #725 provides special education services for USD #470, Arkansas City 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 #470 "

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on February 1, 2024 and the 30-day timeline ended on March 4, 2024. An extension was granted and the date of the report is March 11, 2024.

Evidence Reviewed

During the investigation, the complaint investigator, Gwen Beegle, spoke to the parent on February 5, 2024 to clarify the concerns and issues in the complaint. The parent was interviewed on February 26, 2024 and emails were exchanged between the parent and the complaint investigator from February 5, 2024 to February 26, 2024. Emails were exchanged with the district from February 5, 2024 to March 1, 2024. The complaint investigator reviewed all evidence and documentation, which was provided by both the district and the complainant. The following documentation and information were used in consideration of the issues.

Interviews of district personnel: Dr. Ron Sarnacki (Special Education Director), Alicia Kennedy (Special Education Teacher), Janelle Burris (Speech Language Therapist), Debbi Davidson (Ark City Recreation Pool Director) and Brittany Ruiz (Paraeducator) on February 23, 2024; Tammy McDaniel (Bus Driver), Megan Robinson (Paraeducator), Jessica Robinson (Paraeducator), and Andrew Brenn (Adapted Physical Education Teacher) on February 26, 2024; Mel Seacat (Arkansas City High School Principal) on February 27, 2024 and Wendy Burton (Complex Needs

Coach) on February 28, 2024. Jennifer Vest from TASN was interviewed on February 22, 2024 and February 29, 2024.

Undated documents:

1. [Student's] pool procedure
2. [Student's] MWF schedule, 23-24
3. [Student's] TTh schedule, 23-34
4. [Student] Attendance Report 2022-23 Year
5. [Student] Attendance Report 2023-24 Year
6. [Student's] Fall PT Conference
7. [Student's] accommodations List 23-24
8. USD #470 School Calendar 2023-24
9. High school bell schedule

Dated documents

10. Multidisciplinary Team Report for Reevaluation dated February 24, 2021
11. Individualized Education Plan (IEP) for the student dated February 3, 2023
12. Prior Written Notice (PWN) for changes to the IEP dated February 3, 2023
13. IEP Amendment Form for Changes Not Requiring a Full IEP Team Meeting dated June 21, 2023
14. Prior Written Notice (PWN) for changes to the IEP not requiring consent dated June 21, 2023
15. [Student's] observational data with entries beginning August 17, 2023 and ending February 16, 2024
16. Phone Log with entries beginning August 17, 2023 and ending February 16, 2024
17. Additional data narrative dated August 21, 2023
18. Behavior data chart on time to get off the bus and time sent home with entries dated August 23, 2023 to October 13, 2023
19. [Student's] departure data with entries beginning on August 27, 2023 and ending February 16, 2024
20. Email from TASN to Alicia Kennedy (Special Education Teacher) dated August 29, 2023 at 7:39 p.m.
21. Email exchange between Jennifer Vest ((TASN-State Trainer) and Dr. Sarnacki (Special Education Director) dated September 5, 2023 beginning at 7:15 a.m. and ending at 10:34 p.m.
22. Email from TASN to Alicia Kennedy dated September 5, 2023 at 8:20 a.m.
23. TASN Technical Assistance Action Plan, with September 19, 2023 action plan date
24. Email from TASN to Alicia Kennedy dated September 19, 2023 at 12:00 a.m.

25. Email from Jennifer Vest dated September 22, 2023 at 4:12 p.m.
26. Email from TASN to Alicia Kennedy dated September 22, 2023 at 4:15 p.m.
27. Email exchange between Jennifer Vest to Wendy Burton (Complex Needs Coach) dated October 25, 2023 beginning at 7:12 a.m. and ending at 7:15 a.m.
28. Email from TASN to Alicia Kennedy dated November 1, 2023 at 4:08 p.m.
29. Email exchange between Alicia Kennedy and the parent, beginning January 17, 2024 at 3.20 p.m. and ending January 18, 2024 at 10:30 a.m.
30. Email from Alicia Kennedy to the parent dated January 19, 2024 at 4:50 a.m. with the parent reply the same date at 8:24 a.m.
31. Email from Alicia Kennedy to the parent dated January 24, 2024 at 8:55 with parent reply on same date
32. Individualized Education Plan for the student dated January 30, 2024
33. Prior Written Notice for material change of services and other changes to the IEP dated January 30, 2024 with parent signature giving consent on the same date
34. Email from Dr. Sarnack to Dr. Crista Grimwood (KSDE SETS), the complaint investigator, the parent, Ron Ballard (USD #470 Superintendent), Brian Dempsey (KSDE SETS Assistant Director), Braden Smith (USD #470 Director of Curriculum and Instruction), and Mel Seacat (Arkansas City High School Principal) dated February 5, 2024 at 12:17 a.m.
35. Email from Maria Guzman (Administrative Assistant Heartsprings Admissions) to Dr. Sarnacki, Cristina Baker (Heartsprings Admission Team) and Hayleigh Thom (Heartsprings Admission Team) dated February 8, 2024 at 4:28 p.m.
36. Heartsprings Admission Application
37. Email from TASN to Alicia Kennedy dated February 12, 2024 at 2:29 p.m.
38. IEP Progress Report dated February 15, 2024 for IEP dated February 3, 2023
39. Letter from Melissa Seacat ACHS Principal to the complaint investigator and Dr. Crista Grimwood dated February 14, 2024
40. Email from Alicia Kennedy to the parent dated February 14, 2024 at 10:10 a.m.
41. Email from Alicia Kennedy to the parent dated February 15, 2024 at 8:23 a.m.
42. Teacher absence report, 2022-23 school year

Background Information

The student is a 17 year old who attends USD #470 and qualifies for special education in the category of Intellectual Disability. The student has been in the district since he was in the REACH Infant Toddler program. When the student was 5 years old, he was aggressive toward adults when told "no" and at times refused to get off the bus. He was diagnosed with Fragile X syndrome when he was 6 years old and was medicated for seizures and to control his behavior, which included aggression on the school bus. According to the National Institutes of Child Health and Human Development, Fragile X, when severe in males, is characterized by

intellectual disability, attention problems, aggression, anxiety, sensory issues that can cause behavior problems, language processing problems and other speech and language disorders. The school team received consultation from a TASN behavior specialist at that time.

The student was last evaluated on February 24, 2021. The report summarized the Wechsler Abbreviated Scale of Intelligence (WASI-II) given in 2018 which showed extremely low scores and difficulty completing the test. At the time of the 2021 evaluation, the student could count to 10, recognize some shapes, and answer what and where questions. The speech language evaluation showed significant communication deficits in his ability to interact with others and to make his wants and needs known. The student's behavior interfered with speech language therapy services at that time. No functional behavior assessment (FBA) was included with the evaluation. The parent waived re-evaluation on November 13, 2023.

Annual IEP meetings were held February 3, 2023 and January 30, 2024. According to his most recent IEP, the student was assigned to a self-contained autism classroom in the high school building. He received special transportation, full time special education, nursing services, consultative speech/language and occupational therapy, and adaptive physical education. Due to his seizure disorder, the student was not to be left unsupervised. The IEP did not include an FBA and did contain a Behavior Intervention Plan (BIP) for self injury, aggression toward others, and refusals; spitting, kicking, slapping, punching, dropping to the floor are listed as behaviors of concern. For aggressiveness or self injury, the BIP included a crisis plan which called for the student to be sent home for unsafe behavior. The student used assistive technology (IPAD for visual schedule and timers), and the IEP indicated there is no data suggesting the student needed ESY services.

Issues Investigated

1. ISSUE ONE: The USD #470, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP for the student that was reasonably calculated to enable the student to make progress, specifically to promote school attendance and achievement of annual IEP goals.
2. ISSUE TWO: The USD #470, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a full day of school for the student.

Issue One

The USD #470, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP for the student that was reasonably calculated to enable the student to make progress, specifically to promote school attendance and achievement of annual IEP goals.

Applicable Law

Federal and state statutes and regulations at 34 C.F.R 300.320 (a)(4)(i) and K.S.A. 72-3429(c)(4) require that the IEP include special education and related services based on peer reviewed research to the extent practical be provided to the child and a statement of program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals. Federal and state statutes and regulations at 34 C.F.R. 300.324(a)(1) and (2)(i) and K.S.A. 72-3429 (d) require that when developing the child's IEP, the IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of the child, the results of the initial or most recent evaluation, and the academic, developmental and functional needs of the child.

Federal regulations at 34 C.F.R 300.320(b) require that when the child turns 16 and updated annually the IEP must include (a) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate independent living schools and (b) the transition services, including course of study, needed to assist the child in reaching those goals.

The U.S. Supreme Court has held that to provide FAPE, a student's IEP must be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances (Endrew F. v. Douglas County Sch. Dist. RE-1, 69 IDELR 174 (U.S. 2017). This FAPE standard applies regardless of the child's disability, age, or current placement. The IEP should aim to enable the student to make progress toward the student's annual IEP goals and in the general education curriculum, but there is no guarantee of progress.

Federal statutes and regulations at 34 C.F.R. 300.324(b)(1) require that each agency must review the child's IEP periodically, at least annually, to determine whether the goals for the child are being achieved, and that the agency revises the IEP as appropriate to address any lack of expected progress toward the annual goals, among other reasons.

Analysis: Findings of Fact

The parent alleges that the child has not made progress in school and that this has been going on for four years. In the formal complaint, the parent alleges that she first contacted KSDE regarding the student last year, and she believed that in June 2023 the district agreed to make changes that would lead to progress and she withdrew her complaint. The parent alleged that the student is "going backwards" and she is still waiting for progress. The parent alleged that

last year the time for the student to be sent home was 11:00 or 11:30 a.m. and this year it is 9:00 or 9:30 am. The parent alleges that the student isn't learning anything at school except bad behavior and that any progress in discipline has been lost. The parent alleged that the student has learned "absolutely nothing." From the interview, the parent alleges no new goals have been written.

The district responded that "The response to the complaint is focused on goals from the 2.3.23 IEP. Since the new IEP was written on 1.30.24, there has not been adequate time in which to monitor progress for that IEP. . . The Progress Reports from the 2.3.23 IEP show that the student did make progress toward meeting those goals as evidenced below. [The district and cooperative] do feel that the new IEP written on 1.30.24 has goals that were written to enable the student to make progress toward those goals as well." The district responded that the student made progress on four of five goals on the February 3, 2023 IEP. For the fifth goal, the district responded that "Progress Report 12.11.23 [stated] through collaboration with TASN, a plan was set into action to elongate [student's] day by 1 minute, after 3 consecutive days of reaching his target time. [Student] is currently attending school until 9:29 a.m. [Student's] day has been elongated by 7 minutes. We are exploring preferred activities in order to elongate the time [student] spends at school during the day."

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #470.

The student's most recent evaluation was conducted in 2021, and the parent's waived a reevaluation in November 2023.

The parent reported that the student is a "spitter" and that at home he does chores such as helping with the dishes and mowing the grass with support. The parent reported that with support such as walking alongside the student between him and other persons in a novel situation (hospital hallway), the student can be successful.

February 3, 2023 IEP Strengths, Needs, and Services

An annual IEP meeting was held on February 3, 2023. The February 3, 2023 PWN indicated two changes to the student's IEP were made from the previous (2022) IEP: a decrease from daily swimming to twice a week swimming due to problems leaving the pool, and a change from eating in the cafeteria to eating in the autism classroom due to having difficulty with the noise and busy-ness of the cafeteria. The PWN did not list a change to the student's goals, BIP, or other services.

The student's strengths and needs included on the February 3, 2023 IEP are summarized and grouped by domains, as follows.

- In the health and physical needs area, the student was described as strong, enjoyed being active, could throw and catch balls. His seizure disorder required him to be closely monitored and he could communicate when having a seizure. He took

medication at school and home. His health plan noted that when having a seizure, the student may gag, cry, wet himself, or become aggressive.

- Occupational therapy described sensory tools that had been used over the years but were not currently being used. A weighted vest had been attempted and abandoned. The student liked using the paper shredder with consistent cues and strategies, and he required sensory walks to regulate him despite the focus on calm in the classroom.
- Social emotional strengths included interacting with preferred peers and adults and responding to structure, consistency, attention, and praise. Social emotional needs included being overwhelmed by unfamiliar people or settings or changes in routines, leading to aggression toward staff and peers and self injury. Unpreferred tasks led to dropping to the floor and refusing to transition to the activity, followed by aggression toward staff.
- General intelligence and cognitive performance showed that his intelligence testing has not been updated since 2018. The IEP stated that the student liked routine and structure, communicated through words, phrases, gestures, imitations and noises, recognized his first name in print, could name family and staff members, could sort, match and put functionally appropriate puzzles together. Cognitive needs included providing answers to questions to express his feelings, wants or needs or providing answers in conversation. Nor could the student adjust his behavior to different settings or unscheduled events or people. He required 1:1 assistance for daily living skills and did not understand personal safety.
- In reading, the student could recognize his first name and match letters to it, recognize family member names, recognize words in familiar social stories and follow social story steps. He was working on recognizing environmental signs and safety icons. The staff was developing social stories for his curriculum.
- In math, the student could: count to 10, recognize some shapes, match shapes, sort, match numbers, and respond to a few cues for time. The IEP stated that more math activities were being developed for his IEP. In functional and adaptive needs, the IEP stated he was capable of following his schedule to know what will come next but needed one to one assistance for toileting, hygiene, life skills, navigating through the building, and transitions.
- In communication, the IEP noted that the student could communicate in words and short phrases, communicate how he felt with the help of icons and prompts, and answer simple yes and no questions. "[The student] had difficulty adequately expressing his needs, wants, opinions and ideas. When he is not understood, he becomes frustrated which can lead to self-injurious behaviors and aggression toward staff."

The IEP added, in the impact of his exceptionality, that he was unable to participate in the general education curriculum, working several grade levels below peers in all areas, and that he followed a visual schedule through his day with support. The impact of disability reiterated that he preferred interaction with trusted adults, became overwhelmed by unfamiliar people,

demonstrated self injury and aggression toward staff, required a consistent schedule, could not be left unsupervised, and required 1:1 support for behavior, academic tasks, life skills, navigating the building, toileting, and transitions. Additionally, it stated that he would be transported home "when [the student's] aggressive behaviors become unsafe for himself, staff, and peers."

At the time of his February 3, 2023 IEP, the student was placed in the self-contained autism classroom and he did not participate in the general education curriculum or extended school year (ESY, no data on regression having been collected.

According to the February 3, 2024 IEP, the student received special transportation from home, 20 minutes round trip. The IEP included a behavior intervention plan (BIP) and a crisis plan for self injurious or aggressive behaviors, noting that he would be transported home if his behavior at school became unsafe. The special education and related services included: special education in the special education classroom, up to 416 minutes per day, special education support for lunch in the autism classroom, 1:1 para support for when the student is in school, twice weekly swimming with 1:1 support in the pool and 2:1 support for transition back to the classroom, consultative occupational therapy (OT) 10 minutes once a week, consultative speech language therapy 10 minutes once a week, adapted PE (APE) services 15 minutes once a week, nursing services 15 minutes once a week. The IEP stated he had no supplementary aids and services, and that the staff were to receive support for yearly seizure medication training, positive behavior supports (4-7 hours in-district), and for modified Willbarger brushing technique (45 minutes). His health plan described student specific seizure symptoms, non-urgent treatment care and emergency procedures, and it stated that the student was not to be unsupervised due to his seizure disorder.

The February 3, 2023 IEP's assistive technology section stated that the student used an IPAD and timers for a visual schedule and transitions throughout the day. Documents and interviews showed that the student did not use the IPAD as a communication device.

The February 3, 2023 IEP's transition assessment did not list specific transition instruments. Narrative information stated that the Post Secondary Interest Interview indicated that the student liked attention from preferred adults, responded to positive praise, and could communicate most of his wants and needs verbally and through gestures and icons. He would live at home with his parents. Narrative information for the Interest Interview and Parent Report stated he had strengths in sorting, classifying, puzzles, paper shredding, and knew the concept of "one more to be finished." To be successful in the workplace, the student would need to follow directions, work on self regulation, social, math, and functional reading skills. The Student Interview reported that he recognized his first name and matched the letters; recognized his address, birthday, phone number, some safety signs, some letter sounds, and some words in favorite books; could identify activities in his visual schedule; and could count to

10. His needs included to recognize more safety signs, work on cleaning up after himself when asked, and work on ending a preferred task to go to a less preferred one independently.

Desired post school outcomes were to live at home with his parents and spend time with his sister; the student would pursue on the job training and employment at an organization for adults with developmental needs. The course of study listed 20.25 completed credits of 26 needed to graduate. The IEP stated that he did not require transition services in "education/training, employment, independent/daily living, related services, or community services experiences that were not already provided through the general curriculum." The IEP stated that he required 1:1 assistance for completing academic tasks, navigating the school building, hygiene, daily living skills, bathroom needs, and transitions for behavioral support and assistance for staying on task.There were no transition goals.

The February 3, 2023 IEP stated that KRS was notified at the date of the IEP. The IEP stated "primary provider has reached out to the organization to verify" that the student is on the list for CDDO services.

The February 3, 2023 IEP stated that "it was anticipated that this student will graduate with a high school diploma" and listed his graduation date as May, 2024. The IEP also stated that the student would complete his educational program at the end of the school year when the student became 21 years of age. In an interview, the teacher stated she expected the student to attend school till he was 21 years old. In an interview, the parent reported that she made the decision recently to have the student graduate at 18 because he was not attending or benefiting from school. An interview with the special education instructional coach stated that discussion at the most recent IEP meeting on January 30, 2024 informed the parent that the student could "bank" his diploma to continue to attend school through the age of 21.

February 3, 2023 IEP Goals and Progress

The February 3, 2023 IEP goals and baselines for each goal are presented in the table below.

Goal	Baseline	Progress Reports
Goal 1: When given a verbal prompt and a model, the student will clean up his area after a snack or a meal 1 out of 4 opportunities.	Baseline: With a verbal prompt and a model, the student is cleaning up 1 out of 4 items in his area after a snack or a meal.	Goal 1 Progress Reports: March 6, 2023: "Yes" 1 of 4 opportunities May 1, 2023: "Yes" 1 of 4 opportunities October 10, 2023: "No" No opportunities December 11, 2023; "No" No opportunities

Goal	Baseline	Progress Reports
Goal 2: The student will be able to identify 15 out of 20 environmental/ safety icons by matching with verbal prompts.	Baseline: The student can identify 7 out of 15 environmental/safety icons by matching with verbal prompts	Goal 2 Progress Reports: March 6, 2023: "Yes" 8/20 icons with verbal prompts May 1, 2023: "Yes" 9/20 icons with verbal prompts October 10, 2023: "No" No opportunities December 11, 2023: "Yes" 9/20 icons with verbal prompts
Goal 3: The student will complete the transition from pool to the classroom with 2:1 assistance without dropping/refusal, 4 out of 5 opportunities.	Baseline: "Previously the student was transitioning from the pool with 1:1 support, Due to unsafe/aggressive behaviors, 2:1 support is currently needed. Currently the student is transitioning from the pool to the classroom with 2:1 support 1 out of 4 opportunities.	Goal 3 Progress Reports March 6, 2023: "Yes" 1/5 opportunities May 1, 2023: "Yes" 0/5 opportunities October 10, 2023: "Yes" 2/5 opportunities December 11, 2023: "Yes" 2/5 opportunities
Goal 4: APE: The student will demonstrate an average of 65% for locomotor and object control skills.	Baseline: Currently the student is demonstrating 60% for locomotor and object control skills.	Goal 4 Progress Reports April 14, 2023: "Yes" at 62% October 15, 2023: "Yes" at 63% December 15, 2023: "Yes" at 64% January 30, 2024: "Yes" at 65%

In an interview, the APE teacher reported that he had a good relationship with the student and that the progress measures were estimates based on participation.

June 26, 2023 IEP Amendment, Goal and Progress

The parent reported that she filed and subsequently withdrew a formal complaint in June, 2023. The district reported that the team met in June, 2023. An IEP amendment dated June 26, 2023 with parent signature on the same date added Goal 5 to the IEP: "By the end of the annual IEP cycle, the student will attend school for an average of ½ day, each school day." Additional paraeducator support was added to the classroom, and the para was to be experienced working with students with high needs. The amendment stated: "At a future date, a goal for speech/language will be added. Speech services will be in person with an SLP who used to work with the student and has a good relationship with him."

The PWN for other changes to the IEP not involving services or placement dated June 26, 2023 stated the same changes as listed above. The PWN stated the changes were in response to the parent's concern about the length of time the student is staying at school, and that the school staff wanted to support him to do so. The PWN did not list changes to the student's BIP, length of school day, or other services. The parent signed giving consent on the same day.

The speech language therapist reported in an interview that the student's behavior in or prior to her evaluation prevented adding direct service to the student's daily schedule as indicated in the June 26, 2023 amendment. She continued to provide the consultation services to the teacher during the fall, 2023 semester.

The IEP Progress Report for Goal 5 reported two benchmarks: October 10, 2023 with "no" progress, stating that the student was attending school till 9:22 a.m. on average, and December 12, 2023 with "yes" progress rating, stating that the student was attending school till 9:29 a.m.

Behavior Intervention Plan Summary and TASN Consultation for February 3, 2023 IEP

According to the February 3, 2023 IEP, the student's BIP stated that his target behavior was "spitting, slapping, punching, kicking, and dropping to the floor" and his replacement behavior was self-regulation and impulse control. The baseline stated that the student exhibited aggression toward staff when frustrated, overwhelmed, during transitions and when avoiding non preferred tasks. The BIP listed seven instructional methods for instruction (anger management, decision making, direct instruction, modeling, providing cues, social skills training, and stress management); nine for prevention (avoid physical contact, provide clear directions, frequent breaks, reminders/prompts, assignment modifications, predictable routine/schedule, structured environment, review rules/expectations, and provide independent area or space); and seven for intervention (redirect, provide prompts/cues, repeat expectations, use visuals, offer a break, give physical space and other).

The step by step directions in the student's BIP directed staff to, upon a refusal or spit, ask "is [student] ready?" and present the ready icon; if the student again refused, say "[student] is not ready" and present the not ready icon and withhold attention for two minutes. After this, the staff were directed to have the student check his visual schedule and start the process again, repeating as necessary. The step by step directions were the same for aggression toward staff, with the addition for staff to rotate, stay a safe distance, and transport the student home if he became unsafe. Instructional method consequences were verbal praise and offer breaks, or alternatively to withhold attention for misbehavior and to transport home for unsafe behavior. Behavior was to be charted weekly.

Document review showed the behavior graphed from August 23, 2023 to October 18, 2023 and narrative behavior summaries through February 15, 2024 when the district submitted evidence for the complaint.

The district reported ongoing TASN consultation on the student's program. The district and TASN consultant agreed that consultation began on or shortly before May 2, 2023 and that TASN gave recommendations for the school team on May 2, 2023. At that time, TASN reported that they suggested that the district revise the BIP with the district's school psychologist. Document review showed no changes to the student's BIP at that time. TASN and the district

agreed that TASN observed the student in August, September, and October of 2023 and that TASN consultants made suggestions. TASN and the district agree that the student began to get off the bus and come into the building more reliably during the fall of 2023.

The district reported that the parent and TASN received the student's daily behavior data. The parent reported that she compared her observation of when the student got on the bus to the written data and she believed the narrative data added negative emphasis to the student's actions. TASN reported that they reviewed the data before visiting on site and answered the teacher's questions between or after their consultation visits. TASN reported that they did not author the student's BIP and their role is to make suggestions to the IEP team and provide training to staff, if the district accepted it. TASN reported that the district took some but not all of their suggestions regarding the student's behavior and instructional plan during their consultation period (May, 2023 through October, 2023).

The parent reported that all previous discipline progress the student made in school had been lost during the past 4 years. The district reported that the progress to get the student to get off the school bus and into the building and to add 7 minutes to the student's school day was substantial because of the student's extremely aggressive behavior. Document review showed that the student's target times for attendance were adjusted (a) on November 14, 2023 from 9:26 a.m. to 9:27 a.m., (b) on November 27, 2023 to 9:28 a.m., and on December 1, 2023 to 9:29 a.m.

When asked if the target time determined when the student went home from school, the teacher said no, the student always went home due to unsafe behavior.

The highschool bell schedule stated that the school day started at 7:55 a.m. and ended at 3:21 p.m. The highschool bell schedule showed that the high school used four 90-minute blocks per day with 5 minute passing periods, plus a daily 35 minute advisory period in this pattern: Block 1, Advisory, Block 2, Block 3, Block 4. A review of the student's attendance record for the twelve months before the complaint was filed showed the following absences by period, 57 partial days and 8 total days.

No. of Periods Absent	Total	Dates
5 (full day)	8	February 8, 14*, 20, 24; April 5, 18*, 24*; May 16
3 blocks +advisory	9	March 20, 29; April 3, 5, 19; May 1, 2, 15, 16
3 blocks	13	February 3, 13; March 10, 22, 24, 27; April 4, 17, 21; May 10, 11, 12, 17
2 blocks	27	February 1, 2, 7, 10, 15, 21, 23, 27; March 2, 3, 6, 7, 8, 9, 21, 30, 31; April 11, 14, 20, 25, 26; May 3, 4, 5*, 8, 9
1	8	February 6, 9, 22, 28; March 23; April 12, 13, 27

*Text messages from the parent showed that the student was sent home due to seizures on May 5, 2023.

*The parent reported and provided text evidence showing that she was asked to keep the student home due to staff absences on the following dates: February 14, 2023; April 18, 2023; April 24, 2023. The total of early dismissals due to behavior problems is 56 partial days and the total number of days confirmed as district request to have the student stay home is three for the period from February 1 through May 16, 2023.

Annual IEP January 30, 2024

An IEP meeting was held on January 30, 2024, which updated the student's IEP. No new assessments were listed. The strengths and needs were similar to those in the prior IEP, with some additions, as follows:

- In the health and physical needs area, the January 30, 2024 IEP added that he was incredibly strong and staff precautions should be taken when he acted aggressively.
- In occupational therapy, the January 30, 2024 IEP added that his needs were more behavioral than sensory.
- Social emotional needs were unchanged in the January 30, 2024 IEP.
- General intelligence and cognitive performance unchanged in January 30, 2024 IEP.
- In reading, the IEP added that the student could follow steps in social stories and identify activities on his visual schedule that he used during the day. He required one to one assistance for reading tasks and could sort envelopes with familiar names on them.
- In math, the IEP added that he enjoyed puzzles and new puzzles were being added to his curriculum and that he could understand concepts of time as it related to his schedule.
- In functional and adaptive needs, the IEP added that he could eat and drink independently but continued to need extensive support for academic tasks, toileting, hygiene, life skills, navigating through the building, transitions and getting out of the pool. His aggressive behaviors continued.
- In communication, the January 30, 2024 IEP added that the student repeated requests to go home and became aggressive if staff did not comply.
- The impact of the student's disability statement is unchanged on the January 30, 2024 IEP.

When asked if new assessments had been conducted in order to develop goals for the new IEP, the teacher replied that only classroom data had been collected. The IEP retained similar goals to the prior IEP, which are presented in the following table along with the baselines. No quarterly progress had yet been recorded, and no benchmarks were listed on the IEP.

Goal	Baseline
Goal 1: When given a verbal prompt, the student will clean up his area before moving to another area 4 out of 4 opportunities.	Baseline: Currently with a verbal prompt and a model, the student is cleaning up 0 out of 4 items in his area.

Goal	Baseline
Goal 2: The student will be able to identify 15 out of 20 environmental/ safety icons by recognition with verbal prompts.	Baseline: The student can identify 9 out of 20 environmental/safety icons by recognition with verbal prompts.
Goal 3: The student will complete the transition from pool to the classroom with 2:1 assistance without dropping/refusal, 4 out of 5 opportunities.	Baseline Currently the student is transitioning from the pool to the classroom with 2:1 support, 2 out of 4 opportunities.
Goal 4: The student will attend school for and average of ½ day (12:00 p.m.) each school day	Baseline: The student's target time is 9:29 a.m. The student's day has been elongated by 7 minutes.
Goal 5: The student will demonstrate an average of 70% for locomotor and object control skills.	Baseline: Currently the student is demonstrating 65% for locomotor and object control skills.

The January 30, 2024 IEP retained the special education and related services from the prior IEP, with a few changes noted in the following list of services: special education in the special education classroom *up to 240 minutes per day (reduced from "up to 418" minutes on the prior IEP)*, consultative occupational therapy (OT) 10 minutes once a week, consultative speech language therapy 10 minutes once a week, adapted PE (APE) services 15 minutes once a week, nursing services 15 minutes once a week, and special education support for lunch in the autism classroom. One to one para support for when the student is in school was *removed* as a service. Twice weekly swimming with 1:1 support in the pool and 2:1 support for transition back to the classroom was *removed* as a service although the goal was retained. Support for personnel remained similar to the prior year, with the following yearly training; unspecified medical training (1 hour), BIP implementation (1 hour), Positive Behavior Supports (4-7 hours), and IPAD/timer training (1 hour).

The January 30, 2024 BIP stated the behavior of concern was "aggression toward staff including spitting, slapping, punching, shoving, kicking, charging at them, and dropping to the floor. Self injurious behaviors including slapping and punching himself in the face." The baseline stated he struggled with transitions, unfamiliar activities or persons, and schedule changes; he exhibited aggression toward staff, and he repeatedly asked to go home, becoming upset if staff did not comply. The replacement behavior was to complete transitions and tasks without aggression or self injury, along with self regulation and impulse control. The instructional methods for instruction, prevention intervention and consequences remained the same as for the prior BIP. Added descriptions of methods were: (a) for instruction, to model calming breathing techniques and to offer breaks at any sign of aggression, (b) for prevention, to recognize when the student needs a break and present an icon and verbal prompt at first sign of distress, along with calming breathing and modified workspace, (c) for intervention the same "ready/not ready" steps described previously, (d) and for consequences, celebrations for

completed activities, offered breaks, and IPAD reinforcement activities, or alternatively, to not be given attention and to transport home if unsafe.

The transition plan added no new assessments or changes to his performance. The desired post school outcomes were updated to specify "sorting or shredding" training and employment in an organization for adults with developmental needs. The transition plan listed no services and that the student had been referred to KRS the previous year.

The PWN dated January 30, 2024 stated that changes to the IEP included a material (more than 25%) change of service which required parental consent. The January 30, 2024 PWN listed the following changes to the student's IEP: adjusted direct service times, updating the student's goals, add TASN collaboration [to the direct special education services], remove the Modified Willbarger Brushing Technique, update the student's health plan because he no longer receives medication at school, and to adjust the student's services to eliminate swimming.

The district and the parent agreed that the district has pursued the possibility of out-of-district placement, exchanging information with the special therapeutic day and residential school after acquiring parental permission in February, 2024.

Conclusion

In this case, the parent claimed that the student is not making progress in school and that the district has not written new goals or effective plans leading to progress for an extended period of time. The district has responded by citing incremental goal progress, highlighting the safety concerns the student's aggression causes to staff and the student himself.

The evidence cited above shows that the district failed to create and implement an effective instructional program for the student in a number of ways, described in the next paragraphs.

It is noted that the district sought outside assistance through a TASN consultation. It is noted that the student exhibited chronic challenging behavior and severe disabilities and that the district has sought special school placement.

During the 2022-23 school year, despite evidence that the student was routinely being dismissed from school early due to his problem behavior, the district did not ask for an IEP meeting as required by 34 C.F.R. 320.324 (b)(1)(ii)(A) until the parent filed a formal complaint in June, 2023. At that time, an amendment added a fifth IEP goal that the student would attend school half time and receive direct speech language services at some time in the future. The full IEP team did not meet then, nor at the beginning of the subsequent school year. The June 26, 2023 PWN did not change the number of service minutes to correspond to the half day goal, and it did not change the BIP or other services that might lead to more successful achievement of the half day attendance or other IEP goals. Further, the PWN promised future direct speech language services that did not occur at any time.

The student's February 3, 2023 IEP stated that the impact of his disability meant that, in addition to his behavioral challenges, the student could not be unsupervised, and required one to one support for behavior, academic tasks, life skills, navigating the building, toileting, hygiene, and transitions. At the time written, this IEP included 4 goals which, if achieved, would have resulted in the student learning to match 7 of 15 environmental icons or safety signs, clean up 1 of 4 items from his snack area, improve 5% in his locomotor skills, and get out of the pool 4 out of 5 times with 2 person support.

Comparison of the goals in the 2023 and 2024 IEP shows minor wording changes in the goals and infinitesimal progress toward achieving the annual goals. Baseline performance from the 2023 to 2024 IEPs showed decreased performance on one goal and an increased amount of support in another from the 2022 levels. Growth in the APE goal at one percent per quarter was called a participation estimation by the teacher. Growth in recognizing environmental signs was from matching 7 of 15 with verbal prompts to recognizing 9 of 20 signs with verbal prompts. Looking to the previous year's goals, the February PWN indicated that there were no changes to the student's IEP goals at the time of the February 3, 2023 IEP, indicating that the goals were the same for the prior IEP in 2022.

At the same time, services were decreased on the 2024 IEP. The decreased amount of time in school acknowledged the extant failure of the special education program to predictably provide a full instructional day. The reduction of the one to one paraeducator support occurs on the same IEP that enumerates the need for one to one supervision in every aspect of the student's maintenance and education. The annual goal to get out of the pool could not be achieved when the PWN removed swimming from the student's program.

Neither the 2023 or 2024 IEP provided transition goals or services as required by 34 C.F.R 300.320(b). The expected outcomes for the student were to live at home and to receive adult services in an adult service center.

The student's school attendance report for the past twelve months, across two school years, showed a pattern to use of the BIP to remove the student from school and thus, from educational opportunity and services. It is noted that the student exhibited chronic and difficult behavior management problems for the school staff. However, neither the student's behavior nor his school attendance was improved as a result of the student's placement in the autism classroom, his IEP and BIP, or other behavior techniques utilized by the district's staff. The crisis plan operated as the standard removal of the student from special education services needed for the student to make educational progress. As the parent claimed, the student's time at school decreased from the 2022-23 to the 2023-24 school year.

In summary, the district had evidence during the past twelve months that the student's BIP was not effective and that the student's IEP annual goals were not being met. It is found that the district did not meet its responsibility to convene the IEP team to address the lack of progress as required by 34 C.F.R. 320.324 (b)(1)(ii)(A). It is found that the district did not create

meaningful goals to address the numerous student needs or appreciably change the goals from year to year in light of the failed instructional approach, and it is found that the district did not provide services appropriate to the student's disability, strengths and needs over the past twelve months as required by 34 C.F.R 300.320 (a)(4)(i), K.S.A 72-3429(c)(4), 34 C.F.R. 300.324(a)(1) and (2)(i) and K.S.A. 72-3429 (d). It is found that the extent of these violations resulted in deprivation of educational benefit and rise to the level of the denial of FAPE to the student (34 C.F.R. 300.513(a)(2)(iii).

Based on the foregoing, ***it is substantiated*** that USD #470, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP for the student that was reasonably calculated to enable the student to make progress, specifically to promote school attendance and achievement of annual IEP goals.

Issue Two

The USD #470, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a full day of school for the student.

Applicable Law

Free appropriate public education 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). Federal regulations 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. 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, those who graduate with a high school diploma are no longer eligible for services at that point (K.A.R. 91-40-2(f)).

The Kansas special education statutes (K.S.A. 72-3403 to-3439) require parents to see that their child with a disability attends school so that their child can receive the special education and related services on the child's IEP. This means that for a child with a disability who has an IEP compulsory attendance may begin as early as age 3 (K.S.A. 72-3421) and continues through high school graduation or when the student ages out of special education.

The IEP Team of a child with a disability has authority to reduce the school day of the child when that is necessary in order to provide a free appropriate public education, see, Sierra Vista (AZ) Unified School District, 54 IDELR 35 (0CR 2009), That was a case where the Office for Civil Rights (OCR) said shorting the school day of a child with a disability administratively, instead of

using a decision by an IEP team, was improper because it was not made on an individual basis with regard to whether the shortened school day was appropriate for the student with a disability. The message from OCR in this case was that when an IEP team determines, on individual basis, that a shortened school day is appropriate for a student, the IEP team may change the IEP to specify the extent to which the school day will be shortened. In Kansas, even if an IEP team makes such a decision it must also obtain written parental consent if the shortened school day constitutes a material change in services. In this complaint, the decision to shorten the school day of this student was not made by the IEP team at an IEP meeting and no parent consent was obtained for what constituted a material change in services. Accordingly, shortening the school day of this student, based on the student's behavior, must be viewed through the authority of the school district to remove a student for disciplinary reasons.

School officials have the authority to remove students with disabilities from school for code of conduct violations and to determine if a disciplinary change of placement has occurred. Children with disabilities can be removed for short term suspensions for up to 10 days in a school year, or more if the behavior is not determined to be a manifestation of the child's disability (34 C.F.R. 300.530 (c)) or a disciplinary change of placement (34 C.F.R. 300.530(b)(1)).

At the 11th day and every day of suspension after that in a school year, special education and related services that are needed to enable the child participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP must be provided (34 C.F.R. 300.530(b)(2)). Additionally, school officials must determine if a pattern has developed by considering whether a disciplinary change of placement has occurred. To determine if a disciplinary change of placement occurred, school officials examine whether the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals and other factors such as: the length of each removal; the total amount of time the child has been removed; the proximity of the removals to one another; and any other unique circumstances on a case-by-case basis (34 C.F.R. 300.536(a) and (b); K.A.R. 91-40-33).

The *Kansas Special Education Process Handbook* includes a flow chart that states when a removal that cumulates to more than 10 school days, and shows a pattern of removal constituting a change of placement (34 C.F.R. 300.536(a)(1)(2) and 34 C.F.R 300.530(c)), an IEP meeting is required to (1) make a manifestation determination (Notice of action and Parent Rights immediately, and meeting within 10 school days. 34 C.F.R. 300.530(e), (h); and (2) If the behavior is a manifestation of the disability, (a) develop a FBA and BIP, or review existing BIP, and make any changes needed to address behavior (34 C.F.R. 300.530(f)).

Federal/state statutes and regulations at 34 C.F.R 300.11(c) and K.A.R. 91-40-1(eee) state that a school day under IDEA means any day, including a partial day, that children are in attendance at school for instructional purposes. School day has the same meaning for all children in

school, including children with and without disabilities. Given this definition, if a child is suspended for part of a school day, the partial day counts as a full day for purposes of determining if a change of placement has occurred, or if educational services are required during the period of suspension. Early dismissals for behavioral violations of the code of conduct are partial days of attendance.

Analysis: Findings of Fact

The parent alleged that the school was keeping the student at school for shorter and shorter periods of time. The parent alleged that last year, the student had been at school till about 11:00 or 11:30 and currently it was till 9:00 or 9:30, with school beginning at 8 a.m. The parent alleged that the district had promised to do better in June, 2023 but that no progress had been made despite those promises.

The district responded that the district had attempted to and made progress toward providing a full day of school for the student as seen in Goal 5 of his IEP. The district further stated that the student had significant behavior problems getting off the school bus and getting into the school building. "During the prior school year (i.e., the 22.23 school year), [the student] refused to get off of the USD 470 vehicle. This refusal to get off the vehicle and into the building lasted up to three hours in length. During this refusal, [the student] spit, shoved, slapped, and threw objects at school personnel (i.e., teachers, para educators, driver) who were attempting to assist in getting him off of the vehicle and into the building. Consultants from KSDE TASN were brought in to assist and to provide guidance and recommendations. The refusal to get off the vehicle and into the building was never resolved. School personnel dealt with this situation on a regular basis." The district responded that these problems continued into the 2023-24 school year. The district responded that the student's aggressive behavior was also evident after he entered the classroom and referred to the student's daily observational behavior report as evidence.

The district responded that the parent had withdrawn a formal complaint filed in June, 2023 based on the district's meeting with her to write a new goal for the student to stay at school for half of the school day. The district responded that the student had been aggressive on the school bus toward a peer, necessitating a special bussing arrangement. The district responded that on January 31, 2024, the student had injured the teacher requiring medical care and time away from the classroom as a result of the injury.

Finally, the district responded that at the beginning of the 2023-24 school year, and again at the time of the complaint, the district had approached a therapeutic residential and day school provider for student placement. The district reported that the day school provider had agreed to accept the student's application for review in February, 2024.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #470.

The findings of Issue One are incorporated herein by reference.

When asked for the disciplinary record of the student, the district reported that due to the child's disability, the district replied that the student had not been referred to the school administration for disciplinary purposes: "Based on his developmental needs, we never felt it to be appropriate to use the same disciplinary procedures with him as we would with other students, rather a behavior support plan was developed and put into place within his IEP."

Interviews of district staff and the parent confirmed that the student did not receive services in the home.

The student's observational data showed daily reports of target behaviors identified in the student's BIP. Documentation that the staff implemented the step by step procedure was at times included. An example of this documentation is: "Staff followed [student's] BIP with the 3 minute timer and withholding attention during refusal. Reminding him with his visual schedule and verbally when the time went off that it was time for Shredding."

The student observational data report showed three full days of school (August 17, August 18, and August 23, 2023) and the following 89 days of early dismissal times due to student behavior during the 2023-24 school year.

Date	Time	Date	Time	Date	Time	Date	Time	Date	Time	Date	Time
8.21*	1:22	9.19	9:53	10.12	9:20	11.7	9:28	12.5	9:29	1.18	9:29
8.23	9:46	9.20	9:38	10.13	9:31	11.8	8:40	12.6	8:45	1.19	9:19
8:24	1:59	9.21	9:13	10.16	9:13	11.9	9:26	12.7	9:29	1.23	9:27
8.30	11:35	9.22	10:00	10.17	9:08	11.13	9:27	12.8	9:29	1.24	9:29
8.31	10:57	9.25	9:09	10.18	9:15	11.14	9:27	12.11	8:58	1.25	9.29
9.05	9:38	9.26	10:14	10.19	10.00	11.15	9:01	12.12	9.29	1.26	9:04
9.06	8:39	9.27	9:02	10.20	9:21	11.16	9.27	12.13	9:18	1.29	9:07
9.07	9:42	9.28	9:36	10.23	9:45	11.17	8:33	12:14	9:29	1.30	9:29
9.08	8:40	9.29	8:36	10.24	9:34	11.20	9:27	12:15	8:40	1.31	9:05
9.11	9:16	10.2	9:14	10.25	8:43	11.21	9:27	1.04	9:24	2.08	9:00
9.12	9:40	10.3	9:16	10.30	8:55	11.27	9.27	1.08	9:29	2.09	8:55
9.13	9:17	10.4	9:16	11:1	9:12	11.28	9:30	1.10	8:43	2.13	9:02
9.14	9:18	10.9	9:00	11.2	9:26	11.29	9:28	1.11	9:22	2.14	8:08
9.15	9:26	10.10	9:07	11.3	8:58	12.1	9:28	1.12	8:47	2.15	9:19
9.18	8:59	10.11	9:30	11.6	9:01	12.4	9:29	1.17	9:10		

*due to staff appointment.

Interview data showed that the student had an independent bus route due to his problem behavior related to the bus. The student absence report cross referenced with daily observational data showed absences on three days (August 25, 27 and 28) due to "transition

safety concerns" and "safety meeting" following an incident of aggression toward a peer on the bus.

The parent reported and provided text evidence showing that she was asked to keep the student home due to staff absences on the following dates: February 14, 2023; April 18, 2023; April 24, 2023; October 31, 2023; November 30, 2023; and January 5, 2024. Teacher absence data cross referenced with the teacher absence report showed a common date on February 14, 2023. October 31, 2023, November 30, 2023, January 5, 2024 and February 12, 2024 were listed as absences due to staff shortage in the student's observational data report. Text evidence and student observational data report showed an early dismissal due to a teacher appointment on August 21, 2023 at 1:22 p.m. In total, one partial and seven full days can be documented as additional missed days due to staffing issues from these sources.

The district acknowledged that the parent was asked to keep the student home from school following a staff injury and the subsequent arrangement for a substitute on February 1, 2, 5, 6, and 7, 2024, for five additional days of absence due to staffing issues. In its response to the complaint, the district reported that services resumed for the student on February 8, 2024.

In total, 15 full days and one early dismissal can be documented as missed due to administrative or staffing reasons during the past twelve months.

Conclusion

In summary, that the student did not regularly attend school for a full day during the past twelve months is without dispute. The district provided ample evidence that the student's aggression toward staff, self injury and refusals by dropping to the ground are frequent occurrences in the school and transportation settings, and that these behavior problems have proven unworkable for staff to manage using the existing behavioral intervention measures, even with the use of consultation services from recognized statewide providers. The district reported that these aggressive and other behaviors required them to remove the student from school because his behavior became unsafe for staff or for himself, and removal was written into the student's IEP through his BIP.

However, KSDE has advised districts that "IEP teams should take caution when including a removal from school as part of a BIP. If a child is removed from school without educational services this would be counted as a day of suspension" (p.208, Kansas Special Education Process Handbook). Therefore, it is found that the district has used repeated short term suspensions by early dismissal cumulating to 56 days in the 2023-24 school year and 89 days during the 2023-24 school year, to the date the case evidence was submitted. Of these 145 days, the district is permitted to use 10 per school year as short term suspensions.

Due to the number of days involved in the short term suspensions, the district had an obligation to provide services for the student on the 11th day (34 C.F.R..300.530(b)(2)) and to determine if a disciplinary change of placement had occurred (34 C.F.R. 300.536(a) and (b);

K.A.R. 91-40-33). It is noted that KSDE also advises districts to consider conducting an FBA before reaching the 11th day of short term suspensions and that in this case, despite the extensive documentation of serious behavior problems involving injury to self and others, the district did not conduct an FBA to guide the student's BIP.

Additionally, it is found that the district failed to implement the student's IEP for staffing or administrative reasons for 15 days during the past 12 months, when it asked the parent to keep the child home on a regular school day. In total, the student's IEP services were not implemented for 125 partial days and 15 full days, in violation of federal regulations at 34 C.F.R. 300.323(c)(2) which require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

Further, it is found that the extent of these violations resulted in deprivation of educational benefit and rise to the level of the denial of FAPE to the student (34 C.F.R. 300.513(a)(2)(iii)).

Based on the foregoing, ***it is substantiated*** that USD #470, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a full day of school for the student.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: Violations of 34 C.F.R 300.320 (a)(4)(i), K.S.A 72-3429(c)(4), 34 C.F.R. 300.324(a)(1) and (2)(i), K.S.A. 72-3429 (d) and 34 C.F.R 300.320(b) were found, based on the facts listed above. Corrective action is required (as follows):
    a. CORRECTIVE ACTION:
        i. Within 20 days of this report, USD #470 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with:
            1. Federal and state regulations at 34 C.F.R 300.320 (a)(4)(i) and KSA 72-3429(c)(4) which require that the IEP include special education and related services based on peer reviewed research to the extent practical be provided to the child and a statement of program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals;
            2. Federal and state statutes and regulations at 34 C.F.R. 300.324(a)(1) and (2)(i) and K.S.A. 72-3429(d) which require that when developing the child's IEP, the IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of the child, the results of the initial or most recent evaluation, and the academic, developmental and functional needs of the child; and

3. Federal regulations at 34 C.F.R.300.320(b) which require that IEPs include appropriate measurable post secondary goals based on age appropriate transition assessments and transition services needed to assist the child in reaching the goals.

ii. Within 20 calendar days of the date of this Investigation Report, the district must reconvene the Student's IEP Team and ensure that a full and complete review of the student's education program is conducted, to include conducting new and varied assessments of the student's academic, functional, and transition needs if required to determine new goals, special education instruction, accommodations, and related services. The IEP team shall reconsider and clarify the student's transition goals, services, and plan needed to promote increased post secondary outcomes. The IEP team shall reconsider the student's placement, as the district has demonstrated that this placement cannot provide education for this child as it currently provides curriculum, instruction, and behavior support, to include consideration of an out of district placement if needed.

iii. Within 20 calendar days, concurrently with a(ii), the district will contract with a KSDE approved specialist in adolescent severe disabilities curriculum and instruction, communication, sensory disorders, and positive behavior support to inform the activities in a(ii). The district will allow the specialist access to the student as necessary to provide effective consultation.

iv. Within 40 days of the date of this report, the district must provide a report to KSDE that describes its completion of these activities and ensures the implementation of an IEP that is reasonably calculated to provide educational benefit to the child.

v. Dates due: (i) and (ii) March 28, 2024; (iii) April 17, 2024.

2. ISSUE TWO: Violations of 34 C.F.R. 300.323(c)(2), 34 C.F.R..300.530(b)(2), (34 C.F.R. 300.536(a) and (b) were found, based on the facts enumerated above. Corrective action is required (as follows):

a. CORRECTIVE ACTION:

i. Within 20 days of this report, USD #470 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with

1. Federal regulations at 34 C.F.R 300.323(c)(2) which require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP;

2. Federal regulations at (34 C.F.R..300.530(b)(2)), which require districts to provide services to the student on the 11th day of cumulative short term suspensions
3. Federal and state regulations at 34 C.F.R. 300.536(a) and (b); K.A.R. 91-40-33) which require districts to determine if a disciplinary change of placement occurred.

ii. The district shall immediately, within 20 days of the date of this report, take steps to ensure that the special education and related services in the student's IEP are provided to the student.

iii. The district shall immediately, within 30 days of the date of this report, calculate the days of missed special education to date and offer compensatory education to the parent, who may accept none, some, or all of the offered services. The district shall provide a copy of the offer to SETS as evidence of its completion. The offer shall be no less than 39,683 minutes based on the student dismissal data and student absence reports calculated in the following ways.

1. For the 46 partial day absences occurring after the first 10 partial day absences in the 2022-23 school year, using the student absence report: 6 absences for one 90 minute period; 20 absences for 2 periods plus a passing period between; 11 absences for 3 periods and two passing periods; 9 absences for 3 periods, advisory, and three passing periods. Total: 10,209 minutes.
2. For 79 partial day absences occurring after the first 10 partial day absences in the 2023-24 school year, the number of minutes provided to the student, as documented by the early dismissal time when the student went to the bus, was subtracted from 446 minutes (bell to bell minutes in the school day) and then summed. Total: 22,784 minutes.
3. For 15 days administratively directed absences (15 days at 446 minutes). Total 6,690 minutes.

iv. The parent shall have 15 days to accept none, some, or all of the compensatory education offer. The district will provide PWN to the parents resulting from the parents' response to the compensatory education offer. The district shall submit the PWN to SETS as evidence of its completion 50 days after the date of this report.

v. Dates due: (a)(i and ii) March 28, 2024; (iii) April 8, 2024; (iv) April 27, 2024.

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).

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 #231
ON FEBRUARY 2, 2024

DATE OF REPORT MARCH 12, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of --------- by his stepmother, ---------. In the remainder of the report, --------- will be referred to as "the student." --------- will be referred to as "the complainant" or "the mother." ---------'s father is --------- and, in the report, will be referred to as "the father." ---------'s stepfather is --------- and, in the report, will be referred to as "the stepfather."

The complaint is against USD #231, Gardner Public Schools. In the remainder of the report, USD #231 will be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on February 2, 2024, and the 30-day timeline ends on March 2, 2024. Due to the complaint investigator's illness an extension was granted through March 12, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham interviewed the complainant on February 5, 2024 and again on March 4, 2024. Additionally, the complaint investigator interviewed the executive director of special education and the special education coordinator on March 5, 2024. She reviewed all evidence and documentation which was provided by both the district and the complainant. The following documentation and information were used in consideration of the issue(s):

Parent evidence

1. Parent notes of communications with school dated between August 16, 2023 and February 6, 2024.
2. IEP dated September 27, 2023.
3. List of accommodations requested for dates September 30, 2023 through May 24, 2024.
4. Email among case manager, mother, and special education coordinator between October 2, 2023 at 1:26 p.m. and October 3, 2023 at 9:21 a.m.
5. Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated October 6, 2023.

6. Email between case manager and mother between October 9, 2023 at 2:03 p.m. and October 10, 2023 at 10:48 a.m.
7. Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated October 10, 2023.
8. Text of email sent to school regarding seeing changes in student dated October 17, 2023.
9. Notice of Meeting dated October 19, 2023 for October 27, 2023 meeting.
10. Email between case manager and mother between October 20, 2023 at 1:26 p.m. and 2:41p.m.
11. IEP Meeting – Review Concerns regarding Services and Previously Proposed IEP dated October 27, 2023 and meeting notes.
12. Parent notes dated December 7, 2023, January 25, 2024, January 29, 2024, and February 6, 2024.
13. Course progress for English Language Arts, Mathematics, Science and Social Studies, accessed on February 5, 2024
14. Screen shot of narrative from Psychological Report, undated.
15. Service Summary, undated.

District evidence

1. Progress Report dated March 7, 2023 and September 22, 2023.
2. Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated May 18, 2023 signed by mother on May 18, 2023
3. IEP Team Meeting Notes for May 18, 2023 meeting.
4. Teacher notes, Behavior Data/Home-School Communication and Target Behavior Sheets related to behavior IEP goals dated between August 23, 2023 through February 6, 2024.
5. IEP dated September 26, 2023 including meeting notes.
6. IEP dated October 6, 2022
7. Teacher notes dated October 16, 2023 through December 12, 2023 regarding attendance.
8. Email from mother to principal dated October 17, 2023 at 6:03 p.m.
9. Email from executive director of special education to mother dated October 18, 2023 at 7:05 a.m.
10. Email between mother and executive director of special education dated October 19, 2023 between 1:44 p.m. and 2:02 p.m.
11. Email from mother to executive director of special education dated October 20, 2023 at 1:52 p.m.
12. IEP Meeting – Review Concerns regarding Services and Previously Proposed IEP dated October 27, 2023 and meeting notes.

13. Email among special education coordinator to mother, stepfather and father dated November 17, 2023 between 11:21 a.m. and 11:55 a.m.
14. Email from principal to executive director of secondary education and special education coordinator dated November 21, 2023 at 12:41 p.m.
15. Email from executive director of special education to special education coordinator, stepfather, school psychologist, special education teacher, father, mother, and behavior specialist dated November 21, 2023 at 3:49 p.m.
16. Email from stepfather to executive director of special education dated November 27, 2023 at 11:05 a.m.
17. Email between 8th grade math teacher and mother dated November 28, 2023 at 5:06 p.m. and 5:26 p.m.
18. Incident Details report including dates of November 30, 2023, 8:59 a.m., 1:02 p.m.; December 7, 2023, 9:05 a.m.; January 25, 2024, 1:05 p.m.; January 29, 2024, 11:13 a.m.; February 6, 2024 at 10:00 a.m.
19. Evaluation Team Report dated December 6, 2023 with Reevaluation Report
20. Audio recording of December 6, 2023 IEP meeting
21. Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated December 6, 2023 signed by parent on December 6, 2023
22. Email among the executive director of secondary education to behavior specialist, executive director of special education, special education coordinator, and special education teacher dated December 11, 2023 between 10:01 a.m. through 11:53 a.m.
23. Email from principal to case manager dated December 12, 2023 at 8:48 a.m.
24. Email between principal to executive director of special education dated December 12, 2023 between 8:48 a.m. and 8:55 a.m.
25. Email from stepfather to principal dated December 13, 2023 at 7:46 p.m.
26. Email from principal to executive director of special education, case manager, special education coordinator and assistant principal dated December 14, 2023 at 7:39 a.m.
27. Email between stepfather and principal dated between January 2, 2024 at 7:07 p.m. in response to email sent on December 13, 2024 at 7:46 p.m. through January 3, 2023 at 7:38 a.m.
28. Emails among special education coordinator, executive director of special education, assistant principal and principal dated between January 2, 2024 at 8:20 p.m. and January 3, 2024 at 7:16 a.m.
29. Email from special education coordinator to parents dated January 3, 2024 at 3:42 p.m.
30. Email from principal to special education coordinator and executive director of secondary education dated January 4, 2024 at 9:14 a.m.
31. Email from principal to special education coordinator, executive director of secondary education and special education teacher dated January 4, 2024 at 11:30 a.m.

32. Email from principal to special education coordinator, executive director of secondary education and special education teacher dated January 4, 2024 at 1:59 p.m.
33. Email from case manager to principal dated January 25, 2024 at 11:57 a.m. with reply to case manager and special education teacher at 1:01 p.m.
34. Email from principal to special education coordinator, executive director of secondary education and special education teacher dated January 25, 2024 at 1:21 p.m.
35. Behavior Intervention Plan dated January 2024
36. Email from mother to special education coordinator dated February 1, 2024 at 1:50 p.m.
37. Email exchanges between executive director of special education and MIS data clerk dated February 1, 2024 between 1:50 p.m. and 3:08 p.m.
38. Email exchange between special education coordinator and executive director of special education dated February 1, 2024 between 2:04 through 2:08 p.m.
39. Email from stepfather to mother and special education coordinator dated February 1, 2024 at 2:32 p.m.
40. Email from special education coordinator to stepfather dated February 2, 2024 at 8:04 a.m. with responses between mother, stepfather and special education coordinator dated through February 6, 2024 at 12:48 p.m.
41. Email from principal to parents, case manager, special education teacher, and special education coordinator dated February 5, 2024 at 11:51 a.m.
42. Email from principal to parents, case manager, special education teacher, and special education coordinator dated February 5, 2024 at 1:37 p.m.
43. Email from principal to parents, case manager, executive director of secondary education, special education coordinator, and executive director of special education dated February 6, 2024 at 11:19 a.m.
44. IEP Meeting – Review Data dated February 9, 2024
45. Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated February 9, 2024
46. Audio recording of February 9, 2023 IEP meeting
47. Response to Formal Complaint dated February 16, 2024
48. Email from executive director of special education to complaint investigator dated February 29, 2024 at 1:15 p.m.
49. Staff schedules for the 2023-2024 school year showing assignment to student.
50. IEP Preparation Timeline
51. MIS Minute newsletter dated October 2023
52. DocuSign printout of February 9, 2024 Meeting Documents

Background Information

The student is an eighth grader at a district middle school who is eligible for special education services as a student with autism. He additionally has a medical diagnosis of Attention Deficit

Hyperactivity Disorder – Combined Type. In the district the student's IEP special education services are implemented in the regular education classroom with paraeducator support and in a Communications program. This program emphasizes instruction and support for students with delays in communication, social awareness, emotional reciprocity, and possible cognitive delays at the home middle school. It focuses on providing highly structured learning, intensive behavioral support and intense social skills and communication support to develop foundational skills to increase inclusion in the general education setting. The student's case manager was changed during the school year as the student appeared to have greater trust with this teacher and the student is choosing to spend more time in the special education setting than the general education classrooms for content instruction this school year.

The student transferred at the beginning of the 2022-2023 from a nearby district with an IEP. Upon transfer the student's IEP was implemented in RISE, a program for students with significant externalizing and internalizing behavior. It provided a structured environment and inclusion support specifically designed to increase a student's ability to self-regulate emotions and behavior and to promote self-advocacy. This program was considered to most closely match the program from the previous district. At the end of the 2022-2023 school year the IEP team met to receive services in the Communications program as it was a better fit with his strengths and needs. Since the beginning of the 2023-2024 school year the student has had issues with elopement (leaving class) and not participating in class.

Issues Investigated

1. ISSUE ONE: USD #231, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to review and revise the student's IEP due to any lack of expected progress toward the annual goals and in the general education curriculum when the student was not progressing during the 2023-2024 school year.
2. ISSUE TWO: USD #231, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP during the 2022-2023 school year, specifically services, service minutes, providing an alternative lunch setting, providing 1:1 educational support, providing the testing and instructional accommodations.
3. ISSUE THREE: USD #231, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent a copy of the student's IEP in a timely fashion during the 2023-2024 school year.
4. ISSUE FOUR: USD #231, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a prior written notice to parents following a substantial change in placement during the past 12 months when moving the student from the RISE program to another program.

Issue One

USD #231, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to review and revise the student's IEP due to any lack of expected progress toward the annual goals and in the general education curriculum when the student was not progressing during the 2023-2024 school year.

Applicable Law

According to federal regulations at 34 C.F.R. §300.324(b) and K.S.A. §72-3429 each agency shall ensure that the IEP team: (1) Reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and (2) revises the IEP, as appropriate, to address: (A) Any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate; (B) the results of any reevaluation conducted under this section; (C) information about the child provided by the parents; (D) the child's anticipated needs; or (E) other matters.

Analysis: Findings of Fact

The complainant alleged that the student is not doing well in the Communications class and wants to go back to the RISE program. They complain that there are not enough staff to support the student and that he is leaving classes and putting down his head when the environment is overstimulating.

The district responded that the student showed academic progress academically, however, did not progress with his self-management goal addressing compliance with non-preferred activities. The district stated the IEP team met four times so far during the 2023-2024 school year to address the student's refusals. In addition, the district conducted a reevaluation during the fall of 2023 which included a functional behavior assessment.

Documentation shows the IEP team met on September 26, 2023 to review and complete the student's annual IEP. Agreement was not reached for the plan and services during this meeting, so the previous IEP of October 6, 2022 with a May 17, 2023 amendment was the IEP of record. The IEP team met again on October 27, 2023 to review concerns regarding service minutes and complete the September 26, 2023 draft IEP. During the meeting, the decision was made to conduct a reevaluation that included a functional behavior assessment (FBA), discuss shortening the school day to decrease the student being overwhelmed, attending class, refusals, elopements, use of personal tablet, teacher prompts and supports. Decisions included conducting the reevaluation with the FBA, providing family daily data sheets about behaviors of concern. The October 6, 2022, with a May 17, 2023 amendment continued to be the IEP of record. The IEP team met again on December 6, 2023 to review the reevaluation report and subsequently changed service minutes based on the reevaluation report. The parent signed consent for this change and the September 26, 2023 IEP with changes made on

October 27, 2023 and December 6, 2023 was adopted. On February 9, 2024, the IEP team met to review data collected for the student and discuss moving the student to the RISE program, have a new case manager assigned due to the relationship of respect between the teacher and student, shortened school days, lunch support/supervision and tablet use. Decisions made during this meeting included, rejecting the move to the RISE program, reassigning the case manager, providing an agreed upon area for lunch and support, shortening the student's day and tablet use. That PWN is not yet signed for the material change of services.

Conclusion

The IEP team met four times to review data and discuss changes to the student's IEP based on mutual concerns of the student being overwhelmed, attending class, refusals, elopements, use of personal tablet, teacher prompts and supports. At each meeting, the team identified the issues, reviewed new data, and discussed changes to the IEP. In some cases, the impetus for the meeting was based on the parent's concern about progress (October 17, 2023) and in other cases it was based on the district's concerns. These decisions are documented in prior written notices or IEP team meeting notes. These decisions and the need to address lack of progress are referred to in email exchanges between IEP team members and family members along with planning to meet to discuss IEP changes. Based on the foregoing, ***it is not substantiated*** that USD #231 failed to review and revise the student's IEP due to any lack of expected progress toward the annual goals and in the general education curriculum when the student was not progressing during the 2023-2024 school year.

Issue Two

USD #231, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP during the 2022-2023 school year, specifically services, service minutes, providing an alternative lunch setting, providing 1:1 educational support, providing the testing and instructional accommodations.

Applicable Law

Federal regulations 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. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

The complainant alleged that the student's IEP was not being implemented in several areas including the services, service minutes, providing an alternative lunch setting, providing 1:1

educational support and providing testing and instructional accommodations. The parent stated that the RISE program was more appropriate for the student's services and service minutes as he was having increases in behavior in the Communications program. She stated he could not eat in the lunchroom as it was too overstimulating and when he sought out a quieter lunch area, he was constantly asked to move resulting in him missing lunch. She stated he was not getting enough testing and instructional support or accommodations were provided to the student in the general education classroom and in the Communications program.

The district replied that they implemented the IEP as written. They state that the student used his accommodations throughout the school day and received direct instruction to address skill gaps. They state the IEP did not provide 1:1 educational support, however the student's individual learning needs and need for frequent breaks necessitated 1:1 educational support. Although there was no alternative lunch accommodation in the IEP at the beginning of the school year the student was permitted to eat in a classroom because it was preferred. Services and this alternative lunch location are recorded in the current IEP.

The findings of Issue one are incorporated herein by reference.

The student had two IEPs in effect during the 2023-2024 school year, The IEP dated October 6, 2022 (amended on May 17, 2023) and the IEP dated September 26, 2023, initiated on October 27, 2023.

According to these two IEPs and amendments made during the four IEP team meetings the student's special education services in a regular education classroom and outside of a regular classroom are displayed below. Additionally, the student has 35 minutes of non-instructional paraeducator support 6 days every week during the lunch period.

Dates	special education direct services **in** a regular education classroom	special education direct services **outside** a regular education classroom
8/16/23 – 10/5/2023	180 minutes 5 days every week	215 minutes 5 days every week
9/26/2023 – 12/15/2023	180 minutes 5 days every week	215 minutes 5 days every week
1/4/2024 – 5/24/2024	297 minutes 5 days every week	70 minutes 5 days every week

Neither of the student's IEP indicate 1:1 instructional support for the student during academic instruction. The staff schedules for semester one of the 2023-2024 school year show one staff assigned to the student all class periods but 7th hour. She was with the student during Art, Science, Mathematics, Social Skills, and Seminar. A different staff was with the student during ELA. During the second semester one staff was assigned to oversee the student during Science, Math, Social Skills, and another staff was assigned to the student during ELA and Seminar.

The student progress notes show that progress was reported on the student's 3 IEP goals on a quarterly basis. The student had one ELA goal, one Mathematics goal and one Self-Management goal. Daily behavior sheets dated between August 23, 2023 and February 6, 2024 show that data were collected for the self-management goal and were used in the development of the Behavior Intervention Plan.

The IEP with a meeting date of 9/26/2023 included 35 service minutes, 5 days every week for the student's lunch at the school. The IEP prior did not include an alternative lunch accommodation, but the district reported he was permitted to eat lunch in a teacher's classroom because he preferred that.

	8/16/23 – 10/5/2023	9/26/2023 - current
Read aloud for assignments and assessments	x	x
Extended time for assignments	x	x- clarified for 1 extra class session
Shorten assignment	x	x
Allow frequent breaks	x	x
Contingency Map		x
Separate Setting for assessment		x
Tablet to access curriculum		x
Clozed Notes		x
Text to speech audio to read test items for district assessment	ELA, Mathematics and Social Studies	ELA, Mathematics (8th grade does not assess Social Studies)

Email exchanges specifically on September 21, 2023 document that the accommodations are being provided in class.

The parent provided a list of accommodations including thirteen accommodations and one supplemental aid for training staff to use the BIP. The parent stated during the interview on March 4, 2024 that she provided these to the IEP team explaining that they were clearer for the staff to follow and wanted to replace the current accommodations with these. Review of the IEPs and notes do not show these were adopted or replaced those on the IEP. She stated that the staff did not listen to them.

Teacher notes and emails show that the first four accommodations were implemented regularly with the student. The final four accommodations were added during the February 9, 2024 IEP meeting and documentation is not available to determine the level of implementation.

Conclusion

Based on the foregoing, ***it is not substantiated*** that USD #231 failed to implement the student's IEP during the 2022-2023 school year, specifically services, service minutes, providing an alternative lunch setting, providing 1:1 educational support, providing the testing and instructional accommodations. Meetings discussions focused on multiple solutions for the student and in many cases discussion and decision making was carried from one meeting to the next. The disjointedness may have contributed to a misunderstanding of decisions made and the services, service minutes, student supports and accommodations being implemented.

Issue Three

USD #231, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent a copy of the student's IEP in a timely fashion during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.322(f) and state regulations at K.A.R. §91-40-18(d) state that parents are provided a copy of the child's IEP at no cost to the parent. Further, 34 C.F.R. §300.501(a) states that he parents of a child with a disability must be afforded, in accordance with the procedures of §§300.613 through 300.621, an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child.

Analysis: Findings of Fact

The parent alleged that during the 2023-2024 school year that she has requested in writing and verbally for a copy of the student's IEPs and still has not gotten a copy of them.

The district responded that the parent was provided a copy of the IEP during each of the four IEP meetings. They further responded that when the complaint was filed the district learned that the parent was indicating she did not have a copy of the student's current IEP and immediately provided an electronic copy via email.

The findings of Issues one and two are incorporated herein by reference.

The district reported in their response that the IEP team has met four times during the 2023-2024 school year, September 26, 2023, October 27, 2023, December 6, 2023, and February 9, 2024. An IEP dated September 26, 2023 included the IEP team members present and the parent is signed for attendance. The meeting minute notes from this September 26, 2023 IEP recorded that the parents requested that any information be shared with the family prior to the meeting so the family would have time to review and prepare for the meetings.

A meeting note dated October 27, 2023 documents, "School sent out IEP 9/28/23 for IEP meeting 9/30; Parent signature was not given on PWN. The team is currently working from the

expired (sic) IEP, since we have not obtained (sic) a signature for the new PWN at this time. Parent stated that she would never consent (sic) to the new IEP behavior as the (sic) BIP Box wasn't checked. School want to add BIP (sic) that was in place before moving to [district]." A PWN dated December 6, 2023 documents IEP team decisions and the parent signed agreement to decisions made. An email on February 1, 2024 at 1:50 p.m. from mother to the special education coordinator stated, "I got your message and I have requested multiple times that we communicate through email so that we can have a paper trail. Since the beginning of this year we have had several IEP meetings (sic) and we have never received a copy of the reports from the IEP. We have requested them and still have not received them." An email from the special education coordinator to the parents dated February 2, 2024 documented, "I apologize for the lack of communication regarding these documents. I wasn't aware you didn't have them in your possession. I have attached the documents from [student's] special education file from the 23-24 school year. Please let me know if you have any questions. Notice of Meeting and Notes from the meeting held on 10/27/2023; Evaluation Report from the meeting held on 12/6/2023; IEP and PWN from the meeting held on 12/6/2023.

On February 2, 2024 at 8:04 a.m. the special education coordinator emailed the stepfather Notice of Meeting and meeting notes from the October 27, 2023 meetings, the December 6, 2023 Evaluation Report and the December 6, 2023 IEP and Prior Written Notice. The parent confirmed she was in receipt of these documents during an interview on March 4, 2024.

An IEP team sign in sheets shows the participants and a PWN documented decisions made during the February 9, 2024 IEP meeting. The parent stated during the March 4, 2024 interview with the complaint investigator that she did not receive a copy of the PWN. A DocuSign printout of the February 9, 2024 meeting documents shows that the envelope containing the documents regarding the February meeting, including the PWN to be signed were sent on February 9, 2024 and resent on February 20, 2024 and February 28, 2024. It showed that the parent viewed the documents on February 21, 2024 at 8:52:36 a.m. and viewed the documents on the same day at 8:53:09 a.m.

The IEP preparation timeline used in the district states the following steps for each case manager to follow in regard to providing parents special education documentation. Ten days prior to the IEP scheduled date send home a draft of the IEP for review. Three to five days prior notify parents to get additional information and answer preliminary questions. On the day of the meeting send parents home with a copy of everything they signed, and a copy of the IEP and the changes made during the meeting. After the meeting send a finalized copy of the IEP home to the parents.

The MIS minute newsletter for October 2023 featured an article, "I held an IEP meeting – what is next?" In that article it states, "After the meeting is held, documents are signed, parents have a copy, you have a copy for the working file, you have reviewed PowerSchool for the last time then the packet should be finalized."

Conclusion

It is found that the federal and state statutes and regulations specify that a copy of the IEP be provided to the family free of charge and that families be provided requested documents, however timelines for timely response are not defined. The district has written procedures in place for when documentation must be provided, and it is found that those were followed in this case based on interviews with the parent reviewing and comparing documentation. Based on the foregoing, ***it is not substantiated*** that USD #231 failed to provide the parent a copy of the student's IEP in a timely fashion during the 2023-2024 school year based on the district's practice.

Issue Four

USD #231, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a prior written notice to parents following a substantial change in placement during the past 12 months when moving the student from the RISE program to another program.

Applicable Law

According to federal regulations at 34 CFR §300.503(a)(2) and Kansas state statute at K.S.A. §72-3430(b)(2), the parents of exceptional children shall have the right to written prior notice in accordance with K.S.A. 72-3432, and amendments thereto, whenever an agency either 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.

Analysis: Findings of Fact

The parent alleged that the student was originally assigned to the RISE program when moving in from out of district. At the end of his first year in the district the IEP team met and moved the student to the Communication program stating it was a better fit with the student's strengths and needs. The parent states that this change should be considered a substantial change of placement and a PWN should have been provided to the parent.

The district responded that the student was reassigned from the original RISE program to the Communications program in May 2023, effective at the beginning of the 2023-2024 school year. The district states that this reassignment to another program did not constitute a substantial change of placement. The IEP service minutes, goals, accommodations and modifications remained the same. The program did not result in a change in access to nondisabled peers. As such a prior written notice, nor parent consent was needed. Even so, the class change was discussed with the parents during the May 18, 2023 IEP meeting and the parents agreed and signed consent for the actions during that meeting.

The findings of Issues one, two, and are incorporated herein by reference.

The PWN dated May 18, 2023 indicated that a meeting was held with the IEP team to discuss IEP services and to discuss placement. The PWN indicates a substantial change in placement (25% movement of your child's school day to or from less or more restrictive environment to a less or more restrictive environment) and material change in services (25% or more of the duration or frequency of a special education service, related service or supplementary aid specified in the IEP changed). An email from the district to the complaint investigator clarified that it is the district's practice to obtain parental consent when a student is moved from one specialized program to another.

It is documented that," [student] will receive the following services through Communications case management. (180 minutes of special education services in the general education setting, 5 days per week. 215 minutes of special education services in the special education setting, 5 days per week. The explanation for the change, "[Student] had displayed significant social concerns that significantly impact his ability to maintain within the classroom and the RISE special education classroom setting. The team feels that [student] may benefit from specific social and communications supports to access his education." Options considered included, "…to continue case management through RISE, however it was rejected because [student's] needs require more specific intervention that are not offered within the RISE setting. It was considered to increase services, but it was rejected because the current minutes are sufficient to adequately meeting [student's] needs. The parent signed consent on May 18, 2023.

Conclusion

Based on the foregoing, ***it is not substantiated*** that USD #231 failed to provide a prior written notice to parents following a substantial change in placement during the past 12 months when moving the student from the RISE program to another program.

Although the district claimed that the change from RISE to the Communications program was not a substantial change of placement the PWN was marked that it would be considered during the meeting. In sum, however, the parent signed their consent for the change of placement from the RISE to the Communications program so no procedural error was found.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. §300.324(b) and K.S.A. §72-3429 was not found, based on review of student data, interview, IEP meeting minutes and email exchanges Corrective action is not required.
2. ISSUE TWO: A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was not found, based on review of student data, interview, IEP meeting minutes and email exchanges Corrective action is not required.

3. ISSUE THREE: A violation of 34 C.F.R. §300.322(f), K.A.R. §91-40-18(d), and 34 C.F.R. §300.501(a) was not found, based on interview, review of district policy and procedures, and DocuSign receipts. Corrective action is not required.
4. ISSUE FOUR: A violation of 34 CFR § 300.503(a)(2) and § 72-3430(b)(2), was not found, based on the PWN with parent consent. Corrective action is not required.

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).

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 FEBRUARY 23, 2024

DATE OF REPORT MARCH 7, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of -------, by his father, -------. In the remainder of the report, ------- will be referred to as "the student." ------- will be referred to as "the complainant" or "the parent".

The complaint is against USD #229 In the remainder of the report, USD #229 will be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on February 23, 2024, and the 30-day timeline ends on March 24, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigators, Ashley Niedzwiecki reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The following documentation and information were used in consideration of the issue(s):

1. Student's current IEP.
2. Notes from IEP meetings dated January 19, 2023, February 16, 2023, April 20, 2023, and October 26, 2023.
3. Email dated October 24, 2023.
4. IEP Progress Report dated 10/13/2023.
5. List of words used to monitor student's reading and spelling goals.
6. Interview with the parent on 3/4/2024.
7. Interview with Dr. Mark Schmidt, Assistant Superintendent of Special Education on 3/5/2024.

Background Information

The student is an elementary aged student, in attendance at USD #229. The student has been identified as a student with an exceptionality.

Issues Investigated

Issue One

Whether USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a Prior Written Notice following a change in methodology related to the student's Goal 1 and Goal 3.

Applicable Law

Under federal and state law, a Prior Written Notice (PWN) is required to be sent to parents when certain proposed special education actions occur. A PWN must be sent to parents whenever an agency, 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 and appropriate public education to the child. (K.S.A. 72-3430(b)(2)(A)-(B); 34 C.F.R. 300.503(a)(2)).

If it is determined that a child needs specialized instruction, the IEP team must develop an IEP, including measurable annual goals. (K.S.A. 72-3429(c)(2)). The IEP must include a description of how the child's progress toward meeting those annual goals will be measured. (K.S.A. 72-3429(c)(3)). Annual goals are the methods used to measure the progress made by the provision of services and may be changed or removed without parental consent but would require a PWN.

Federal regulations require an IEP to include "a statement of the special education, related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child." 34 CFR 300.320 (a)(4). This does not, however, mean the IEP must identify the specific methodology that a district will use. The U.S. Department of Education has stated that "there is nothing in the [IDEA] that requires an IEP to include specific instructional methodologies." 71 Fed. Reg. 46,665 (2006); Endrew F. v. Douglas County Sch. Dist. RE-1, 69 IDELR 174 (U.S. 2017) (holding that an IEP is substantively appropriate if it is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances).

Further, courts have found that although districts are required to provide prior written notice before instituting a change in placement, such notice is not required when a district exercises its discretion to select a particular educational methodology. (Dearborn Pub. Schs., 115 LRP 23739 (SEA MI 03/25/15)). According to the Kansas Process Handbook, instructional methodology may be changed without parental consent, and without the need for a PWN, unless the instructional methodology is specified in the student's IEP. (See *Kansas Process Handbook,* pg. 10).

Findings of Fact

According to the complainant, the student dropped in progress on Goal 1 from 100% to 40% and from 93% accuracy to 80% accuracy on Goal 3 following ESY 2023. The parent claims that this drop in progress was the result of changing the methodology used to instruct the student at the beginning of the 2023-2024 school year. The parent argues this change in methodology required the district to send a Prior Written Notice (PWN).

The parent states that he expressed his concerns about the student's drop in progress prior to an IEP meeting held October 26, 2023. The district acknowledged this in an email written to the parent on October 24, 2023. In that email, the district outlines topics for discussion at the upcoming October 26, 2023, meeting. Topics to discuss included how the student was being assessed on reading and writing goals and the percentage decrease for those goals. Notes from the IEP meeting confirm the district clarified "the differences between real and nonsense words and how these are used in assessment/instruction." The parent confirms the district explained the assessment process, however, claims the district failed to specifically mention that the method of instruction would change to a mixed format.

To address the parent's concerns, both the district and the parent agree that during the October 26, 2023, meeting, the district explained how some regression was typical when a student learns to integrate new skills. However, the parent states that he was not satisfied with this explanation. According to the district, at that time, and based on what the student was demonstrating during progress monitoring, it was appropriate for the teacher to make instructional adjustments to a mixed syllable format. While the district acknowledges that a change in instructional methodology was not explicitly discussed, the importance of challenging the student to integrate skills and generalize skill sets to allow for the student to gain greater literacy competency was discussed at length. This is evidenced by the IEP meeting notes provided by the district.

In review of the student's current IEP, the goals are stated as follows:

Goal 1 – Category: Writing

> By April 2024, when writing, [the student] will use encoding skills by saying the word, tap the word phoneme by phoneme to accurately spell the word on 4/5 opportunities with 80% accuracy.

Goal 3 – Category:

> By April 2024, when given a list of words with closed syllable consonant combinations, silent E and open syllable, soft c, g, s, tch, dge, vowel team syllables, and vowel R syllables [the student] will read the words on 4/5 opportunities with 95% accuracy.

In this case, the IEP does not specify any instructional methodology required to be used to achieve these goals, nor is there any indication as to the type of assessment required to

monitor the student's progress. The goals do, however, contain all four components of a well-written goal, namely: timeframe, condition, behavior, and criterion.

Additionally, while a drop in progress can be alarming for a parent to see, it can also be an indication to the district that the method of instruction needs to be altered. In this case, the district confirmed that based on the student's progress, the district changed the method of instruction, but not the student's goals. As stated by the district, progress monitoring is a "snippet" of what the student understands. Based on that monitoring, the district has a responsibility to "lay the groundwork for bigger things to come which is why we generalize skills and builds on skills." Here, the district changed the instructional methodology to a mixed format. Outside of this discretionary change, the district and the parent agree that nothing was modified in the student's IEP following the October 26, 2023, IEP team meeting.

Conclusion

A district is required to provide a parent 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 and appropriate public education to the child. (K.S.A. 72-3430(b)(2)(A)-(B); 34 C.F.R. 300.503(a)(2)). In this case, the district changed the instructional methodology provided to the student, not the identification, evaluation, placement, or provision of services offered to the student. As stated previously, a district may change the instructional methodology without parent consent, and in some cases without needing to issue a PWN. A PWN, notifying the parent of a change in instruction would be required if the instructional methodology was listed in the student's IEP. However, if instructional methodology is not listed in the IEP, the district may change instruction methods without parent consent and without the requirement of a PWN.

Therefore, based on the foregoing, a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically that the district failed to provide the parent with a Prior Written Notice following a change in methodology *is not substantiated*.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to provide a Prior Written Notice following a change in methodology related to the student's Goal 1 and Goal 3 *is not substantiated.*
    a. No corrective action required.

Investigator

Ashley Niedzwiecki

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).

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 #500
ON FEBRUARY 13, 2024

DATE OF REPORT MARCH 14, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ------ by his parent, ------. In the remainder of the report ------ will be referred to as "the student" and ------ may be referred to as "the complainant", "the parent", or "the mother". Also note that ------ will be referred to as "the student's grandmother" in the report.

The complaint is against USD #500 (Kansas City Kansas Public Schools). In the remainder of the report, this responsible public agency may be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on February 13, 2024 and the 30-day timeline to investigate the allegations ends on March 14, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation, which was provided by both the district and the complainant. The following documentation and information were used in consideration of the issues:

1. Physical Form dated August 16, 2019 completed by Rhonda Herschel, Nurse Practioner at Pediatric Specialists in Colorado Springs, Colorado
2. Medical Visit Summary dated March 30, 2023 from the University of Kansas Health System showing diagnoses of Attention Deficit Hyperactivity Disorder (ADHD) and Tics (Tourette's syndrome)
3. Sign-in Sheet for parent meetings held on August 14, 2023
4. Handwritten notes of August 14, 2023 parent meeting written by Thomas Yeo, General Education Teacher
5. BrightChat Parent Contact Log dated between August 16, 2023 and January 17, 2023
6. Student Attendance Record dated between August 22, 2023 and February 27, 2024
7. Parent Contact Log dated between September 15, 2023 and February 16, 2024
8. Personalized Learning Plan (PLP) Meeting Notes and Progress Reports dated September 26, 2023; October 25, 2023; December 5, 2023; January 30, 2024; and February 27, 2024

9. Sign-in Sheet for Parent/Teacher Conference meetings held on October 26, 2023
10. Screenshot of message to the parent dated January 24, 2024 written by Rachel Ledbetter, Licensed Master's Level Psychologist at Enso Therapy Group
11. Emails dated between January 29, 2024 at 10:59 AM and February 2, 2024 at 11:00 AM between the parent and Sara Richards, Behavioral Health Social Worker, regarding scheduling a meeting
12. Enso Therapy Group Psychological Evaluation Report dated February 7, 2024 written by Ms. Ledbetter
13. Formal Complaint Request Form signed by the complainant on February 11, 2024
14. Sign-in Sheet for parent meetings held on February 16, 2024
15. Handwritten notes of February 16, 2024 parent meeting written by JaKyta Lawrie, Executive Director , Wyandotte Comprehensive Special Education Cooperative
16. Letter to the complainant dated February 16, 2024 acknowledging the parent referral written by Dr. Lawrie
17. Email dated February 21, 2024 at 12:12 PM written by Melissa Hunter-Boyce, Principal of Stony Point South Elementary School sharing contact information for the student with the assigned school psychologist
18. Response to the Allegations dated March 5, 2024, written by Dr. Lawrie
19. Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent dated March 6, 2024 (unsigned)
20. Interview with Dr. Hunter-Boyce on March 6, 2024
21. Interview with the complainant on March 6, 2024
22. Interview with the student's grandmother with parent consent on March 8, 2024
23. USD #500 District Calendar for the 2023-24 school year

Background Information

The student is a nine-year old male currently enrolled in the fourth grade in USD #500. He attends his neighborhood school, Stony Point South Elementary School. Previously, the student was enrolled for the first, second, and third grades in USD #500 through the Greenbush Academy, a virtual school.

The parent reports the student was identified as having a disability and received speech therapy as a preschool student in Colorado. He was initially enrolled as a kindergarten student in Colorado but the mother chose to homeschool after the first month of school after the student eloped from the school building and was lost for a period of time. She noted that family subsequently moved to Kansas and that he was enrolled in the virtual school program in USD #500. The mother acknowledged that the student has never had an IEP while residing in Kansas.

Issues Investigated

Based on the written complaint and an interview with the complainant, one issue was identified and investigated.

Issue One

USD #500, 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 an initial evaluation of the student in August 2023.

Position of the Parent

The mother reported the student was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Tourette's syndrome when he was enrolled at Stony Point South Elementary School at the beginning of the 2023-24 school year. She indicated that she and the grandmother met with the building principal, the school social worker, and the fourth grade teacher prior to school starting and shared these diagnoses and her concerns with him starting in-person classes. The parent requested the student be evaluated for special education at that meeting but was told the district would like to get to know the student and try classroom accommodations for eight weeks before testing the student.

The parent reported that she never heard back from the district regarding the evaluation and the outcome. At the beginning of second semester, the fourth grade teacher shared the student was not completing school work and would be given incomplete grades if the situation did not change. The parent met with school staff on February 16, 2024 and learned that the special education evaluation had never been completed and she again made a request for an initial special education evaluation. As of March 12, 2024, the parent reported that she had received no additional contact with the district.

Position of the District

The district acknowledged that the student enrolled in the fourth grade at Stony Point South Elementary School at the beginning of the school year without an IEP and that they met with family prior to school starting to discuss parent concerns for their student. Melissa Hunter-Boyce, Principal of Stony Point South Elementary School, indicated the parent did initially request a special education evaluation for the student. However, because the student had not been in an in-person learning environment for more than three school years, the parent agreed to wait a month to allow the student to acclimate to the school routine and expectations and then to decide if special education testing was appropriate. The parent also shared the student was being evaluated for Autism in September and the results of that evaluation would be shared with the school.

The student participated in the Student Improvement Team (SIT) process during the first month of school and adjusted to fourth grade well. At the end of September, the SIT team recommended continuing interventions and monitoring success. At the end of October, the student was continuing to be successful and the SIT team again recommended continuing with the current interventions in the classroom. During second quarter, the student began to be chronically absent and had two minor scuffles incidents with another student who was annoying him; however data reviewed by the SIT team showed he was continuing to make academic progress and interventions with the counseling department were started. In January, his grades in the classroom began to fall because of missing work and the parent was contacted by the fourth grade teacher.

The team and the parent met on February 16, 2024 to discuss the concerns. The parent made another request for an initial special education evaluation and the school staff were in agreement that a disability was suspected. The student has been referred for an initial special education evaluation following district procedures and the district is waiting to receive parent consent in order to proceed with the proposed evaluation to date.

Applicable Law

Federal regulations at 34 C.F.R. 300.301(a) require school districts to conduct a full and individual initial evaluation in accordance with 34 C.F.R. 300.304 through 34 C.F.R. 300.306 to determine if the student is a student with a disability under the IDEA and to determine if the student is in need of special education and related services. In Kansas, this determination must be made no later than 60 school days from the date the parent provides written consent for an evaluation.

Federal regulations at 34 C.F.R. 300.301(b) allows either the parents of the student or the school district to initiate a request for an initial evaluation to determine if the child is a child with a disability and in need of special education and related services. This request may be made verbally or in writing.

Federal regulations at 34 C.F.R. 300.304(a) requires that school districts provide parents with prior written notice that describes any evaluation procedures the school district proposes or refuses to conduct within a reasonable timeframe. In Kansas, a reasonable timeframe for an LEA to respond to a parent request for an initial special education evaluation is considered 15 school days unless there are unusual circumstances.

Federal regulations at 34 C.F.R. 300.300(a) require school district to obtain parent consent prior to conducting any proposed initial special education evaluation.

Analysis: Findings of Fact

The handwritten notes kept by the fourth grade teacher from the initial meeting with the parent and grandmother on August 14, 2023 include descriptions of parent concerns and

refer to the scheduled Autism testing but does not document any discussion regarding a special education evaluation. There is no written documentation of the parent's request for an initial special education evaluation and the parent acknowledged that the request for the special education evaluation was only made verbally during the meeting on August 14, 2023.

The building principal also acknowledged that the parent did make a verbal referral for a special education evaluation during the meeting; however, the testing was not pursued immediately in order to allow the student to respond to general education interventions (GEI) in the classroom since he had not been in-person at school for more than three school years. The parent acknowledged she was in agreement to allow for these interventions prior to proceeding directly to testing in order to allow the student to acclimate to in-person learning. However, both the mother and the grandmother stated that they believed that the evaluation would take place after the GEI had been completed but no one from the district had ever contacted them regarding the school's evaluation or the results so they assumed the evaluation was still in progress.

Documentation shows a Personalized Learning Plan (PLP) was developed for the student to address concerns regarding work completion and math skills. Meeting Notes and Progress Reports show this plan was reviewed by the Student Improvement Team (SIT) five times during the 2023-24 school year.

The first meeting was held on September 26, 2023 and USD #500 stated,

> *The team reviewed data and student work from the last four weeks. Data shows that work completion is still a concern and Math is not the student's favorite subject. FastBridge testing does not show any SPED concerns for ELA or Math at this time. The recommendation is for the classroom teacher to continue with interventions in small group targeted support for Math and continue with positive incentives and reinforcements. Other than being a little socially awkward, the student's behavior was not outside the normal behavior of a 4th grader and presented no behavior concerns at this time.*

The PLP was reviewed again on October 25, 2023 and it was noted that the student was having more difficulty completing math assignments. He continued to need small group targeted instruction in the area of math; however, his reading skills fell within the average range for his grade level based on the FastBridge Assessment scores.

Documentation and interviews showed the parent attended the Parent/Teacher Conference for the student on October 26, 2023. The fourth grade teacher shared the current FastBridge data, updated the parent on the student's progress in class and the SIT process. The parent requested that incomplete school work be sent home each day so it could be completed at home.

At the December 5, 2023 PLP review meeting, the student was described as continuing to struggle with completing work and not wanting to be challenged. However, he is successful when he does complete the school work.

The Parent Contact Log documents that the fourth grade teacher left a phone message for the parent on January 17, 2024 about the student still not doing his work. The parent replied to Mr. Yeo via BrightChat asking for more details about when this behavior was happening. Mr. Yeo responded,

> *. . . from the beginning of the day until dismissal he refused to follow the lesson, work with his peers, or complete any assignments. When asked to work he responds with "I'm not going to do that."*

Interviews and documentation found the parent requested to meet with the building principal, the school social worker, and the fourth grade teacher to discuss these concerns. Multiple emails and phone calls were made between the parent and school staff in order to schedule and then re-schedule a team meeting between January 29 and February 14, 2024 with a conference finally being scheduled for February 16, 2024.

Notes from the January 30, 2024 PLP review meeting indicate the student's defiance is "becoming more pronounced." It was noted that he "outwardly refuses to work with groups or participate in lessons as well as independent work". The SIT team hypothesized this was because of the multiple snow days during the month of January impacting daily attendance and forcing changes in classroom/school routines. It was recommended to increase the positive praise and continue academic interventions.

The conference was held on February 16, 2024 with the parent, grandmother, building principal and the fourth grade teacher in attendance. Lack of communication between school and home was the first topic discussed. Mr. Yeo indicated he had made multiple attempts to contact the parent during the school year but had not been successful and the parent reported the same thing. The mother shared that BrightChat was not working, she had not signed up for Class Dojo messaging, and she was unable to access the online grade card in Parent Portal. The parent and school agreed that both were trying to communicate all school year and yet neither was getting a response from the other so both thought the other was not responding. Both the parent and Dr. Hunter-Boyce reported the parent was assisted in accessing each of these school communication platforms following the meeting.

Next, the team discussed the parent's request for a special education evaluation that was made back in August. The parent and school staff both acknowledged that the request was made but that testing was not pursued at that time to allow for GEI to be attempted first. School staff reported the student responded well to the GEI overall but concerns were still noted in work completion so a referral to the SIT team was made and a PLP was developed for the student as part of the GEI process. Ongoing data collection and progress monitoring

indicated to the SIT team that a special education referral was not necessary at this time. School staff indicated that Mr. Yeo had attempted to keep the parent updated as the student's progress in school but the communication glitch between the parent and Mr. Yeo had interfered with the sharing of this information.

The parent shared that the student had been diagnosed with Level 1 Autism by Rachel Ledbetter, Licensed Master's Level Psychologist at Enso Therapy Group, and provided the district with a copy of the evaluation report. The parent again verbally requested the student be evaluated for special education services. USD #500 provided a letter to the parent dated February 16, 2024 acknowledging the referral and describing the special education evaluation process.

At the February 27, 2024 PLP meeting, the SIT Team meeting notes reflect the student being absent for 16% of school days during the 2023-24 school year which has resulted in the student missing instruction in critical content which makes work more difficult. It was noted that he continues to need small group or individualized instruction in the area of math.

USD #500 provided the parents with prior written (PWN) requesting consent for an initial special education evaluation on March 6, 2024. The PWN included an explanation of why the action was proposed stating,

> *The LEA proposes to accept the parent's request for an initial SPED Evaluation received on 2/16/24. The Wyandotte Comprehensive Special Education Cooperative is proposing the evaluation as result of reviewing the independent evaluation report dated on 2.7.24 (evaluation dates: 9.26.23 and 9.28.23) by Enso Group LLC and the possible impact that this may having on the student's ability to access the educational curriculum and make progress within the educational environment. The outside independent evaluation demonstrated elevated scores within the CARS, Vineland and BASC assessments.*

To date, the LEA is waiting to receive written consent prior to proceeding with the proposed special education evaluation of the student.

Conclusion

According to federal regulations at 34 C.F.R. 300.301(b), a request for an initial special education evaluation to determine if the child is a child with a disability and in need of special education and related services may be made by either the parents of the student or the school district. The IDEA does not require this request to be in writing.

The Parent's Guide to Special Education in Kansas states:

> *General Education Interventions (GEI) are used to help any child who shows academic or behavior concerns. GEI are used to help school staff understand what the child needs to be successful in the general education setting. The data collected during GEI is also used by*

school staff to decide which children should be referred for an initial evaluation for special education.

With the parent request for an evaluation, the school will likely provide some information about the GEI process to the parent. Information about GEI process is to be informative. The information should explain what GEI is and how it is used. The parent has a right to participate in the GEI process. The parent could withdraw the request for an evaluation to allow for the GEI process to continue. This is a parent choice. A parent can request that the initial evaluation be conducted without waiting for the GEI process to finish.

Federal regulations at 34 C.F.R. 300.304(a) requires that parents are provided with prior written notice within a reasonable timeframe that describes any evaluation procedures the school district proposes or refuses to conduct. In Kansas, a reasonable timeframe for an LEA to respond to a parent request for an initial special education evaluation is considered 15 school days unless there are unusual circumstances.

In this case, the parent verbally made a request for a special education evaluation for the student on August 14, 2023. The district proposed that the student participate in the GEI process since he had not been attendance in an in-person school setting for more than three school years and the parent agreed. However, there is no documentation to show that the parent ever withdrew her request for the initial evaluation to determine eligibility after August 14, 2024. Interviews with the parent and grandmother found that both believed that the special education evaluation was still in process. There is also no documentation to show the district provided the parent with appropriate PWN refusing to conduct the initial special education evaluation on or before September 6, 2023, which was 15 school days from the date of the parent's verbal request for an evaluation.

Instead, documentation and interview found the parent made a second verbal request for an initial special education evaluation on February 16, 2024. At that time the district provided the parent with PWN proposing an evaluation and requesting consent on March 6, 2024, which is 12 school days from the date of the parent request. At this time, the district cannot proceed with the evaluation process until the parent provides written consent as required by 34 C.F.R. 300.300(a). If and when that consent is obtained, USD #500 shall have 60 school days to complete the evaluation and determine eligibility as required by the 34 C.F.R. 300.301(a) and the Kansas Department of Education.

Based upon the foregoing, a violation of federal regulations at 34 C.F.R. 300.304(a) ***is substantiated***. While the district did respond appropriately to the parent's request for a special education evaluation on February 16, 2024, there is evidence to support a finding that USD #500 failed to respond appropriately to the parent's original request for a special education evaluation on August 14, 2023 in a timely manner.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of federal regulations at 34 C.F.R. 300.304(a) is substantiated because USD #500 failed to respond appropriately to the parent's original request for a special education evaluation on August 14, 2023 in a timely manner. Corrective action is required as follows:
    a. CORRECTIVE ACTION:
        i. USD #500 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will ensure that parents are provided with prior written notice that describes any evaluation procedures the school district proposes or refuses to conduct within a reasonable timeframe as required by that Federal regulations at 34 C.F.R. 300.304(a).
            1. No later than April 4, 2024
        ii. USD #500 shall complete the initial evaluation of the student, determine eligibility, and provide the parent with appropriate prior written notice regarding eligibility within 60 school-days of the date the parent provides written consent for the evaluation. If the student is found eligible for special education and related services, the district will develop an IEP to provide the student with a free appropriate public education (FAPE). USD #500 will offer compensatory services to the parent to offset the delay between December 6, 2023, which is 60 school days from the original date the parent could have provided written consent and actual date of the eligibility determination meeting. USD #500 will provide SETS with documentation of whether the parent accepted all, part, or none of the offered compensatory services.
            1. No later than August 15, 2024
        iii. USD #500 will provide training to all staff in the special education evaluation process including, but not limited to, school counselors, school psychologists, school administrators, and special education teachers regarding the requirements related to providing parents with PWN. USD #500 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 #500 will provide SETS with any handouts and/or a copy of the presentation.
            1. No later than May 31, 2024

Investigator

Nancy Thomas

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).

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

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

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

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

(A) The issuance of an accreditation deficiency advisement;

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

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

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

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #453 LEAVENWORTH PUBLIC SCHOOLS
ON FEBRUARY 14, 2024

DATE OF REPORT MARCH 18, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of -------, by a former district employee of USD #453, -------. In the remainder of the report, ------- will be referred to as "the student." ------- will be referred to as "the complainant" or "the former district employee". -------'s parent, -------, will be referred to as "the parent".

The complaint is against USD #453. In the remainder of the report, USD #453 will be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on February 14, 2024, and the 30-day timeline ends on March 15, 2024. An extension was granted until March 22, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Ashley Niedzwiecki reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The following documentation and information were used in consideration of the issue(s):

1. The district's response to the allegations.
2. Interview with the parent.
3. Interview with the district.
4. The student's current IEP and amendments.
5. Emails between the district and the parent.
6. Occupational Therapy Schedule for 2023/2024 school year.
7. Para support and pull-out schedule for 2023/2024 school year.
8. Vision and Orientation & Mobility pull-out schedule/notes dated 10/5/2023 to 2/20/2024.
9. Occupational Therapy Documentation of service minute logs dated 1/11/2023 to 5/22/2023 and 8/16/2023 to 2/8/2024.
10. Direct Specialized Instruction and Inclusion logs dated 2/1/2023 to 6/30/2023 and 8/15/2023 to 2/28/2024.

11. TSVI log dated 1/11/2023 to 8/2023.
12. Incident Report and suspension log for the 2023/2024 school year.
13. Student Attendance record for 2023/2024 school year.
14. Student behavior observation notes dated 1/2023 to 2/2024.
15. Para attendance log for the 2023/2024 school year.
16. District calendars for 2022-2023 and 2023-2024.

Background Information

The student is an elementary aged student, in attendance at USD #453. The student has been identified as a student with an exceptionality, specifically visual Impairment and Autism. The student's IEP is implemented through push-in and pull-out services, namely behavior and vision para support in the classroom and pull-out occupational therapy, vision, orientation & mobility, and behavior support.

Issues Investigated

1. ISSUE ONE: Whether USD #453, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP as written, specifically by failing to provide the required number of push-in and pull-out minutes.
2. ISSUE TWO: Whether USD #453, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP as written, specifically by failing to provide services during out-of-school suspension.

Issue One

Whether USD #453, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP as written, specifically by failing to provide the required number of push-in and pull-out minutes.

Applicable Law

Under federal and state law, a district must ensure that an IEP is in effect for each exceptional child at the beginning of the school year. (34 C.F.R. 300.323(a) & (c); K.S.A. 72-3429(a)(1); K.A.R. 91-40-16(b)(3)). The district 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)). Those services to which a parent has granted written consent must be implemented no later than 10 school days after consent was granted unless reasonable justification for the delay can be shown. (K.A.R.91-40-16(b)(2)).

Additionally, while IDEA does not specifically speak to provider absences, in Letter to Clarke, The Office of Special Education Programs (OSEP) encourages public agencies to consider the impact of provider's absence or a child's absence on the child's progress and performance. The IEP Team is responsible for determining the anticipated frequency, location, and duration of services (34 CFR 300.320(a)(7)).

Findings of Fact & Analysis

The complainant argues the district failed to provide staff sufficient to accommodate all service minutes required in the student's IEP. According to the complainant the district is "not following the minutes in [the student's] IEP for push in and pull-out minutes". During an interview with the parent, the parent stated she did express a concern to the district about whether the student was receiving all required minutes following the filing of this complaint. Emails provided by the district confirm the parent spoke to the district by phone on 2/15/2024 and that she requested the student's service minute schedule. In an email dated 2/16/2024, the district assured the parent the IEP was being implemented as written, and also provided the parent with the student's push-in and pull-out services schedule. The email also stated the student failed to receive services with Ms. Penny, the vision and Orientation & Mobility provider from Kansas State School for the Blind (KSSB), on "one day" due to the student being in the recovery room. The district notes they will work with KSSB to make up the services. Both the district and the parent agree that following the introduction of a new general education teacher, the student's behavior has begun to improve and the student's time in the recovery room has decreased. Finally, the period investigated during this complaint will be from 2/14/2023 to 2/28/2024.

Records show that on December 12, 2023, the IEP Team met and amended the student's IEP. Prior to this amendment the IEP (dated 4/24/2023 -1/10/2024) required the following services:

- 15 minutes of indirect consultation services for vision 1x every 4 weeks.
- 60 minutes/5x a week of behavior related services in the regular education setting.
- 30 minutes/5x a week of direct services for behavior, in a special education setting.
- 30 minutes/5x a week of transportation services related to behavior in an "extracurricular setting". (transportation to and from school)
- 15 minutes/1x a week of OT services in a special education setting. (4/24/2023 – 6/30/2023)
- 5 minutes/1x a week of consultation indirect OT services (4/24/2023 – 6/30/2023.)
- Following the amendment on December 12, 2023, the student's current IEP includes the following direct and indirect services:
- 30 minutes/1x a week of direct services for vision, in a special education setting.
- 105 minutes/5x a week of behavior related services in the regular education setting, amended to increase minutes on January 3, 2024. (amended on 12/12/23 to 75 minutes/5x a week & then on 1/3/2024 to 105 minutes/5x a week).

- 45 minutes/5x a week of direct services for behavior, in a special education setting.
- 30 minutes/5x a week of transportation services related to behavior in an "extracurricular setting". (transportation to and from school)
- 30 minutes/1x a week of direct services for Orientation and Mobility, in a special education setting.
- 15 minutes/1x a week of OT services in a special education setting.

Each area of service, for both the pervious IEP and the current IEP, will be examined separately.

1. 15 minutes of indirect vision consultation services 1x every 4 weeks. (IEP dated 4/24/2023 – 1/10/2024)

According to the district, vision consultation services were provided by Kansas State School for the Blind (KSSB). The district acknowledged a delay in services due to availability of the provider at the start of the 2023/2024 school year. The district also calculated that, at the time of the December 12, 2023, meeting 60 minutes of consultation services had been missed. A PWN, dated 8/21/2023, states "the annual IEP dated 01.11.2023 indicated that consultative vision services 15 minutes a day, once every four weeks in GenEd classroom would end on 06.30.2023. This service is to carry over for the 2023-2024 school year to start 08.15.2023." The PWN notes this was a clerical error. A log, titled, Teacher of Student for Vision Impaired (TSVI) , dated January 2023 - August 2023, confirm an IEP Team meeting was held 1/11/2023, and "consult services for student with visual impairments" was added. Although the IEP provided by the district is dated 4/24/2023 – 1/10/2024, documents (8/21/2023 PWN, district notes, and service logs) clearly indicate the student was to receive vision consultation services from 2/14/2023 to 12/12/2023.

<u>IEP dated 4/24/2023 – 1/10/2024:</u>

In review of the TSVI log, consultation services were provided in February 2023, March 2023, April 2023, and May 2023. In August 2023 the service log indicates that the pervious provider was no longer with USD 453. A new log dated 10/5/2023 – 2/20/2024, indicates vision consultation services were missed in the months of August 2023/September 2023, October 2023, at the beginning of November 2023, and in December 2023, for a total of 60 minutes. While the service log shows the provider met with the student in October 2023, notes reveal that this was a "1st meeting with [the student]". Since a meeting with the student is not a consultation with the general education teacher, these minutes do not satisfy the IEP requirements and thus the October 2023 consultation was missed.

Additionally, provider notes indicate a student evaluation, completed on 12/6/2023, and an in-service demo, done on 12/8/2023, (for a total of 180 minutes), were counted

toward the overall consultation and direct service minutes required in both the 4/24/2023 -1/1/2024 IEP and the current IEP. This calculation is not accurate. Evaluations and demos are neither direct service minutes nor consultation minutes. Furthermore, minutes previously provided in one context cannot count toward future minutes required in a future IEP. (In this case the evaluation and demo occurred on 12/6/2023 and 12/8/2023, and, even if they were considered direct services, those minutes would not apply to any minutes required in the amended IEP dated 12/12/2023). Also, documents indicate the provider delivered a consult for 30 minutes on 11/30/2023 and counted this toward the overall consult minutes required. While this consult did last longer than the required 15 minutes, it does not negate the missed future consultation minutes. This is because the IEP specifically states that a consult is to occur for 15 minutes every 4 weeks. Doubling the amount of consult time one month does not excuse the consultation required in following months.

Based on the information above, 60 vision consultation minutes were missed between 4/2023 and 12/12/2023.

Current IEP:

The student's IEP was again amended on 12/12/2023. The signed PWN, dated 12/12/2023, states, "It is proposed to initiate specialized instruction in the are[a] of vision 30 minutes a day, once a week. This is a change from consultation services in the previous IEP." Records indicate that following this amendment, vision consultation services did cease, and 30 minutes of direct vision services began. Since vision consultation was no longer required, no minutes were missed between 12/12/2023 to 2/28/2024.

Conclusion:

Therefore, based on the information above, the district is in violation of failing to implement the IEP as written, specifically by failing to provide 60 vision consultation minutes between 2/14/2023 and 2/28/2024.

2. 30 minutes/1x a week of direct services for vision, in a special education setting. (Current IEP)

As stated above, following the 12/12/2023 amendment, vision consultation services ceased, and 30 minutes of direct special education vision services began. According to the district, these services were provided by Kansas School for the Blind teacher, Penny Kimberling. The district acknowledges a "slight delay in starting the service due to the winter break holiday, student unavailability due to road closures, and school closures." As of the filing of this complaint, the district states that 35 minutes of direct vision special education services are owed to the student.

IEP dated 4/24/2023 – 1/10/2024:

Direct special education vision services were not required in the IEP dated 4/24/2023 – 1/10/2024.

Current IEP:

As stated previously, provider notes indicate a student evaluation, completed on 12/6/2023, and an in-service demo, done on 12/8/2023, (for a total of 180 minutes) were counted toward the direct service minutes required in the amended IEP. However, this is an erroneous calculation. Neither an evaluation nor an in-service demo will satisfy required direct service minutes. Regardless, even if they had been direct service time, time spent with a student prior to an IEP service being consented to, in writing, by the parent, does not count toward future services.

In a review of provider service logs, beginning 12/12/2023, the student was required to receive 240 total direct services minutes between 12/12/2023 to 2/20/2024. As stated by the district, the student's services were delayed slightly due to winter break. Also, Kansas law requires districts to implement services consented to by the parent within 10 days. (K.A.R.91-40-16(b)(2)). In this case, the IEP was amended on 12/12/2023. This required the district to implement the service by 12/22/23. According to the district calendar, winter break was from 12/22/2023 to 1/3/2024. This means the district was not obligated to start services until the student returned from winter break. Records show the provider was working with the student initially on Thursdays and then switching to Tuesdays after February 8, 2024. Cross referencing the school calendar with provider notes and the student's attendance records show the student missed services on, 1/4/2024, 1/11/2024, 1/18/2024, 1/25/2024, and 2/8/2024.

Provider notes list winter break as occurring from 12/21/2023 – 1/8/2024, however these dates conflict with the district's school calendar and the student's attendance records. Following the established pattern of services, the student should have first received services on 1/4/2024. Since there is nothing in the record to indicate why the student missed, this is a missed service date. On 1/11/2024 provider records say, "Emailed ahead Ms. Cook explained student were not available due to bad roads." However, student attendance records and other service records indicate the student was at school and should have been available. Given the lack of reliability of the provider's records and considering the amount of conflicting documentation showing the student was at school, it is determined the student did miss services on 1/11/2024 due to provider availability, not student availability. On 1/18/2024 the student missed because the student was in the Recovery Room. Since another part of the student's IEP was being implemented, these service minutes do not need to be made up. On 1/25/2024 provider notes indicate the provider was at a celebration and therefore unavailable for services. Provider availability is not an acceptable reason missed

services. Finally, on 2/8/2024, provider notes state the student was "in group" and that services would be switched to Tuesdays. There is nothing to indicate that services were provided on this date, or that they could not have been provided. As such, services were missed on 2/8/2024. Additional, notes suggest the provider added an additional 50-minutes total (vision and/or O&M) on 2/1/2024 and 30 minutes (vision and/or O&M) on 2/20/2024. However, because there is no documentation in the provider's notes, or otherwise, to indicate that this was agreed upon, with the parent, as compensatory time for missed minutes, nor is there anything in the notes to indicate specifically which skills were worked on, the overage cannot arbitrarily be applied as compensatory services.

Conclusion:

Therefore, based on the information above, the district is in violation by failing to implement the IEP as written, specifically by failing to provide 120 vision direct special education minutes related to vision between 12/12/2023 and 2/20/2024.

3. 60 minutes/5x a week of behavior related services in the regular education setting. (IEP dated 4/24/2023 – 1/10/2024)

105 minutes/5x a week of behavior related services in the regular education setting, (current IEP amended to increase minutes on January 3, 2024, from 75 to 105 minutes).

According to documents, the IEP dated 4/24/2023 to 12/12/2023, requires 60 minutes of indirect special education services related to behavior, provided 5x a week in the general education classroom through para support. Following an amendment on 12/12/2023 the minutes were increased to 75 indirect special education minutes and then amended again on 1/3/2024 to include an additional 30 minutes of indirect service minutes specific to vision, bringing the total number of push-in minutes to 105 minutes 5x a week.

IEP dated 4/24/2023 – 1/10/2024:

The IEP required 60 minutes of indirect special education service minutes, related to behavior, provided to the student in the general education setting through para support. Service logs dated 2/1/2023 – 6/30/2023, indicate the student missed indirect service minutes on 15 days. Of these 15 days, 12 were related to student excused absences and are not required to be made up. For three of the missed indirect service days, occurring on 6/5/2023, 6/7/2023, and 6/21/2023, the service log confirms services were missed, but does not indicate why they were missed. Furthermore, records do not show the student as marked absent. Consequently, the district missed 120 minutes total of push in behavior support services minutes between 2/14/2023 and 12/12/2023.

Current IEP:

According to the district 75 minutes (between 12/12/2023 and 1/2/2024), and then 105 minutes (beginning 1/3/82024) of indirect special education services were required 5x a week in the general education classroom through para support. The record shows these minutes were provided from 8:30-9:00 am, 9:00 – 9:15 am, 1:00-1:15 pm, 12:30-12:45 pm, and 3:00-3:30 pm. Service logs dated 8/15/2023 – 2/28/2023 indicate the student missed 10 days of services. Of those missed days, 8 were due to student absences and 2 were due to out-of-school suspensions (OSS). Student absences and OSS days, which have not reached an accumulated 11 days, do not require the district to make-up minutes. Consequently, no indirect behavior support service minutes were missed between 12/12/2023 and 2/28/2024.

Conclusion:

Therefore, based on the information above, the district is in violation of failing to implement the IEP as written, specifically by failing to provide 120 indirect service minutes between 2/14/2023 and 2/28/2024.

4. 30 minutes/5x a week of direct services for behavior, in a special education setting. (IEP dated 4/24/2023 – 1/10/2024)

45 minutes/5x a week of direct services for behavior, in a special education setting. (current IEP).

IEP dated 4/24/2023 – 1/10/2024:

According to the district, 30 minutes of direct special education services were provided 5x a week in the special education setting by special education teacher Jayme Temple. Records show the student missed 23 sessions between 2/14/2023 and 12/12/2023. Of these 23 missed direct service minutes, 10 sessions were missed due to provider absences, mostly because the provider was attending an IEP meeting. Another 8 sessions were missed due to student absences, and 3 were missed because the student was with the nurse. Finally, 2 sessions were missed without any explanation attached. In some instances, records reveal conflicting evidence as to whether the student received direct services or not. For example, a printout of the student's progress report notes the student was absent on 5 days between 2/14/2023 and 6/26/2023, however, according to district service minute logs, the student *did* receive services on 3 of those days and was in the nurse's station the other 2 days. Finally, according to a progress report, dated 10/10/2023, the student was not making progress "adequate to achieve goals" on either of the student's behavior goals.

Missed services because of student absence from school are generally excused, and the district is generally not required to offer compensatory minutes. However, missed

minutes because of provider absences, regardless of the reason, generally require the district to make-up the minutes, notify the parent of the missed minutes, and possibly consider whether the missed minutes are interfering with the student's ability to receive FAPE, especially if the student is missing a significant number of minutes due to provider availability. Additionally, when a student misses service minutes because the student is in another area of the school, not related to the student's IEP, the district should attempt to make-up those minutes. Since the IEP Team is responsible for determining the frequency, location, and duration of services (34 CFR 300.320(a)(7)), it is inappropriate to disregard missed services simply because the student is utilizing another service provided by the district to all students (i.e. the school nurse). Also, if such absences become chronic, a district is obligated to consider how these missed minutes are affecting the student's ability to receive FAPE (See OSEP *Letter to Clarke*).

In this investigation, using the guidance in OSEP's *Letter to Clarke*, it is found that the failure of the district to provide services to this student due to the absence of service providers reached the level of a chronic failure. Accordingly, the bulk of these missed services should have been made up. This finding will be reflected in the conclusion and corrective action portions of this report.

Here, the student missed a total of 15 direct special education service sessions for behavior because of provider absences, student absences (with the nurse), and because of unexplained misses. Consequently, the district missed a total of 450 minutes of direct service minutes between 2/14/2023 and 12/12/2023.

Current IEP:

According to the district, under the current IEP, 45 minutes of direct special education services were provided 5x a week, in the special education setting, by special education teacher Jayme Temple. Records indicate the student missed 13 direct special education service sessions between 12/12/2023 and 2/28/2024. Of the sessions missed, 11 were because of student excused absences and 2 were because the student was in OSS. As previously stated, services are not required during OSS until the 11th cumulated day. In this case, the student was in OSS for a total of two days, and student absences account for the remaining nine missed days of services, therefore, the district is not required to offer compensatory services for any of the missed minutes.

Conclusion:

Based on the information above, the district is in violation of failing to implement the IEP as written, specifically by failing to provide 450 (15 x 30) minutes of direct service minutes between 2/14/2023 and 2/28/2024.

5. 30 minutes/5x a week of transportation services related to behavior in an "extracurricular setting". (transportation to and from school) (same for both the previous and the current IEP)

There is nothing in the record or the complaint to indicate that the student missed transportation services. Therefore, there is no violation of failing to implement the IEP as written, specifically by failing to provide transportation services to the student.

6. 15 minutes/1x a week of OT services in a special education setting. (4/24/2023 – 6/30/2023).

According to the district, 15 minutes of special education services for occupational therapy (OT) is required 1x a week. This is currently provided by occupational therapist Shawna Dobbe. The district does acknowledge that USD #453 was unable to secure a qualified OT from 8/15/2023 – 10/2/2023. In an interview with the Director of Special Education, Dr. Cathy Redelberger, she confirmed the student failed to receive any OT services during this time. Also, according to the student's progress report dated 10/10/2023, the parent was informed of the lapse in services due to provider availability and the possibility of compensatory services was addressed. Finally, a signed PWN, dated 12/12/2023, states, "It is proposed to *continue* pull-out occupational therapy 15 minutes a day (direct services), once a week".

Further, although the previous IEP shows direct OT services stopping on 6/30/2023 the district provided documentation to show this was a clerical error and that direct OT services were meant to continue, and in fact did continue, for the 2023-2024 school year. Continuation of services is evidenced by the student's OT service logs, parent interview, and the student's progress report, which states "…'skills were not addressed though OT this past quarter", followed by an offer to discuss compensatory services. In recognition of this clerical error, the district submitted an unsigned PWN, dated 12/12/2023, noting the clerical error. The PWN stated OT services resumed on 10/17/2023 (after hiring the OT) to present day. It is worth noting however, that although the unsigned PWN states OT services *resumed* from "10/17/2023 to present", conversations with the district, the parent, and documentation, support the student was intended to receive direct OT services from 8/15/2023 to present. Additionally, the student's progress report (10/10/2023) still contained the same OT goals from the 2022/2023 IEP. These goals include:

- Goal 1 – By January of 2024, [the student] will improve [the student's] bilateral coordination and cutting skills by being able to cut within ¼ inch of the line on 3 of 4 basic shapes.

- Goal 2 – By January of 2024, [the student] will improve [the student's] fine motor and writing skills by being able to write [the student's] name legibly and copy 9 of 9 basic shapes essential to letter and number formation.

For both goals, as of 10/10/2023, the student is reported as not having made "adequate progress to achieve goal". Comments on the report also state, "Leavenworth USD 453 was unable to secure a qualified Occupational Therapist from 8/15/23 – 10/2/23. The district is prepared to offer compensatory services for the loss of instructional time for your student. Moving forward, when your child's annual IEP meeting is held, the team will discuss compensatory services and develop a plan to ensure those services are provided". No documentation was provided to show compensatory services, yet, have been offered, or have occurred. It is also relevant to note that nothing in the record indicates the student has made progress toward either OT goal.

Whether the district properly provided a PWN is not an issue in this case, and therefore no finding will be made. However, a district must provide a PWN whenever a change to the IEP occurs. Failure to do so is possibly a violation of IDEA. Here, the district failed to properly record the continuation of direct OT services or OT consultation services when the IEP was amended on 8/15/2023. Following this amendment, a PWN was sent to the parent on 8/21/2023 discussing a different clerical error of removing vision consultation services. This was addressed to the parent and signed by the parent. The IEP was again amended at that time to include vision; however, nothing was mentioned about discontinuing or continuing direct OT services or OT consultation services. Even so, documentation evidence and discussions with the parent and district reveal these services were meant to continue into the 2023/2024 school year and therefore a PWN addressing this was likely required following the 8/15/2023 amendment. As stated previously, the district did provide an unsigned PWN, dated 12/12/2023, stating that OT direct services were to *resume* on 10/17/2023 to present. However, this PWN does not align with other documents in the record, nor was it signed by the parent, or even addressed to the parent.

<u>IEP dated 4/24/2023 – 1/10/2024:</u>

Considering the information above, and accounting for the district's admission of a clerical error, documentation will be reviewed from 2/14/2023 to 12/12/2023. During the above-mentioned period, services were required to be delivered an estimated 30 times. Records confirm the student missed direct special education OT services 10 times between 2/14/2023 and 12/12/2023. Specifically, the student missed one direct OT special education session during the week of 3/20/2023, and nine sessions between 8/15/2023 and 10/23/2023. District records note the week of 3/20/2023 was missed because of spring break, however, according to the district calendar, spring

break ended on March 17, 2023. Therefore, OT services should have been delivered the week of March 20, 2023. The next nine sessions were missed due to provider availability, which the district acknowledges.

An additional three sessions were missed between 2/14/2023 and 12/12/2023, but these sessions do not require compensatory services. Services were missed on 11/14/2023 due to provider availability, however the record indicates the session was made up that week on 11/17/2023. The student again missed on 11/29/2023 due to a student excused absence, therefore not requiring compensatory services. On 12/6/2023 services were missed because the student was in the Recovery Room. As stated previously, when another section of the IEP is being implemented the district is not required to offer compensatory services for those missed minutes.

Therefore, based on the information above, between 2/14/2023 and 12/12/2023, the student missed a total of ten OT direct special education service sessions for a total of 150 minutes.

Current IEP:

According to the current IEP, the student is required to receive 15 minutes/1x a week of OT services in the special education setting. Between 12/12/2023 and 2/8/2024, services were required a total of seven times. A review of the OT service log shows services were missed on five occasions, specifically, 12/15/2023, 1/5/2024, 1/12/2024, 1/19/2024, and 2/8/2024. Of these missed sessions, one was missed because the student was in the Recovery Room (1/5/2024) and one was missed because of an excused student absence (1/12/2024). These do not require the district to offer compensatory minutes. Again, it is worth noting however, that if such absences become chronic, a district has an obligation to consider how the missed minutes are affecting the student's ability to receive FAPE. (See *Letter to Clarke*)

Two missed sessions, on 12/15/2023 and 2/8/2024, are the result of student availability. On 12/15/2023, records indicate the student was with the nurse and a make-up session would occur the following week, but there is nothing in the log to indicate the required make-up session occurred. On 2/8/2024 the service log lists the student as unavailable but does not indicate why the student was unavailable. A cross-reference of the student's direct behavior service log, attendance record, and progress report all list the student as in school and receiving other services on 2/8/2023. Since there is no indication these missed service minutes were due to an excused student absence, the minutes are considered missed. Finally, the student missed services on 1/19/2024 due to the in-person facilitator being unavailable. Service provider availability does not excuse required minutes listed in an IEP.

Based on the information above, between 12/12/2023 and 2/8/2024, the student missed a total of three OT direct service sessions (on 12/15/2023, 1/19/2024, and 2/8/2024) for a total of 45 minutes.

Conclusion:

Therefore, the district is in violation of failing to implement the IEP as written, specifically by failing to provide direct OT special education services 13 times between 2/14/2023 and 2/8/2024 for a total of 195 minutes.

7. 5 minutes/1x a week of consultation indirect OT services (4/24/2023 – 6/30/2023.)

The student's IEP specifies that OT consultation services are provided 5 minutes, 1x a week. As discussed above, OT consultation was listed in the student's IEP from 4/24/2023 to 6/30/2023. However, interviews, documentation, and service logs indicate services were in place 1/11/2023 onward and were meant to continue in the 2023/2024 school year. Specifically, the progress report, dated 10/10/2023, states, "[The student] will resume consultative OT services the week of 10/9 at which time progress toward this goal is expected to resume." This statement is noted under each of the student's OT goals. Furthermore, the district confirmed in interviews that the student failed to receive *any* OT services due to provider availability prior to hiring an OT in October 2023. Finally, a signed PWN, dated 12/12/2023, (discussed under #5), states, "It is proposed to continue pull-out occupational therapy 15 minutes a day (direct services), once a week". This record seems to indicate that OT consultation services were to cease following the 12/12/2023 amendment. This is confirmed by service logs. Therefore, records will be reviewed for the time between 2/14/2023 – 6/30/2023 and from 8/15/2023 – 12/12/2023.

IEP dated 4/24/2023 – 1/10/2024:

Between 2/14/2023 and 6/30/2023, OT consultation services were required a total of 26 times. Of these 26 required consultation sessions, records show 23 were missed. OT service logs show consultation was missed the weeks of February 20th, February 27th, March 6th, March 20th, March 27th, April 4th, April 10th, May 1st, May 8th, May 15th, and May 22nd. Also, the eight weeks between 8/15/2023 and 10/17/2023 when the district was without an OT, and the weeks of November 20th, November 27th, December 4th, and December 11th.

Consequently, based on the information above, between 2/14/2023 - 6/30/2024 and 8/15/2023 – 12/12/2023 a total of 23 OT consultation service sessions were missed for a total of 115 consult minutes.

Current IEP:

As stated above, it does not seem that OT consultation was intended to continue beyond 12/12/2023. The signed PWN, dated 12/12/2023, (discussed under #5) only mentions OT direct services, stating, "It is proposed to continue pull-out occupational therapy 15 minutes a day (direct services), once a week". Further, between 12/12/2023 and 2/8/2024, only one OT consult is recorded on 1/19/2023. Therefore, because there is not enough evidence to show that OT consultation was required under the current IEP, a finding will not be made as to missed services from 12/12/2023 – current.

Conclusion:

Therefore, the district is in violation of failing to implement the IEP as written, specifically by failing to provide direct OT consultation special education services 23 times between 2/14/2023 and 2/8/2024 for a total of 115 OT consultation minutes.

8. 30 minutes/1x a week of direct services for Orientation and Mobility, in a special education setting. (current IEP)

A PWN, dated 12/12/2023, states, "It is proposed to initiate specialized instruction in the area of orientation and mobility 30 minutes a day, once a week." According to the district, these services were provided by Kansas School for the Blind teacher, Penny Kimberling. Documents show Ms. Kimberling provided both Orientation & Mobility special education services (30 minutes a week) and direct vision special education services (30 minutes a week).

IEP dated 4/24/2023 – 1/10/2024:

Orientation & Mobility (O&M) was not included in the IEP prior to 12/12/2023.

Current IEP:

As stated under section #2, the law requires services, which the parent has consented to, to be implemented no later than 10 days following written consent. In this case, the IEP was amended and the PWN signed on 12/12/2023, meaning orientation & mobility services needed to be implemented by 12/22/2023. However, the district was on winter break between 12/22/2023 and 1/3/2024, therefore, service did not need to begin until 1/4/2023. Also as noted under section #2, provider notes indicate services were provided on Thursdays and then switched to Tuesdays on 2/8/2024. After reviewing documents, including provider notes, district calendars, student attendance records, and other service records, it is determined the student missed services on 1/4/2024, 1/11/2024, 1/18/2024, 1/25/2024, 2/8/2024.

Since the same provider, KSSB teacher, Penny Kimberling, provides both direct vision services, and O&M services, a similar analysis applies to these dates as under section #2. On 1/4/2024, services were missed without explanation. On 1/11/2024, services

were missed presumably due to lack of provider availability since other documents indicate the student was in attendance that day. On 1/18/2024, the missed services were due to implementing another part of the student's IEP. On 1/25/2024, services were missed because of lack of provider availability, and 2/8/2024, services were missed because the student was in group (not a student availability issue).

Additionally, as discussed above, notes suggest the provider added 50-minute (vision and/or O&M) on 2/1/2024 and 30 minutes (vision and/or O&M) on 2/20/2024. However, because there is no documentation in provider notes, or otherwise, to indicate this was agreed upon compensatory time for missed minutes (with the parent), nor is there anything in the record to indicate which skills were worked on, the overage does not apply to compensatory services. Consequently, the district missed four O&M sessions, for a total of 120 minutes.

Conclusion

Therefore, the district is in violation of failing to implement the IEP as written, specifically by failing to provide direct special education services related to Orientation and Mobility for a total of 120 minutes between 12/12/2023 and 2/20/2024.

Conclusion

Therefore, based on the foregoing, a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDE/A), by failing to implement the IEP as written, specifically by failing to provide the required number of push-in and pull-out minutes *is substantiated*.

In total the district failed to provide, 60 minutes of vision consultation services, 120 minutes of direct (pull-out) vision special education services, 120 minutes of indirect (push-in) behavior support special education services, 450 minutes of direct (pull-out) behavior support special education services, 195 minutes of direct (pull-out) occupational therapy special education services, 115 minutes of occupational therapy consultation services, and 120 minutes of direct (pull-out) orientation and mobility services.

Issue Two

Whether USD #453, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP as written, specifically by failing to provide services during out-of-school suspension.

Applicable Law

Students with disabilities may be disciplined using traditional forms of discipline, such as suspensions, detention, or restriction of privileges as long as those forms of discipline are used with nondisabled students in the same manner and do not violate the provisions of the

student's IEP or the student's right to a free appropriate public education (FAPE). If a student, identified as a student with a disability, is disciplined and that discipline results in a change of placement the student is entitled to procedural protections under the IDEA. (34 C.F.R. §§ 300.530, 300.536). A disciplinary change of placement occurs if: (1) a student has been removed from his or her current educational placement for more than 10 consecutive school days, or (2) a student has been subjected to a series of removals that total more than 10 school days and those removals constitute a pattern of misconduct that involves substantially the same behavior. 34 C.F.R. § 300.536(a); K.A.R. 91-40-33(a)(1)). A district is not required to provide special education or related services to a student who has been suspended from school for 10 or fewer school days during a school year. (K.A.R. 91-40-35(a)).

Findings of Fact & Analysis

Documents show the student was subject to an out-of-school suspension (OSS), on 12/19/2023 and 12/20/2023. Attendance records also show the student was absent during the afternoon on 12/18/2023 for a medical absence (MED). An interview with the parent clarified that she was called because of the incident occurring on 12/18/2023 and asked to take the student home, which she did. There is no other indication in the record that the student was disciplined with any other in-school-suspensions (ISS) or an additional OSS during the school year. That said, interviews with the parent revealed the district does call her sometimes "to calm down [the student] so [the student] can go back to class". According to the parent, sometimes this works, but often she would choose to take the student home because once the student sees her, "[the student] won't go back to class."

In this case, the district states the student was suspended for a total of 2 days of OSS, therefore the district was not obligated to provide services during the time of suspension. The district is correct. Since the student has not accumulated more than 10 OSS or ISS days in the school year, services are not required. However, in this case, the district miscalculates the total number of OSS days the student has accumulated. A suspension occurs when the student is removed for any part of the school day. Here, the district called the parent to come and pick the student up following the incident occurring on 12/18/2023. That day, (12/18/2023), also counts as an OSS since the student was removed. Therefore, at the time of this report, the student had reached three days of OSS, not two. Since the total number of OSS days is still less than ten, the district is not obligation to provide services during OSS.

That said, while records do not provide enough evidence to make a finding, it is worth noting that each time the parent is called to "calm down" the student, resulting in the student's removal from school, these situations would count toward the total number of OSS removals. Calling this a "parent choice" is inappropriate and would not negate the fact that the district called the parent due to student behavior. Depending on how many days this has occurred this year (and the parent could not verify when or how often, nor do records provide clarity), the student could potentially have already accumulated more than ten OSS days. Especially,

since in a review of attendance records, the student was marked absent for MED for all or part of the day on nine additional occasions (not counting the 12/18/2023 date which is a known OSS day). Regardless, in this situation, with the evidence available, the district was not obligated to offer special education services to the student during OSS on 12/18/2023, 12/19/2023, or 12/20/2023.

Conclusion

Therefore, based on the foregoing, a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically by failing to provide services during out-of-school suspension *is not substantiated*.

Summary of Conclusions/Corrective Action

ISSUE ONE: A violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to provide the required number of push-in and pull-out minutes is substantiated.

a) CORRECTIVE ACTION:
   i) Draft a proposal to the parent offering the specified number of compensatory services in the following areas:
      1) 60 minutes of consultation services related to vision.*
      2) 120 minutes of direct special education service minutes related to vision.*
      3) 120 minutes of indirect special education service minutes related to behavior.*
      4) 450 minutes of direct special education service minutes related to behavior.*
      5) 195 minutes of direct special education service minutes related to OT.*
      6) 115 minutes of consultation service minutes related to OT.*
      7) 120 minutes of special education service minutes related to Orientation and Mobility.*
         (a) Date due: May 1, 2024
   ii) *The parent may accept, some, all, or none of the specified minutes.
   iii) Provide a copy of the offer to KSDE along with the parent's response.
         (a) Due date: May 1, 2024
   iv) Provide training to all staff on proper IEP implementation procedures.
         (a) Due date: May 1, 2024
   v) Provide a letter to KDSE confirming the training was completed.
         (a) Due date: May 10, 2024
   vi) Reconvene an IEP team meeting to consider the impact of service provider's absence or the student's absence on the student's progress and performance.
         (a) Due date: May 1, 2024
   vii) Provide a letter to KSDE confirming the IEP meeting and the outcome.

(a) Due date: May 10, 2024

ISSUE TWO: A violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to provide services during out-of-school suspension is not substantiated.

b. No corrective action required.

Investigator

Complaint Investigator:

Ashley Niedzwiecki

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).

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 #458
ON FEBRUARY 26, 2024

DATE OF REPORT MARCH 27, 2024

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 complainant," or "the parent."

Investigation of Complaint

On March 11, 2024, Laura Jurgensen, complaint investigator, spoke with the parent via Zoom. On March 20, 2024, the investigator spoke, via Zoom, with Jennifer Martin, Director of Special Education; Bailey Edgar, School Psychologist; and Jill Koertner, District Behavior Coach. The complaint investigator also exchanged multiple emails with the parents and Ms. Martin. For the remainder of this report, Ms. Martin will be referred to as "Director of Special Education," Ms. Edgar will be referred to as "School Psychologist," and Ms. Koertner will be referred to as "District Behavior Coach."

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

- Student's i-Ready Reading Data, Aug. 25, 2023–Mar. 21, 2024.
- Student's i-Ready Math Data, Aug. 24, 2023–Mar. 20, 2024.
- Student Behavior Intervention Plan (BIP) Goal Progress Data, Aug. 15, 2023–Mar. 6, 2024.
- Student Progress Reports 1st, 2nd, and 3rd Quarters 2023-2024.
- Parent Issues and Timeline with [school and district], Mar. 1, 2024.
- Email from Director of Special Education to Student's IEP Team Providing Progress Report Data, Feb. 2, 2024.
- Email from Parent to Student's IEP Team with Data Request, Feb. 1, 2024.
- Email from School Psychologist to Parents with Prior Written Notice (PWN), Notice of Meeting (NOM), and draft Individualized Education Program (IEP), Jan. 29, 2024.
- Proposed IEP Amendment, Jan. 24, 2024.
- Jan. 24, 2024, IEP Team Meeting Paperwork: NOMs for Jan. 12 & 24, 2024, IEP Team Meeting Notes, PWN.
- Slides from IEP Team Meeting, Jan. 24, 2024.
- U.S. Dep't of Educ. Office of Special Educ. Programs (OSEP) Letter to Lipsitt, Apr. 19, 2018, IEP Team Discussed at Jan. 24, 2024, IEP Team Meeting.

- Email from Director of Special Education to Student's IEP Team with Agenda for Jan. 24, 2024, IEP Team Meeting, Jan. 11, 2024.
- Student Otolaryngology Office Visits Notes, Nov. 9, and Dec. 9, 2023.
- IEP Goal 8.1 Progress Data, Oct. 24–Dec. 7, 2023.
- Letter from Director of Special Education to Parents Regarding Missed Services, Dec. 7, 2023.
- Dec. 6, 2023, IEP Team Meeting Paperwork: PWN and Request for Consent for Reevaluation, Parent Consent for Release of Information and Medicaid Reimbursement, NOM, IEP Team Meeting Notes.
- NOM and IEP Team Meeting Notes, Nov. 10, 2023.
- Student's Day at School Worksheets from School to Parent, Nov. 27, 30, Dec. 4, and 5.
- Email Exchange between School Psychologist, Parent, & Principal regarding Parent's Request for Increased Time in the Regular Education Environment, Oct. 30, 2023.
- Student IEP, May 1, 2023.
- May 1, 2023, IEP Team Meeting Paperwork: IEP Team Meeting Notes, Behavior Intervention Plan, Extended School Year Transportation, Extended School Year Justification, School Year Transportation, Parent Rights Receipt, Electronic Communication Consent, Parent Consent for Release of Information and Medicaid Reimbursement, First–Third Quarter 2022-2023 Progress Report, PWN, NOM.
- Behavior Intervention Plan, Apr. 30, 2023.
- Student Behavior Data Collection Sheet, Versions 1, 2, 3, and 4.
- Facebook Comment Exchange between District and Parent regarding IEP Compliance and Special Education Funding.
- Text Messages between Substitute Special Education Teacher and Parent regarding Student's Behavior.
- Cooperative Progress Report Guidance.
- Cooperative's Written Procedures for Creating Progress Reports for Students with IEPs, Sept. 2023.
- Cooperative's Written Procedures for Creating Progress Reports for Students with IEPs, Nov. 2023.
- Screencast of Cooperative's Instructions for Creating Progress Reports for Students with IEPs.
- IEP pages, including amendments, for 38 students with IEPs attending student's school, from the first day of school through the filing of this complaint showing the student's name and the special education services in the regular education environment required for the student.
- Student's school provider schedules with anticipated student services times.
- Twelve letters from the Cooperative to parents whose children the Cooperative determined did not receive required special education services, Dec. 7, 2023.

Background Information

The district against which this complaint is filed provides special education services through a cooperative. The student is enrolled in the first grade in an elementary school within the cooperative that is not in the student's resident district, based on an IEP Team decision before the student enrolled in kindergarten. (Parent Interview, Mar. 11, 2024; Student IEP, May 1, 2023.) The student's strengths are being social and imaginative, working well in a structured environment, and completing many tasks independently. (Student IEP, May 1, 2023.) The student's exceptionality impacts his ability to access and progress in the general curriculum through his visual and fine motor delays and sensory needs that inhibit him from participating in classroom activities as compared to same age peers. (Student IEP, May 1, 2023.) The student's language delays impact his ability to verbally demonstrate knowledge and impede his social success with staff and peers as others often have a difficult time understanding his wants and needs. (Student IEP, May 1, 2023.) The student's exceptionality impacts his ability to work on grade level curriculum and he accesses the general curriculum with modifications. (District Interview, Mar. 20, 2024.)

Issues

In the written complaint, the parent presented two issues.

Issue One: From the first day of school through the filing of this complaint did USD 458 ensure that to the maximum extent appropriate, the student was educated with children who are nondisabled and was only removed from the regular educational environment if the nature or severity of the student's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily? 34 C.F.R. § 300.114(a)(2); K.S.A. § 72-3420(a).

Issue Two: From the first day of school through the filing of this complaint did USD 458 ensure that as soon as possible following development of the student's IEP, USD 458 made available all special education and related services to the student that the student's IEP states will be provided in a regular education classroom? 34 C.F.R. § 300.323(c)(2); K.S.A. § 72-3429(a)(1).

During the investigation, the investigator came across information that raised a credible allegation regarding a special education practice that raised a potential compliance issue. The December 6, 2023, IEP Team meeting notes indicate that multiple students with IEPs had not received the special education services in the regular class as stated in their IEP. The December 6, 2023, IEP Team meeting notes states, "families will be receiving a letter from the special education director" and "families may be offered compensatory services." When a State becomes aware of a credible allegation it must conduct proper due diligence in a timely manner. (U.S. Dep't of Educ. Office of Special Educ. & Rehabilitative Services, State General Supervision Responsibilities Under Parts B and C of the IDEA, Monitoring, Technical Assistance, and Enforcement, OSEP QA 23-01, July 24, 2023.) Due to the closeness between this concern

and Issue Two and learning of this credible allegation early enough in the investigation to give the district the opportunity to respond and provide evidence, the State will conduct its proper due diligence by resolving this issue in this complaint investigation.

Issue Three: From the first day of school through the filing of this complaint did USD 458 ensure that as soon as possible following development of the IEPs of all students with IEPs enrolled in student's school, USD 458 made available all special education services to all students with IEPs enrolled in student's school that each student's IEP states will be provided in the regular class? 34 C.F.R. § 300.323(c)(2); K.S.A. § 72-3429(a)(1).

Issue One

From the first day of school through the filing of this complaint did USD 458 ensure that to the maximum extent appropriate, the student was educated with children who are nondisabled and was only removed from the regular educational environment if the nature or severity of the student's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily? 34 C.F.R. § 300.114(a)(2); K.S.A. § 72-3420(a).

Applicable Law

The regulations implementing the Individuals with Disabilities Education Act (IDEA) and Kansas statute require, to the maximum extent appropriate, that a child with an IEP must be educated with children who are not disabled and only removed from the regular education environment if the nature and severity of the child's disability, even with the use of supplementary aids and services, causes the child to not receive a satisfactory education. (34 C.F.R. § 300.114(a)(2); K.S.A. § 72-3420(a).) The decision to remove a child from the regular education environment and to consider the use of supplementary aids and services necessary to keep the child in the regular education environment to the maximum extent appropriate must be "made by made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options" (34 C.F.R. § 300.116(a)(1).) OSEP indicates in its comments to the regulations implementing IDEA that the "regular educational environment" referenced in 34 C.F.R. § 300.114(a) includes regular classrooms and other school settings, like the cafeteria and recess, where children without disabilities participate. (71 Fed. Reg. 46,585 (2006).) The placement decision is documented in the child's IEP and must include "[a]n explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in" participating in the child's special education and related services, supplementary aids and services, program modifications, and supports for school personnel that enable the child to make appropriate progress on their annual goals, be involved in and progress in the general curriculum, participate in extracurricular and nonacademic activities, and be educated and participate with other children with disabilities and nondisabled children. (34 C.F.R. § 300.320(a)(5); K.S.A. § 72-

3429(c)(5).) Districts must communicate decisions regarding proposed changes to placement or refusing a parent's request to change placement through a Prior Written Notice. (34 C.F.R. § 300.503(a); K.S.A. § 72-3430(b)(2).)

Analysis: Findings of Fact

When the student's IEP Team met on May 1, 2023, the IEP Team determined the student's placement and documented the placement decision for the student in the IEP. (Student IEP, May 1, 2023.) The parent's written complaint does not allege a violation of law as to the IEP Team's May 1 placement decision and the district maintains this decision met special education legal requirements. (Parent Interview, Mar. 11, 2024; District Interview, Mar. 20, 2024.) The allegation for this issue is that the district did not ensure that the student's placement was maintained from the first day of school through the filing of this complaint as the student's IEP required.

The student's May 1, 2023, IEP indicates the IEP Team selected the student's placement to be "Special Education Direct Services in a General Education Classroom in a Elementary or Secondary Building" and "Special Education Classroom in General Education Elementary or Secondary Building." District staff indicate that the student spends most of the school day in a special education classroom that the student's school calls the "structured learning classroom" or SLC. (District Interview, Mar. 20, 2024.) In considering whether the nature and severity of the student's disability, even with the use of supplementary aids and services, would enable the student to receive a satisfactory education in the regular educational environment, the IEP Team determined that the student, "would most greatly benefit from placement within a specialized program that would meet his social/behavioral needs more directly than a regular education environments [sic] with supplementary aids and services only. He will be included in his general education classroom as often as possible." (Student IEP, May 1, 2023.) To be clear, this is a statement of placement, with the IEP Team attempting to document its decision under 34 C.F.R. § 300.114(a)(2)(ii) and not a statement of special education services.

Despite the parent not alleging a violation of special education law as to the IEP Team's May 1, 2023, decision on the student's placement, the written description in the student's IEP, is clearly defective in explaining the "the extent, if any, to which the child will not participate with nondisabled children in the regular class" (34 C.F.R. § 300.320(a)(5).) To explain is "to make plain or understandable." (Explain, Merriam- Webster Dictionary.) Indicating that the student will "be included in his general education classroom as often as possible" does not provide the needed specificity for IEP Team members to understand when the student will not participate with nondisabled children in the regular class. (Student IEP, May 1, 2023.) The IEP must clearly document the team's explanation of the extent, if any, to which the student will not participate with nondisabled children in the regular class. The team could document this in the IEP in a variety of ways, the clearest likely being to describe the classes, subjects, and/or portions of the student's day when the student will not participate in the regular class and other school

settings, like the cafeteria and recess, where children without disabilities participate. The December 6, 2023, IEP Team meeting minutes indicate that district staff provided the parent with a copy of the student's daily schedule and discussed the portions of the student's day that he spent in the SLC and the regular class, in relation to his special education services. (Dec. 6, 2023, IEP Team Meeting Paperwork.) Talking through the student's daily schedule and discussing the portions of the student's day that he will spend in and removed from the regular class, in relation to his special education services, is a conversation for the group of persons knowledgeable about the child, including the parents, and this conversation and decision must be documented in the child's IEP, clearly explaining "the extent, if any, to which the child will not participate with nondisabled children in the regular class " (34 C.F.R. § 300.320(a)(5).)

At the end of September 2023, the student's special education teacher from the SLC classroom went on parental leave. (Parent Interview, Mar. 11, 2024; District Interview, Mar. 20, 2024.) In October 2023, the parent attended a parent teacher conference with the student's general education teacher where the general education teacher indicated that the student was doing well in the regular class, but that the student was not there much. (Parent Interview, Mar. 11, 2024.) Following the parent teacher conference the parent contacted the School Psychologist and requested to increase the student's time in the regular class and to amend the student's IEP without a meeting to reflect the increased time. (Parent Interview, Mar. 11, 2024.) The parent and School Psychologist then exchanged emails and established a November 10, 2023, IEP Team meeting. (Email Exchange between School Psychologist, Parent, & Principal regarding Parent's Request for Increased Time in the Regular Education Environment, Oct. 30, 2023.)

The parent indicated that on November 3, 2023, the secretary from the student's school called the parent and asked the parent to come to the school as the student was exhibiting aggressive behavior, either to help staff calm the student or to pick the student up. (Parent Interview, Mar. 11, 2024.) The parent was able to assist school staff in calming the student and the student remained at school. (Parent Interview, Mar. 11, 2024.) The student's IEP Team spent most of the November 10, 2023, IEP Team meeting discussing the November 3 situation. (NOM and IEP Team Meeting Notes, Nov. 10, 2023.) The parent raised her request for increased time in the regular class and the School Psychologist discussed the student's behavior inconsistences and lack of foundational academic knowledge and skills that would prevent the student from being successful in increased time in the regular class. (NOM and IEP Team Meeting Notes, Nov. 10, 2023.) The IEP Team identified reading group as a good time to increase the student's time daily by 15–20 minutes in the regular class and collect data to determine the student's success with this change. (NOM and IEP Team Meeting Notes, Nov. 10, 2023.) The IEP Team decided to meet again on December 6, 2023, to review the collected data and further discuss increasing the student's time in the regular class. (NOM and IEP Team Meeting Notes, Nov. 10, 2023.) The district did not provide the investigator with a Prior Written

Notice documenting the IEP Team's decision on the parent's request to increase the student's time in the regular class.

On November 16, 2023, the parent was again called to the student's school to help staff calm the student. (Parent Interview, Mar. 11, 2024.) The parent provided the investigator with "Day at School" sheets for the student for November 27 and 30 and December 4 and 5 that she asserts is evidence that the special education teacher was not permitting the student to go to the regular class unless he exhibited good behavior. On their face, these sheets do not seem to indicate this, but with the student's IEP providing an unclear description of the student's participation in the regular class it is understandable that the parent wondered whether staff were not permitting the student to participate in the regular class due to his behavior. At the December 6, 2023, IEP Team meeting, the IEP Team discussed data on the student's progress toward meeting the annual goals and data on the student's challenging behavior, including times of the day the student more often exhibited "vocal disruption, property disruption, elopement, and aggression." (Dec. 6, 2023, IEP Team Meeting Paperwork.) District staff provided the parent with a copy of the student's daily schedule and discussed the portions of the student's day that he spent in the SLC and the regular class, in relation to his special education services. (Dec. 6, 2023, IEP Team Meeting Paperwork.) District staff explained to the parent that the student's time in the regular class had been cut short each day, as well as for other students, "and families will be receiving a letter from the special education director" and that "families may be offered compensatory services." (Dec. 6, 2023, IEP Team Meeting Paperwork.) District staff indicate that it was not until at or shortly after the November 10, 2023, IEP Team meeting that they realized the student was not participating in the regular class to the extent they believed his IEP to require. (District Interview, Mar. 20, 2024.) The IEP Team decided that the student should receive a functional behavior assessment (FBA), so the district requested parent consent, which the parent provided on December 8, 2023. (Dec. 6, 2023, IEP Team Meeting Paperwork.) The December 6 IEP Team meeting notes do not indicate that the IEP Team discussed the parent's request to increase the student's time in the regular class and the data district staff were scheduled to collect, rather the focus was more on the time the student had missed in the regular class. (Dec. 6, 2023, IEP Team Meeting Paperwork.)

In the interview with district staff, they explained that school staff create schoolwide schedules based on the amount of time students with IEPs are to spend in the regular class, updating those schedules as student's IEPs are amended throughout the school year. (District Interview, Mar. 20, 2024.) The Director of Special Education explained that staff are not required to document when a student with an IEP spends all required time in the regular class and likewise are not required to document when a student with an IEP does not spend all required time in the regular class. (District Interview, Mar. 20, 2024.) District staff indicated that it is expected that all students with IEPs will spend all minutes in the regular class their IEPs require unless the student is sick and so the schedules plus attendance data represent the evidence that students with IEPs spent the required time in the regular class. (District Interview, Mar. 20,

2024.) But in this situation, the evidence does not support the district's conclusion. The schedule shows the school's plan to ensure that students with IEPs spend the time their IEPs require in the regular class, but the student at the focus of this investigation did not spend the time the schedule indicates in the regular class, as district staff indicated to the parent at the December 6 IEP Team meeting. (Dec. 6, 2023, IEP Team Meeting Paperwork.)

District staff stated that there were many staffing changes in the SLC during the time on which this investigation is focused: the SLC special education teacher went on parental leave, there were multiple paraprofessional changes, the Cooperative hired a new special education teacher for the SLC, and the student's special education teacher returned from parental leave. (District Interview, Mar. 20, 2024.) District staff indicate this led to lack of clarity around whether and when the student was spending the time required in the regular class. (District Interview, Mar. 20, 2024.) District staff stated there is not a method to alert relevant school staff or Cooperative staff when students do not spend the time their IEPs require in the regular class. (District Interview, Mar. 20, 2024.)

Conclusion

Both the district and the parent were clear that the student did not spend the time in the regular class his IEP required. (Parent Interview, Mar. 11, 2024; District Interview, Mar. 20, 2024.) Federal and state special education legal requirements indicate that a student may only be removed from the regular educational environment if the nature or severity of the student's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 C.F.R. § 300.114(a)(2); K.S.A. § 72-3420(a).) As the student began to miss daily, required time in the regular class, a group of persons, knowledgeable about the child, including the parents, did not make this decision. Rather, the student was removed from the regular class due to a failure of the system to have a mechanism in place that would alert school and Cooperative leadership that this student was not spending the required time in the regular class. Federal and state special education legal requirements do not necessarily require that a district must document each minute a child with an IEP spends in and outside the regular class, but as part of its obligation to ensure that the student was only removed from the regular educational environment if the nature or severity of the student's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, the district must have a mechanism to make relevant school and Cooperative staff aware within a reasonable amount of time when this is not occurring. Based on the foregoing, this investigation concludes that USD 458 violated its obligation to ensure that to the maximum extent appropriate, the student was educated with children who are nondisabled and was only removed from the regular educational environment if the nature or severity of the student's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily under 34 C.F.R. § 300.114(a)(2) and K.S.A. § 72-3420(a). Further,

investigation into this issue led to evidence that supports the conclusion that USD 458 violated its obligation to ensure that the written description in the student's IEP explains "the extent, if any, to which the child will not participate with nondisabled children in the regular class . . . " under 34 C.F.R. § 300.320(a)(5) and K.S.A. § 72-3429(c)(5). Finally, investigation into this issue led to evidence that supports the conclusion that USD 458 violated its obligation to provide the parent with a Prior Written Notice documenting the IEP Team's decision on the parent's request to increase the student's time in the regular class under 34 C.F.R. § 300.503(a) and K.S.A. § 72-3430(b)(2).

Issue Two

From the first day of school through the filing of this complaint did USD 458 ensure that as soon as possible following development of the student's IEP, USD 458 made available all special education and related services to the student that the student's IEP states will be provided in a regular education classroom? (34 C.F.R. § 300.323(c)(2); K.S.A. § 72-3429(a)(1).)

Applicable Law

The regulations implementing the IDEA require that a district must ensure that special education services are made available to the child in accordance with the child's IEP. 34 C.F.R. § 300.323(c)(2).) Each child's IEP must include a statement of special education services:

> *based on peer-reviewed research to the extent practicable, . . . that will be provided to enable the child . . . [t]o advance appropriately toward attaining the [child's] annual goals, . . . [t]o be involved in and make progress in the general education curriculum, . . . to participate in extracurricular and other nonacademic activities, . . . and [t]o be educated and participate with other children with disabilities and nondisabled children.*

(34 C.F.R. § 300.320(a)(4); K.S.A. § 72-3429(c)(1).) The regulations implementing the IDEA and Kansas special education regulations go on to further define special education as:

> *specially designed instruction . . . to meet the unique needs of a child with a disability . . . adapting, as appropriate to the needs of [the] child . . . , the content, methodology, or delivery of instruction [t]o 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, so that the child can meet the educational standards within the [district].*

(34 C.F.R. § 300.39(a)(1), (b)(3); K.A.R. § 91-40-1(lll).) Each special education service is required to be accompanied by the projected date for the beginning of the service and the anticipated frequency, location, and duration of the service. (34 C.F.R. § 300.320(a)(7).)

Analysis: Findings of Fact

The student's IEP provides a chart to indicate the special education services the student is to receive. (Student IEP, May 1, 2023.) This table duplicates the header row of this chart and the row of this chart at issue in this complaint investigation:

Service	From	To	Amount	Setting	Freq
Special Education Services	05/01/2023	04/30/2024	125 minutes	C - Special Ed Direct Services in a Regular Ed Classroom in an Elementary or Secondary Building:	5 days per week

Both the district and the parent were clear that the student did not receive the special education services in the regular class his IEP required. (Parent Interview, Mar. 11, 2024; District Interview, Mar. 20, 2024.) Because the district admits that the student did not receive the special education services in the regular class his IEP required, this analysis will focus on whether the district had a sufficient method to ensure the student received the special education services in the regular class the student's IEP required, whether the student's IEP includes a statement of special education services, based on peer-reviewed research to the extent practicable, that will be provided to enable the student to advance appropriately toward attaining the student's annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and nondisabled children, and the appropriateness of the district's response when it discovered the student had not received the required special education services in the regular class.

As with time spent in the regular class, the district likewise does not document whether students receive the special education services indicated on their IEP. (District Interview, Mar. 20, 2024.) Just as with time spent in the regular class, district staff build a schoolwide schedule based on the special education services minutes each IEP requires. (District Interview, Mar. 20, 2024.) District staff maintain that the schedules ensure that all students with IEPs will receive the special education services in the regular class their IEPs require unless the student is sick and so the schedules plus attendance data represent the evidence that students with IEPs received the special education services their IEPs require. (District Interview, Mar. 20, 2024.) As in Issue One, the evidence does not support the district's conclusion. The schedule shows the school's plan to ensure that students with IEPs receive the special education services their IEPs require in the regular class, but the student at the focus of this investigation did not receive the special education services his IEP required in the regular class, as district staff indicated to the parent at the December 6 IEP Team meeting. (Dec. 6, 2023, IEP Team Meeting Paperwork.) District staff stated there is not a method to alert relevant school or Cooperative staff when students do not receive the special education services their IEPs require in the regular class. (District Interview, Mar. 20, 2024.)

The student's IEP only references the special education services the student will receive in the regular class in the chart reproduced above. There is no other statement that describes these special education services. The district uses the web-based tool Bright SPED™ to create student's IEPs. (Email from Special Education Director to Complaint Investigator, Mar. 22, 2024.) During the district interview, district staff indicated that how these services were determined was to consider the student's strengths and needs, along with the student's annual goals and how the student accessed the general curriculum to determine the special education services the student needed. But the chart does not contain the results of this discussion and decision and simply states "Special Education Services," and does not provide a statement that explains the services that will be provided to enable the student to advance appropriately toward attaining the student's annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities. From the term "Special Education Services" it is not possible to determine whether these services are based on peer-reviewed research, to the extent practicable. A state complaint decision from the Colorado Department of Education explains that the statement of special education services translates into practice as a "service delivery statement" and that it must be "must be sufficiently detailed for parents to understand what specific services and supports the school district is offering to provide." (Adams 12 Five Star Schs., 75 IDELR 86 (SEA CO 2019)). In the comments to the regulations implementing IDEA, OSEP provides guidance on 34 C.F.R. § 300.320(a)(7) that is applicable to the vagueness we see in this student's statement of special education services. (Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed. Reg., 46,540, 46,667 (Aug. 14, 2006).). In responding to a recommendation about the term "duration" OSEP commented:

> *What is required is that the IEP include information about the amount of services that will be provided to the child, so that the level of the agency's commitment of resources will be clear to parents and other IEP Team members. The amount of time to be committed to each of the various services to be provided must be appropriate to the specific service, and clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP.*

(Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed. Reg., 46,540, 46,667 (Aug. 14, 2006).) Despite OSEP responding to a recommendation about duration of a service, the regulation cited is clearly focused on clarity for all involved with the child and should be applied when drafting the statement of special education services and the frequency, duration, and location of those services.

As stated in Issue One, district staff learned the student was not receiving the special education services in the regular class his IEP required at or shortly after the November 10,

2023, IEP Team meeting. (District Interview, Mar. 20, 2024.) Once district staff learned this, the School Psychologist then took the schoolwide schedule to the student's general education teacher and asked the general education teacher to recall from memory the dates the student did not come to the regular class for his special education services. (District Interview, Mar. 20, 2024.) The District Behavior Coach then created a schedule from the relevant period that showed the dates and times the student came to the regular class for his special education services and asked the student's general education teacher to verify its accuracy. (District Interview, Mar. 20, 2024.) On December 7, 2023, the Director of Special Education Services sent the parents a letter letting them know the student had not received some of the special education services indicated in his IEP due to a staffing shortage, provided the parents with information on the district's efforts to recruit staff and on hired new staff, and invited them to contact the student's school to schedule an IEP Team meeting to "discuss the specific services missed and a possible plan to deliver compensatory services for those not provided." In determining the services that the district would offer to the student; district staff reviewed the student's progress data on annual goals and compiled this for the IEP Team to discuss. (Slides from IEP Team Meeting, Jan. 24, 2024.) This investigator reviewed the student progress data district staff reviewed and prepared for the January IEP Team meeting. (Student Behavior Intervention Plan (BIP) Goal Progress Data, Aug. 15, 2023–Mar. 6, 2024; Student Progress Reports 1st, 2nd, and 3rd Quarters 2023-2024.) This investigator also reviewed the Cooperative's guidance on creating progress reports and the student's progress reports appear to have been accurately created, following Cooperative guidance. (Cooperative Progress Report Guidance; Cooperative's Written Procedures for Creating Progress Reports for Students with IEPs, Sept. 2023; Cooperative's Written Procedures for Creating Progress Reports for Students with IEPs, Nov. 2023; Screencast of Cooperative's Instructions for Creating Progress Reports for Students with IEPs.)

On January 11, 2024, the Director of Special Education emailed the student's IEP Team with an agenda for the January 12 IEP Team meeting, the two options district staff had come up with for making up the missed services, and invited the parents to bring any other options to the meeting they would like to contribute. District staff determined that the student had made sufficient progress on his annual goals despite not receiving the required special education services in the regular class and the student continued to have access to the general education curriculum in the SLC. (District Interview, Mar. 20, 2024.) USD 458 canceled school on January 12 due to inclement weather and the IEP Team rescheduled its meeting for January 24. (District Interview, Mar. 20, 2024.) At the January 24 IEP Team meeting, the IEP Team reviewed the student's progress data. (Slides from IEP Team Meeting, Jan. 24, 2024.) The Director of Special Education does not recall disagreement amongst the IEP Team as to whether student had made progress on his IEP goals. (District Interview, Mar. 20, 2024.) In the parent interview, the parent expressed surprise that the student had made the progress he had considering the data from this previous progress report, the disruptions the student experienced due to

behavior and staffing changes, and absences from school in December. The School Psychologist did not believe that the IEP Team reached consensus on whether the student's missed services impacted his progress on his annual goals and access to the general education curriculum. (District Interview, Mar. 20, 2024.)

The Director of Special Education indicated that she explained that the standard the IEP Team would use to determine whether to provide the student with compensatory services is the standard that OSEP sets in its Letter to Lipsitt. (District Interview, Mar. 20, 2024; U.S. Dep't of Educ. OSEP Letter to Lipsitt, Apr. 19, 2018.) The Director of Special Education indicates this standard required the IEP Team to consider whether the missed services impeded the student's progress on annual goals and as district staff concluded the student's progress was not impeded, district staff then determined that the student missed the opportunities to interact with peers in the regular class. (District Interview, Mar. 20, 2024.) District staff indicated this is what motivated the option presented to the parents to make up missed services through a before or after school club to provide an opportunity to interact with peers and work on his annual goals related to speech through a curriculum resource the student's speech therapist would provide. (District Interview, Mar. 20, 2024.) District staff also provided parents with the option to provide more time in the regular class and reduce the student's time in the special education classroom (SLC) but expressed to the parent that may not be the best option. (Jan. 24, 2024, IEP Team Meeting Paperwork.) The parent disagreed with district staff that a before or after school club was sufficient to make up the services the student missed. (Parent Interview, Mar. 11, 2024; Jan. 24, 2024, IEP Team Meeting Paperwork.) The IEP Team did not come to agreement on how to make up special education services the student missed in the regular class and the parent requested more data, such as reading and math work samples from the student's time in the SLC, to make this decision. (Jan. 24, 2024, IEP Team Meeting Paperwork.) The Director of Special Education indicated in an email to the investigator that she is unsure whether district staff sent the parent the requested data. (Email from Director of Special Education to Complaint Investigator, Mar. 21, 2024.) The Director of Special Education provided the data to the complaint investigator that should have been provided to the parent. (Student's i-Ready Reading Data, Aug. 25, 2023–Mar. 21, 2024; Student's i-Ready Math Data, Aug. 24, 2023–Mar. 20, 2024.)

The Director of Special Education articulated the correct standard the IEP Team must use to determine whether the student needs compensatory services, but not the correct OSEP letter. In *Letter to Lipsitt*, OSEP indicates that in a state complaint investigation, the state education agency has broad discretion to determine a suitable remedy when a public agency has failed to provide a child with appropriate services, and that can include compensatory services, but *Letter to Lipsitt* does not speak to the standard IEP Teams must use to determine whether and what compensatory services are required when a student misses services. (U.S. Dep't of Educ. OSEP *Letter to Lipsitt*, Apr. 19, 2018.) OSEP has articulated this standard in a few letters, most notably in *Letter to Clarke* and most recently in *Letter to Wolfram.* (U.S. Dep't of Educ. OSEP

Letter to Clarke, Apr. 19, 2018; U.S. Dep't of Educ. OSEP *Letter to Wolfram,* January 10, 2022.) OSEP writes *Letter to Wolfram* in the context of guidance it issued due to the COVID-19 pandemic, but OSEP summarizes its missed services guidance across multiple documents in stating:

> *the decision to provide 'make up' or compensatory education when there is a disruption in the provision of educational services, and the nature and amount of the special education and related services that are to be provided as compensatory education, is an individualized determination made by the [IEP] Team in accordance with the requirements in 34 CFR §§300.320-300.324. That is, the IEP Team must determine whether the child was denied educational benefit because of the disruption in educational services and whether compensatory education is needed to 'make up' for the denial including addressing any skills that may have been lost.*

District staff articulated its basis for offering a before or after school club as providing an opportunity for the student to interact with peers and work on his annual goals related to speech. (District Interview, Mar. 20, 2024.) It is also reasonable that the parent would request additional data on what the student completed in the SLC, including math and reading work samples, to help her consider whether the missed services denied the student educational benefit and the type of services that may be needed to address any skills the student may have lost.

Conclusion

The district admits it violated 34 C.F.R. § 300.323(c)(2) and K.S.A. § 72-3429(a)(1) by not providing all special education services to the student that the student's IEP states will be provided in the regular class. The district does not have a mechanism in place that would alert school and Cooperative leadership that this student was missing the special education services the student's IEP required in the regular class. Federal and state special education requirements do not necessarily require that a district document each minute of special education services a child with an IEP receives, but as part of its obligation to ensure that the student received the special education services the student's IEP required in the regular class, the district must have a mechanism to make relevant school and Cooperative staff aware within a reasonable amount of time when this is not occurring.

Additionally, the chart to indicate the special education services the student is to receive does not meet the special education legal requirement for the IEP to include a statement of special education services, based on peer-reviewed research to the extent practicable, that will be provided to enable the student to advance appropriately toward attaining the student's annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and nondisabled children. This chart is likely appropriate to

report special education data to the Kansas State Department of Education (KSDE), but does not include the clarity required for the team supporting the student, including the parents, to understand the special education services that the district will provide to enable the student to advance appropriately toward attaining the student's annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and nondisabled children. Districts must meet KSDE's data reporting requirements but are not required to include this chart within a student's IEP to do that. Based on the foregoing, this investigation concludes that USD 458 violated its obligation to ensure that the student's IEP include a statement of special education services as 34 C.F.R. § 300.320(a)(4) and K.S.A. § 72-3429(c)(1) require.

Issue Three

From the first day of school through the filing of this complaint did USD 458 ensure that as soon as possible following development of the IEPs of all students with IEPs enrolled in student's school, USD 458 made available all special education services to all students with IEPs enrolled in student's school that each student's IEP states will be provided in a regular education classroom? 34 C.F.R. § 300.323(c)(2); K.S.A. § 72- 3429(a)(1).

Applicable Law

The regulations implementing the IDEA require that a district must ensure that special education services are made available to the child in accordance with the child's IEP. (34 C.F.R. § 300.323(c)(2).) Each child's IEP must include a statement of special education services:

> *based on peer-reviewed research to the extent practicable, . . . that will be provided to enable the child . . . [t]o advance appropriately toward attaining the [child's] annual goals, . . . [t]o be involved in and make progress in the general education curriculum, . . . to participate in extracurricular and other nonacademic activities, . . . and [t]o be educated and participate with other children with disabilities and nondisabled children.*

(34 C.F.R. § 300.320(a)(4); K.S.A. § 72-3429(c)(1).) The regulations implementing the IDEA and Kansas special education regulations go on to further define special education as:

> *specially designed instruction . . . to meet the unique needs of a child with a disability . . . adapting, as appropriate to the needs of [the] child . . . , the content, methodology, or delivery of instruction [t]o 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, so that the child can meet the educational standards within the [district].*

(34 C.F.R. § 300.39(a)(1), (b)(3); K.A.R. § 91-40-1(lll).)

Analysis: Findings of Fact

In analyzing this issue, the complaint investigator reviewed IEP pages, including amendments, for all students with IEPs attending student's school whose IEP requires special education services in the regular class, from the first day of school through the filing of this complaint, student's school provider schedules with anticipated student services times, and 12 letters from the Cooperative to parents whose children the Cooperative determined did not receive required special education services. Because the student's Dec. 6, 2023, IEP Team minutes were not clear about the number of students not receiving required special education services in the regular class, the investigator reviewed IEP pages for all students with IEPs showing the special education services in the regular class the student was to receive. District staff indicated in the interview that they determined that only students attending the SLC missed special education services in the regular class due to the staff changes and shortage, and not every student in the SLC. The Director of Special Education said that the complainant is the only parent that contacted the school and requested an IEP Team meeting to discuss compensatory services from the 12 letters the Cooperative sent to parents on December 7. (District Interview, Mar. 20, 2024.)

As stated in Issue Two, the district does not document whether students receive the special education services indicated on their IEP. (District Interview, Mar. 20, 2024.) District staff maintain that the schoolwide schedule ensures that all students with IEPs will receive the special education services in the regular class their IEPs require unless the student is sick and so the schedules plus attendance data represent the evidence that students with IEPs received the special education services their IEPs require. (District Interview, Mar. 20, 2024.) District staff stated there is not a method to alert relevant school or Cooperative staff when students do not receive the special education services their IEPs require in the regular class. (District Interview, Mar. 20, 2024.)

The Cooperative determined which students missed special education services in the regular class using the same method described in Issue Two. (District Interview, Mar. 20, 2024.) The Cooperative followed KSDE guidance when it learned that students were not receiving all special education services in the regular class their IEPs required by sending a letter to all relevant parents to inform them of the situation, the Cooperative's efforts, and an offer to convene the student's IEP Team to discuss compensatory services. (Kan. State Dep't of Educ., *An Update on Kansas Due Process Hearings, State Complaints, Recent Court Decisions, and Federal Guidance*, 2016 Summer Leadership Conference for Administrators, July 27, 2016, https://drive.google.com/file/d/0B8GP-%20ByRgj_TdEVvdEhWcWNjN1U/view?resourcekey=0-U4zN8bF71BxH0WtS6SX-ug)

Through review of 38 other student IEPs, it is clear that the special education services chart from the district's web-based tool, Bright SPED,™ is the only IEP documentation of the required statement of special education services. The chart simply states, "Special Education Services,"

and does not provide a statement that explains the services that will be provided to enable the student to advance appropriately toward attaining the student's annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities. From the term "Special Education Services" it is not possible to determine whether these services are based on peer-reviewed research, to the extent practicable.

Conclusion

Based on the foregoing, this investigation concludes USD 458 violated 34 C.F.R. § 300.323(c)(2) and K.S.A. § 72-3429(a)(1) systemically by not having a mechanism in place that would alert school and Cooperative leadership that students were missing the special education services the student's IEPs required in a regular class. Federal and state special education requirements do not necessarily require that a district must document each minute of special education services a child with an IEP receives, but as part of its obligation to ensure that students received the special education services the student's IEPs required in a regular class, the district must have a mechanism to make relevant school and Cooperative staff aware within a reasonable amount of time when this is not occurring.

Based on the analysis and conclusion in Issue Two, and additional analysis in Issue Three, this investigation concludes that USD 458 violated 34 C.F.R. § 300.320(a)(4) and K.S.A. § 72-3429(c)(1) systemically through its special education services chart from the district's web-based tool, Bright SPED,™ that does not provide the required statement of special education services, based on peer-reviewed research to the extent practicable, that will be provided to enable the student to advance appropriately toward attaining the student's annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and nondisabled children.

Summary of Conclusions/Corrective Action

Issue One

The district violated 34 C.F.R. § 300.114(a)(2), K.S.A. § 72-3420(a), 34 C.F.R. § 300.320(a)(5), K.S.A. § 72-3429(c)(5), 34 C.F.R. § 300.503(a), and K.S.A. § 72-3430(b)(2), based on the findings of fact listed above. Corrective action is required, as follows:

1. Within 20 calendar days of the date of this report, USD 458 must submit a written statement to KSDE Special Education and Title Services (SETS) that it will comply with:
    a. Federal and state legal requirements at 34 C.F.R. § 300.114(a)(2) and K.S.A. § 72-3420(a) which require the district to ensure that to the maximum extent appropriate, students are educated with children who are nondisabled and only removed from the regular educational environment if the nature or severity of a student's disability is such that education in regular classes with

the use of supplementary aids and services cannot be achieved satisfactorily;

b. Federal and state legal requirements at 34 C.F.R. § 300.320(a)(5) and K.S.A. § 72-3429(c)(5) which require the district to ensure that the written description in a child's IEP explains the extent, if any, to which the child will not participate with nondisabled children in the regular class; and

c. Federal and state legal requirements at 34 C.F.R. § 300.503(a) and K.S.A. § 72-3430(b)(2) which require the district to ensure it provides parents with a Prior Written Notice with the district's decision on the parent's request regarding their child's placement.

2.

a. Within 20 calendar days of the date of this report, the district must draft a written procedure by which school leadership will be responsible for tracking when a child with an IEP does not receive time in the regular class as the student's IEP requires and, if this happens for a time specified within the procedure, school leadership must contact Cooperative leadership to create a plan to ensure time in the regular class is provided as required. The district must submit this draft written procedure to SETS for its review and approval.

b. Once SETS approves of the written procedure, the district must implement this written procedure by communicating it to all relevant staff and providing staff with any templates for tracking the procedure would require within five school days, and sending to SETS the district communication, including templates for tracking the procedure within the same amount of time.

3. Within 20 calendar days of the date of this report, the district must convene the student's IEP Team to respond to the IEP prompt, "Is the nature or severity of the student's disability such that placement in the regular education environment with supplementary aids and services cannot be achieved satisfactorily?" with a response that clearly explains the extent, if any, to which the child will not participate with nondisabled children in the regular class. The IEP Team can complete this at an IEP Team meeting that was scheduled prior to KSDE issuing this report. After completing this corrective action, the district must provide the IEP page with this response to SETS.

4.

a. Within five school days of the date of this report, the district must issue a Prior Written Notice to the parent with the district's decision on the parent's request for the student to have increased time in the regular class.

b. At the student's next IEP Team meeting, Cooperative leadership must attend the meeting and review the Prior Written Notice section of Chapter 1 of the Kansas Special Education Process Handbook with the IEP Team, so district staff are clear on when a Prior Written Notice is required, and the parents are clear on when to expect one. After completing this corrective action, the

district must provide a copy of the Prior Written Notice and the IEP Team meeting minutes to SETS.

5. Due Dates:
    a. April 3, 2024: 4.a.;
    b. April 16, 2024: 1., 2.a., 3., and 4.b.; and
    c. Within five school days of SETS approval of the written procedure: 2.b.

Issue Two

The district violated 34 C.F.R. § 300.323(c)(2), K.S.A. § 72-3429(a)(1), 34 C.F.R. § 300.320(a)(4), and K.S.A. § 72-3429(c)(1), based on the findings of fact listed above. Corrective action is required, as follows:

1. Within 20 calendar days of the date of this report, USD 458 must submit a written statement to KSDE Special Education and Title Services (SETS) that it will comply with:
    a. Federal and state legal requirements at 34 C.F.R. § 300.323(c)(2) and K.S.A. § 72-3429(a)(1) which require the district to ensure that special education services are made available to each child with an IEP in accordance with the child's IEP; and
    b. Federal and state legal requirements at 34 C.F.R. § 300.320(a)(4) and K.S.A. § 72-3429(c)(1) which require the district to ensure that each child's IEP includes a statement of special education services, based on peer- reviewed research to the extent practicable, that will be provided to enable the child to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and nondisabled children.
2.
    a. Within 20 calendar days of the date of this report, the district must draft a written procedure by which school leadership will be responsible for tracking when a child with an IEP does not receive special education services as the student's IEP requires and, if this happens for a time specified within the procedure, school leadership must contact Cooperative leadership to create a plan to ensure time in the regular class is provided as required. The district may integrate this procedure with the procedure required in corrective action for issue one. The district must submit this draft written procedure to SETS for its review and approval.
    b. Once SETS approves of the written procedure, the district must implement this written procedure by communicating it to all relevant staff and providing staff with any templates for tracking the procedure would require within five school days, and sending to SETS the district communication, including templates for tracking the procedure within the same amount of time.
3.

a. Within three school days of the date of this report, the district must contact the parent and ask the parent what additional data it can provide to the parent to assist with a decision on educational benefit and compensatory services. The district is not required to create data that does not exist to respond to the parent's request.

b. The district must provide the data the parent requests within three school days of the parent's request, copying SETS on this email to the parent.

c. Within 20 calendar days of the date of this report, the district must convene the student's IEP Team to determine whether the child was denied educational benefit because of the disruption in educational services and whether compensatory education is needed to make up for the denial including addressing any skills that may have been lost. If the IEP Team cannot come to consensus on this decision, the district representative on the IEP Team must make the decision, and the district must issue the parent a Prior Written Notice with its decision and the basis for its decision. The parent can then choose whether to exercise their dispute resolution rights regarding that decision. The IEP Team can complete this at an IEP Team meeting that was scheduled prior to KSDE issuing this report. After completing this corrective action, the district must provide the IEP Team meeting minutes to SETS and the Prior Written Notice, if the IEP Team did not come to consensus.

4.

a. Within five school days of the date of this report, the Cooperative must contact its Bright SPED™ representative and inform them that the district's web-based IEP tool must include a prompt to require IEP Teams to provide a statement of special education services. The Cooperative may provide a redacted version of this report to Bright SPED™ as part of its request to add this prompt.

b. The Cooperative must confirm to SETS that it completed this portion of the corrective action within one school day.

c. The Cooperative must obtain a date from its Bright SPED™ representative in writing as to when this prompt will be added to the district's web-based IEP tool and the district must provide this information to SETS within one business day of receiving it.

d. Once Bright SPED™ adds the prompt to the district's web-based IEP tool, SETS must submit this IEP page to SETS within one business day for its review and approval.

e. Once SETS approves of the prompt, the student's IEP Team must add a statement of special education services that meets special education legal requirements either using the IEP amendment process described in K.S.A. 72-3429(b)(4) or in an IEP Team meeting within 30 school days.

5. Due Dates:
    a. April 1, 2024: 3.a.
    b. April 3, 2024: 4.a.
    c. Within one school day of contacting its Bright SPED™ representative: 4.b.
    d. Within three school days of the parent's request for data: 3.b.;
    e. April 16, 2024: 1., 2.a., 3.c.;
    f. Within five school days of SETS approval of the written procedure: 2.b.;
    g. Within one business day of receiving the date of when the prompt will be added: 4.c.;
    h. Within one business day of receiving the prompt: 4.d.; and
    i. Within 30 school days of SETS approval of the IEP prompt: 4.e.

Issue Three

The district violated 34 C.F.R. § 300.323(c)(2), K.S.A. § 72-3429(a)(1), 34 C.F.R. § 300.320(a)(4), and K.S.A. § 72-3429(c)(1), based on the findings of fact listed above. Corrective action is required, as follows:

1. Issue Two, corrective actions 1., 2., and 4.a.–d. are designed to address Issue Three as well as Issue Two.
2. Once the district receives SETS approval as indicated in Issue Two, corrective action 4.d., district IEP Teams must add statements of special education services that meet special education legal requirements to all IEPs either using the IEP amendment process described in K.S.A. 72-3429(b)(4) or in an IEP Team meeting within 30 school days.
3. Due Date: Within 30 school days of SETS approval as indicated in Issue Two, corrective action 4.d.

Investigator

Laura N. Jurgensen 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).

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 #337
ON FEBRUARY 26, 2024

DATE OF REPORT APRIL 4, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ---------- by his parents, ---------- and ----------. In the remainder of the report ---------- will be referred to as "the student" and ---------- and ---------- may be referred to as "the complainants", "the parents", or as "the father" or "the mother" respectively.

The complaint is against USD #337 (Royal Valley Public Schools) who contracts with the Holton Special Education Cooperative (HSEC) for special education services. In the remainder of the report, these two responsible public agencies may be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on February 26, 2024 and the timeline to investigate the allegations was extended due to the district's spring break.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation, which was provided by both the district and the complainants. It is noted that the parents also provided documentation related to concerns for implementation of the IEP; however, this documentation was not considered in the investigation as it does not relate to the allegations being investigated. The parent was advised that any additional allegations of noncompliance must be addressed following the dispute resolution procedures described in the IDEA.

The following documentation and information were used in consideration of the issues:

1. Formal Complaint dated February 27, 2024 written by the father
2. Response to the allegations dated March 25, 2024 and written by Amy Haussler, Director of Special Education
3. Evaluation Report dated January 21, 2022
4. Individualized Education Program (IEP) dated February 8, 2022
5. IEP Goal Progress Report for the February 8, 2022 IEP

6. IEP dated February 6, 2023
7. Prior Written Notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change of Placement, and/or Request for Consent dated February 6, 2023
8. IEP Goal Progress Report for the February 6, 2023 IEP
9. IEP dated January 31, 2024
10. PWN dated January 31, 2024
11. IEP Goal Progress Report for the January 31, 2024 IEP
12. Email dated February 6, 2024 at 8:14 AM written by the complainants to school staff
13. Email dated February 6, 2024 at 8:46 AM written by Rhonda Sayles, Assistant Principal, to the parents
14. PWN dated February 23, 2024

Also as part of the investigation, the parents were interviewed by telephone on March 19, 2024. In addition, USD #337 made the following staff available for a telephone interview on March 21, 2024:

Amy Haussler, Director of Special Education for HSEC
Aaric Davis, Superintendent
Keith Glotzvach, Principal
Rhonda Sayles, Assistant Principal
Leslie Smith, School Psychologist
Clara Sowers, Special Education Teacher
Melissa Peven, HSEC Special Education Coordinator
Tara Ludusch, HSEC Special Education Mentor for Ms. Sowers

Background Information

The student is a 14-year old male currently enrolled in the eighth grade in USD #337 and attends his neighborhood school, Royal Valley Middle School. The student transferred into this district in the second grade with an individualized education program (IEP) for speech therapy services.

Both the parents and district staff reported that the student received medical diagnoses of intellectual disability, attention deficit hyperactivity disorder (ADHD), and oppositional defiant disorder (ODD) when he was in elementary school. The student's most recent reevaluation for special education was conducted on January 21, 2022 and the multidisciplinary team determined that the student met the eligibility criteria for the exceptionality of Intellectual Disability. The student currently has an IEP and receives special education services.

Issues Investigated

Based on the written complaint, two issues were identified and investigated.

Issue One

USD #337, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP designed to provide a free appropriate public education (FAPE) to the student, specifically by not reviewing and revising the IEP, as appropriate, during the past 12 months.

Positions of the Parties

The parents allege USD #337 failed to review and revise the student's IEP as required. They indicated that the student has failed to meet the goals in his IEP for several consecutive years without ever adjusting the goals or enhancing the special education services to achieve the goals. The parents believe that the district has not accurately reported the student's progress towards his IEP goals for the past several years.

The LEA reported that the student's annual IEPs have been rewritten each school year with updated information. They also report the student has made progress on his IEP goals from year to year. USD #337 indicated that school team recommended higher goals for reading and math at the most recent IEP team meeting; however, the parents refused and wanted lower expectations. The LEA believes the student's IEPs were reviewed and revised as required by the IDEA in order to provide the student with FAPE.

Applicable Law

Federal regulations implementing the IDEA at 34 C.F.R. 300.320(a)(2) require IEPs to include measurable annual goals that will meet the child's needs and enable the child to be involved with and make progress in the general education curriculum.

Federal regulations implementing the IDEA at 34 C.F.R. 300.320(a)(3) IEPs to 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 the annual goals will be provided to the parents.

Federal regulations implementing the IDEA at 34 C.F.R. 300.324(b)(1) require school districts to review and revise, if needed, a student's IEP periodically, but not less than annually. In addition, the LEA must reconvene a student's IEP team to address any lack of expected progress toward the annual goals and in the general education curriculum; to consider the results of any reevaluation; and to consider any information about the student provided by the parents.

Analysis: Findings of Fact

There have been three IEPs in effect while the student has attended Royal Valley Middle School. The first IEP was developed on February 8, 2022; the second IEP was developed on February 6, 2023; and the third was developed on January 31, 2024. The chart below lists the IEP goals and the special education services required by each of these documents:

Goals	February 8, 2022	February 6, 2023	January 31, 2024
Reading Goal	In 36 instructional weeks, when given a level 4 reading passage, the student will correctly answer 6/8 comprehension questions, two out of three trials. Evaluation Procedures: Qualitative Reading Inventory	In 36 instructional weeks, when given a 6" grade reading probe, the student will correctly answer 22/25 questions correctly two out of three trials. Evaluation Procedures: Reading Probe	By the end of the IEP year, when presented with 6th grade level reading passage the student will be able to answer comprehension questions 7/8 accuracy on 3 or 4 trials. Evaluation Procedures: CBM, classroom data and assessments, Qualitative Reading Inventory
Math Goal	In 36 instructional weeks, when given a 4th grade Math Assessment addressing multiplication, division, area, perimeter, and fractions, the student will correctly answer 33/48 questions, two out of three trials. Evaluation Procedures: Math Achievement Predictors Assessment	In 36 instructional weeks, when given a level 5 math probe, the student will answer at least 38/48 math computations correctly, in two out of three trials. Evaluation Procedures: Math Probe	By the end of the IEP year, when given a mixed math probe at the 6th grade level the student will score the 15" percentile or higher on 3 of 4 trials. Evaluation Procedures: easy CBM, classroom data and assessments

Goals	February 8, 2022	February 6, 2023	January 31, 2024
Functional Daily Living Goal	By the end of the annual IEP, when presented with social interactions/situations, using the super skills checklist, the student will be able to use fundamental skills (correct voice volume and tone, etc) social initiation skills (asking for help, starting/joining/ending a conversation, etc.), social response skills (listening, following directions, etc.), and getting along with others (being flexible, dealing with 'No", etc.) skills on 4 out of 5 observation periods (80%), two out of three trials. Evaluation Procedures: observations, super skills checklist	By the end of the annual IEP, when presented with social interactions/situations probe, the student will be able to use fundamental skills: (to understand and respecting self and others), social initiation skills: (asking for help, starting/joining/ending a conversation, etc.), social response skills (listening, following directions, etc.), and getting along with others (being flexible, dealing with 'No", etc.) skills on 4 out of 5 observation periods (80%), two out of three trials. Evaluation Procedures: observations, fundamental social interaction probe	By the end of the TEP year, when presented with social interactions/situations probe, the student will be able to use fundamental skills: (to understand and respecting self and others), social initiation skills: (asking for help, starting/joining/ending a conversation, etc.), social response skills (listening, following directions, etc.), skills on 3 out of 4, 15 minute observation periods (75%), Evaluation Procedures: Observation, data collection
Special Education Services	6th grade 240 minutes per week (mpw) for math 75 mpw for reading 75 mpw for functional daily living skills 650 mpw inclusion support 7th grade 240 mpw for math 120 mpw for reading 120 mpw for functional daily living skills 750 mpw inclusion support	7th grade 240 mpw for math 120 mpw for reading 120 mpw for functional daily living skills 750 mpw inclusion support 8th grade 240 mpw for math 120 mpw for reading 120 mpw for functional daily living skills 600 mpw inclusion support	8th grade 240 mpw for math 120 mpw for reading 120 mpw for functional daily living skills 600 mpw inclusion support 9th grade 120 mpw for math 120 mpw for independent study 300 mpw inclusion suport

The IEP developed on February 8, 2022 included the following parent concerns in the Present Level of Academic and Functional Performance:

> *Reading: The baseline, using the same assessment method, has regressed over the prior 12 months. At what time do we explore the potential of further pull-out instruction to ensure the student has the tools necessary to progress and meet his IEP goals. The IEP goal will have remained the same for 24 months. Parents understand the least-restrictive environment, but failing to progress and falling even further behind peers is not acceptable.*
>
> *Math: Similar concerns with the baseline and goal remaining largely unchanged for what will be 24 months. Progress reports should show him progressing to reach his goal or we need to*

> *be looking at additional accommodations or aids that will assist the student in moving his skills forward.*
>
> *How these concerns will be addressed: We will look at pulling the student for reading, after seeing if the new strategies we are implementing work or not.*

Documentation shows that the services for specialized instruction in reading were increased on the February 8, 2022 IEP as a result of parent concerns in regards to the student's lack of progress towards IEP goals for the 7th grade.

The Parent Concerns section of the February 6, 2023 IEP stated:

> *Parents are concerned about the student's organizational skills and keeping track of his assignments, otherwise, they have no other concerns other than what are already been addressed in the IEP.*

A Prior Written Notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change of Placement, and/or Request for Consent dated February 6, 2023. The description of the action proposed states:

> *For the remainder of the 2022/23 school year, the student will have IRC [inter-related classroom] pull-out for math, reading, and functional daily living skills, and inclusion support for ELA [English Language Arts], science, and social studies. For the 2023/24 school year, the student will have IRC pull-out math, reading, and functional daily living skills, and inclusion support for ELA, science, and social studies until the end of his current IEP.*

USD #337 explained the proposed action by stating:

> *The above services are being proposed as part of the student's educational plan due to his delays in his math and reading comprehension skills that significantly impact his ability to complete grade level assignments in the general education classroom. The student is currently performing more than three grade levels in math and reading comprehension below that of his peers. He needs direct, individualized instruction in the IRC room to remediate those delays. The team has determined that inclusion services are necessary for the student to be academically successful in the general education classroom due to his 3rd grade reading comprehension skills. The student exhibits significant weaknesses in the area of fundamental social skills. He needs direct and explicit instruction in social skills that are not part of the general education curriculum. He is not able to generalize the social skills he has learned when interacting with his peers.*

The January 31, 2024 IEP indicated that the parents had no concerns other than what is being addressed in the IEP. The IEP continues to include one goal for reading, one goal for math, and one goal for functional daily living skills. School staff recommended increasing the goal for reading comprehension to the 7th grade level but it was continued at the 6th grade level per parents' request. School staff also recommended increasing the goal for math at the 6th grade

level; however, the math goal continued at level 5 at parent request. The Functional daily living skills goal no longer included the "*getting along with others skills*" (being flexible, dealing with No, etc.)" and specified a 15-minute observation period but decreased the rate from 80% to 75% of the time.

A PWN dated January 31, 2024 describes the action proposed as follows:

> *It is being proposed, that for the remainder of the 2023-2024 school year, the student will receive services in the IRC classroom for math, reading/ELA, and functional skills. He will also receive inclusion services for science, history and ELA. For the 2024-2025 school year, the student will receive services in the IRC classroom for math and independent study skills. He will also receive inclusion services for English, science and electives.*

Following the January 31, 2024 IEP team meeting, the parents shared the following concerns in an email to USD #337 staff on February 6, 2024 at 8:14 AM,

> *We had lengthy discussion on IEP goals and what was appropriate to reach within a 12 month period, especially since we have not achieved many goals over the prior two years. Reference was made by the Holton SpEd Coop. (Mrs. Ladusch) that goals are often set 'more like 18 months so that they are high-achieving goals. This goes directly against federal and state SpEd regulations that "Measurable Annual goals are descriptions of what a child can REASONABLY be expected to accomplish within a 12 month period with the provision of special education", and that any goal that is determined to not be reachable within the time period established should lead to an amended IEP to set goals that are achievable . . . There are documented results with progress reports that show a decline or retrograde in the student's progress towards his goals the prior IEP year. Despite this, the progress report still was indicative of 'Yes' when determining if he was making progress even in the final progress update which should show achievement of the goal, or else should be 'No' by default. Mrs. Ladusch appeared to agree that these should not have been stated as 'Yes' for progress; I believe this is essentially falsifying information to appear to be successful in implementing the IEP and is not acceptable . . . The parents would again reiterate our request for more information on the progress the student is making in math. We have made numerous requests for examples of work or progress reports from the online platforms being used as currently we only see "participation points" in PowerSchool for grades and the quarterly IEP progress report related to testing results. Parents cannot assist with any learning or progress when we have no idea of the concepts and work that are being taught.*

As a result of this email and a meeting with the parents regarding the allegations in this complaint, USD #337 created a new PWN dated March 23, 2024. The actions proposed section states:

a. *The team proposes that the student's progress towards his IEP goals continue to be shared with parents through the progress reports provided to them quarterly.*

b. *The team proposes to change the <yes= to <no= on the progress report dated 10/13/2023 for the following goal: In 36 instructional weeks, when given a level 5 math probe, the student will answer at least 38/48 math computations correctly, in two out of three trials.*

c. *The team proposes to change the <yes= to <no= on the progress reports dated 10/13/2023 and 12/20/2023 for the following goal: By the end of the annual IEP, when presented with social interactions/situations probe, the student will be able to use fundamental skills: (to understand and respecting self and others), social initiation skills: (asking for help, starting/joining/ending a conversation, etc.), social response skills (listening, following directions, etc.), and getting along with others (being flexible, dealing with 'No", etc.) skills on 4 out of 5 observation periods (80%), two out of three trials.*

Conclusion

Federal regulations implementing the IDEA at 34 C.F.R. 300.324(b)(1) require school districts to review and revise, if needed, a student's IEP periodically, but not less than annually. Documentation and interviews found the student's IEPs have been reviewed and revised annually during the past three school years.

Federal regulations at 34 C.F.R. 300.320(a)(3) IEPs require school district to include a description of how the child's progress toward meeting the annual IEP goals will be measured while federal regulations implementing the IDEA at 34 C.F.R. 300.324(b)(1) require school districts to reconvene a student's IEP team to address any lack of expected progress toward the annual goals and in the general education curriculum.

In this case, documentations shows that the math and reading goals were changed over the three IEPs by increasing the grade level of content as well as increasing the level of accuracy. It is noted that the evaluation procedures to gauge the student's progress were inconsistent across the IEPs and may have resulted in an inaccurate record of student progress and confusion as to whether the student was making adequate progress to achieve the goal. This was acknowledged by the district when it provided the parent with a PWN dated February 23, 2024 proposing to change the report of IEP goal progress for the math goal for one reporting period.

In addition, functional daily living skills were identified as a significant area of concern in the January 21, 2022 Evaluation Report, the Present Levels of Academic and Functional Performance in all three IEPs, and described in the February 6, 2023 PWN. Across the three IEPs, the goal for this area includes between three and four specific behaviors measured through observations and the IEP goal progress reports across the three IEPs do not address each of the specific behaviors being measured. Again, this may have resulted in an inaccurate record of student progress and confusion as to whether the student was making adequate progress to achieve the goal.

Again, this was acknowledged when USD #337 provided the parents with a PWN dated February 23, 2024 proposing to change the report IEP goal progress for the functional daily living skills goal on two consecutive reporting periods. Had the IEP goal progress reporting been more specific at the time of the two reporting periods of October 13, 2023 and December 20, 2023, the continued lack of progress across two reporting periods would have triggered the need to reconvene the IEP team to consider the student's lack of progress towards the functional daily living skills IEP goal.

Based on the foregoing, a finding of noncompliance ***is substantiated*** for USD #337 not including an adequate description of how the child's progress toward meeting the annual IEP goals will be measured and not reconvening the IEP team to address the lack of expected progress toward the annual goal.

Issue Two

USD #337, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to include the required members of the IEP team at the most recent annual IEP team meeting, specifically by not following appropriate procedures to excuse the LEA representative during the 2023-24 school year.

It is noted that USD #337 acknowledged noncompliance for this issue and proposed a resolution to the Kansas State Department of Education (KSDE). This proposed resolution was accepted by KSDE on April 3, 2024; therefore ***no investigation or findings*** will be included in this investigation report in regards to Issue Two.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of federal regulations at 34 C.F.R. 300.320(a)(3) is substantiated because the USD #337 failed to include an adequate description of how the child's progress toward meeting the annual IEP goals would be measured. In addition, a violation of federal regulations at 34 C.F.R. 300.324(b)(1) is substantiated because USD #337 failed to reconvene a student's IEP team to address the lack of expected progress toward the functional daily living skills goal across two consecutive IEP goal reporting periods in December 2023.
    a. CORRECTIVE ACTION:
        i. USD #337 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will ensure that each annual IEP goal shall include an adequate description of how the child's progress towards meeting each annual goal will be measured.
            1. No later than May 1, 2024
        ii. USD #337 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will ensure that IEP

teams will be reconvened to address any lack of expected progress toward annual goals based on IEP goal progress reports.

1. No later than May 1, 2024

iii. USD #337 will provide training to special education staff specifically addressing the requirement for IEP teams to be reconvened to address any lack of expected progress toward annual goals based on IEP goal progress reports. This training will also provide guidance for writing measureable goals. USD #337 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.

1. No later than May 30, 2024

Investigator

Nancy Thomas

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).

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 February 26, 2024
Against Unified School District No. 337

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced on February 26, 2024, with the parents,xxxxxxxxxxx, filing a complaint on behalf of their child, xxxxxxxxxxx. This decision will refer to xxxxxxxxxxx as "the parents," and xxxxxxxxxxx as "the student." A complaint investigator completed the complaint investigation on behalf of the Kansas State Department of Education (KSDE) Special Education and Title Services team. Following the investigation, KSDE issued a complaint report, addressing the parents' allegations, on April 4, 2024. The complaint report concluded that there were two violations of special education law under one issue and ordered corrective action.

On April 5, 2024, the district filed an appeal of the complaint report. Upon receiving the appeal, KSDE appointed an Appeal Committee, and it reviewed the district's appeal, the email from the complaint investigator to the district where the complaint investigator frames the complaint issues, and the complaint report. The Appeal Committee now issues this Appeal Decision.

Preliminary Matters

KSDE included the text of regulation regarding filing an appeal, K.A.R. 91-40-51(f), with the complaint report. That regulation states, in part, "Each notice [of appeal] 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 for the statement, the Appeal Committee does not attempt to locate the missing support.

The Appeal Committee does not decide new issues as part of the appeal. The Appeal Committee reviews the complaint report and determines whether the appealed findings or conclusions are correct. The Appeal Committee does not conduct a separate investigation. The Appeal Committee's function is to determine whether sufficient evidence exists to support the complaint report's appealed findings and conclusions.

Districts' Appeal

The district argues the investigator erred in the finding of two violations under complaint report issue one. The Appeal Committee will review each appealed finding separately. The Appeal Committee addressed the appeal of the following complaint report findings:

Issue One: USD #337, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP designed to provide a free appropriate public education (FAPE) to the student, specifically by not reviewing and revising the IEP, as appropriate, during the past 12 months.

> Sub-Issue A: Did the investigator correctly conclude that USD #337 violated 34 C.F.R. § 300.320(a)(3) because USD #337 failed to include in the student's IEP an adequate description of how the student's progress toward meeting the annual IEP goals would be measured?
>
> Sub-Issue B: Did the investigator correctly conclude that USD #337 violated 34 C.F.R. § 300.324(b)(1) because USD #337 failed to reconvene the student's IEP Team to address the lack of expected progress toward the student's functional daily living skills goal across two consecutive IEP goal reporting periods in December 2023?

Issue One

USD #337, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP designed to provide a free appropriate public education (FAPE) to the student, specifically by not reviewing and revising the IEP, as appropriate, during the past 12 months.

Sub-Issue A

> Did the investigator correctly conclude that USD #337 violated 34 C.F.R. § 300.320(a)(3) because USD #337 failed to include in the student's IEP an adequate description of how the student's progress toward meeting the annual IEP goals would be measured?

Each student's IEP must include "[a] description of . . . [h]ow the child's progress toward meeting the annual goals will be measured . . . ." 34 C.F.R. § 300.320(a)(3). The district's appeal indicates that "the [student's] IEP goal and evaluation procedures adequately describes how the progress towards the goal will be measured through the four elements of a goal (time frame, condition, behavior, criteria). We also include an additional element on our goal page by providing information to the parents on the evaluation procedure (what tools/method)." (*District's Written Notice of Appeal* 1, Apr. 5, 2024.) The complaint investigator states the following in the conclusion section of the complaint report:

> Federal regulations at 34 C.F.R. 300.320(a)(3) IEPs require school district [sic] to include a description of how the child's progress toward meeting the annual IEP goals will be measured . . . . It is noted that the evaluation procedures to gauge the student's progress were inconsistent across the IEPs and may have resulted in an inaccurate record of student progress [on the student's math and reading goals] and confusion as to whether the student was making adequate progress to achieve the goal . . . . Across the three IEPs, the

> goal for [functional daily living skills] includes between three and four specific behaviors measured through observations and the IEP goal progress reports across the three IEPs do not address each of the specific behaviors being measured. Again, this may have resulted in an inaccurate record of student progress and confusion as to whether the student was making adequate progress to achieve the goal.
> (*Complaint Report* 9–10, Apr. 4, 2024.)

The Appeal Committee determines that the complaint report finding that the student's "evaluation procedures to gauge the student's progress were inconsistent across the IEPs" does not support the conclusion that the district violated 34 C.F.R. § 300.320(a)(3) because this regulation does not require that evaluation procedures to gauge a student's progress be consistent across IEPs. 34 C.F.R. § 300.320(a)(3) requires that the description of how a child's progress toward meeting an annual goal be consistent with the measurement of the goal because that is how the IEP Team will know whether the student is making progress. However, the investigator does not provide legal support for the determination that the description of how progress will be measured must be consistent across IEPs. Additionally, the investigator's finding regarding the lack of specificity in the student's progress reports is not detailed enough to give the Appeal Committee sufficient information to support the conclusion that the district violated the requirement to describe how the student's progress toward meeting the annual IEP goals will be measured.

The Appeal Committee agrees with the district that the complaint report finding that the district violated 34 C.F.R. § 300.320(a)(3) because USD #337 failed to include in the student's IEP an adequate description of how the student's progress toward meeting the annual IEP goals would be measured is not support by the complaint report analysis. The district is not required to complete corrective action 1.a.i. as the Appeal Committee has overturned the related finding. The district is also not required to complete corrective action on training for writing measurable goals as the complaint report does not contain a finding that the district violated 34 C.F.R.300.320(a)(2)(i) on measurable annual goals.

Sub-Issue B:

> Did the investigator correctly conclude that USD #337 violated 34 C.F.R. § 300.324(b)(1) because USD #337 failed to reconvene the student's IEP Team to address the lack of expected progress toward the student's functional daily living skills goal across two consecutive IEP goal reporting periods in December 2023?

34 C.F.R. § 300.324(b)(1)(ii) requires the district to ensure that each child's IEP Team revises the child's IEP, "as appropriate, to address . . . [a]ny lack of expected progress toward the annual goals . . . ." The district's appeal does not dispute the investigator's finding that the student was not making progress so the Appeal Committee will just focus on whether the district ensured that the IEP Team revised the student's IEP to address the lack of progress. (*District's Written Notice of*

Appeal, Apr. 5, 2024.) The district's appeal states, "[The district] advise[s] our staff that if a student does not make progress for two reporting periods in a row, we need to meet as an IEP team to review and revise as appropriate." (*District's Written Notice of Appeal* 1, Apr. 5, 2024.) The district asserts it timely brought the student's IEP Team together to discuss the student's lack of progress:

> The functional daily living goal had a target criteria of 80%. The October 2023 progress report revealed a drop to 73%, but the team believed the student could still meet the 80% by February with no revision necessary. Then the student dropped to 69% on December 20, 2023 - the day students were dismissed for winter break. [The district] returned to school on Wednesday, January 3, 2024. The school had snow days on January 8, 9, and 10th. The Notice of Meeting was sent on January 11, 2024 [sic] to review and revise the IEP at a mutually agreeable time with the parents. The school had more snow days on January 12, 16, and 23. The IEP team met to review and revised the IEP on January 31, 2024. (District's Written Notice of Appeal 1, Apr. 5, 2024.)

The complaint investigator concludes, "that the evaluation procedures to gauge the student's progress were inconsistent across the IEPs and may have resulted in an inaccurate record of student progress and confusion as to whether the student was making adequate progress to achieve the goal." (*Complaint Report* 10, Apr. 4, 2024.) The complaint investigator further concludes, "Had the IEP goal progress reporting been more specific at the time of the two reporting periods of October 13, 2023 [sic] and December 20, 2023, the continued lack of progress across two reporting periods would have triggered the need to reconvene the IEP team to consider the student's lack of progress towards the functional daily living skills IEP goal." On March 23, 2024, the district sent the parents a Prior Written Notice proposing to change the student's October 13 and December 20, 2023, progress reports, on his functional living skills goals from making progress to not making progress.

The Appeal Committee finds that the investigator supported the conclusion that the district did not timely ensure that the student's IEP Team addressed the student's lack of progress by making findings that the progress reporting was not specific enough to accurately record the student's lack of progress, which then impeded the district's ability to ensure the student's IEP Team would convene to address any lack of progress. The Appeal Committee finds that the investigator supported the conclusion that the district did not timely ensure that the student's IEP Team addressed the student's lack of progress through the finding that the district proposed to change the student' s progress reports to indicate the student did not make progress on his functional living skills goals. Because the district did not initially accurately record the student's progress, the district was unable to meet its obligation to timely convene the student's IEP Team to address the student's lack of progress.

Issue One-Conclusion

Based on a review of the above, the Appeal Committee overturns the investigator's finding that the district violated 34 C.F.R. § 300.324(b)(1) and removes the related corrective action and affirms the investigator's finding that the district violated 34 C.F.R. § 300.324(b)(1), leaving the related corrective action in place.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued April 29, 2024.

Appeal Committee

Brian Dempsey: Assistant Director of Special Education and Title Services

Dr. Crista Grimwood: Dispute Resolution Coordinator

Stacie Martin: State Transition Coordinator

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #500
KANSAS CITY PUBLIC SCHOOLS
ON MARCH 11, 2024

DATE OF REPORT APRIL 10, 2024

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

The complaint is against USD #500 (Kansas City Kansas Public Schools). In the remainder of the report, USD #500 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 March 11, 2024. The KSDE allows for a 30-day timeline to investigate the child complaint, which ends on April 20, 2024.

Investigation of Complaint

Gwen Beegle, Complaint Investigator, interviewed the parent by telephone on March 13, 2024, to clarify the issues of the complaint as part of the investigation. During the investigation, the Complaint Investigator reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The following persons were interviewed regarding this complaint: Kacie Inderhees (Infant Toddler Provider-IT Provider) March 18, 2024; Katie Brooks (Evaluator, Special Educator) April 1, 2024; Angel Spann (KCK Early Childhood Coordinator) April 1, 2024; and Keri Schreiber (Early Childhood Speech Language Pathologist) April 1, 2024. The parent was interviewed using a language interpreter on April 3, 2024.

The following documentation and information were used in consideration of the issue(s), with documents listed first.

1. Teaching License Justine Neuman in Early Childhood (PreK-3), Early Childhood Unified (B-K) and English for Speakers of other Languages (PreK-12) dated August 15, 2020 through August 15, 2025.
2. Children's Mercy Audiogram for the student dated May 19, 2023
3. IFSP dated September 13, 2023 including transition to Part B plan
4. Part C to B Referral dated November 3, 2023

5. Prior Written Notice Intent to Evaluate Infant and Toddler in English dated November 16, 2023
6. Prior Written Notice for Evaluation and Request for Consent dated January 11, 2024 with parent signature giving consent on the same date
7. Prior Written Notice Intent to Evaluate Infant and Toddler in English dated January 12, 2024
8. Proprio Call Log dated February 23, 2024 at 9:04 a.m.
9. Early Childhood Application for Enrollment dated February 26, 2024
10. Prior Written Notice in Spanish for identification, initial services, and placement and request for consent dated February 23, 2024 for a meeting on March 4, 2024 with both consent and no consent marked and signed by parent on March 4, 2024
11. Notice of Meeting in Spanish dated February 23, 2024 for a meeting on illegible date at 9:00 am, signed by the parent on February 23, 2024 waiving 10 day notice
12. Student evaluation- Eligibility Report (Spanish and English versions) dated March 4, 2024 with eligibility affirmed and signed by parent on March 4, 2024
13. Draft IEP dated March 4, 2024
14. IEP Meeting Notes and Summary in English dated March 4, 2024 with parent signature indicating receipt and understanding of parental rights and with meeting notes in Spanish
15. Procedural Safeguard Notice, signed and dated by the parent on March 4, 2024 (English)
16. Notice of Meeting in Spanish dated March 4, 2024 for a meeting on March 6, 2024 signed by the parent on March 4, 2024 waiving 10 day notice
17. Proprio Call Log dated March 4, 2024 at 9:04 a.m.
18. IEP Meeting Summary, dated March 7, 2024, Spanish
19. Prior Written Notice in English dated March 7, 2024 for initial services and placement unsigned by parent
20. Prior Written Notice in Spanish dated March 7, 2024 for initial services and placement unsigned by parent
21. March 7, 2024 [Student Name] Meeting Notes by District Speech Language Pathologist

Emails

22. Email exchange between Kacie Inderhees (Infant and Toddler Service Provider) and Robin Larson-Molson (KCK School Psychologist) beginning October 11, 2023 at 9:59 a.m. and ending October 20, 2023 at 1:12 p.m.
23. Calendar invitation confirmation from Robin Larson-Molson to Kacie Inderheese dated October 20, 2023 at 1:38 p.m.
24. Email exchange between Angie Sublet (District Audiologist) and Kacie Inderhees beginning October 19, 2023 at 4:09 p.m. and ending October 19, 2023 at 4:21 p.m.

25. Email exchange from Jorjann Kline (Intake Coordinator) to Angel Spann (KCK Early Childhood Coordinator) and Kacie Inderheese dated November 3, 2023 at 3:39 p.m.
26. Email from Ja'Kyta Lawrie (Special Education Director) to Debbie Lair (Infant and Toddler Coordinator), Angel Spann and Brenda Tantow (KCK Part C to B Team) dated November 3, 2023 at 3:48 p.m.
27. Email exchange between Kacie Inderhees and Ja'Kyta Lawrie, Angel Spann, Brenda Tantow and Debbie Lair, beginning November 6, 2023 at 11:05 a.m. and ending November 6 at 5:51 p.m.
28. Email exchange between Kacie Inderhees and Robin Larson-Molson beginning November 15, 2023 at unknown time and ending November 15 at 8:59 a.m.
29. Email exchange between Kacie Inderhees, Debbie Lair, and Erin Schuweiler (Kansas School for the Deaf - KSD) beginning November 15, 2023 at 12:04 p.m. and ending November 16, 2023 at 9:42 a.m.
30. Email from Stormy Dellolio (Facilitator) to Eshauna Davis (KCK School Psychologist) and the parent dated January 5, 2024 at 4:37 p.m.
31. Email from Kacie Inderhees to Brenda Tantow dated February 9, 2024 at 11:46 a.m.
32. Email exchange between Melinda Bridgewater (Speech Language Pathologist C2B team SLP diagnostician), and Kacie Inderhees beginning February 23, 2023 at 11:03 a.m. and ending at 12:04 p.m.
33. Email exchange between Angie Sublet, Kathryn Brooks (Evaluator), Melinda Bridgewater, and Justine Newman Preschool Teacher for the Deaf and Hard of Hearing) beginning February 23, 2023 at 1:47 p.m. and ending February 25, 2023 at 8:14 p.m.
34. Email exchange between Kacie Inderhees and Kathryn Brooks beginning February 28, 2024 at 8:41 a.m. and ending at 8:57 a.m.
35. Email from Melinda Bridgewater to Kerri Schreiber (KCK Early Childhood Speech Language Therapist) dated March 4, 2023 at 10:22 a.m.
36. Email exchange between Kacie Inderhees and Angie Sublet, Kathryn Brooks, Melinda Bridgewater, Heather Turi (KCK Early Childhood Center-KCK ECC Principal), Justine Newman, and Kerri Schriber beginning March 4, 2024 at 1:44 p.m. and ending March 7, 2024 at 12:06 p.m.
37. Email from Angie Sublet to Rebecca (SPED admin) dated March 4, 2024 at 3:14 p.m.

Background Information

The student is 3 years old and attended Project Eagle for infant and toddler services. His evaluation stated that he was automatically eligible for services due to established risk for developmental delay as a result of being diagnosed with unilateral conductive hearing loss in the right ear that is moderate-severe. The student has worn a bone-anchored hearing aid since age 6 months to amplify sound in the affected ear and has no hearing loss in the other ear. The student was evaluated and found eligible for Part C services in 2021 due to his hearing loss and delays in communication, social emotional development and cognition. His

Part B evaluation dated March 4, 2024, found him eligible in the primary disability area of hearing impairment with a secondary disability in speech and language and additional needs identified in the social emotional domain. The student's family speaks Spanish in the home, and the student has been exposed to sign language since he was 7 months old. The student has some words in Spanish and in English, along with some sign language development.

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)).

Issues Investigated

Based upon the written complaint and an interview, the following eight issues were identified.

ISSUE ONE: The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford procedural safeguards for parental participation, specifically to (a) provide parental rights document, (b) provide prior written notice in the parent's native language (c) provide 10 day notice of meetings, (d) notify the parent of IEP meetings, (e) provide full translation at meetings, and (f) respond to a parental request for a meeting in a timely way. (page 6)

ISSUE TWO: The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond to the Part C referral of a potentially eligible child in a timely way. (page 13)

ISSUE THREE: The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a district representative at the student's transition conference. (page 15)

ISSUE FOUR: The USD #500 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, specifically by (a) evaluating the child in the native language of the home, (b) including parental input into the evaluation and evaluation process, and (c) considering outside evaluations and reports. (page 17)

ISSUE FIVE: The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to convene an IEP team required to complete the IEP, including a representative for the school for the deaf as requested by the parent (page 20)

ISSUE SIX: The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop the

student's IEP, specifically by predetermining the student's placement and failing to consider other continuum options (page 22).

ISSUE SEVEN: The USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide FAPE by having an IEP in place at the time of the child's third birthday (page 25)

ISSUE EIGHT: The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide appropriately trained staff to meet the unique needs of the student (page 27)

Issue One

The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford procedural safeguards for parental participation, specifically to (a) provide parental rights document, (b) provide prior written notice in the parent's native language (c) provide 10 day notice of meetings, (d) notify the parent of IEP meetings, (e) full translation at meetings, and (f) respond to a parental request for a meeting in a timely way.

Applicable Statutes and Regulations

According to the Kansas Early Childhood Transition from IDEA Part C to Part B (2018), the Notice of Procedural Safeguards, Parent's Rights, must be given to parents upon initial referral or parent request for evaluation. When an LEA receives a Part C referral, it has a reasonable time in which to provide parents with the notice of procedural safeguards. KSDE interprets a reasonable time to be within 15 school days unless there is a reasonable justification for further delay.

Federal regulations at 34 C.F.R. 300.322 (a) require that parents be given the opportunity to participate in all IEP meetings. Districts must ensure that parents are part of any group that makes decisions on educational placement of the parent's child (34 C.F.R. 300.327). The school must provide notice of an IEP team meeting to the parents for the initial IEP team meeting and any subsequent IEP team meetings and the notice must be provided in writing at least 10 calendar days prior to the meeting (K.A.R. 91-40-17(a)(2)) Additionally, federal regulations at 34 CFR 300.322(b) require that the parent be informed of the purpose, location and attendees at the meeting and 34 CFR 300.322(e) require that the public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents whose native language is other than English. Prior written notice must be provided in the parent's native language (34 C.F.R. 300.503(c)(2)). Finally, 34 CFR 300.9(a) requires that the parent has been fully informed of all information relevant to the activity for which consent is sought in his or her native language.

Parents can request that an IEP meeting be held, and KSA 72-3429 (f)(2)(C) requires that the district convene an IEP meeting to address information about the child provided by the parents. KSDE interprets a reasonable time to respond to a parental request for a meeting to be within 15 school days unless there is a reasonable justification for further delay.

Positions of the Parties

The parent alleged that the district did not acknowledge the student's referral from Part C to Part B by sending a copy of the parental rights or providing prior written notice for permission to evaluate the student in the parent's native language, requiring her to have another family member translate it so she could give permission for comprehensive evaluation. The parent alleged that the district failed to send a representative to a transition meeting on November 15, 2023 despite confirming their attendance. The parent alleged that she was notified on February 23, 2024 for a meeting on March 4, 2024, but the IEP could not be completed at that time. The parent alleged that the district rescheduled then canceled an IEP meeting on March 6, 2024, and then scheduled another meeting on March 7, 2024. The district failed to directly notify the parent of the March 6 and March 7, 2024 dates or provide 10 day notice. The parent alleged that at the IEP meeting the school team did not pause in their discussions for the interpreter to translate parts of the discussion, and that a district staff told the interpreter "no need to interpret that" after making a statement. Finally, the parent alleged that she visited the early childhood office and the district office attempting to enroll her child, but she was turned away because she did not have a meeting scheduled.

USD #500 denied any violations relating to the allegations raised in the formal complaint.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent, LEA staff in USD #500 and other persons listed above.

The district and parent agree that the district received the Part C to Part B referral on November 3, 2023.

The district reported and documentation showed that no information on the referral indicated that the family's native language was Spanish. The district provided a copy of a Prior Written Notice (PWN) of Intent to Evaluate the student dated November 16, 2023, mailed to the parent on the same date. In an interview, the parent reported that she did not receive this notice.

Emails between the infant toddler (IT) provider and the district's school psychologist October 19-20, 2023, showed that the school psychologist was aware that the family needed an interpreter for the transition conference, which would be provided by Part C. These emails also showed that the IT provider told the school psychologist that the family was interested in a placement at the school for the deaf (KSD) and that the school psychologist accepted the invitation to the transition conference which included the time and location of the meeting.

Emails from the same period showed that the school psychologist alerted the IT provider that the district would reach out to initiate the evaluation at least 30 days before the student's third birthday.

The parent and district agree that the school psychologist did not attend the transition conference, sending an email after the start of the meeting that she could attend only by teleconference media. The parent and the district agree that the transition conference was held without Part B presence, at least 90 days before the student's 3rd birthday.

The district reported that it contacted the parent on January 5, 2024 to explain the evaluation process. The district provided a copy of the follow up email to the parent dated January 5, 2024 showing parental rights documents in English and Spanish attachments along with a request for a social history of the student. The district reported that the parent replied to this email returning the completed social history forms in both languages. The parent reported that she replied to the social history as well as she could as it was provided in English. A second PWN of Intent to Evaluate the student dated January 12, 2024 showed documentation that it was mailed to the parent on the same date.

Prior Written Notice for Evaluation and Request for Consent was provided in English on January 11, 2024 with consent signed by the parent on the same date, 60 days before the student's third birthday.

Emails on February 25, 2024 showed that the audiologist, evaluator, and speech language therapist on the district's evaluation team shared a copy of the IFSP for discussion.

The district reported that the evaluation team met with the parent on February 23, 2024 to work with the child and interview the parent. The evaluation team arranged to observe the student and interview the student's teachers on February 27, 2024 in his current placement as part of the evaluation.

At the time of the evaluation, the evaluation team explained the location of the KCK-ECC classroom for deaf and hard of hearing students and described the services that could be provided to the student in that program. The evaluation team believed that the parent was positive about this placement and scheduled the staffing to occur in that location, to occur on March 4, 2024, 5 days before the student's third birthday. According to the evaluator, the parent did not mention the KSD placement at the time of the evaluation.

The district provided two notices of meetings, the first dated February 23, 2024 for a meeting on March 4, 2024 and the second on March 4, 2024 for a meeting on March 6, 2024. On both documents, the parent waived 10 day notice. The district evaluator explained that she had shown and explained the notice of meeting to the parent on the day of the evaluation, February 23, 2024, but she did not have the Spanish language version printed. While the Spanish version was being printed, the parent left and so she was not able to have the NOM signed till March 4, 2024.

The IEP Meeting Notes and Summary in English dated March 4, 2024 included the parent's signature with two options checked, indicating the parent's receipt and understanding of parental rights in her native language. Prior Written Notice for Identification, Initial Services and Placement in Spanish dated February 23, 2024 was marked as delivered on March 4, 2024. Both consent and no consent were checked with the parental signature on March 4, 2024. In an interview, the parent said that she intended to say no consent to the district because she believed they did not understand the needs of her son and she thought KSD provided more educational opportunities.

The district reported and documents showed that the student's evaluation and eligibility were the topics of the March 4, 2024 meeting, and that the student's primary disability was determined to be hard of hearing with a secondary disability of speech language delay. At the March 4, 2024 meeting the evaluator and district attendees became aware that the parent wanted to discuss KSD as a placement rather than the district's classroom and school. The March 4, 2024 IEP meeting notes state: "The team will meet again on March 6 at 8:00 a.m., to write the IEP, since the parents show a preference for the KSD and the KSD representative did not attend this meeting. The KSD representative is available at this time."

The district reported that the IT provider agreed to contact KSD, and the IEP meeting was rescheduled on March 7, 2024 due to KSD not being available on March 6 at the same time as district staff. The meeting was held on March 7, 2024 to allow for district, KSD, parent and IT provider participation, before the student's third birthday. The parent reported that the district did not inform her of the changed time of the meeting. The interview with the IT provider verified that she informed the parent that the March 6, 2024 meeting would be held on March 7, 2024. Documents showed that the parent attended the IEP meeting on March 7, 2024.

The parent reported in the written complaint that during the March 7, 2024 IEP meeting, the Early Childhood Coordinator told the interpreter, "no need to interpret that'' after making a statement and that during the meeting the discussion did not pause to allow translation for parts of the discussion. The district disputed this, clarifying that the Early Childhood Coordinator had asked a side question of the IT provider in reference to accurately transferring her handwritten notes into the typed meeting summary, which was then translated to the whole group in its entirety. During an interview the Early Childhood Coordinator reported that the translator was available and all aspects of the meeting were translated for the parent.

Personal notes of the March 7, 2024 meeting by the district's early childhood speech language pathologist showed that the district provided a translator by telephone rather than having the parent's adult son to translate during the meeting and that some untranslated exchanges between the IT provider and the parent were made in Spanish during the meeting. The notes also reported that the district's staff verified the parental concerns after the side conversations had occurred. The notes showed a disagreement between the district staff, the IT provider and the KSD representative about whether the district was obligated to provide transportation to

KSD. In an interview, the Early Childhood Coordinator added that the parties in the meeting were very engaged in the discussion throughout the meeting, showing that the translation was effective.

The parent reported that she visited the two locations in the district in order to enroll her son on February 19 and February 20, 2024. The district reported that the parent visited the ECC office on February 26, 2024 to complete an application for enrollment in the program, which is typical for all parents wishing to enroll children. In an interview, the parent stated that she spoke to the receptionist and she did not ask for an IEP meeting at that time because she had shared information with the district already and she thought the district was aware of what was needed.

Conclusion

In summary, the parent's procedural due process rights during the Part C to B transition, Part B evaluation, and IEP development process were largely provided, with regard to the elements of the complaint: (a) the parent's rights were provided via email in Spanish and English in response to the Part B referral by January 5, 2024 and the parent acknowledged receipt of the rights in writing on March 4, 2024, (b) prior written notices for intent to evaluate were mailed and consent for evaluation secured in time for the evaluation to be completed prior to the student's third birthday, (c) two notices of meetings were provided with 10 day notice waived with parental signatures, and (d) language translation was provided at each meeting.

However, the failure of the Part B representative to attend the transition conference caused a communication interruption that led to two errors, the provision of the PWN-E in English rather than Spanish and the evaluation team's lack of awareness that the IT provider had conveyed the family's interest in KSD placement. The parent was able to reply to the PWN-E promptly, although it was provided in English. Failing to know that the parent wanted KSD present caused a rescheduling of the staffing meeting, for March 6 and then March 7, 2024, leading to a subsequent error in communicating the time and location of the March 7 meeting to the parent. Although inconvenienced, the parent was able to attend, to be informed and to participate in the evaluation, eligibility, and IEP development process despite the district's errors. Further, when the parent visited the district office, she completed an application for school enrollment but she did not ask for a meeting to be scheduled. While it might have been good service for the office reception to recognize that an IEP meeting was needed and speak to the required special education process, the parent did not indicate that she wanted an IEP meeting scheduled and so no parental request for a meeting was received by the district at that time.

Based on the foregoing, a violation of special education statutes and regulations i*s substantiated* for failing to provide the January 11, 2024 PWN-E in the parent's native language (34 C.F.R. 300.503(c)(3) and for failing to provide proper notice of meeting for the March 7,

2024 IEP meeting (34 C.F.R. 300.322(b) and K.A.R. 91-40-17(a)(2)). A violation is not substantiated for failing to provide parental rights, providing full translation at meetings, failing to provide 10 day notice at the March 4, 2024 meeting, and for failing to respond to a parental request for a meeting.

Issue Two

The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond to the Part C referral of a potentially eligible child in a timely way.

Applicable Statutes and Regulations

Upon referral 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). Whenever a child has been referred for an evaluation, the school must provide Prior Written Notice to the parents that describe any evaluation procedures the school proposes to conduct (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.304(a)). Schools are required to respond to a request for an evaluation in a timely way with Prior Written Notice; in Kansas this is within 15 school days. From the time the parent gives consent for an evaluation, the evaluation must be completed, eligibility determined and initial services begun in 60 days (34C.F.R. 300.301(c)(1)).

Positions of the Parties

The parent alleged that the referral for special education for the student was sent to the school district from infant toddler services on November 3, 2023 and that the district did not respond to it in a timely way. The parent stated that when she did receive information from the district, it was in English causing her to ask a family member to translate it for her before she signed and returned the document. The parent stated that the evaluation conference was not scheduled till February 23, 2024 to be held on March 4, 2024 despite the district's knowledge of the student and his March 8 birthday. Due to these delays, her child is now without services.

USD #500 responded that USD #500 denied any violations relating to the allegations raised in the formal complaint.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #500.

The findings of Issue One are incorporated herein by reference.

As stated previously, the Part C to B referral was made to the district on November 3, 2023. The district reported and provided documentation that showed that a Prior Written Notice with

Intent to Evaluate was written and mailed to the parent on November 16, 2024. The Prior Written Notice with Intent to Evaluate stated that, "Requesting consent for evaluation at this time was considered, but rejected because the team would like to request consent within 60 school days of the child's third birthday. The team will present a prior written notice and request for consent prior to starting the evaluation." The parent reported that she did not receive this notice by mail. The district provided documentation that indicated that the same PWN with intent to evaluation was mailed again on January 12, 2024.

The district reported that it contacted the parent on January 5, 2024 to explain the evaluation process. The district provided a copy of the follow up email sent to the parent dated January 5, 2024 showing parental rights documents in English and Spanish attachments along with a request for a social history of the student. The district reported that the parent replied to this email returning the completed social history in both languages.

Prior Written Notice for Evaluation and Request for Consent was provided in English on January 11, 2024 with consent given and signed by the parent on the same date, 60 days before the student's third birthday. The district reported and the evaluation document showed that the student's Part B evaluation was initiated with a meeting with parents and direct interaction with the student on February 23, 2024, followed by observation of the student in his current placement and interviews with his teachers on February 27, 2024 and an evaluation and eligibility meeting held on March 4, 2024. The student's evaluation shows eligibility affirmed and signed by the parent on March 4, 2024. The district reported and documentation showed that the district offered a draft IEP one day prior to the student's third birthday on March 7, 2024, and the PWN of the same date showed that the parent declined to consent for this Part B placement's initiation. The parent confirmed in an interview that the district had offered this placement and IEP at the March 7, 2024 meeting.

Conclusions

In this instance, the district reported responding by mail to the Part B referral with a PWN with intent to evaluate, which stated that the evaluation consent would be sought within 60 days of the child's third birthday, when services would need to be in place. The district reported sending this PWN in November within 15 days of the Part B referral and again in January, 2024. It is noted that the parent did not report receiving this PWN and the conditions of its delivery cannot be determined. The district sought and acquired consent on January 11, 2024 and completed the evaluation and eligibility determination on March 4, 2024, offering a district placement on March 7, 2024. Based on the foregoing, a violation of special education statutes and regulations *is not substantiated* for failure to respond to the Part C referral of a potentially eligible child in a timely way.

Issue Three

The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a district representative at the student's transition conference.

Applicable Statutes and Regulations

For children transferring from IDEA Part C to Part B services, the school is required to ensure that: (a) the parents are provided with a copy of the Parent Rights Notice (procedural safeguards) (b) eligibility is determined according to Part B requirements through an initial evaluation; (c) if eligible, an IEP or IFSP is in effect by the child's 3rd birthday; (d) if a child's 3rd birthday occurs during the summer, the child's IEP team determines the date when services will begin, but not later than the beginning of the school year following the 3rd birthday; and (e) a representative of the district will participate in transition planning conferences arranged by the Part C program (K.A.R. 91-40-2(b); 34 C.F.R.300.124(c)).

This regulation does not require LEA staff members to attend these conferences in person. Staff members may participate in conferences through alternative methods, such as telephone conference calls or other means of technology (e.g., zoom meetings). If the LEA is unable to send a representative to the transition conference, the Part C Program is still responsible for convening a timely transition conference and conveying the information required by the Part B program to the parent.

Positions of the Parties

The parent stated that the infant toddler (IT) provider scheduled a transition conference with the school on November 8, 2024 for a meeting on November 15, 2023 and when the parent and IT provider came to the meeting at the school, the district failed to provide a representative.

USD #500 replied that USD #500 denied any violations relating to the allegations raised in the formal complaint. The district responded that, when the Part B representative alerted the IT provider via email that she could not attend in person, the IT provider should have rescheduled the transition conference.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent, the infant toddler service provider and district staff in USD #500.

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

In mid-October, 2023, the IT provider alerted the district to the need to schedule a transition planning conference before the student whose third birthday was March 8, 2024, necessitating the meeting to fall before December 9, 2024. Via email, the IT provider confirmed that a district

school psychologist was available and would attend a transition planning conference as the Part B representative on November 15, 2023 at 8:30 a.m. After the start of the meeting, at 8:44 a.m., the Part B representative emailed to report that she could not attend the meeting in person but could attend on Teams or Google. The transition planning meeting proceeded in person with the parent, infant toddler service provider, and KSD representative in attendance. After the meeting, the infant toddler service provider informed the district Infant and Toddler Coordinator that the Part B representative had not attended and they sent an email after the meeting began. On February 9, 2024, the IT provider emailed a member of the district's Part C to B team to remind the district that the student was in transition to Part B.

On November 3, 2023, an email from the Special Education Director to the Part C Coordinator showed that the Part B program requested alterations in the Part C to Part B referral process, to include providing IFSPs along with referrals and to designate Part B administrators to receive all referrals. These administrators would be "prepared to discuss continuum of services for part B and provide procedural safeguards to parents at that meeting and answer questions."

Conclusions

Based on the foregoing, a violation of special education statutes and regulations *is substantiated* for failing to provide a district representative at the student's transition conference. It is noted that the Part C provider was aware of the Part B school psychologist's email and could have rescheduled the transition conference or connected the school psychologist electronically but declined to do so because of their late notice. It is noted that this meeting occurred during the first weeks of implementing the new KCK process designed to prevent such errors in the future.

Issue Four

The USD #500 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, specifically by (a) evaluating the child in the native language of the home, (b) including parental input, and (c) considering outside evaluations and reports.

Applicable Statutes and Regulations

Federal statutes and regulations at 34 CFR 300.324(a) require that in developing the child's IEP, the IEP team shall consider the following: the strengths of the child, the concerns of the parents, the results of the child's evaluation, the academic and functional needs of the child, the use of positive behavior interventions and supports if the child's behavior impedes learning, the need for braille or the impact of limited English proficiency, the child's communication needs, and the need for assistive technology.

> *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)).*

Additionally, according to 34 C.F.R. 300.304 (c)(1) and K.S.A. 72-3428(c) (1) (A) and (B) the assessments are to be selected and administered so as not to be discriminatory on a racial or cultural basis and to be provided and administered in the native language or other mode of communication and form most likely to yield accurate information on what the child knows and is able to do academically, developmentally, and functionally.

Positions of the Parties

The parent alleged that the evaluation took place in late February and that the district did not consider outside evaluations and reports when drafting the IEP. The parent alleged that no discussion was afforded at the evaluation meeting, and the persons present at the meeting had not completed the student's evaluation. The parent stated that the district stated that KSD was not invited or needed at the meeting, yet KSD had been in the home with services since the student was 7 months old. The parent alleged that her input was not considered or wanted. The parent alleged that only English was assessed, although the student is in a Spanish speaking home and has exposure to sign with a clinician from KSD from the age of 7 months.

USD #500 replied that USD #500 denied any violations relating to the allegations raised in the formal complaint.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #500.

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

In an interview, the IT provider reported that the parent believed that the school's evaluator asked about the child's communication in Spanish and sign, but did not directly assess him in those means of communication. The IT provider reported that the draft IEP goals were not based on accurate baseline information regarding the student's current receptive language across all languages.

The district reported that the district's evaluation team met with the parents and child on February 23, 2024 for the evaluation. Because the child was crying and the interpreter had not yet arrived, the evaluator interviewed the parent with the assessment checklist while the father took the child for a walk. The district evaluation team gave time for the parents to calm the student and then worked with the child in the evaluation room to complete the interaction and

observational portion of the assessment with an in-person translator present for the evaluation.

The evaluation team reported some discrepancies between their observations and the parent's report of student skills, and the evaluation team acquired permission and arranged to observe the student and interview the student's teachers on February 27, 2024 in his current placement to continue the evaluation. The evaluation team collected current data reports from the parent during the parent interview and from the student's teachers on February 27, 2024 when the additional observations and teacher interviews were held. In an interview, the parent reported giving the district a report from KSD. The district reported using the Children's Mercy audiology report, current Part C reports and the IFSP as additional data sources for the evaluation. The district reported that these were considered as part of the evaluation and determination of the student's needs for the draft Part B IEP prepared by the evaluation team and subsequently proposed by the district. The district reported that the IEP Goal 1 skill level was not completed as it was a draft to be discussed at the IEP development meeting.

At the time of the evaluation on February 23, 2024, the evaluation team explained the location of the KCK-ECC classroom for deaf and hard of hearing students and described the services that could be provided to the student in that program and school. The evaluation team believed that the parent was positive about this placement and scheduled the staffing to occur in that location, to occur on March 4, 2024, 5 days before the student's third birthday. According to the evaluator, the parent did not mention the KSD placement at the time of the evaluation.

The parent and IT provider reported that the evaluation discussed at the March 7, 2024 meeting did not consider the reports from KSD or allow KSD to be represented in the March 4, 2024 evaluation/eligibility meeting despite the IT provider providing the information that the parent wanted KSD involvement and consideration of their reports and possible placement. The district reported that the IFSP and additional material provided by the parent and current services were sources for the evaluation which was discussed and affirmed along with eligibility on March 4, 2024, with the present levels of performance reviewed at the March 7, 2024 meeting. The district reported and documentation showed that KSD was present at the March 7, 2024 meeting which was rescheduled to ensure KSD participation and that KSD was discussed as a placement option during the IEP meeting. The parent agreed that a brief discussion of KSD and its process for developing IEPs occurred at the March 7, 2024 meeting.

Conclusions

In this case, the district was tasked to evaluate a child with trilingual language development, in Spanish, English, and sign language. The district's evaluation team reported using the information provided to them by the parent, interviews and reports from the current school placement, the IFSP which included the student's history of services and development, the

Children's Mercy audiology report, along with new assessments via parent interview and student observation as part of its comprehensive evaluation, using language interpretation during the direct interaction with the child. It is noted that the March 4, 2024 meeting did not include KSD representation. However, KSD was present and given an opportunity to give input at the March 7, 2024 meeting scheduled specifically so they could participate.

Based on the foregoing, a violation of special education statutes and regulations *is not substantiated* for failing to complete a comprehensive special education evaluation for a child with a suspected disability, specifically by (a) evaluating the child in the native language of the home, (b) including parental input, and (c) considering outside evaluations and reports.

Issue Five

The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to convene an IEP team required to complete the IEP, including a representative for the school for the deaf as requested by the parent

Applicable Statutes and Regulations

Federal regulations implementing the IDEA at 34 C.F.R.300.321(a) and state statutes at K.S.A. 72-3404(u)(4)(A)-(B) state that the IEP team must include the following members: the parents of the child, a regular education teacher of the child if the child is or may be participating in the regular education environment, a special education teacher or provider, a representative of the public agency who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the public agency, an individual who can interpret the instructional implications of evaluation results, at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and when appropriate, the child with a disability.

Positions of the Parties

The parent alleged that she informed the district in three ways that she wanted a representative from the school for the deaf involved in the student's transition from infant toddler services. Because the district failed to invite a KSD representative, the IEP could not be completed at the March 4, 2024 meeting convened by the district.

USD #500 replied that USD #500 denied any violations relating to the allegations raised in the formal complaint.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #500.

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

The student's IFSP transition plan section listed the IT provider, a KSD representative, and the student's adult brother in addition to Part B and the parent as persons the family would like to attend the IEP meeting.

At the March 4, 2024 IEP meeting convened by the district, the meeting notes signatures show that the following persons attended: the parent, the IT provider at the request of the parent, the special education teacher/evaluator, the principal of the KCK-ECC program who served as the LEA representative, the Speech Language Pathologist (SLP) of the evaluation team, and the district's audiologist. Evaluation and eligibility were discussed at the March 4, 2024 meeting, according to meeting minutes, the PWN dated and the student's evaluation report. At the March 7, 2024 IEP meeting, the following persons attended: the parents, the student's adult brother, a representative from KSD, the KCK ECSE-DHH teacher, the KCK early childhood SLP and the KCK Early Childhood Coordinator who served as the LEA representative.

Conclusions

In this case, at each of the two IEP meetings, the district invited an IEP team that included required members (34 C.F.R. 300.321(a)) along with the IT provider (Part C service coordinator) that the parent wanted to be included, as required by 34 C.F.R. 300.321(f). At the March 4, 2024 meeting when the district's evaluation team became aware that the parent wanted KSD present, a second meeting was scheduled to accommodate the possibility of KSD placement, again including the required IEP team members and the IT provider along with the KSD representative as requested by the parent during the March 4, 2024 meeting. Again, the second meeting included the IEP team members required by IDEA, with staff present who could explain the services that could be provided in the KCK ECC deaf and hard of hearing classroom and early childhood school. It is unfortunate that the district school psychologist originally communicating with the IT service coordinator did not convey the family's wish for KSD involvement in the Part C to B transition. However, the district met its responsibility to convene an evaluation- eligibility and an IEP team that met the requirements of IDEA.

Based on the foregoing, a violation of special education statutes and regulations *is not substantiated* for failure to convene an IEP team required to complete the IEP, including a representative for the school for the deaf as requested by the parent.

Issue Six

The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop the student's IEP, specifically by predetermining the student's placement and failing to consider other continuum options.

Applicable Statutes and Regulations

Federal regulations implementing the IDEA at 34 C.F.R. 300.115(a)(b) and state regulations a K.A.R. 91-40-21(a)(b), each agency must ensure that children with disabilities are educated in the least restrictive environment and must maintain a continuum of alternative educational placements is available, including regular classes, special classes, special schools, home and hospital instruction. In determining the placement of a child with a disability, including a preschool child, K.A.R. 91-40-21(c) the decision must be made by a group of persons including the child's parent and others knowledgeable about the child, the meaning of evaluation data, and the placement options. This group may be the student's IEP team.

Positions of the Parties

The parent stated that the general feeling within the IEP meeting was that a decision had been predetermined and no other continuum of placement options were discussed. The parent alleged that the school district at no point accommodated her wishes or communicated to her clearly about her options. The parent alleged that she made it clear from the beginning that she wanted KSD involved in this IEP because she had been working with them for years. She alleged that it violated her rights not to have this considered.

USD #500 replied that USD #500 denied any violations relating to the allegations raised in the formal complaint.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #500.

The findings of Issue One, Issue Two, Issue Three, Issue Four and Issue Five are incorporated herein by reference.

At the March 4, 2024 meeting the evaluator and district attendees became aware that the parent wanted to discuss KSD as a placement as an alternative to the district's EC deaf and hard of hearing classroom and general education early childhood center. At that point, the evaluator suggested completing only the evaluation and eligibility determination on March 4, 2024. The March 4, 2024 IEP meeting notes state: "The team will meet again on March 6 at 8:00 a.m. to write the IEP, since the parents show a preference for the KSD and the KSD representative did not attend this meeting. The KSD representative is available at this time."

The meeting was rescheduled for March 7, 2024 to allow for district, KSD, parent and IT provider participation before the student's third birthday.

In an interview, the KCK Early Childhood Coordinator stated that, during the March 7, 2024 IEP meeting, KSD had the opportunity to describe the KSD program, which was a full day program. Meeting minutes and the PWN dated March 7, 2024 showed that the district offered a placement in the KCK - ECC deaf and hard of hearing classroom within the district. Interviews with district staff uniformly stated that the administrative, evaluation and program staff believed that the student could be successfully educated within the district, and that the district was willing to work with KSD if needed to meet a student's educational needs as it had in past instances. Personal notes of the March 7, 2024 meeting showed a disagreement about whether the district was obligated to provide transportation to KSD, with the IT provider and KSD representative asserting that the district needed to provide transportation and the district asserting that KCK could provide FAPE to the student in the district and therefore the transportation related service would be provided only to the district program. Interviews with district staff showed that the staff recognized that the parent was concerned about her work schedule and the half day KCK ECC program, and in response the district staff explained that KCK could provide transportation to a child care provider rather than the home, if desired. Interviews, meeting minutes, and the March 7, 2024 PWN showed that the district stated that, because an offer of FAPE had been provided in the district and rejected by the parent, transportation to KSD was not provided as a related service. District staff, when interviewed, stated that KSD completes its own IEP when students attend there. When the parent declined to sign the PWN to initiate special education services in the district, no further action was taken to refine the district's draft IEP goals and services at the IEP meeting. District staff reported providing a paper copy of the March 7, 2024 PWN along with the special education director's phone number to the parent at the conclusion of the meeting.

Conclusions

In this case, the district properly reconvened an IEP meeting to include KSD when this was requested by the parent or the IT provider during the first meeting which completed the evaluation and established eligibility. The district provided the opportunity for KSD to be discussed as a placement option. The district made an offer of FAPE within the district, based on the expertise of the district's evaluation and EC program staff and the previous interactions with the parent. District staff expressed their conviction that the district could offer a successful educational plan for the student, alongside their understanding that they did work successfully with the school for the deaf when they believed it necessary. The district provided the PWN and contact information at the close of the March 7, 2024 IEP meeting so that the parent could later contact the district regarding services. Based on the foregoing, a violation of special education statutes and regulations *is not substantiated* for failure to properly develop

the student's IEP, specifically by predetermining the student's placement and failing to consider other continuum options.

Issue Seven

The USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide FAPE by having an IEP in place at the time of the child's third birthday

Applicable Statutes and Regulations

For children transferring from IDEA Part C to Part B services, the school is required to ensure that if eligible, an IEP or IFSP is in effect by the child's 3rd birthday, unless a child's 3rd birthday occurs during the summer, in which case the child's IEP team determines the date when services will begin, but not later than the beginning of the school year following the 3rd birthday (K.A.R. 91-40-2(b)(1)(2)).

Positions of the Parties

The parent's complaint stated: "My child should have had an IEP in place by his third birthday. Due to KCKPS's delay in communicating with me and acknowledging my wishes, my child does not have an IEP in place for his third birthday. I did not decline the IEP to be difficult. I did it because I feel having Kansas School for the Deaf as a part of his process is important to making the best decisions for his future." The parent alleged, "As of right now my son is receiving no services because the services for him only lasted from 6 months to 3 years old from the school he attended named Educare Kansas City with Project Eagle. His time with Educare is almost up, that's why I've been trying to figure out which school to enroll for my son to attend next."

USD #500 replied that USD #500 denied any violations relating to the allegations raised in the formal complaint.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #500.

The findings of Issue One, Issue Two, Issue Three, Issue Four, Issue Five and Issue Six are incorporated herein by reference.

After the student's referral from Part C, the district provided a Part B evaluation that led to a determination that the student was eligible for special education and related services upon his third birthday. One day prior to his birthday, the district offered the parent placement in the KCK - ECC deaf and hard of hearing classroom with a draft IEP dated March 4, 2024. The March 4, 2024 PWN showed that the parent did not consent to the district's IEP with

placement in the deaf and hard of hearing classroom; this was clarified in an interview with the parent.

The parent did not accept the district's offer of placement at the March 7, 2024 IEP meeting; the district provided PWN dated March 7, 2024 that stated: "The action proposed was to provide Gael special education services at his neighborhood attendance area for early childhood. The following proposal was made: 75 min. four days a week special education services, 15 min. a quarter for audiology, speech and language 15 min. 2 days a week, & special transportation, K-time is 150 min 2 days a week and 135 min. 2 days a week. The action at this time was refused by the parent. She prefers to have her child attend a full day program which is offered at KSD. The option to attend KCK ECC with an ECSE teacher to support was considered but rejected due to the program being half day versus a full day, which would be the parent's preference. The option to give bus transportation from the district to KSD was rejected because FAPE can be provided in the district."

An interview with the parent indicated that KSD had not initiated an IEP process with the parent after the March 7, 2024 IEP meeting.

Conclusions

In this case, the student was determined to be eligible for services, the district offered a draft IEP with in-district placement which was rejected by the parent at the second IEP meeting. It is noted that time constraints prevented further negotiations before the child's third birthday when a disagreement between the parties was not resolved. However, the parent has the absolute authority to consent for services to be initiated, and the district properly provided prior written notice indicating that the services would not be initiated without parental consent.

Based on the foregoing, a violation of special education statutes and regulations ***is not substantiated*** for failure to provide FAPE by having an IEP in place at the time of the child's third birthday.

Issue Eight

The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide appropriately trained staff to meet the unique needs of the student

Applicable Statutes and Regulations

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) require 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.

Positions of the Parties

The parent alleged that the district did not have properly prepared staff to provide services to their child.

USD #500 replied that USD #500 denied any violations relating to the allegations raised in the formal complaint.

Findings of the Investigation

The findings of Issue One, Issue Two, Issue Three, Issue Four, Issue Five, Issue Six and Issue Seven are incorporated herein by reference.

The district reported that the teacher in the KCK ECC deaf and hard of hearing classroom had served the district for several years, first as the general education teacher in the deaf and hard of hearing classroom, and now as the special education teacher in that classroom, which now uses a reverse mainstream model to develop a multimodal mode of communication, including both sign and spoken language.

The district provided a copy of the teacher's licensure, showing that the teacher holds current endorsements in: Early Childhood Education (PRK-3), Early Childhood Unified (B-K) and English for Speakers of Other Languages (PRK-12).

In interviews, the district reported that the teacher is fluent in sign language for preschool aged students, is familiar with typical equipment, and provides needed accommodations and modifications in the classroom. The district reported that the teacher has been successful with children who had hearing losses similar to those exhibited by the student during the evaluation.

Conclusions

In this case, the teacher holds the credentials to properly teach in the classroom and has additional experiences teaching students with hearing impairment in the district. Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failure to provide appropriately trained staff to meet the unique needs of the student.

Corrective Actions

No corrective actions are required for Issues Two, Four, Five, Six, Seven and Eight. Violations were found in Issue One and Three and corrective actions are required.

1. ISSUE ONE: A violation of 34 CFR 300.322(b) to inform parents of meeting, K.A.R. 91-40-17(a)(2) 10 day notice of meeting, 34 CFR 300.503(c)(2) provide notice in native language was found, based on facts listed above. Corrective actions are required (as follows):
    a. CORRECTIVE ACTIONS
        i. By May 10, 2024, USD #500 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. 300.322(b), K.A.R. 91-40-17(a)(2) that require proper notice to be given to parents of IEP meetings and with 34 CFR 300.503(c)(2) which require that the district provide prior written notice in the parent's native language.
        ii. By May 10, 2024, USD #500 shall provide a copy of the previously signed Prior Written Notice to Evaluate in Spanish to the parent.
2. ISSUE THREE: A violation of 34 C.F.R.300.124(c) was found, based on facts listed above. Corrective actions are required (as follows):
    a. CORRECTIVE ACTIONS
        i. By May 10, 2024, USD #500 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.300.124(c) which require that a Part B representative attend the transition planning conference.
        ii. By May 10, 2024, USD #500 shall submit a copy of the revised Part C to B transition procedure to SETS, along with evidence that it has met with the Infant and Toddler Coordinator and any other persons it believes important to clarify roles in the Part C to Part B process in the district and ensure a smooth transition process for families.

Investigator

Gwen Beegle

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).

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 #490
ON MARCH 5, 2024

DATE OF REPORT APRIL 12, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of -------, by his mother, -------. In the remainder of the report, ------- will be referred to as "the student." ------- will be referred to as "the complainant" or "the parent."

The complaint is against USD #490, El Dorado Public Schools. It is noted that Butler County Special Education Interlocal #638 provides special education services for USD#490. In the remainder of the report," the "district" shall refer only to USD #490.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on March 5, 2024 and the 30-day timeline ends on April 5, 2024. A one-week extension was requested by the complaint investigator and granted by KSDE as the IEP team was meeting on April 2, 2024 to review the results of a reevaluation and to develop a new IEP. The new timeline ends on April 12, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham reviewed all evidence and documentation, which was provided by both the district and the complainant. Additionally, Dr. Wickham interviewed and spoke with the mother on March 18, 2024 and April 3, 2024. The complaint investigator interviewed the student's LifeWorks case manager on March April 8, 2024. The following documentation and information were used in consideration of the issues:

1. Student Safety Plan dated October 9, 2023 (from sending district)
2. Individualized Education Program (IEP), dated October 16, 2023 (from sending district)
3. Individualized Education Program, dated November 20, 2023
4. Individualized Education Program, dated January 29, 2024
5. Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent (PWN) dated January 29, 2024
6. Email from student's case manager to assistant principal, dated February 13, 2024 at 2:58 p.m.

7. District Response to the allegations, received April 1, 2024
8. Email from the Coop Director to the complaint investigator dated April 2, 2024 at 1:55 p.m.
9. Interview with student's case manager on April 8, 2024
10. Progress Report for 2023-2024 School year
11. 2023-2024 District Calendar

Background Information

The student is a junior at the high school in the district. The student moved into the district in October 2023 with an IEP that was adopted and implemented in November 2023. The student qualified for special education as a student with Autism. The student had a safety plan upon moving into the district for eloping and it is reported that eloping has become more frequent in the new school district. The IEP met in January 2024, and it was determined to conduct a reevaluation to better address the eloping. The reevaluation was expedited, and the IEP team met on April 2, 2024.

Issues Investigated

1. ISSUE ONE: USD #490, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP during the 2023-2024 school year, specifically the behavior intervention plan components of providing one-on-one staff, a safe place to calm resulting in unwarranted suspensions.
2. ISSUE TWO: USD #490, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to craft an IEP based on the student's evaluation, strengths and needs related to behavior during the 2023-2024 school year.

Issue One

USD #490, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP during the 2023-2024 school year, specifically the behavior intervention plan components of providing one-on-one staff, a safe place to calm resulting in unwarranted suspensions.

Applicable Law

Federal regulations 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. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are

implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

The parent alleged that after moving to the district after Thanksgiving in 2023 the district did not follow the IEP. She stated he had a very specific BIP that worked for him at the previous school and that the district did not follow any part of it including, providing one-on-one staff throughout the school day, including during class, lunch, passing periods, and the transition to and from the bus. Additionally, the previous IEP stated he could go to a safe place to help calm down. She alleged that when he went to a separate location it was to work, not to calm down. As a result of the staff pushing him, instead of supporting him he began to elope more frequently. Subsequently the student was suspended for eloping and when he tried to return once he had calmed down, he was not allowed.

The district responded that the IEP from the previous district did not indicate the need for the same one-on-one staff all day. It did show special education services and that the district provided staff with the student at all times, but not the same para all day long each day. Additionally, this student has several places in the building and outside of the building in the courtyard that were designated as a "safe place." The student did not always utilize the spaces, but they were always available to him.

Three IEPs were in effect during the 2023-2024 school year to date. The IEP dated October 16, 2023 from the sending district and in effect when the student moved in. The student also moved into the district with a Safety Plan dated October 9, 2023. The November 20, 2023 IEP adopted the October 16, 2023 goals, supplementary aids and supports and services. Finally, the third IEP was written January 29, 2024. The move-in IEP and adopted November 20, 2023 IEP documented 110 minutes of special education service 5 days every week with para support in the general education setting for electives. No accommodations addressed para support; however, the IEP refers to para support during electives.

The case manager reported in an email to the complaint investigator on April 2, 2024 at 1:55 p.m. that three paraeducators and the teacher rotated to provide the student support during electives.

The Safety Plan dated October 9, 2023 documents a safe space be available to the student when the case manager is absent. The October 16, 2023 and November 20, 2023 IEPs have an accommodation that when the student is "overwhelmed, frustrated, or dysregulated due to changes or sensory issues a short break (typically in a safe place) is provided to the student to calm down and prepare to join in the class by using a timer for 5-10 minute breaks. As part of the behavior intervention plan in the November 20, 2023 IEP the following is listed as a replacement strategy, "when [student] is overwhelmed, frustrated, or dysregulated a short break (typically in a safe place) helps [student] calm down and prepare to join in the class" as

well, "Staff will prompt [student] to use a calming strategy. [Student] will choose a calming strategy. Replacement behavior examples, but are not limited to: feeling a fluffy item, listening to music, and having alone time in his safe zone."

The IEP dated January 29, 2024 documents that the student will receive 110 minutes of special education service 5 days every week with para support in the general education setting for electives. The January 29, 2024 IEP added an accommodation that stated, "para support in all settings for the duration of the school day, in all settings during school" And "may receive 1 on 1 adult instruction in a separate setting when needed in the general education setting". This is documented in the January 29, 2024 PWN as well.

The case manager reported in an email to the complaint investigator on April 2, 2024 at 1:55 p.m. that, "He doesn't utilize his safe spaces, even when they are offered to him."

Conclusion

It is found that the student's IEPs indicated the student would be provided one-to-one support during electives. Interview with the district showed that the student was provided with one-to-one support by three paraeducators or the teacher. Further, it was written in the IEPs, Safety Plan and/or Behavior Intervention Plan that a safe space was to be provided when the student's behavior was dysregulated, overwhelmed, or frustrated. Interview with the district showed that a location was identified and that it was provided to the student, but he did not choose the safe space. As a safe space was one of the student's options for calming it was found that the student had a choice of calming strategies beyond the safe space. Based on the foregoing, ***it is not substantiated*** that USD #490 failed to follow the student's IEP during the 2023-2024 school year, specifically the behavior intervention plan components of providing one-on-one staff, a safe place to calm resulting in unwarranted suspensions.

Issue Two

USD #490, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to craft an IEP based on the student's evaluation, strengths and needs related to behavior during the 2023-2024 school year.

Applicable Law

Federal regulations and state statutes at 34 C.F.R. §300.324(a)(1), C.F.R. §34 300.324(a)(2)(i) and K.S.A. §72-3429(9)(d) state that when developing each child's IEP, the IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child; the results of the initial evaluation or most recent evaluation of the child; the academic, developmental and functional needs of the child; and in the case of a child whose behavior impedes the child's learning or that of others, the use of positive behavioral interventions and supports and other strategies to address that behavior.

Analysis: Findings of Fact

The parent alleged that on January 29, 2024 a meeting was held and changes were made that she did not approve. The parent stated her goal of this meeting was to problem solve the student's eloping. She stated that when she learned the meeting was an IEP meeting, she was told the only changes to the IEP would be to correct the school's name to the current district's name. The parent stated that when she received the IEP many other parts were changed as well. The parent stated that these changes have negatively impacted the student's behavior and now the principal is pushing to move the student to either half days or a more restrictive environment.

The district responded that they met on January 29, 2024 to discuss the student's needs and drafted an IEP with parent input. During the meeting, the team did indicate the need for more information and requested consent for a comprehensive evaluation including a FBA. Consent was provided and this comprehensive reevaluation was expedited, and testing began immediately. The reevaluation was in process at the time of the child complaint was made so the team was already in the process of gathering more data for the April 2, 2024 reevaluation meeting and possible revision of the IEP.

Interview and documentation showed that the student was in another district until October 2023 when he moved to this district. The IEP team adopted the move-in IEP on November 23, 2023.

The IEP dated November 23, 2023 was adopted from the previous district. It is marked that the student's behavior impacts the learning of self or others and that need is met by a goal. The goal stated that when "upset, frustrated, angry or dysregulated he will use a self-regulation/self-coping strategy to help him stay in the school building 100% of the time as measured by his behavior on (sic) a sheet and teacher data collection." Additionally, the student receives 275 minutes of special education service in the special education setting 5 days every week and an additional 110 minutes of special education service in the general education setting during electives five days every week.

Interview and documentation show that an IEP meeting was held on January 29, 2024 to discuss eloping. The IEP shows that after less than 80 school days the school requested permission to conduct a reevaluation to complete new academic testing and a Functional Behavior Assessment (FBA).

The IEP meeting on January 29, 2024 was held in response to the student's eloping in spite of the goal on his November 23, 2023 IEP. Data indicated the student eloped from school sixteen times during 27 school days. In this IEP, the strategies that were described in the November 23, 2023 IEP behavior goal were written as a Behavior Intervention Plan and a second goal addressed behavior, "when consequences are given for unacceptable behavior, [student] will accept responsibility for own behavior without making excuses or blaming others and accept

consequences of a wrongdoing without excessive complaining 70% of the time." The BIP included strategies for when the student eloped to include, "If [student] leaves classrooms, staff will notify office immediately. If [student] stays in building, staff will try to de-escalate and have him come back to class. If he leaves the building, [student] will be given a lunch detention. [Student] will also be given his work in an alternative setting within the school building for rest of the day with para support if he chooses to come back for classes. Accommodations to describe adult support were added, "receive 1 on 1 adult instruction in a separate setting" and "Para Support in all settings" for the duration of the school day.

An email from the case manager to the district summarized the discussions and decisions of the meeting. This email also suggested a need for a different approach to the student's eloping behavior that would be more supportive of the student.

Conclusion

It is found that the district first adopted the IEP from the previous district within one month of the student moving in, November 20, 2023. The IEP team met in January to address the student's eloping using data collected after a period of time. At that meeting changes to the IEP were made that were reasonable based on the data and the district requested and received consent to conduct a comprehensive reevaluation to determine if additional IEP revisions were warranted. The change in service minutes were related to the district's school day rather than reflective of a change of service minutes.

An April 2, 2024 meeting was held for the district to present the findings of the reevaluation and consider revisions to the IEP. Interview with the family and district after the meeting suggest that changes have been made to the IEP. Based on the foregoing, *it is not substantiated* that USD #490 failed to craft an IEP based on the student's evaluation, strengths and needs related to behavior during the 2023-2024 school year. It is noted that the evaluation results were not reviewed, nor any resultant changes to the student's IEP.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was not found, based on interview and review of documentation. Corrective action is not required.
2. ISSUE TWO: A violation of 34 C.F.R. §300.324(a)(1), C.F.R. §34 300.324(a)(2)(i) and K.S.A. §72-3429(9)(d) was not found, based on interview and review of documentation. Corrective action is not required.

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).

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 MARCH 12, 2024

DATE OF REPORT APRIL 12, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of -------, by his mother, -------. 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."

The complaint is against USD #497, Lawrence Public Schools. In the remainder of the report, USD #497 will be referred to as "the district". The student attends Quail Run Elementary School and in the remainder of the report will be referred to as "the school."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on March 12, 2024, and the 30-day timeline ends on April 12, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham, reviewed all documentation, which was provided by both the district and the complainant. Additionally, the complaint investigator talked with the mother on March 14, 2024 and Laura Basham, Director, Student Services on March 18, 2024. The complaint investigator attempted to talk with two former staff who worked with the student recommended by the complainant but attempts on March 28 and April 8, 2024 were unsuccessful. The following documentation and information were used in consideration of the issues:

1. Individualized Education Program dated May 8, 2023
2. Screenshot of text exchange between autism teacher and parent dated September 5, 2023, no time provided.
3. Screenshot 1 of text exchange between autism teacher and parent dated October 11, 2023, no time provided.
4. Screenshot 2 of text exchange between autism teacher and parent dated October 11, 2023, no time provided.
5. Screenshot 1 of text from parent to autism teacher dated October 12, 2023, no time provided.
6. Email from principal to school staff dated October 20, 2023 at 10:53 a.m.

7. PowerPoint presentation made to school staff on October 25, 2023 titled, "AAC: Strategies and Implementation" presented by district speech and language therapists.
8. Friday Flyer, school newsletter from the principal dated November 10, 2023 at 4:17 p.m.
9. Email between principal and parent dated November 15, 2023 between 7:11 a.m. and 11:32 a.m.
10. Email from mother to principal dated November 16, 2023 at 4:21 p.m.
11. Email between principal and parent dated November 16, 2023 at 4:56 p.m. and November 17, 2023 at 9:23 a.m.
12. Non-District Parentally Provided AT Devices Agreement signed by parent January 31, 2024.
13. Screenshot of text from autism teacher to parent dated February 26, 2024, no time provided.
14. Screenshot of text exchange between autism teacher and parent dated February 26, 2024 between 10:57 a.m. and 11:21 a.m.
15. Screenshot of text exchange between autism teacher and parent dated February 26, 2024 between 11:28 a.m. and 11:37 a.m.
16. Screenshot of text exchange between parent and principal dated February 26, 2024, no time provided.
17. Screenshot of text from parent to principal dated February 27, 2024, no time provided.
18. Screenshot of text exchange between parent and principal dated between February 27, 2024 and February 28, 2024, no time provided.
19. Email from case manager to parents dated March 1, 2024 at 4:10 p.m.
20. Screenshot of text exchange between parent and principal dated March 5 2024, no time provided.
21. Screenshot of text from parent to principal dated March 5 2024, no time provided.
22. Email exchange between parent and case manager dated March 5, 2024 between 7:20 a.m. and 2:27 p.m.
23. Email between Executive Director of Special Education and Student Services and parent dated March 5, 2024 between 8:58 a.m. and 10:17 a.m.
24. Email between parent and principal dated March 5, 2024 at 2:41 p.m. and 8:06 p.m.
25. Email from Director, Student Services to parent dated March 5, 2024 at 6:35 p.m.
26. Email from mother to Executive Director of Special Education and Student Services and Director, Student Services dated March 5, 2024 at 7:20 p.m.
27. Email from principal to parent dated March 8, 2024 at 2:51 p.m.
28. Email from school psychologist to parent dated March 12, 2024 at 1:09 p.m.
29. Notice of Meeting dated March 12, 2024
30. Email exchange between school psychologist and parent dated March 12, 2024 between 1:09 and 1:48 p.m.

31. Email exchange between school psychologist and parent dated March 18, 2024 between 9:31 a.m. and 12:44 p.m.
32. Notice of Meeting dated March 18, 2024
33. IEP Meeting Notes dated March 20, 2024
34. Email from case manager to parents dated March 23, 2024 at 4:10 p.m.
35. Email from principal to parent dated March 24, 2024 at 12:39 p.m.
36. Prior Written Notice for Evaluation or Reevaluation dated March 26, 2024
37. Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated March 26, 2024
38. Progress Report with reported dates of May 17, 2023, October 13, 2023, December 20, 2023, and March 1, 2024
39. District response received March 29, 2024

Background Information

The student attends first grade at Quail Run Elementary in USD #497, Lawrence Public Schools. The student has been in the district for two years and previously received preschool services in another state. The student receives special education services under the eligibility category of autism. The student has multiple disabilities and uses a communication device and is learning to toilet train. He receives special education services in a specialized setting and in general education, occupational therapy, speech, and language therapy, adapted physical education, attendant care, extended school year, and special transportation services. Additionally, his IEP includes supplementary aids and supports.

Issues Investigated

1. ISSUE ONE: USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a prior written notice after denying a parent request for an IEP meeting on March 7, 2024 during Parent Teacher Conferences.
2. ISSUE TWO: USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the IEP during the 2023-2024 school year, specifically providing the student access to his communication device.

Issue One

USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a prior written notice after denying a parent request for an IEP meeting on March 7, 2024 during Parent Teacher Conferences.

Applicable Law

Federal regulations and State statutes at 34 C.F.R. §300.503(a)(1) and 34 C.F.R. §300.503(a)(2) and K.S.A. §72-3432(a) and K.S.A. §72-3432(b) state that written notice must be given to the parents of a child with a disability a reasonable time before the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

Analysis: Findings of Fact

The Friday Flyer school newsletter from the Principal stated, "Next Thursday marks the end of the third quarter at [school]. That means students will not have school next Friday, March 1st. Teachers will use that day to get ready for parent-teacher conferences on March 6th & 7th."

A text sent from the parent to the principal on March 5, 2024 showed a photo of her child's arm with a bruise and expressed concern. A second text was sent from the parent to the principal on March 5, 2024 stating concerns that supplies that the mother sent to the school for the student were being used with other students.

At 2:41 p.m. on March 5, 2024 the parent emailed the principal, "Requesting an emergency IEP meeting in place of parent teacher conference on Thursday @ 9a.m. I am going to bring an advocate & I can sign the waive (sic) my rights to 10 days." The principal responded at 8:06 p.m. stating "…we are happy to continue as planned at 9 AM on Thursday for [student's] conference, however, cannot put together a team IEP meeting in that time frame due to other scheduled meetings for conferences within the team. I think Thursday will be a great opportunity for us to touch base on what we discussed today on the phone. This will include how we will improve communication (based on your feedback) and send home ideas for things to do with [student], like homework."

An email from the director of student services to the parent on Mar 5, 2024, 6:36 PM responded to the parent's request for an emergency IEP meeting. "On Thursday, the team may want to schedule an IEP meeting for the near future to address your concerns and spend more time discussing [student's] progress. Parent/teacher conferences are typically shorter time slots and not all members of an IEP team are present. Therefore, the meeting on Thursday may be the beginning to start working through questions/concerns."

An email from the principal to the parent on March 8, 2024 at 8:52 a.m. reiterated that the meeting held during the parent/teacher conference was a start and that an IEP meeting with the IEP team will be scheduled on Wednesday, March 20, 2024 after spring break.

The director of student services stated in a phone interview with the complaint investigator on March 18, 2024 that the district did not deny an IEP meeting but was unable to assemble all of the IEP team members on the day requested by the parent because it was a parent-teacher conference day, and all staff were allocated to meeting that responsibility.

Two Notices of Meetings were provided to the parent dated March 12, 2024 and March 18, 2024 for an IEP meeting on March 20, 2024 at 1:00 p.m. at the school.

Minutes dated March 20, 2024 showed an IEP meeting was held March 20, 2024.

Conclusion

The Prior Written Notice is a procedural safeguard provided to a parent before the district makes changes to identification, evaluation, educational placement or provision of special education and related services (FAPE) of the child. In this case the complaint investigator had to determine if the parent's request for an emergency IEP meeting constituted any one of these types of changes. Interview and review of documentation provided by the family and district show that the request for the emergency IEP meeting was in response to a parent's concern about her child's treatment and concern about misuse of student's supplies. It was not found that the district was proposing a change to identification, evaluation, educational placement or provision of special education and related services (FAPE). Based on the foregoing, ***it is not substantiated*** that USD #497 failed to provide a prior written notice after denying a parent request for an IEP meeting on March 7, 2024 during Parent Teacher Conferences.

Issue Two

USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the IEP during the **2023-2024** school year, specifically providing the student access to his communication device.

Applicable Law

Federal regulations 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. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

The parent alleged that the student was denied access to his personal communication device at recess and that if the device needs recharging, he did not have access to it. The parent stated that the student's device was purchased through insurance and goes between home and school.

The district responded that the parent provided and requested the school to utilize a parentally-owned iPad with TouchChat and that it has provided the student access throughout the day. The school agreed to use this privately-owned device in lieu of one provided by the district. The district further responded that the student's IEP does not include AAC as a necessary service, however the IEP does discuss how AAC use is an option along with other communication strategies (multi-modal communication goal and present levels). The school's device (iPad with TouchChat) was used in a comparable manner prior to the parent supplying the parent-owned iPad. The only change has been the owner of the device, as student access and use of the device has been consistently provided.

The May 8, 2023 IEP (in effect during the 2023-2024 school year) Present Levels document that the student is working to increase "his use of icons, signs (ASL), and gestures to communicate with staff and peers…benefits from the use of visual communication supports including low-tech visual icons and/or a speech-generating device (he has been using the teacher's iPad with TouchChat in his Kindergarten specialized classroom) to interact in his learning environment. Without these supports, [student] does not have a reliable way to communicate his wants, needs, and ideas throughout the school day." Further, he has "been introduced to different forms of augmentative and alternative communication, including a speech-generating device. [Student] is starting to demonstrate emerging communication skills using the device." and that the box is checked that assistive technology needs were considered by the IEP team.

The May 8, 2023 IEP shows the student has a communication goal, "When participating in structured language tasks, [student] will be able to use multi-modal communication (e.g., AAC device, word approximation, sign) to make choices and request preferred items or activities at 4 out of 5 opportunities with no more than 1 prompt by end of the IEP as measured by Observation." and that "all adult support (special education, general education, related services, paraprofessional, caregivers, and other consistent adults in [student's] day will be trained on how to facilitate specialized instruction and interventions, including the use of AAC to model and teach [student's] target vocabulary throughout the instructional day." Finally, the student receives 15 minutes of pullout speech/language services 2 days every week to support program development and material design.

The principal confirmed that the student's teacher and paraeducators attended October 24, 2023 training conducted by district speech and language therapist titled, "ACC: Strategies and Implementation" and used collaboration time to discuss the student's communication.

The parent signed a "Parentally Provided AT Device Agreement" form on Feburary 3, 2024 for the district to use the non-district AT device with the student.

In response to an email question from the complaint investigator the district responded, "[student's] private device came back and forth to school in his backpack daily. This was arranged through verbal conversations with the parent. The staff reported that this did occur daily and they do not recall a day the device did not come to school or was not sent home. They did report that there was an occasional day that the battery on [student's] private device ran out during the school day. When this happened, they swapped his device with a district device that was charged and had the same app (TouchChat). The team also discussed this with the parent at the meeting on March 20th."

The March 20, 2024 IEP meeting minutes document that the IEP Team discussed the student's access to his non-district AT device throughout the school day including recess. The notes recorded the decision that "if the non-district device is broken, not charged, etc., the student will have access to a district issued device with the TouchChat App as well as the teacher device that also has TouchChat. It is recorded that there have been a few occasions where the non-district device lost battery power during the school day and the school device was provided to the student to ensure he had access to a familiar communication tool."

The Progress Notes spanning May 17, 2023 through March 1, 2024 document the student's use of the AAC device.

Conclusion

It is found through documentation review and interview with the district that the student communication is through multiple means and the iPad with TouchChat is one important method. Documentation showed that the student had access to the iPad with TouchChat and other means during the school day and further that if the student-owned device is broken the district substituted a district device. Based on the foregoing, it is not substantiated that USD#497 failed to follow the IEP during the 2023-2024 school year, specifically providing the student access to his communication device.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. §300.503(a)(1), 34 C.F.R. §300.503(a)(2), K.S.A. §72-3432(a) and K.S.A. §72-3432(b)was not found, based on documentation review and interview. Corrective action is not required.
2. ISSUE TWO: A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was not found, based on documentation review and interview. Corrective action is not required.

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).

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 March 12, 2024
Against Unified School District No. 497

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced on March 12, 2024, with the parent, xxxxxxx, filing a complaint on behalf of her child, xxxxxxx. This decision will refer to xxxxxxx as "the parent," and xxxxxxx as "the student." A complaint investigator completed the complaint investigation on behalf of the Kansas State Department of Education (KSDE) Special Education and Title Services team. Following the investigation, KSDE issued a complaint report, addressing the parent's allegations, on April 12, 2024. The complaint report concluded that there were no violations of special education law under two issues.

On April 12, 2024, the parent filed an appeal of the complaint report. Upon receiving the appeal, KSDE appointed an Appeal Committee, and it reviewed the parent's appeal, the parent's complaint, the email from the complaint investigator to the parent where the complaint investigator frames the complaint issues, and the complaint report. The Appeal Committee now issues this Appeal Decision.

Preliminary Matters

KSDE included the text of regulation regarding filing an appeal, K.A.R. 91-40-51(f), with the complaint report. That regulation states, in part, "Each notice [of appeal] 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 for the statement, the Appeal Committee does not attempt to locate the missing support.

The Appeal Committee does not decide new issues as part of the appeal. The Appeal Committee reviews the complaint report and determines whether the appealed findings or conclusions are correct. The Appeal Committee does not conduct a separate investigation. The Appeal Committee's function is to determine whether sufficient evidence exists to support the complaint report's appealed findings and conclusions.

Parents' Appeal

The parent raises four reasons for alleging that the findings and conclusions from the complaint report are incorrect. One of the reasons focuses on the parent's concerns with the investigation

process. Another reason alleges a mistake in how the investigator stated issue two in the complaint report. Two of the reasons focus on items that were not mentioned in the parent's complaint and, therefore, were not investigated: the student's potty schedule and Prior Written Notice regarding changes to the student's IEP. The Appeal Committee will not address either reason the parent raises on appeal that were not part of the complaint. The parent may exercise her dispute resolution options regarding these issues and will find resources to assist her on the KSDE website, https://www.ksde.org/Default.aspx?tabid=603. The Appeal Committee will address the following two issues:

Issue One: Can the parent's complaint investigation process concerns be appealed?

Issue Two: Did the investigator misstate issue two in the complaint report?

Issue One

Can the parent's complaint investigation process concerns be appealed?

K.A.R. 91-40-51(f)(1) indicates that "the findings or conclusions" of a complaint report can be appealed. The parent's appeal states, "None of my witnesses were contacted. No one came to talk My son [sic] or even look at him." (Parent's Request for Appeal, Apr. 12, 2024.) The parent's allegations regarding the complaint investigation process are not complaint report findings and conclusions that can be appealed. Parties to a complaint investigation should always feel free to express any concerns regarding the complaint investigation to KSDE and KSDE will use that information to make improvements to its formal complaint system. Even though the appeal committee determines that the parent's allegations regarding the complaint investigation are not findings and conclusions from the complaint report that can be appealed, the appeal committee will provide information in this appeal decision regarding the complaint investigation process.

Applicable Law

The federal regulations implementing the Individuals with Disabilities Education Act (IDEA) give the state education agency (SEA) discretion about whether to conduct an on-site investigation, indicating this would only occur "if the SEA determines that an [on-site] investigation is necessary." 34 C.F.R. § 300.152(a)(1). *OSEP Memo 13-08* further explains that the "standards to be used in determining whether to conduct an on-site investigation are left to each State." (OSEP Memo 13-08, July 23, 2013.) Kansas special education regulations require the complaint investigator to initiate a "discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded" but does not require the complaint investigator to interview all witnesses the complaint identifies or to observe the child at the center of the complaint. K.A.R. § 91-40-51(c)(1). Ultimately, the investigator must work to obtain the information necessary to "make an independent determination as to whether the public agency is violating" Part B of the IDEA, its implementing regulations, or Kansas special education

law and issue "a written decision to the complainant that addresses each allegation in the complaint and contains . . . (f)indings of fact and conclusions; and (t)he reasons for [KSDE's] final decision." 34 C.F.R. § 300.151(a)(5)(ii).

Relevant Facts

The parent's request for appeal states, "None of my witnesses were contacted. No one came to talk My son [sic] or even look at him." (Parent's Request for Appeal, Apr. 12, 2024.) The complaint report indicates that the "complaint investigator attempted to talk with two former staff who worked with the student recommended by the complainant but attempts on March 28 and April 8, 2024 [sic] were unsuccessful." (Kan. State Dep't of Educ. Special Educ. & Title Services, *Report of Complaint Filed Against Unified Sch. Dist. #497 on Mar. 12, 2024*, Apr. 12, 2024.) Additionally, the complaint report indicates the complaint investigator "reviewed all documentation . . . provided by . . . the complainant" and details all documentation reviewed in a list within the complaint report. (*Complaint Report* 1–3.)

Issue One Conclusion

Based on its review, the Appeal Committee finds that the parent's concerns on the appeal process are not findings and conclusions from the complaint report that can be appealed. The Appeal Committee recognizes that a complaint investigation is not required to include an onsite visit to observe the child if this is deemed not to be necessary to resolve the complaint. Finally, the Appeal Committee understands that complaint investigators will make attempts to interview individuals a party requests to be interviewed, should that individual have information relevant to resolving the complaint, but that the complaint investigator must balance efforts to do that with concluding the investigation within the required timeline.

Issue Two

Did the investigator misstate issue two in the complaint report?

Relevant Facts

The complaint investigator indicates in her March 17, 2024, email to the district that this issue was included in the parent's complaint and frames it for investigation as, "USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the IEP during the 2022-2023 school year, specifically providing the student access to his communication device." (Email from Complaint Investigator to District Staff Framing Complaint Issues to be Investigated, Mar. 17, 2024.) The complaint investigator frames this issue in the same way in a March 17, 2024, email to the parent. (Email from Complaint Investigator to Parent Framing Complaint Issues to be Investigated, Mar. 17, 2024.) The district caught the investigator's mistake and emailed the investigator to clarify the investigation of this issue would

focus on the 2023–24 school year. (Email from Complaint Investigator to Appeal Facilitator, Apr. 28, 2024.) The complaint investigator clarified the school year in a phone call with the parent. (Email from Complaint Investigator to Appeal Facilitator, Apr. 28, 2024.) The complaint investigator mistakenly did not change the school year in the issue statement in the complaint report. (Kan. State Dep't of Educ. Special Educ. & Title Services, *Report of Complaint Filed Against Dist. on Mar. 12, 2024*, 4, 6; Email from Complaint Investigator to Appeal Facilitator, Apr. 28, 2024.) The analysis of issue two in the complaint report references items relevant to this issue that were either in effect or took place during the 2023–24 school year. (Complaint Report, 6–8.) There is no reference to items from the 2022–23 school year, other than the student's May 8, 2023, IEP that was in effect during the 2023–24 school year. *https://www.ksde.org/Default.aspx?tabid=603*, 6–8.)

Issue Two Conclusion

Based on its review, the Appeal Committee finds that the complaint investigator's reference to the 2022–23 school year in issue two of the complaint report is a mistake. The correct school year is 2023–24, the complaint investigator informed both parties to the complaint of the year on which the investigation of this issue would focus, and the complaint report references items from the 2023–24 school year. The Appeal Committee directs the KSDE Dispute Resolution Coordinator to correct the mistake in the online posting of this complaint decision.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued April 29, 2024.

Appeal Committee

Brian Dempsey: Assistant Director of Special Education and Title Services

Dr. Crista Grimwood: Dispute Resolution Coordinator

Stacie Martin: State Transition Coordinator

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #443 DODGE CITY COUNTY SCHOOLS
ON APRIL 1, 2024

DATE OF REPORT MAY 1, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ------- by her mother -------. In the remainder of the report, ------- will be referred to as "the student." ------- will be referred to as "the complainant" or "the parent" or "the mother." ------- is the student's father. In the remainder of the report, ------- will be referred to as "the father" and together ------- and ------- will be referred to as "the parents."

The complaint is against USD #443. In the remainder of the report, USD #443 will be referred to as "the district". It is noted that Southwest Kansas Area Cooperative District - USD #613 (SKACD) Interlocal provides special education services for USD#443. In the remainder of the report," the "coop" shall refer only to SKACD. The student's school of attendance is Sacred Heart Parochial School in Dodge City. In the remainder of the report, Sacred Heart Parochial School will be referred to as "the parochial school," or "the private parochial school."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on April 1, 2024 and the 30-day timeline ends on May 1, 2024. It is noted that this investigation required only document review so was completed early.

Evidence Reviewed

During the investigation, the Complaint Investigators Donna Wickham and Lori Noto reviewed all evidence and documentation, which was provided by both the district and the family. The following documentation provided by the family and district and information were used in consideration of the issues:

1. Individualized Education Plan, dated November 21, 2022.
2. Individualized Education Plan, dated November 15, 2023.
3. Individualized Education Plan, dated November 28, 2023.
4. Emails between mother and assistant coop director, dated between February 22, 2024 at 10:07 a.m. and February 23, 2024 at 12:42 p.m.
5. Draft Individualized Education Plan, dated March 20, 2024.

6. Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent 1 (PWN) dated March 20, 2024, signed consent March 30, 2024 for compensatory minutes only.
7. PWN 2, dated March 20, 2024.
8. PWN 3, dated March 20, 2024.
9. PWN 4, dated March 20, 2024.
10. PWN 5, dated March 20, 2024 signed partial consent March 30, 2024.
11. PWN 6, dated March 20, 2024.Emails between mother and assistant coop director, dated between March 21, 2024 at 4:05 p.m. and March 22, 2024 at 9:17 a.m.
12. Handout titled, "3/20/2024 IEP Meeting Service Time" (84 minutes)
13. District Resolution dated April 12, 2024.
14. Math Problem solving rubric, undated.
15. Reading rubric, undated

Background Information

The student attends Sacred Heart Catholic School in Dodge City for her general education program and receives gifted education services with Dodge City Middle School. A previous child complaint titled, 24FC443-001 was recently completed. This complaint was filed to address concerns related to some of the corrective actions and two new issues. Special Education and Title Services has oversight with the issues related to corrective action, so these concerns were not investigated.

Issues Investigated

1. ISSUE ONE: USD #443, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide written input from the Reading Teacher at the November 15, 2023 and November 28, 2023 meetings.
2. ISSUE TWO: USD #443, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to write the PWN specifying the dates and times the district was proposing compensatory services as specified in the February 20, 2024 Child Complaint titled, 24FC443-001.

Issue One

USD #443, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide written input from the Reading Teacher at the November 15, 2023 and November 28, 2023 meetings.

Applicable Law

Federal regulations at 34 C.F.R. §300.321(a)(2) and K.S.A. §72-3404(u)(2) states, The public agency must ensure that the IEP Team for each child with a disability includes not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); The Kansas Special Education Process Manual (2018) states that "If the child has several general education teachers, at least one must attend the IEP meeting. However, it may be appropriate for more to attend. The school may designate which teacher or teachers will serve as IEP team member(s), taking into account the best interests of the child. The general education teacher who serves as a member of the child's IEP team should be one who is, or may be, responsible for implementing a portion of the IEP. The school is strongly encouraged to seek input from the teachers who will not be attending the IEP team meeting."

Analysis: Findings of Fact

The parents alleged that although the gifted teacher collected written input from the reading teacher prior to the November 15, 2023 and November 28, 2023 IEP meeting this written input was not provided to the parent. Instead, there was only a "verbal report of the ELA teacher's comments."

The district responded that they only had an obligation to include a general education teacher at each of the IEP meetings and attendance sheets demonstrate that a general education teacher was present. They further state there is no requirement for a required team member to submit written input to the IEP team when they are physically present at the annual IEP meeting. Furthermore, the reading teacher was present at the March 20, 2024 IEP.

The IEPs dated November 21, 2022 (in effect at the beginning of the 2023-2024 school year), November 15, 2023, November 28, 2023, and March 20, 2024 showed a general education teacher signed the attendance sheet.

Conclusion

According to federal regulations and Kansas statutes the district is obligated to include a general education teacher as a part of the student's IEP team if the student is participating in general education classes. In this case the student is attending general education classes and has more than one general education teacher. It is the district's obligation to provide a general education teacher, the parent may not request a specific teacher. It is found that the district met its obligation by having a general education teacher.

The assertion the parent made that the district is obliged to submit written documentation to the parent and IEP team is in the case when a required member of the IEP team is excused from the meeting. A general education teacher participated in each of the student's IEP meetings, so the district was not obligated to collect and submit written teacher documentation from a specific teacher.

Based on the foregoing, ***it is not substantiated*** that USD #443 failed to provide written input from the Reading Teacher at the November 15, 2023 and November 28, 2023 meetings.

Issue Two

USD #443, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to write the PWN specifying the dates and times the district was proposing compensatory services as specified in the February 20, 2024 Child Complaint titled, 24FC443-001.

Applicable Law

Federal regulations and State statutes at 34 C.F.R. §300.503(a)(1) and 34 C.F.R. §300.503(a)(2) and K.S.A. §72-3432(a) and K.S.A. §72-3432(b) state that written notice must be given to the parents of a child with a disability a reasonable time before the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

Analysis: Findings of Fact

The parent alleged that the PWNs that offered compensatory services did not contain the specific dates and times of the when the proposed compensatory services were offered. She stated that without the specific calendar dates and times on the PWN the family cannot consider and make a fully informed decision as to what her child would be missing in order that she might potentially accept the compensatory services.

The district stated that there is no requirement in either the regulation or the directives issued under the previous findings of 24FC443-001 that would require the specific service dates and times be documented on the prior written notice document.

Six Prior Written Notices, all dated March 20, 2024 were written following the Corrective Action resultant from 24FC443-001. Each PWN included a description of the proposed or refused action along with an explanation and other options considered and reasons for rejection. Additionally, each included a description of each record or report that was used as the basis of the proposal or refused action. Finally, each of the six PWNs included a statement that the parents have parental rights under the law along with sources for the parents to contact to assist in understanding their rights.

The PWNs addressing compensatory minutes included a total number of proposed minutes along with an offer of a specific number of minutes and the number of times offered each week, comparable to how service minutes are offered in a student's IEP.

Conclusion

Prior Written Notice is provided when the school proposes 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 or 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.

The Prior Written Notice provided to parents for each proposed special education action must contain specific information:

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

In reviewing the PWNs the district wrote and provided to the family, it is found that the district met its obligation. There is not an obligation to write the PWN with the level of specificity with dates and times. The decision of the specific dates and times are not to be documented in a PWN. In doing so, any departure from those dates and times for any reason would necessitate a new PWN.

Based on the foregoing, ***it is not substantiated*** that USD #443 failed to write the PWN specifying the dates and times the district was proposing compensatory services as specified in the February 20, 2024 Child Complaint titled, 24FC443-001.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. §300.321(a)(2) and K.S.A. §72-3404(u)(2) was not found, based on document review. Corrective action is not required.

2. ISSUE TWO: A violation of 34 C.F.R. §300.503(a)(1) and 34 C.F.R. §300.503(a)(2) and K.S.A. §72-3432(a) and K.S.A. §72-3432(b) was not found, based on document review. Corrective action is not required.

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.

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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.

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 April 1, 2024
Against Unified School District No. 443

DECISION OF THE APPEAL COMMITTEE

Background

The matter commenced with the filing of a complaint on April 1, 2024, by xxxxxxxxx on behalf of her child, In the remainder of the decision, xxxxxxxxx will be referred to as "the parent", and xxxxxxxxx will be referred to as "the student". An investigation of the complaint was undertaken by complaint investigators, Donna Wickham and Lori Noto, 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 May 1, 2024. That Complaint Report concluded that there were no violations of special education laws 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 parent's appeal and supporting documents, the original complaint filed by the parent, and the Complaint Report. 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.

Parents' Appeal

The parent argues the investigators erred in their finding of no violation under issue one and issue two. The parent also argues the complaint investigators failed to properly investigate all five submitted concerns. Finally, the parent argues the investigators did not provide the parent with

the opportunity to discuss the complaint as required under K.A.R. 91-40-51(c)(1). Each issue will be reviewed separately. The following investigated issues in this complaint will be addressed by the Appeal Committee:

> ISSUE ONE: USD #443, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide written input from the reading teacher at the November 15, 2023, and November 28, 2023, meetings.
>
> ISSUE TWO: USD #443, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to write the PWN specifying the dates and times the district was proposing compensatory services as specified in the February 20, 2024, Child Complaint titled 24FC-443-001.

Parent Concerns Not Addressed in the Complaint

The Appeal Committee does not review issues that have not first been investigated. Therefore, while the Committee takes this opportunity to comment on the parent's concerns, no decision will be made regarding those issues that were not investigated.

First, the parent argues the complaint investigators failed to contact her regarding the formal complaint.

Following the filing of a complaint, the complaint investigator assigned will contact the complainant, to clarify the issues and review all relevant records and documents submitted by the parties, to determine whether the facts stated in the complaint are correct and, if so, whether they substantiate a violation of the requirements of special education laws or regulations. (See Kansas Process Handbook, pg. 174). Under K.A.R. 91-40-51(c)(1), the complaint investigator is required to have "[a] discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded." There is no requirement for an investigator to contact the complainant through any prescribed method.

In this case, the record shows the investigators reviewed the parent's complaint, and then sought clarification of the issues through an email, sent on April 8, 2024, to the parent, asking the parent if she would like to continue the discussion through a phone interview. The parent did not respond to this email or address the interview request. In the appeal the parent states, "The Complaint Investigator never contacted me. Therefore, I never had an opportunity to clarify any information or discuss any matters." Based on a review of records, this statement appears to be inaccurate. While it is true that the investigators did not speak directly with the parent, they did contact the parent and ask if the parent wished to communicate further regarding the complaint. Additionally, the parent had an opportunity, at that time, to clarify any disagreement regarding the issues presented by the investigators.

Further, although the Kansas regulation does require a complaint investigator to "have a discussion" with the complainant, it does not require that discussion to occur through any specific method, be of any specific length of time, or compel the complainant to participate. Here, the parent did not respond to the email and the investigators continued to investigate the issues based on all available documentation provided by both the district and the parent. Regardless, if the parent has additional information, that was not shared with the investigators, of a possible violation of state and federal special education laws, the parent may file a new formal complaint.

Second, the parent argues the investigators failed to properly investigate all her concerns.

Here, the parent presented five concerns and two sub-concerns in the formal complaint, for a total of seven concerns. Upon review of the submitted documentation, the investigators determined that two of those concerns were new issues, one concern regarded documents utilized in the previous formal complaint, and four concerns, (including the two sub-concerns) were related to the corrective action assigned in the previously investigated Child Complaint, 24FC443-001. As noted by the investigators in the current Complaint Report, "This complaint was filed to address concerns related to some of the corrective actions [in 24FC443-001] and two new issues. Special Education and Title Services has oversight with issues related to corrective action, so these concerns were not investigated."

A review of records shows the investigators did reach out to KSDE to verify whether parent concerns regarding corrective action should be investigated. The response from KSDE was that only new issues should be investigated and concerns related to ongoing corrective action should not be investigated. The investigators also determined the parent's concern, about a records request, was related to documents used in the previous Child Complaint, 24FC443-001. Specifically, the parent notes, "I requested certain educational records from the Districts that the Districts produced for the investigator as a result of the last formal complaint I filed in January 2024." According to the Model Form, which the parent used to submit her formal complaint, "Any document submitted by either the school district or parents will be available to the other party, upon request." In this case, the parent could have, and still can, request those documents from the complaint investigator who investigated Child Complaint 24FC443-001. Additionally, as stated above, if the parent believes there is new information regarding the submitted issues, a new formal complaint can be submitted to KSDE for review.

Issue One

> USD #443, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide written input from the reading teacher at the November 15, 2023, and November 28, 2023, meetings.

Under issue one, the parent disagrees with the investigators finding for numerous reasons. Each reason will be addressed separately below.

1. The parent states, "[T]he current investigator accepted information from the district without allowing the parents an opportunity to make known the full facts." The parent references the following statement in the current Complaint Report which she claims requires further explanation:

   > "…attendance sheets demonstrate that a general education teacher was present. They {the district} further state there is no requirement for a required team member to submit written input to the IEP team when they are physically present at the annual IEP meeting. Furthermore, the reading teacher was present at the March 20th, 2024, IEP."

   As stated above, the parent may file another formal complaint if the parent has new information about a possible violation of state and federal special education laws.

2. The parent states a review of the signature page alone would not have informed the investigator that "the *regular education teacher* was absent, albeit without proper excusal, for part of each of the meetings." (Emphasis added.) As evidence of this, the parent cites the previous Complaint Report (24FC443-001), and, in part, the investigator's statement "A general education teacher partly attended…". In that complaint, the investigator notes that the reading teacher was not present for the meetings. However, the investigator also found that a *general education* teacher was present for part of the meetings, stating, "[T]he student's homeroom/science teacher from the parochial school was present for part of the meeting." (Emphasis added.) This statement pertained to both the November 15 and November 28, 2023, IEP meetings.

   In response the district contends, "[T]he attendance pages at both IEP meetings (11/15/23 and 11/28/2023) clearly indicate that a general education teacher was present at each meeting.

   In the Complaint Report (24FC443-002), the complaint investigators note, "The IEPs dated November 21, 2022 (in effect at the beginning of 2023-2024 school year), November 15, 2023, November 28, 2023, and March 20, 2024, showed a general education teacher signed the attendance sheet."

   Here, the investigators reviewed the IEP attendance records and noted that a general education teacher was present at each meeting in question. As defined in K.S.A. 72-3404 (u)(2), an *IEP team* means a group of individuals that includes, "at least one regular education teacher of the child, if the child is, or maybe, participating in the regular education environment…". The investigators found that the child is participating in the general education environment and, according to the IEP attendance records, at least one general education teacher of the child was present at each meeting. Furthermore, the investigators correctly state, "[I]t is the district's obligation to provide a general education

teacher, the parent may not request a specific teacher." As noted by the investigators and confirmed by the records, a general education teacher was present at each meeting.

Furthermore, while the parent's argument that the attendance records, without further investigation, would ultimately fail to show whether the regular education teacher was present for the entire meeting *might* be correct, it is not an issue on which this Committee will decide for two reasons: 1) This argument was not a concern presented to the investigator in the formal complaint. Therefore, the investigator was not obligated to consider whether a reading teacher was present for all or part of the meeting, only whether the reading teacher was obligated to provide written input, and 2) Even if the parent had presented the issue to investigators, it would not have been investigated as part of this complaint. As discussed above, whether a regular education teacher was present for the entire meeting (both 11/15/23 and 11/28/23) was a matter already investigated in a previous complaint (24FC443-001).

3. Finally, the parent disagrees with the investigator's finding because the reading teacher "did not provide written input prior to the meeting…" (Regarding the 11/15/23 and 11/28/23 meetings). The parent cites K.S.A. 72-3429(b)(3), as the requirement for the reading teacher to provide written input before the IEP team meetings. However, the parent confuses the requirement.

   > K.S.A. 72-3429(b)(3) states, "A member of a child's IEP team may be excused from attending an IEP meeting when the meeting is to involve a discussion of, and possibly a modification to, the IEP member's area of the curriculum or related service, if: (A) The parent and the agency consent to the excusal; (B) the IEP member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting; and (C) the parent's consent to the excusal is in writing.

   While the law does require an IEP team member to submit input in writing prior to an IEP team meeting, that requirement does not extend to every single regular education teacher who happens to have the student in class. As addressed above, the reading teacher was not the required general education teacher on the IEP team.

   Further, in response, the district states, "[T]here is no requirement for required team members to submit written input to the IEP team when they are physically present at the annual IEP review."

   The investigators correctly found, "The assertion the parent made that the district is obligated to submit written documentation to the parent and IEP team is in the case when a required member of the IEP team is excused from the meeting." (Emphasis added).

   Finally, as the parent herself states in her appeal, "the school is strongly encouraged to seek input from the teachers who will not be attending the IEP team meeting." (*Kansas*

Process Handbook, pg. 62). Again, this was a discussion and finding in the previous complaint (24FC443-001), where it was noted that the IEP team did gather input from the reading teacher, albeit not in written form. As the record supports, the investigators in this complaint were able to determine that a general education teacher (required IEP team member) was at the meeting. Therefore, since the reading teacher's presence was not needed to fill the required role, there was no obligation for the input to be *written*. (Emphasis added).

Conclusion – Issue One

Based on the review above, the Appeal Committee affirms the investigator's finding that a violation of special education statutes and regulations *is not substantiated*.

Issue Two

USD #443, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to write the PWN specifying the dates and times the district was proposing compensatory services as specified in the February 20, 2024, Child Complaint titled 24FC-443-001.

Again, the parent disputes the investigator's findings for numerous reasons:

1. The parent disagrees with the complaint investigator's finding because the investigator "did not contact me for additional information or clarification."

   Here again, if the parent believes there is additional information, related to a possible violation of state and federal special education laws, beyond that which was already investigated, the parent may file another formal complaint.

2. The parent disagrees with the finding because, "specifically, this concern was raised in relation only to the PWNs which offered compensatory minutes", and therefore, the parent states that this issue was likely investigated by mistake. Regardless, the parent states that this is still an issue.

   The parent claims that had the investigators talked with her, they would have realized that this issue "would have been kicked back to the Special Education and Title Services like the other concerns related to corrective action." However, a review of the record shows the investigators did properly investigate the concern as presented by the parent.

   The parent's formal complaint does address a concern about the PWNs related to compensatory services minutes required under the corrective action assigned in Child Complaint 24FC443-001. Regarding this issue, the parent's principal concern is, "[I]f the required corrective actions are not spelled out to a "T", this district has no intention of correcting something based on only the fact that it is in the student's best interest or

already required by regulation." The parent continues by citing the Kansas Process Handbook, specifically, sections requiring that parents be "fully informed" through a PWN.

In response to the parent's appeal, the district states, in part, "The complainant's primary argument is that in order to be "fully informed", the specific dates (and perhaps times) of special education services would need to be proposed in a prior written notice document. We agree with the investigator's finding that this is simply not the standard of performance required of schools."

In the Child Complaint, the investigators describe the six PWNs given to the parent on March 20, 2024. According to investigators, and confirmed in the record, the PWNs address compensatory minutes, including "a total number of proposed minutes along with an offer of a specific number of minutes and the number of times offered each week, comparable to how service minutes are offered in the student's IEP."

The investigators found, and the record confirms, that all required information was included in the PWNs. Since the parent's concern was whether the PWNs allowed her to be fully informed, as required under state and federal law, the investigators correctly addressed whether the PWNs included the required information. Based on the record, this issue was not investigated by mistake, but rather directly addressed the parent's concern related to the information provided on the PWNs.

3. Conclusion – Issue Two

Based on the review above, the Appeal Committee affirms the investigator's finding that a violation of special education statutes and regulations *is not substantiated*.

Summary of Conclusions

The Appeal Committee affirms the investigator's finding of no violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) under issue one and issue two.

This is the final decision on this matter. There is no further appeal. This Appeal decision is issued on this 13th day of May 2024.

Appeal Committee

Brian Dempsey; Assistant Director of Special Education and Title Services,

H. Dean Zajic; Assistant Director of Special Education and Title Services,

Dr. Crista Grimwood; Dispute Resolution Coordinator.

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #229
ON MARCH 12, 2024

DATE OF REPORT APRIL 19, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of --------, by his father, --------. In the remainder of the report, -------- will be referred to as "the student." -------- will be referred to as "the complainant", "the parent", or "the father".

The complaint is against USD #229 In the remainder of the report, USD #229 will be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on March 12, 2024, and the 30-day timeline ends on April 11, 2024. Due to the inclusion of two additional issues, an extension of the timeline was granted. The final report is due April 19, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Ashley Niedzwiecki, reviewed all evidence and documentation, which was provided by both the district and the complainant. The following documentation and information were used in consideration of the issues:

1. Parent's written allegation. (E.1)
2. District's written response to the allegation. (E.2)
3. Email response from the district to the investigator dated 3/18/2024 addressing the October 26, 2023, meeting. (E.3)
4. Interviews with the Assistant Superintendent of Special Education, Dr. Mark Schmidt on 3/26/2024 and 3/29/2024. (E.4)
5. Interview with the building principal, Ms. Kristin Venable on 3/26/2024. (E.5)
6. Interviews with the parent on 3/28/2024 and 3/29/2024. (E.6)
7. IEP team meeting notes dated 10/26/2023. (E.7)
8. Zoom Usage Report dated 10/25/2023 – 10/26/2023. (E.8)
9. Email correspondence dated 2/26/2023 – 2/29/2024, between the parent and the district titled, [Student's name] – IEP Meeting Date discussing the October 26, 2023, meeting and future meetings. (E.9)

10. Notice of Meeting, sent via email to parents on 10/12/2024, indicating a Zoom meeting to occur on 10/26/2024. (E.10)
11. Formal Complaint 24FC229-009. (E.11)
12. District's written response to Issue 2. (E.12)
13. Email correspondence between the district and the parent, dated 10/12/2023 titled, Notice of Meeting. (E.13)
14. District's written response to Issue 3. (E.14)
15. Email correspondence dated 3/29/2024 – 4/3/2024, between the parent and the district, titled Quarter 3 Progress Reports. (E.15)
16. Interview with the district about issue 2 and issue 3 on 04/15/2024. (E.16)
17. Interview with the parent about issue 2 and issue 3 on 04/16/2024. (E.17)
18. The student's 3rd Quarter Progress Report. (E.18)

Background Information

The student is elementary-aged and in attendance at USD #229. The student has been identified as a student with an exceptionality. The student is a dual- language student. During the investigation, the parent expressed concern regarding the receipt of a Notice of Meeting for the October 26, 2023, IEP Team meeting. (E.6). Additionally, the parent filed a subsequent complaint, number 24FC229-009, on April 4, 2024. (E.11). The additional issue expressed by the parent during this investigation and the issue alleged in formal complaint 24FC229-009, have been incorporated into this investigation. The investigator notified each party, in writing, that additional issues would be added to the complaint.

Issues Investigated

1. ISSUE ONE: Whether USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with meaningful participation during an IEP Team meeting held on October 26, 2023.
2. ISSUE TWO: Whether USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with a Notice of Meeting before the IEP Team meeting held on October 26, 2023.
3. ISSUE THREE: Whether USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly or timely provide the parent with Progress reports for the third quarter of the school year.

Issue One

Whether USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with meaningful participation during an IEP Team meeting held on October 26, 2023.

Applicable Law

Schools must make reasonable efforts to ensure that one or both parents of an exceptional child are present at each IEP team meeting or are afforded the opportunity to participate in the meeting. (34 C.F.R. 300.501(c); K.A.R. 91-40- 17(a)). If neither of the parents of an exceptional child can be physically present for an IEP team meeting, the district shall attempt other measures to ensure parent participation, including individual or conference calls. (34 C.F.R.

300.501(c); K.A.R. 91-40-17(c)). When conducting IEP Team meetings and placement meetings, the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls. (34 C.F.R. 300.328). A district must also take action to ensure that parents understand the discussions that occur at an IEP team meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English. (34 C.F.R. 300.322(e); K.A.R. 91-40- 17(d)).

Findings of Fact

The father alleges the district failed to afford parent participation during the October 26, 2023, IEP team meeting for several reasons. (E.6).

First, the father asserts a poor internet connection prevented meaningful participation. (E.1; E.6). According to the father, the internet connection during the Zoom meeting kept "freezing", causing a delay in the overall discussion. (E.6) He estimates the connection issue totaled approximately 20 minutes of the 60- minute meeting. (E.6). The district confirmed connection problems did occur. (E.2; E.4; E.5). However, according to the district, the connection issue persisted for approximately 5 minutes of the 60-minute-long meeting. (E.4). Specifically, the district stated: "The visual was good but there was some concern with the audio." (E.5.). To fix the problem, the district exercised its standard operating procedures of disconnecting and reconnecting the Zoom meeting to obtain a better connection. (E.4). The speakerphone option on Dr. Schmidt and Mrs. Venable's cell phones was utilized to allow all parties to communicate without the potential of any further disruption or delay. (E.4; E.5, E.6). The district also moved the computer within the building to obtain a more stable internet connection. (E.4; E.5). A Usage Report, from the Zoom record, shows the meeting began at 10:03:15 a.m. (E.8). The connection lasted for approximately 4 minutes and ended at 10:06:46 a.m. (E.8). The meeting resumed at 10:07:13 a.m. and continued uninterrupted for the next approximately 56 minutes, ending at 11:07:37 a.m. (E.8). In total the Zoom meeting was offline for 27 seconds.

The father insists the district must provide a good internet connection, stating, "If the district cannot provide a good connection that is not my issue. They need to provide the resources to get the meeting." (E.6) According to the father, the district must "have 100% reliability of meeting, that is the purpose of a meeting to ask questions and not have a delay because of a connection." (E.6).

While the father claims the Zoom meeting format hindered parent participation, he also states the solution to use speakerphones was problematic. (E.6). According to the father, the use of phones interfered with his ability to "see copies of all documents." (E.6). Both the father and the district agree that any documents discussed were shown over Zoom and printed and provided in hard copy to the father during the meeting. (E.4; E.6). However, the father argues this was "unacceptable because [I] had to ask for a document and [I] shouldn't need to. They should think to have it already." (E.6).

The investigator also sought input from the mother to ascertain her experience during the meeting, however, the father refused access to the mother, stating, "I am in charge of my kid." (E.6). According to the district, the mother did not express any concern related to the internet connection or her opportunity to participate in the meeting. (E.4; E.5). The district claims the mother provided comments, asked questions, received feedback from the team, and expressed satisfaction with the meeting. (E.4; E.5). While the investigator was unable to confirm this with the mother, there is nothing in the record to contradict the district's statement.

Next, the father claims he was not afforded the opportunity for meaningful parent participation because he was not permitted to attend the IEP team meeting in person. (E.6). As noted above, the father participated via Zoom, from a district office. (E.2; E.4; E.5; E.6). According to the father this was due to an alleged altercation between himself and a district employee, resulting in the father being denied access to the Indian Valley Elementary School grounds. (E.6.). This was confirmed by the district. (E.2). The father asserts, "It is unacceptable that [I] cannot go to the building" and claims he should have access to "a normal meeting" in person, not over Zoom. (E.6.). The father asserts, "[It is] becoming hard to handle in the normal way. The school needs to provide me the resources and bring them to me as a parent." (E.6). When asked for clarification on this statement, the father stated, [It] "took a while to reconnect." [I] "was not using my own computer. That is understandable. They need to have the resources, but the resources should not fail." (E.6). The district states, "It is clear that [the father] did meaningfully participate in the Zoom Meeting as evidenced by the Meeting Notes from 10/26/2023. [The father] was able to ask questions, [and] the team was able to consider his questions and provide responses." (E.2).

Finally, the father argues parent participation was impeded because the district failed to adequately explain a decline in the student's progress on two goals, reported October 13, 2023, or why the methodology of instruction was changed. (E.6). (*See Formal Complaint 24FC229-007 where it was found that the district did not violate IDEA when it changed the*

methodology of instruction, resulting in a momentary decline in the student's overall progress). The father states this was his primary concern at the October 26, 2023, meeting. (E.6). According to the father, he sought clarification, but the district failed to provide "an acceptable explanation that student drops in progress." (E.6). The father further stated, "Everything was communicated but they didn't want to explain why they got those numbers [student progress numbers]", and insists, "progress should be the same", and a drop in percentages should "not ever happen". (E.6). Meeting notes confirm the father asked for clarification on the "temporal and spatial modifiers that are mentioned in the speech/language goal", and on how "reading and writing goals were assessed." (E.7).

According to the district, to facilitate parent understanding, Dr. Schmidt acted as a mediator of sorts, clarifying any question the father asked and redirecting the conversation when needed to make sure the team thoroughly responded to all the parent's inquiries to the parents' satisfaction. (E.4). The father acknowledged that "sometimes I couldn't understand" but confirmed Dr. Schmidt "was able to clarify" when he posed a question or needed more explanation during the meeting. (E.6).

The district contends, and progress reports confirm, the student is currently making sufficient progress. (E.5.). However, the father insists he "wanted more explanation" as to why the student dropped in progress than the district has provided. (E.6). The district insists both parents were afforded the opportunity to meaningfully participate, review documents, ask questions during the meeting, and obtain appropriate explanations. (E.2; E.4; E.5).

Analysis

Since the father has claimed multiple reasons why he was denied meaningful parent participation, the investigator will review them individually.

1. Failure to provide meaningful participation due to a poor Internet connection.

   While continuously poor internet connection has the potential to disrupt a meeting, possibly requiring an IEP team to reconvene, that is not always the case. Here, both the district and the parent confirm the connection was interrupted during the meeting, although the degree of disruption varies. The parent claims approximately 1/3 of the meeting was disrupted, while the district contends the disruption lasted approximately 5 minutes. Considering the Zoom log record, which shows a 4-minute Zoom call, followed 27 seconds later by a 56-minute Zoom call, it is reasonable to conclude that the meeting was interrupted for a total of 4 to 5 minutes at the beginning of the meeting. The record also shows, and all parties agree, that the district took standard operating procedures to disconnect, and then reconnect, the Zoom call to establish a more stable connection. The district took the other measures of moving the computer to a different location in the building and connecting audio through phones so that the potential for any further disruptions was minimized or eliminated.

While it may be frustrating for internet connections to falter from time to time, that, in and of itself, does not deny meaningful parent participation, so long as the interruption is not persistent to the point that parent understanding and/or communication is overly burdened. Considering the actions of the district, the Zoom log, and meeting notes indicating that parent concerns were addressed, the investigator finds no evidence to show a poor internet connection substantially hindered meaningful parent participation.

2. Failure to provide meaningful participation due to the IEP meeting being held, in part, over Zoom.

In this case, both parents were present at and afforded the opportunity, to participate in the IEP team meeting held on October 26, 2023. According to the record, the mother was able to participate in person at Indian Valley Elementary School with part of the IEP team, and over Zoom with the other part of the team. There is no indication in the record that her participation was not meaningful or that she was dissatisfied with the meeting. The father was also able to participate in person with part of the team at a district office and over Zoom with the other part of the team. There is nothing in the law that prevents districts from holding meetings in this hybrid-type style when the need arises.

Both the district and the father confirm the father is not permitted on the elementary school grounds but is permitted at other district building locations. Due to this, the district took appropriate measures to ensure both parents were able to participate by utilizing both in-person and Zoom conference call options. In this case, the district did make reasonable efforts by providing the father and the mother with appropriate locations in which to participate, a Zoom meeting, phone conference calls, hard copies and digital copies of documents, and provided equipment to ensure all parties were able to participate despite the father's inability to enter the elementary school grounds. Therefore, the evidence shows that the Zoom meeting format did not hinder or prevent parent participation.

3. Failure to provide meaningful participation due to not adequately addressing parent concerns.

Interviews with the father and the district support that, during the October 2023, IEP team meeting, the district explained why a student's progress may drop when new concepts are introduced to a student. Meeting notes also confirm the district spent time explaining to the parents the use of temporal and spatial modifiers mentioned in the speech/language goal, and how reading and writing goals were assessed. (*While student progress was not evidence considered in this complaint, it is noted in a previous report that the student's progress did drop at the beginning of the school year as concepts were added to the student's learning and the instructional method was changed. However, it*

was also noted that the student quickly showed growth with the newly introduced skills, and by the next quarter was again making sufficient progress toward all goals.)

However, the father insists the district failed to satisfactorily explain the student's drop in progress shown in the first-quarter progress reports. In interviews, the father notes that he assumes any drop in the student's percentages "means the district is not providing resources for [the student]".

Specifically, the father stated his frustration was not due to a misunderstanding of concepts, but rather his dissatisfaction with what the district presented as justification for the drop in progress.

While the law does require a district to take action to ensure parents understand the discussions that occur in an IEP team meeting, (34 C.F.R. 300.322(e); K.A.R. 91-40-17(d)), the law does not require an explanation that is subjectively acceptable to the parent. A review of meeting notes and interviews with the district and parent, confirms the district did ensure the parent understood the discussions at the October 2023, IEP team meeting.

The father acknowledged that Dr. Schmidt explained anything to him that he did not initially understand. The record shows the district paused the meeting, when necessary, circled back to providers for more explanation, and provided both parents with the opportunity to ask any question they may have.

There is nothing in the record to indicate the district's explanation, that scaffolding skills, or altering a student's instructional methodology may momentarily cause a student's percentages to dip, was inadequate or improperly conveyed to the parent. As noted, the law does not require a district to present an explanation that meets a parent's subjective requirement of what is or is not an acceptable explanation. Therefore, because there is nothing in the record to indicate the district failed to ensure the parents understood what was being discussed in the IEP team meeting, the district did not fail to provide meaningful parent participation due to a failure to adequately address the parent's concerns.

Conclusion

Based on the foregoing, a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically that the district failed to provide the parent with meaningful parent participation i*s not substantiated*.

Issue Two

Whether USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with a Notice of Meeting before the IEP Team meeting held on October 26, 2023.

Applicable Law

Unless otherwise provided in K.A.R. 91-40-37, A district must provide written notice to the parent of any IEP team meeting at least 10 calendar days in advance of the meeting. (K.A.R. 91-40-17(a)(2)). The notice shall include the purpose of the meeting, the time, and location of the IEP team meeting, and the titles or positions of the persons who shall attend on behalf of the agency, including, if appropriate, any other agency invited to send a representative to discuss needed transition services. (34 C.F.R. 300.322(b); K.A.R. 91-40-17(b)(2)). Nothing in the law requires the Notice of Meeting to be signed by the parent.

Findings of Fact

The father claims the district failed to provide a Notice of Meeting at least 10 calendar days before the October 26, 2023, IEP team meeting. (E.6; E.10). The district denies this allegation and insists a Notice of Meeting was properly provided to the parent more than 10 days before the meeting. (E.12). The district further provides the original email correspondence, dated October 12, 2023, titled, Notice of Meeting, which included the NOM and the parental rights (E.13). The email also s that the district sent a paper copy of the NOM home in the student's backpack. (E.13).

The record shows a Notice of Meeting (NOM) was provided via email to the parents on October 12, 2023. (E.10). The NOM set the meeting date for October 26, 2023, at 10:00 am, 14 days before the meeting. (E.10). The NOM describes the purpose of the meeting as a "parent request". (E.10). The location is listed as Zoom. (E.10). The district lists the general education teacher, a special education teacher, a school representative, a person who can interpret instructional implications of evaluation results, the school psychologist, and the speech and language pathologist as the persons who shall attend on behalf of the agency. (E.10). The Notice of Meeting includes a statement on the Parent/Guardian Signature line stating, "I received a copy of the parent rights and I plan to attend the meeting as scheduled." (E.10).

Additionally, the father asserted the district requested a meeting on October 24, 2023. (E.17). The father states this was a parent meeting attended by himself, Dr. Schmidt, and Mrs. Venable. (E.17). According to the father, at the meeting, he wrote out questions he had about the student's goals and the district said they would answer the questions at the IEP team meeting where the specialists could explain. (E.17). The district confirmed the meeting was a parent meeting, although the district could not recall whether the parent wrote questions out but stated they did review general education assessments. (E.16). The district confirmed that

any discussion about issues relating to the student's IEP was delayed until the October 26, 2023, IEP team meeting. (E.17).

Analysis

Under the law, districts must provide parents with a Notice of Meeting at least 10 calendar days before any IEP team meeting. Here, the district sent the parent a NOM 14 calendar days before the October 26, 2023, IEP team meeting. The record shows all required information was included in the notice. Finally, although a parent signature is not required under the law, in this case, the statement, "I received a copy of the parent rights and I plan to attend the meeting as scheduled", was added to the Parent/Guardian Signature line, indicating the parent not only received the notice but also agreed to the location and time of the meeting.

As for the meeting held on October 24, 2023, all parties agree the meeting was a parent meeting and not an IEP team meeting. Both parties also agree that the meeting was to address some concerns the parent had, but that discussions pertaining directly to the student's IEP were discussed in the IEP team meeting held October 26, 2023. Since the October 24, 2023, meeting was not an IEP team meeting, a NOM was not required. Therefore, based on the evidence in the record, the district did not fail to provide the parent with a Notice of Meeting at least 10 calendar days before the October 26, 2023, IEP team meeting.

Conclusion

Based on the foregoing, a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically that the district failed to provide the parent with a Notice of Meeting at least 10 calendar days before an IEP team meeting *is not substantiated*.

Issue Three

Whether USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly or timely provide the parent with Progress reports for the third quarter of the school year.

Applicable Law

Under federal and state law, an IEP must contain a description of 1) how the student's progress toward meeting annual goals will be measured and, 2) when periodic reports on the progress the child is making toward meeting annual goals will be provided (i.e. such as quarterly or concurrent with the issuance of report cards). (34 C.F.R. 300.320(a)(3)(i)-(ii); K.S.A.72-3429(c)(3)).

Findings of Fact

The student's IEP requires that progress reports be sent quarterly in conjunction with report cards. (E.14). Specifically, the IEP states, "Progress on goals will be reported with the same

frequency as the general education report cards. (E.14). Report cards and progress reports for the 3rd Quarter were sent to all parents on March 29, 2024. (E.16).

Documents confirm that on Friday, March 29, 2024, the district sent an email to the parents indicating that 3rd Quarter Progress Reports were available on ParentVue. (E.15). The email included written instructions on how to access the report and requested if a parent had any problem viewing the document, the parent could email the district and a paper copy of the report could be provided. (E.15). Following this email, the parent responded, approximately one hour and 40 minutes later stating, "I haven't received any hardcopy documents yet", and "I have difficulty to access your system." (E.15). The district replied the following Monday with an attached copy of the student's report and asked the parent if they would like a "physical copy." (E.15). The father responded he would like a hard copy. (E.15). (E.15).

In an email, dated April 3, 2024, the district further explained how to access the student's progress reports by providing detailed screenshots of the ParentVue log-in and access process. (E.15). In the same email, Dr. Schmidt offered to arrange for a demonstration in his office if the father would prefer. (E.15). Both the written instructions and the picture instructions were attached to the email. (E.15). Finally, the email clarified that a hard copy of the report was sent home with the student on Monday, April 1, 2024. (E.15). In an interview the father stated, "I have been given the version of the report from my wife. She downloaded [it] from ParentVue." (E.17). The father further contends that he cannot get his username and password to work, and stated, "the only way I received [the report] is from the report that my wife downloaded and the version [the district] sent in email." (E.17).

During interviews, the father elaborated on two additional concerns about the appropriateness of the progress report. First, he claims the district changed the student's progress from 40% to 60% for the date of 10/13/2023. When asked about the possible discrepancy, the district seemed unaware of any change in the student's reported progress percentages on the 10/13/2023 line from one progress report document to another. (E.16). Further, the district noted that there is not now, nor has there ever been a 60% listed for any goal on the progress report for any quarter. (E.16).

A review of the 3rd Quarter progress report shows the student's progress toward a writing goal on 10/13/2023 was 40%, specifically stating, "When given words with a variety of syllable types, [the student] writes the words with 40% accuracy." (E.18). Other goal percentages listed on 10/13/2023 include a writing goal at 70% accuracy, a reading goal at 80% accuracy, and a language goal at 70% accuracy. (E.18). There is not a 60% listed on the progress report for any goal, or any date, in the entirety of the report. (E.18).

Secondly, the father states the student is not making adequate progress toward goals as reported in the student's progress report. (E.17). The father bases this claim on observations and discussions with the student in the student's home environment. (E.17). The district states that the student's progress is accurately reported. (E.16).

Analysis

Here, the father claims the district failed to properly provide the parents with progress reports. The student's IEP describes when periodic reports on student progress will be provided as, "*the same frequency as the general education report cards*." A review of emails sent from the district shows the 3rd Quarter Progress Report was sent to both parents on March 29, 2023. This aligns with when all general education report cards were sent to parents via ParentVue.

Furthermore, documents and interviews reveal that in addition to the 3rd Quarter Progress Report sent to the parents via ParentVue, the father also received an emailed copy of the student's progress report, a hard copy of the report sent home with the student, and a downloaded copy from his wife.

Guidance, provided by the Office of Special Education Programs (OSEP), states "[T]he specific times that progress reports are provided to parents and the specific format in which a child's progress toward meeting the annual goals is reported is best left up to State and local officials to determine." (*Federal Register, Vol. 71, No. 156, August 14, 2006, pg. 46664*). Further guidance, provided by the Kansas State Department of Education says, "The reporting may be carried out in writing or through a meeting with the parent (including documentation of information shared at the meeting); whichever would be a more effective means of communication." (*Kansas Special Education Process Handbook, pg. 80*).

The district has established that special education progress reports will be provided through ParentVue. The format in which a district provides parents with progress reports is left to the district's discretion. There is nothing in the record to indicate the parents do not have internet access, (as evidenced by the parent's email communication with the district), or access to ParentVue (as evidenced by the mother's ability to download and print the progress report).

Furthermore, the district sent multiple versions of instructions to the father on how to access the student's quarterly progress reports and offered to provide one-to-one in-person training. Finally, the district also provided the parents with a hard copy, and specifically, provided the father with an emailed copy of the student's progress report.

Next, the father asserts the student's progress report is not proper because of a discrepancy between what was reported in the first quarter (on 10/13/2023), and what that line states on the most recent report (3/8/2024). (A change from a 40% accuracy on a writing goal to 60% accuracy.). However, the possible discrepancy is not verified by the record. A review of the student's progress report shows no 60% recorded anywhere, in any section, of the student's report. While inaccurate reporting may be a concern when, and if, it occurs, in this case, it is neither substantiated by the record nor is it relevant to the issue of whether the progress report was properly and timely provided to the parent.

Finally, the father claims the student is not making progress toward goals based on observations in the home setting. A review of the 3rd Quarter Progress report shows the student's goals and progress as follows:

Writing –

> Goal: By April 2024, when writing [the student] will use encoding skills by saying the word, tap the word phenome by phenome to accurately spell the word on 4/5 opportunities with 80% accuracy. As of 3/8/2024, the student was scoring at 90% accuracy.
>
> Goal: By April 2024, following a reading passage at [the student's] instructional level, [the student] will write a five-part retell providing (who/what/when/where/why) providing accurate information with 80% accuracy for 4/5 data points. As of 3/8/2024, the student was scoring at 94% accuracy.

Reading –

> Goal: By April 2024, when given a list of words with closed syllable consonant combinations, silent E and open syllable, soft c, g, s, tch, vowel team syllables, and vowel R syllables [the student] will read the words on 4/5 opportunities with 95% accuracy. As of 3/8/2024, the student was scoring at 93% accuracy.

Language –

> Goal: By April 2024, during speech-language therapy tasks, [the student] will follow three-step commands with at least 1 modifier (spatial or temporal) in 80% of opportunities without repetition in 2 out of 3 data collection days. As of 3/8/2024, the student was scoring at an average of 70% of opportunities.
>
> Goal: By April 2024, [the student] will listen to a third-grade level short story and will answer "what happened" and "when" questions with 80% accuracy when given a visual cue for 2 out of 3 data days. As of 3/8/2024, the student was scoring at an average of 80% accuracy.
>
> Goal: by April 2024, with a visual cue, the student will listen to a third-grade level short story and will retell the story in sequential order with grammatically correct sentences using nine story grammar elements (character, setting, problem, feeling, plan, attempt to solve, consequence, ending, and ending feeling) with 80% accuracy for 2 out of 3 data days. As of 3/8/2024, the student was scoring at an average of 77% accuracy.

The record shows the student is making significant progress in all goal areas. It's worth noting that while concerns related to a student's progress are appropriate for a parent to discuss with the IEP team, (and in this case, as noted under issue one, did occur), here, the parent's perceived lack of student progress is neither substantiated by the record, nor relevant to whether the district properly and timely provided the parent with progress reports.

Therefore, based on the above, it is found that the district did properly and timely provide the parent with the student's 3rd Quarter progress report.

Conclusion

Based on the foregoing, a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), for failing to properly or timely provide the parent with Progress reports for the third quarter of the school year *is not substantiated*.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: Whether USD #229, violated state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to provide the parent with meaningful participation during an IEP Team meeting held on October 26, 2023, is not substantiated.
    a. No corrective action is required.
2. ISSUE TWO: Whether USD #229, violated state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to provide the parent with a Notice of Meeting before the IEP Team meeting held on October 26, 2023, is not substantiated.
    a. No corrective action is required.
3. ISSUE THREE: Whether USD #229, violated state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to properly or timely provide the parent with Progress reports for the third quarter of the school year is not substantiated.
    a. No corrective action is required.

Investigator

Ashley Niedzwiecki

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).

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 March 12, 2024
Against Unified School District No. 229

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced on February 26, 2024, with the parent, xxxxxxxxxxx, filing a complaint on behalf of his child, xxxxxxxxxxx. This decision will refer to xxxxxxxxxxx as "the parent," and xxxxxxxxxxx as "the student." A complaint investigator completed the complaint investigation on behalf of the Kansas State Department of Education (KSDE) Special Education and Title Services team. Following the investigation, KSDE issued a complaint report, addressing the parent's allegations, on April 19, 2024. The complaint report concluded that there were no violations of special education law under three issues.

On April 20, 2024, the parent filed an appeal of the complaint report. Upon receiving the appeal, KSDE appointed an Appeal Committee, and it reviewed the parent's appeal, the supplemental information the parent provided for the appeal, and relevant portions of the complaint report. The Appeal Committee now issues this Appeal Decision.

Preliminary Matters

KSDE included the text of regulation regarding filing an appeal, K.A.R. 91-40-51(f), with the complaint report. That regulation states, in part, "Each notice [of appeal] 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 for the statement, the Appeal Committee does not attempt to locate the missing support.

The Appeal Committee does not decide new issues as part of the appeal. The Appeal Committee reviews the complaint report and determines whether the appealed findings or conclusions are correct. The Appeal Committee does not conduct a separate investigation. The Appeal Committee's function is to determine whether sufficient evidence exists to support the complaint report's appealed findings and conclusions.

Parents' Appeal

The parent raises one reason for alleging that the complaint investigation report is incorrect:

Issue

Did the investigator correctly conclude that USD #229 did not violate K.A.R. § 91-40-17(a)(2) to provide the parent with a ten-day notice of meeting for the parent and district staff's October 24, 2023, meeting because that meeting was not an IEP Team meeting?

Applicable Law

K.A.R. § 91-40-17(a)(2) requires districts to provide written notice "to the parents of any IEP team meeting at least 10 days in advance of the meeting." Regarding an appeal, K.A.R. § 91-40-51(f)(1) requires the party appealing to, "provide a detailed statement of the basis for alleging that the report is incorrect."

Relevant Facts

The parent's appeal states, in total, "I want to appeal the case, there are inconsistent issues in the report while the investigator has been written." (Email from Parent to KSDE Dispute Resolution Coordinator, Apr. 20, 2024.) Nine days later, the parent sent a second email stating he had, "attached appeal letter for issue two." (Email from Parent to KSDE Dispute Resolution Coordinator, Apr. 29, 2024.) In the attachment the parent copied and pasted portions of the complaint report. (Email Attachment from Parent to KSDE Dispute Resolution Coordinator, Apr. 29, 2024.) After the copying and pasting from the complaint report, the parent writes, "The parent during in an interview with the investigator said agreed [sic] with the school district to have a meeting on October 24, 2023 [sic] that will served [sic] as part of the EIP [sic] meeting and continue on October 26, 2023 while the meeting on October 26 ,2023 [sic] was having issues with the connection via Zoom, The parent never received and signed a NOM for October 24 2023.

The paragraph above I, xxxxxxxxxxxxxxxxx, did not signed [sic] or received [sic] any document of NOM for the meeting occurred on October 24 2023 [sic]." (Email Attachment from Parent to KSDE Dispute Resolution Coordinator, Apr. 29, 2024.)

The appeal committee determines that the parent is alleging on appeal that he told the complaint investigator that he agreed with district staff to hold part of the IEP Team meeting on October 24 and to continue the remainder of the discussion to a second IEP Team meeting on October 26. The complaint report indicates that the parent stated to the complaint investigator that the October 24 meeting, "was a parent meeting" attended by himself and two other district staff members. (Complaint Report 11, Apr. 19, 2024.) As support for this statement, the complaint investigator pointed to the April 16, 2024, interview with the parent. (Complaint Report 2, 11, Apr. 19, 2024.) The complaint report states that the "district confirmed the [October 24] meeting was a parent meeting" and further confirmed that "any discussion about issues relating to the student's IEP was delayed until the October 26, 2023, IEP team meeting." (Complaint Report 11, Apr. 19, 2024.) As support for this statement, the complaint investigator pointed to the April 15, 2024,

interview with district staff. (Complaint Report 2, 11, Apr. 19, 2024.) The complaint investigator concludes that the district was not required to provide a notice of meeting for the October 24 meeting as this "meeting was not an IEP team meeting." (Complaint Report 12, Apr. 19, 2024.)

On appeal, the parent is stating something different than the complaint investigator indicates the parent said during the interview that was part of the complaint investigation. The parent does not provide any additional information on appeal to support his contention that the October 24, 2023, meeting between him and two district staff members was an IEP Team meeting. The complaint investigator reviewed information from the October 26, 2023, IEP Team meeting including meeting notes, email correspondence between the district and the parent regarding the October 26, 2023, IEP Team meeting, the notice of meeting for the October 26, 2023, IEP Team meeting; and wrote in great detail about the October 26, 2023, IEP Team meeting in Issue One of the complaint report. (Complaint Report 3–9, Apr. 19, 2024.) The appeal committee finds that this information shows that the district is aware of its obligations around an IEP Team meeting and, the same information was not part of the investigation for the October 24, 2023, meeting which lends support to the complaint investigator's conclusion that the October 24, 2023, meeting was not an IEP Team meeting.

Conclusion

Based on a review of the above, the Appeal Committee affirms the investigator's finding that the district did not violate K.A.R. § 91-40-17(a)(2) as the complaint investigator sufficiently supported her conclusion that the October 24, 2023, meeting was not an IEP Team meeting and the parent did not provide a detailed statement of the basis for alleging that the report is incorrect that would support a different conclusion.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued May 10, 2024.

Appeal Committee

Brian Dempsey: Assistant Director of Special Education and Title Services

Dr. Crista Grimwood: Dispute Resolution Coordinator

Dean Zajic: Assistant Director of Special Education and Title Services

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #260
ON MARCH 18, 2024

DATE OF REPORT APRIL 18, 2024

This report is in response to a complaint filed with our office on behalf of ----- -----'s parent, Joey -----. In the remainder of the report, the student will be referred to as "the Student" and the parent as "the Parent."

The Complaint is against USD # 260, Derby Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #260.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint. A complaint is considered to be filed on the date it is delivered to both the KSDE and the school district. In this case, the KSDE initially received the complaint on March 18, 2024, and the 30-day timeline ended on April 18, 2024.

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video call on April 8, 2024. On April 8, 2024, five classroom teachers, the Special Education Case Manager, the Assistant Principal, the Principal, and the Special Education Director were interviewed by the Complaint Investigator.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the Parent 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.

From the Parent:

1. Letter, re: 504 Process, no date
2. 504 Accommodation Plan, 04/26/22
3. Section 504-Student Accommodation/Service Plan, 11/20/19
4. Email, re: [Student] 505/IEP, 11/18/22
5. Email, re: [Student] data, 04/20/23
6. Email, re: [Student] Counseling, 05/11/23
7. Email, re: [Student] 504, 9/12/23
8. Email, re: MDR Meeting, 02/13/24

9. Email, re: Positive Referral, 02/07/24
10. Email, re: Hearing Results for [Student], 02/13/24
11. Email, re: IEP Amendment, 02/15/24
12. Email, re: Manifestation Determination Appeal, 02/27/24
13. Email, re: Welcome To After Hours, 02/29/24

From the District:

1. Letter, re: District Response, 03/26/24
2. IEP, 10/19/23
3. Eligibility Determination Documentation, 10/19/23
4. Section 504 Rights, 10/19/23
5. PWN, re: Change in Services, 10/24/23
6. Evaluation/Eligibility Team Report, re: Initial Evaluation, 10/24/22
7. Manifestation Determination Review, 02/27/24
8. Email, re: MDR Meeting Dr. Gresham, 2/12/24
9. PWN, re: Evaluation or Reevaluation And Request for Consent, 12/08/23
10. PWN, re: Evaluation or Reevaluation And Request for Consent, 02/12/24
11. PWN, re: Identification, Special Education Services, Educational Placement, Change in Services & Place, And/Or Request for Consent, 02/15/24
12. IEP, re: Amendment IEP, 02/15/24
13. Team Members Participation, 02/15/24
14. Manifestation Determination Review, 02/15/24

Background Information

This investigation involved an eighth-grade student enrolled at Derby Public Schools in USD #260. The Student currently receives special education under the exceptionality of Giftedness under Kansas State regulations. Before living in Kanas, The student skipped half of the fifth grade and half of the sixth grade, completing one semester of each grade, and then moved on to seventh grade. The Student entered the School District on August 17, 2022. "The Student moved into the District from another state without evidence of an IEP, but instead garnered a Section 504 accommodation plan." The District "immediately opened a 504 for [them]. We adopted the accommodations as written from Washington."

According to the Kansas Process Handbook (Out of State, p.89), "A student who has a current IEP in another state transfers to Kansas, the new school district, in consultation with the parents, must provide the child with FAPE, including services comparable to those described in the child's IEP from the previous school district until Kansas school district either adopts the current IEP, or conducts an initial evaluation of the child, if deemed necessary, and develops and implements a new IEP for the child." Furthermore, K.A.R. 91-40.21 Educational Placement

(c) (2) states, "In determining the educational placement of a gifted child, each agency shall ensure that the placement decision is made by a group of persons, including the child's parent and other persons who are knowledgeable about the child, the meaning of the evaluation data and appropriate placement options for gifted." We were not provided an IEP from Wyoming, South Carolina, or Washington state."

On August 17, 2022, the School Psychologist received consent to evaluate the Student. "At the time, it was noted in the Health Section of the Present Levels that [the Student] had a diagnosis of ADHD … No accommodations were added to the IEP to support the diagnosis of ADHD, as we had the 504 still in place and protecting the child's rights." The Parents agreed to the provisions of FAPE.

The District indicated, "With accommodations of the 504 in place, we had no data to show that the ADHD impacted [the Student's] educational performance, nor was specially designed instruction necessary to support the diagnosis of ADHD." The Parents signed the Prior Written Notice (PWN) agreeing to the proposed provision of FAPE.

According to the Wechsler Intelligence Scale for Children, Fifth Edition, the Student's full [-] scale IQ was 123, well above average. The Interpretation indicated, "Due to the fact that [the Student] is a student with ADHD the confidence interval is being used to determine cognitive ability … [The Student's] full[-]scale IQ confidence interval is 116-128. This would be considered to meet the 97th percentile threshold cognitively. [The Student] was allowed to take short breaks during the testing sessions." When using age norms the Student achieved a score at the 97th percentile for Math problem[-]solving. Teachers noted that "[the Student] comes to class on time and participates in class discussion. [The Student] does struggle with completing work in class and turning work in on time." The primary exceptionality is Gifted.

Issue One

USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to find the Student eligible for special education services and an IEP based on disability when the District did not recognize the Attention Deficit Hyperactivity Disorder (ADHD) or Oppositional Defiant Disorder (ODD) in the Student's IEP.

Positions of the Parties

The Parent alleged that the District refused to acknowledge that the Student had disability even though the School received copies of an evaluation report that indicated the Student had ADHD/ODD.

The District acknowledged that on November 21, 2023, the "Parents agreed with the offer of FAPE and signed consent on or about November 21, 2023." The District "recognized and provided first an accommodation plan through the 504 beginning on 9.7.2022 … At the

[P]arents request, the accommodations were added to the IEP on 10.19.2023 … The 504 was discontinued at the Parent's request. And the [P] arents signed the PWN accepting the 100% change in service when adding the accommodations related explicitly to ADHD into the IEP … The [P]arents did not notice anyone on the team of the ODD diagnosis until February 1, 2024."

On December 7, 2023, the team offered a Prior Written Notice of Evaluation (PWN-E) to Parents for a Functional Behavior Assessment (FBA). On December 8, 2023, the team sent home the PWN-E. The Parents never signed the PWN-E. "If the Student met the eligibility criteria, this would have been an opportunity for the team to add OHI as a secondary exceptionality."

In February 2024, the District tried "to garner permission for an educational evaluation for [the Student] when [their] behaviors quickly escalated from disruptive behavior to bringing a blade to school and vandalism of school property "

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Parents and staff in the District.

1. On December 4, 2022, the Parent sent a response email to the School Psychologist, which stated the Student was "2 years younger than [their] peers … Severe ADHD is a huge issue in [their] learning, places [them] in the arena of twice … exceptionality, sounds like unnecessary work. I can assure you on our end, as parents, we are reinforcing everything the teachers are trying to instill upon [the Student]. All or most of you were in [their] IEP meeting and you heard the same thing from all of [their] teachers. [The Student] is easily distracted. Let's move forward so that we can have [the Student] make progress, which is the whole concept behind an IEP." The Parents disagreed with the IEP, not including the disabilities background information.
2. On May 11, 2023, the Principal sent an email to Parent 2 in response to the Parents' May 10, 2023 email regarding the amendment status, which stated, "I talked to the Social Worker … and the School Psychologist … they are ready to move forward with an amendment. They propose putting [them] on aconsult (sic) until we meet in the fall for [the Student's] formal IEP and then we can assess how everything is going and determine how much time we want to formally put into the IEP… if you are okay with this plan, [they] can send you the amendment paperwork so we can get this going by the end of school and in place for the start of next year."
3. On September 9, 2023, Parent 2 sent an email to the Social Worker, which stated, "My [spouse] and I received your envelope recording, [The Student's] 504. However, [the Student's] 504 was supposed to be condensed into [their] IEP as of last year when it was requested when my [spouse] and I had a meeting with [the Principal]. We will be more than happy to relook at [their] [W]eb [K]idds paperwork regarding [their] IEP when that is sent out to us and we will also be sitting (sic) up [their] meeting for [their] IEP."

4. According to an IEP dated October 19, 2023, the Legal Education Decision Maker (LEDM 1 and LEDM 2) statement was not signed. The Parents/LEDM participated in the IEP meeting in person. The LEDM received a copy of the IEP developed by the team at the IEP meeting on October 19, 2023.
5. According to the IEP dated October 19, 2023, the Student had "a diagnosis of ADHD." According to the IEP, the Student did not have behavior that impeded the learning of themself or others.
6. On October 24, 2023, a Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent indicated, "We met to review the evaluation/assessment data on this [S]tudent, including any evaluations or information you provided, current classroom based-assessments and observations, and teacher or other staff observations with your input: Any additions, changes or modifications to the special education and related services or educational placement that are needed to enable the student to meet the measurable annual goals set in the IEP and to participate, as appropriate, in the general curriculum … Material change in services, As explained … we are proposing a change that results in a decrease or increase of 25% or more of the duration or frequency of a special education service, a related service, or a supplementary aid or a service specified on this [S]tudent's IEP." "Other changes to the IEP not involving services or Placement (Consent not required."
7. On November 21, 2023, the Parent signed A Progress Report Distribution Form acknowledging they had been informed of the disclosures and provided a copy of the IEP. The Parents were made aware of the information contained in the IEP in the disclosure statements.
8. On November 21, 2023, the "Parents agreed with the offer of FAPE and signed consent on or about November 21, 2023."
9. During an interview with the Complaint Investigator, the Assistant Principal shared the Student's increased behaviors occurred around November or December 2023. This was evident from the increase in the Student earning discipline points at school. The school had a point system where students who accumulated too many points faced a manifestation hearing and potentially a disciplinary hearing. To address this issue, the school proposed an FBA to understand the motivation behind the Student's increased behaviors and find a way to meet the Student's needs without causing disruption at school. The Student's Parent expressed interest in this assessment.
10. On December 7, 2023, the team offered a PWN-E to Parents for an FBA. On December 8, 2023, the team sent home a PWN for Evaluation. The Parents never signed the PWN. During interviews with the Complaint investigator, the Parent reported that the consent for the FBA was not signed in December 2023 because it had fallen into the Parent's spam mailbox. After alerting the other party about this in January, the Parent signed the consent, but additional technical issues arose with the electronic signing program. The Parent signed a second consent for the FBA in February 2024.

11. On April 12, 2023, Parent 2 sent an email to the Principal asking about "amending [the Student's] IEP to add counseling. [The Student] is struggling with many things mentally [The Student] has been sending many emails to peers and teachers. Anything regarding games to peer to anger issues to memes. Many peers have asked [the Student] to stop but [the Student] will not."
12. The Student's Parent first mentioned ODD on February 1, 2024, during a phone conversation with the Assistant Principal. The Assistant Principal did not have a strong suspicion of ODD based on their observations and was waiting for a formal diagnosis from a medical professional. The Assistant Principal also noted that the Student had previously seen several doctors without a clear diagnosis and that the school team had not suspected ODD at that time.
13. On February 13, 2024, the Director of Special Services sent an email to the Parents, with attachments, indicating, "The IEP states [the Student is] receiving gifted services. Our IEPs do not disclose the exceptionality."
14. On February 15, 2024, the Director of Special Services emailed the IEP Team, "We will also expedite the evaluation beginning at After Hours. [School Psychologist] please begin the evaluation as soon as next week. Parent concerns include twice exceptionality and potential OHI or Autism. When I say temporarily, it is for the change in placement to After Hours pending the appeals process."
15. During interviews with the Complaint Investigator, the Parent reported they were not aware of the discrepancy between the accommodations. The disabilities listed on the Student's IEP was not identified until the Parent requested an MDR hearing.
16. During an interview with the Complaint Investigator, the Special Education Director recalled the Parent had requested that the 504 and IEP documents be combined. There seemed to be a misunderstanding that combining the documents would automatically grant an exceptionality. Further, the IEP Team did not evaluate for these disabilities.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.111 and K.A.R. 91-40-7(a)(3), the District is required to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction, including children with exceptionalities who are suspected of being children with disabilities even though they are advancing from grade to grade.

The Parent requested that the Student's 504 plan be "condensed" into the IEP for giftedness. The October 2023 IEP indicated that the Student had a diagnosis of ADHD, and the Student's behavior did not impede their learning or the learning of others. The Parent signed an acknowledgment of disclosures, consented to the IEP, and agreed with the offer of a FAPE on November 21, 2023. In December 2023, when the Student's behavior escalated, and the Student was earning more discipline points, the District requested that the Parent provide written consent for an FBA. This consent was not provided until February 2024. The District

made multiple attempts to secure the written consent. The winter break and technical issues with the electronic submission and signature caused delays.

On February 1, 2024, the Assistant Principal learned that the Parents were seeking a medical assessment for possible ODD. At the time, there was no indication that this was a viable diagnosis, and all District staff indicated they were not previously aware of this information. There is no record that the Parents made the District aware of ODD prior to February 2024. Once the Parent shared at the discipline proceedings that the Student may have ODD, the District offered an evaluation.

Before the evaluation could be conducted, the Student was withdrawn from the School and moved out of state.

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

USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the accommodations for the Student's ADHD/ODD as described in the IEP for the Student's giftedness.

Positions of the Parties

The Parent alleged that the District failed to implement the accommodations for the Student's impulsive behaviors, which resulted in the Student being expelled from school.

The District responded that "each accommodation was offered to the [S]tudent from when the 504 was written in September 2022 until and following [the Student's] expulsion in February 2024."

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Parents and staff in the District.

1. On November 20, 2019, a Section 504 Student Accommodation/Service Plan from Wyoming indicated the Student was disabled under Section 504, and the Student had a physical or mental impairment that substantially limited one or more of their major life activities. The Student qualified for Section 504 because of inattentiveness and impulsivity which interfered with the Student's learning.
2. The School Social Worker sent a survey to the Parents asking for feedback on the Student's 504 plan. The School Social Worker indicated that the survey should be returned by September 30, [2022], and if f there were major changes recommended for the the 504, a team meeting would be required. The Parent acknowledged that they

had received the 504 Accommodation Plan and that the 504 Plan was effective as it was written.

3. A Section 504 Accommodation Plan, dated April 26, 2022, explained the Major Life Activity Impacted and specific accommodations that were necessary for the Student to have an opportunity commensurate with non-disabled students with a date range of 4/27/2022 to 4/27/2023.
4. On October 19, 2023, the IEP LEDM input/concerns indicated, "Parents want to ensure that [the Student] continues to be challenged and reaches [their] full potential academically and socially. The [P]arents' concerns reflect those of the IEP team as a whole." This was addressed in the IEP Goals.
5. The IEP dated October 19, 2023, indicated the impact of exceptionality on progress in the general education curriculum stated under "Higher Level Thinking Skills," "According to the Wechsler Intelligence Scale for Children, Fifth Edition, the Student's overall cognitive processing abilities performance fell within the "Well Above Average" range (SS=123, PR=94) "Based upon the most recent evaluation and ongoing data collection does the [S]tudent have needs in this area that require special education or related services?" The IEP indicated "Yes," in this area.
6. The IEP dated October 19, 2023, stated in the area of "Identify impact of exceptionality on progress in general education curriculum," that "[The Student] demonstrates a need to be challenged in the area of higher-level thinking." The IEP stated that in the areas of Reading, Math, and Written Language the Student did not have needs in these areas that required special education or related services.
7. Student strengths on the IEP dated October 19, 2023, indicated, "[The Student] demonstrates strong higher-level thinking skills. [The Student] needs to continue to strengthen the various areas of higher-level thinking, including the application of researched information, the analysis of such, and the strengthening of [their] ability to synthesize information and relay it to [their] peers in a way that demonstrates unique and self-expression and an ability to evaluate information and data on cognitive and effective levels."
8. IEP Goal 1 from the October 19, 2023 IEP indicated, "By October 2024, [the Student] will complete at least two academic projects presented in [the] gifted class that extend [their] grade-level curriculum and require higher-level thinking skills. [Their] goal is to score a minimum of 70% on an appropriate, project-based rubric."
9. The October 19, 2023, IEP Goal 2 indicated, "[The Student] will demonstrate initiative in pursuing knowledge and exploring ideas in 8th grade by maintaining a minimum average of 70% in each academic class."
10. Special Education and Related Services on the October 19, 2023 IEP indicated:
    a. "Record :1 [The Student] will receive gifted services, 5 times per week, Frequency- daily, during 1 class period, starting on October 19, 2023."
    b. "Record:2 [The Student] will receive gifted consult services, 1 time per week, Frequency-1 time per week, [for] 5 minutes starting 10/19/2023." and

c. "Record:3 [The Student] will receive gifted services, in the special education classroom, Frequency-5 times every two weeks, for the length of a class period, starting 8/14/27 and ending 10/18/24."

11. Accommodations/Mods/Supp Aids for the October 19, 2023 IEP indicated:
    a. "Record:1 Access to [a] standing desk or writing surface, daily, in all general education classes, for the length of a class period, Start Date: 10/19/23, End Date: 10/18/23";
    b. "Record: 2 Allow speech to text, daily, in all general education classes, for the length of the class period, Start Date: 10/19/2023, End Date: 10/18/2024";
    c. "Record: 3 Extend time on tests and assessments, 1.5 times, in all general education classes, for the length of the class period, Start Date: 10/19/2023, End Date: 10/18/2024";
    d. "Record: 4 Option to type notes on [a] [C]hromebook, daily, in all general education classes, for the length of the class period, Start Date: 10/19/2023, End Date: 10/18/2024";
    e. "Record: 5 Provide structured/movement breaks, as needed, in all general education classes, for a maximum of two minutes during a class period, Start Date: 10/19/2023, End Date: 10/18/2024"; and
    f. "Record: 6 Oral assessments may be provided in lieu of written assignments at the discretion of the teacher, tests and assessments, in all general education classes, for the length of the class period, Start Date: 10/19/2023, End Date: 10/18/2024."
12. The October 19, 2023 IEP also included, "Under Special Considerations, "[The Student] will meet the [S]chool [G]uidance [C]ounselor for 20 minutes once per week."
13. On October 19, 2023, a Section 504 of the Rehabilitation Act Eligibility Determination Documentation indicated, "Does the [S]tudent need Section 504 services in order for his/her educational needs to be met as adequately as those of non-disabled peers? NO." The 504 indicated the Student was getting dismissed and adding accommodations onto the IEP." The 504 Eligibility Team Signatures form indicated that both Parents had signed in agreement. The Parents received the Section 504 Rights.
14. The PWN dated October 24, 2023, indicated accommodations from [the Student's] 504 had been added to [their] IEP. They had"Access to a standing desk or writing surface, allowing speech to text, extended time on tests and assessments, the option to type notes on Chromebook, provide structured/movement breaks, structured breaks dor (sic) assessments/tests, and small groups for assessments."The Parent signed consent for the PWN.
15. The October 24, 2023 PWN indicated a description of the action proposed or refused, "In accordance with the school calendar, the following services will be provided for [the Student]. From 10/20/2023 to 5/23/2024, [the Student] will receive gifted services in a special education classroom within a regular education building for one class period, 5 times per week. From 10/20/2023 to 5/23/2023 (sic) [the Student] will receive gifted

consult services 5 minutes per day, one day a week. The purpose of consult services in this setting is to provide support to [the Student] and the regular education teacher in best meeting the needs of the fifted (sic) learner. Beginning 8/13/2024 to 10/19/2024. [The Student] will receive gifted services to a special education classroom within a regular education building a minimum of one class period, 5 times every other week … the team has determined that the related services are not required for the [S]tudent to access the general curriculum and/or to benefit from the educational experience."

16. An IEP Amendment dated February 15, 2024, indicated special education services would occur in a "Public Off-site location, 4 days per week, and a duration of 2 hours per day, starting February 15, 2024 through April1, 2024." The Student required transportation on a special education bus.
17. During interviews with the Complaint Investigator, the Parent reported that the Student's behavior changes in September 2023 may have been attributed to relationship issues with the Sibling during visits to the Other Parent's house, difficulty readjusting to the Student's regular routine after spending time with the Sibling, and the cumulative effect of these issues over time.
18. During interviews with the Complaint Investigator, the Band Teacher reported that the Student had a tendency to walk around, get distracted easily, and had difficulty staying focused. The Student often forgot or misplaced things. As a percussionist, the Student was allowed to move around and fidget with the sticks, mallets, or instruments. The Student was also able to test in person or online.
19. During interviews with the Complaint Investigator, the Social Studies Teacher described the difficulty the Student had completing assignments during class. He also shared that the Student fidget with an object in their hands, wandered, and lacked focus. Accommodations provided included a standing desk, breaks, and extended time as needed. Observations of the Social Studies Teacher included that the Student rarely completed assignments in class, fidgeted, wandered, and did not consistently use the standing desk.
20. During an interview with the Complaint Investigator, the Gifted Special Education Case Manager described the Student's ADHD as attention-seeking behaviors, speaking out loud during class, and disrupting classroom activities. According to the Gifted Special Education Case Manager, the Student received accommodations, which included digitally submitting notes and assignments, using a standing desk, taking frequent breaks, reducing the amount of work on an assignment, and allowing extra time for assignments. The Student also received check-ins on missing assignments and progress in classes.
21. In an interview with the Complaint Investigator, the Science Teacher described the Student as easily distracted in the classroom by things like their computer, emails, and physical items. The Science Teacher accommodated the Student by allowing credit for assignments with partial completion if engaged in discussion. The Science Teacher ignored minor distractions, quietly redirected the Student during distractions, and held informal conferences.

22. During interviews with the Complaint Investigator, the Math Teacher shared that the Student exhibited a lack of focus and attention as evidenced by their easily distracted behavior. The Student infrequently engaged in classroom activities, tended to work on personal projects or talk to neighbors during class, played with tape during class, required frequent reminders to stay focused, chose not to work during class, and completed most of their work outside of class. The Sudent was provided with the following accommodations to reduce distractions and assess focus and attention: preferential seating, the option to test in another room, and frequent check-ins.
23. The English Teacher described, during interviews with the Complaint Investigator, that the Student was provided accommodations such as going out of the classroom for assignments, extra time, and voice text speech. However, there were disciplinary issues. On one occasion, the Student came to class with tape wrapped around their hand, causing a spectacle and disrupting the class. After talking to the Student in the hallway, the Student was sent to the office to address the situation.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.323(a)(d) and K.A.R. 72-3429(a) each agency shall have an IEP in effect for each exceptional child at the beginning of each school year.

The Student's October 2023 IEP included accommodations such as access to a standing desk, speech-to-text, extended time, electronic note-taking, structured movement and breaks, and oral assessments. All of the teachers interviewed were able to describe in detail how these accommodations were provided to the Student.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the district failed to provide the Student with accommodations as described in the IEP.

Issue Three

USD #260 failed to conduct a manifestation determination review (MDR) before expelling the student from the school, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA).

Positions of the Parties

The Parent alleged that the District refused to hold an MDR because the Student's IEP was for giftedness only.

The District responded that according to the Director of Special Services, "On several occasions, [the Parent] stated that the 504 was combined with the IEP, automatically making the [S]tudent twice exceptional under the disability category of OHI. I explained each time that the [S]tudent was not evaluated for OHI and offered to evaluate the [S]tudent. [The Parent] refused the evaluation when I called [them] on March 8th, 2024. [They] stated, 'The kid has

been tested enough.' The [Parents] also did not sign the previous attempt by the [D]istrict to evaluate for an FBA in December of 2023."

On February 9, 2024, "the Student reached 60 points, the threshold outlined in our Board of Education approved student handbook for long-term suspension or expulsion. Because [the Student] had an IEP under the exceptionality category of Gifted, the special education department initially determined that [the Student] was not eligible for a manifestation determination hearing. However, upon further investigation, I discovered that the school-based team had provided the [P]arents with the aforementioned prior written notice for evaluation to conduct an FBA … putting us on notice of another potential disability. Therefore, the [D]istrict agreed to the manifestation hearing held on 2.15.2024."

The Parents disagreed with the results of the MDR and appealed the decision. The Assistant Director of Special Services "conducted a second manifestation hearing with each person individually to ensure no bias in the parties' interactions." The Assistant Director of Special Services upheld the original manifestation determination.

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Parents and staff in the District.

1. On December 8, 2023, a PWN indicated a request to conduct a reevaluation in the area of Social/Emotional Status/Behavioral Status that "may include a functional behavioral assessment or evaluation to determine appropriate positive behavioral supports." Records indicated that the District made two delivery attempts to gain permission from the Parent/LEDM.
2. The Principal emailed the Parent on February 12, 2024, and shared that [they] had reached out to the Director of Special Services and [they] verified that students with exceptionalities (gifted) do not have the disciplinary protections of students with disabilities. Because of this, a hearing could proceed without an MDRThe Principal stated that they base an MDR on any disability that is suspected or known at the time of the behavior. "So if a parent provides documentation of a disability after the behavior and the school did not suspect it, we do not consider it." The Principal stated that the Special Education Teacher sent home paperwork that needed to be completed for an FBA on 12/8/2023 in response to concerning behaviors. When it wasn't returned, the Special Education Teacher sent it through Webkids on January 5, 2024. The Principal also stated that the Special Education Teacher had no knowledge or documentation of a new diagnosis.
3. On February 12, 2024, the Parent wrote, "ODD and ADHD has been on [their] IEP. If it's not, then it was ignored half of the IEP meeting. We even discussed whether or not a BIP should be done. [The Student] has accommodations listed specifically for that. Even if it was never combined as outlined in IDEA from [their] 504, [they still have] a 504 for

it, which STILL entitles them to an MDR." A new meeting was requested since the Student did not have an FBA or BIP.

4. On February 12, 2024, the Parent emailed the Director of Special Services, indicating, "I have been advised to not attend an expulsion hearing considering [the Student's] qualification for an MDR. If you choose to still hold it, we nor [the Student] will be in attendance … [They] were already diagnosed with ADHD/ODD. You don't get to add the accommodations and not the diagnosis. Even having had the 504, that demonstrates knowledge of the diagnosis, qualifying [them] for an MDR. This is not something I pulled out of thin air. [Parent 2] and I are both SPED teachers. We ran this by all 3 school psychologists and our own SPED [D]irector. They said we are doing the right thing by providing you an opportunity to do the right thing. We will bring in paperwork showing [they are also] on the Autism Spectrum as well. I have offered to be there tomorrow at 3PM to amend [their] IEP and/or have an MDR."
5. On February 12, 2024, the Principal wrote, "As a building admin, I have no control over whether or not a student is offered an MDR, but I do want to point out that per [P]arent request, [their] 504 was dismissed and compound (sic) with [their] IEP so [they] no longer [have] a 504."
6. On February 15, 2024, the Parent emailed the Director of Special Services, "I do want to go ahead with the formal appeal process…[The Student's] IEP does not address [their] disorder.[their] disability (ADHD/ODD) did impair [their] ability to understand the impact and consequences of [their] behavior. Lastly, [their] disability did impair [their] ability to control the behavior."
7. On February 15, 2024, the Director of Special Services sent an email to the Team, "We will also expedite the evaluation beginning at After Hours. [School Psychologist] please begin the evaluation as soon as next week. Parent concerns include twice exceptionality and potential OHI or Autism. When I say temporarily, it is for the change in placement to After Hours pending the appeals process."
8. On February 15, 2024, the Special Education Teacher sent an email to the Parent, "Here is a copy of the amendment paperwork for the temporary placement that you had discussed and agreed to … Transportation will be provided to the after-hours (sic) placement for the duration [they attend]."
9. On February 15, 2024, for the first Manifestation Determination Review the team reviewed the information from the MDR. The Team also reviewed the implementation of the IEP, and it was noted, "[The Student] does not have a BIP. However, a request by the school-based team for a Functional Behavior Assessment was submitted to the [P]arents in December of 2023. The [P]rior [W]ritten [N]otice for the evaluation was not signed by the [P]arents until 2/12/24."
10. On February 15, 2024, the first MDR indicated in the Social Studies class, "most days [the Student] is off task, not doing assignment[s], doing something else. Getting things done often after school turning in assignment[s] completed at home. Impmortant (sic) to note. Over a year younger than classmates … Someone who is not ready for 8th grade. Has academic gaps that are cocmingout (sic) in the form of behavior."

11. On February 15, 2024, the Band Teacher stated, "Most of redirections are because [the Student] si (sic) when not supposed to be distracting other people. [The Student] did not turn in any assignments. According to the Special Education Teacher, the Student "is almost never on task. Spends most of [their] time attempting to entertain the class rather than do the work. Disruptive in class." According to the Science Teacher, "Hard time to get [them] to do any of the work. Occasionally [they] will. A lot of times it is work avoidance [they are] doing."
12. On February 15, 2024, the first MDR indicated in the area of Math, the Math Teacher stated, "I do notice some of the impulsivity with ADHD but it comes out in the form of destruction or building of something … Interactions with others, crawling on floor, moving around alot. [The Teacher does] not see that as ADHD [but] as [a] choice so it is very difficult to ga[u]ge what is ADHD and what is [the Student's] will."
13. During the first MDR on February 15, 2024, the Parent shared, "same way at home. Teacher reports indicate ADHD symptoms. Inconsistent, withdrawn, concentration, poor study habits, poor use of time … disrespectful. Emotional difficulty. [The Parent] mentioned Autism and ODD." The LEA Representative stated, "There are a lot of behaviors that they overlook and redirect. They are not sending [the Student] to the office for typical ADHD behaviors. Everything that [they're] appearing in the class that is not distraction to the class [they] will stay. [The Student] is one of many with ADHD in the classroom, these are the big things that are distracting others from learning." The Team decided the conduct in question was not caused by or had a direct and substantial relationship to the Student's disability, and the conduct was not a result of the School's failure to implement the IEP. The Team determined the conduct was not a manifestation of the disability.
14. On February 15, 2024, the Parent signed the MDR signature page.
15. On February 20, 2024, the Director of Special Services emailed the Parent, "I am happy to meet to explain to you the eligibility criteria in the state of Kansas and the process for evaluation. We are tasked to consider outside evaluations, yes. Again, it does not unilaterally provide for prong one or two. We are happy to consider your psych's evaluation report once received."
16. On February 27, 2024, a MDR indicated:
    a. Disruptive behaviors that occurred from 9/7/23 through 2/9/24 included:
        i. "Didn't have music out, running index cards on percussion instruments," 2 points;
        ii. "Off task and distracted other students," 1 point;
        iii. "Disruption of class, refusal to follow basic directions, eating in class," no points noted;
        iv. "Disruption in ISS room, broken Chromebook, arguing with staff, disrupting the function of the front office," 10 points; and

v. "Some yellow cards and things, teachers tried to give [the Student] a chance to finish the hour in the office and be successful. Didn't count for points but of note."

b. Insubordination occurred from 10/16/23 through 2/8/24 and included:
   i. "Lied about putting test in Mastery Connect. An agreement was made to come back during the 8th hour to complete it … never showed up." 1 point;
   ii. "Again, using a non-mallet object on a percussion instrument." 1 point; and
   iii. "Refused to follow directions, defiance, disrespect during group pictures." 2 points.

c. Other behaviors that occurred from 10/25/23 through 2/9/24 and included:
   i. "Disrespect of Staff … Yelling at Staff, arguing, punching desk," 5 points;
   ii. "Lying, Blade brought to school, lied about it to [S]taff," 15 points;
   iii. "Skipping Class … snuck out of PE without permission," 1 point;
   iv. "Vandalism: opened and disassembled a soap dispenser and pried open a metal door bending it so it wouldn't close"; and
   v. "Disrespect of [S]taff: iPad not putting it away when asked. Messing with chains on the walking track, disobeying the request of the teacher." 5 points.

In December of 2023, the School District team "requested consent for reevaluation to conduct a Functional Behavior Assessment Parents granted consent for that evaluation, 2/14/2024."

17. According to the MDR dated February 27, 2024, teacher observation of the Student included:
    a. General Education Teacher 1: "[The Teacher] requested to add that [the Student's] behavior seems less like a manifestation of [their] exceptionality and more of an exercise of [their] free will."
    b. General Education Teacher 2: "Reported that the behaviors [they see] appear to be attention seeking, are disruptive, and cause a disturbance in class. Noted that [they give] frequent reminders of expectations[They] also offer accommodations frequently such as extra time, speech to text, a quiet and separate location, but that [the Student] sometimes refuses accommodations."
    c. General Education Teacher 3: "[The Student] is often fidgeting or distracted. [They] accommodate this by giving [the Student] the opportunity to stand, do tests online, and work in a different location."
    d. The Special Education Teacher: "IEP says [the Student] should be given higher order thinking projects, but [the Student] cannot or will not work on them at all. [They] stated that [the Student's Parent] says the reason [they don't] want to do

[their] work is that [they are] bored, but [the Student] is refusing work no matter the level of work. [The Student] was given choices in topic and outcome of [their] project and still didn't do the work."

e. General Education Teacher 4: "Added that [the Student] misses class due to behaviors that happen outside of [their] classroom, such as when [they are] pulled from class to conference with administrators about [their] behavior. When [the Teacher] redirects [the Student] for minor behaviors, [the Student] usually responds."

18. According to an FBA dated February 27, 2024, relevant information included, "[The Parent] confirmed that they have an outside diagnosis of ADHD and ODD and that [they have] 300 pages of emails which would show that the [School District] was notified of that … [The Parent] stated that [they] did not really look over the PWN when the 504 and IEP were combined."
19. On February 27, 2024, the Assistant Director of Special Services emailed the Parent, "I have completed a review of the Manifestation Determination Review (MDR) for [the Student]. This included interviewing all parties, reviewing the original MDR, the current IEP and supporting documents. Based on that information, I have determined that the findings of the Manifestation Determination Review of 02/15/2024 stand as written."

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.530(e) and K.S.A. 72-3433, within 10 school days of the date on which the decision to take disciplinary action is made, a review shall be conducted to determine the relationship between the child's disability and the conduct that is subject to disciplinary action. The review shall be conducted by the agency, the parent, and relevant members of the child's IEP team as determined by the parent and the agency. In carrying out the review, that group shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parent.

Based upon its review of all the relevant information, the group shall determine if the conduct in question was caused by or had a direct and substantial relationship to the child's disability or was the direct result of the agency's failure to implement the child's IEP. If it is determined that the conduct of the student is a manifestation of the child's disability, the IEP team shall conduct a functional behavioral assessment and implement a behavioral intervention plan for such child, provided that the agency has not conducted such an assessment prior to the behavior that resulted in a change in placement. If the child already had a behavioral intervention plan, review and modify it, as necessary, to address the behavior; and return the child to the placement from which the child was removed, unless the parent and the agency agree to a change of placement as part of the modification of the behavioral intervention plan.

The Student was eligible for a 504 Plan due to ADHD and an IEP due to giftedness. When the Student's behavior began to escalate, the District initiated a request to conduct an FBA to determine "appropriate positive behavioral supports." This evaluation was not conducted due

to delays in obtaining written consent. In February 2024, the District was considering expulsion for the Student primarily due to behaviors that included theft, lying, vandalism, and having unsafe objects at School. At the expulsion hearing, the Parent divulged that they had information related to the Student's ODD and Autism diagnoses and disagreed that the Student's IEP should not have included discipline protections for students with disabilities.

As a Student with a 504 plan and an IEP for giftedness only, the Student was not entitled to an MDR. Based on the District's previous attempts to conduct an FBA and the Parent's assertion that the Student had additional disabilities, the District conducted an MDR and concluded that the behaviors that resulted in the recommendation of expulsion were not due to the Student's disabilities that were in the Student's record at the time the decision was made. The Parent appealed this decision, and the District conducted a second MDR with the same outcome. The District also initiated an evaluation of the Student once the District was made aware that the Student may have additional disabilities.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the District failed to meet its obligations to conduct an MDR for the Student.

Issue Four

USD #260 expelled the student from the school based on disability-related behavior in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA).

Positions of the Parties

The Parent alleged that the District did not recognize ODD as a disability and expelled the Student even after it was determined that the Student's behaviors were tied to ADHD/ODD.

The District responded,"a notice of a potential disability, we held a manifestation for [the Student] on February 15, 2024. [The Student] was expelled from [S]chool based on a team decision at a manifestation determination meeting where the team all agreed there was a lack of evidence to support a direct and substantial relationship between the behaviors and ADHD."

According to the Director of Special Services, "The assertion that the [D]istrict had knowledge of ODD or Autism is unsubstantiated. I have asked each person on the team and none of them recall a time when those diagnoses were brought up by [P]arents until February 2024. In such, the [P]arents also never requested an evaluation for a secondary exceptionality, rather, they assumed a secondary exceptionality would be added when the 504 was dismissed. We attempted to garner permission to evaluate the [S]tudent in December and again in February." According to the Director of Special Services, "the [Parent] signed consent for an evaluation in February following the manifestation determination, and then failed to produce the [S]tudent for the evaluation."

The Director of Special Services reported that a manifestation determination team concluded the Student's behaviors did not have a direct, substantial relationship to their disability. These behaviors included vandalism, destruction of school property (intentionally breaking a Chromebook), disrespecting staff, being disruptive, insubordination, skipping class, creating replica weapons, lying, bringing a blade to school and concealing it, and theft. The team acknowledged that impulsivity might have contributed to some of the described behaviors. However, they determined that others, such as stealing a blade, showing it off, and hiding it, as well as the continued destruction of their Chromebook, demonstrated planning and wilful intent.

Findings of Fact

The following findings are based on a review of documentation and interviews with the Parents and staff in the District.

1. The Assistant Principal recalled a significant incident occurred in January 2024, when the Student brought a leather-working tool with a blade to school and lied about its whereabouts. This incident resulted in 15 discipline points. Another major incident occurred in early February 2024, where the Student skipped class and was involved in vandalism. The vandalism resulted in 10 discipline points. Several smaller incidents in February 2024 resulted in the Student acquiring additional discipline points. The final incident occurred on February 9, 2024, when the Student was disruptive and destructive in the intervention room and received 10 discipline points. This act pushed the Student over the 60-point threshold.
2. The Director of Special Services indicated, "The behaviors brought forth for manifestation were determined by the team to not have a direct and substantial relationship to the disability. Those behaviors include:"
    a. "Vandalism";
    b. "[D]estruction of property (purposefully) broke a school Chromebook)";
    c. "[D]isrespect of staff";
    d. "[D]isruptive behaviors";
    e. "[I]nsubordination";
    f. "[S]kipping class";
    g. "[M]aking replicas of weapons/rubber band guns";
    h. "[L]ying";
    i. "[B]ringing a blade to [S]chool and hiding it in the bathroom ceiling following showing it to peers"; and
    j. "[T]heft and insubordination."
3. The Director of Special Services reported, "Having only known the [S]tudent to have a diagnosis of ADHD at the time of MOST of the behaviors during the 2023-2024 school year, providing the agreed upon accommodations in the IEP, plus additional general

education interventions to the [S]tudent, and separating the ADHD behaviors from the willful violations of the [S]chool's code of conduct, the team determined that the behaviors in question were NOT a manifestation of [their] disability, including the disabilities we were just noticed of by the [P]arents following disciplinary action. Therefore disciplinary removal may occur."

4. On February 7, 2024, the Principal emailed the Parent, "[The Student] and I met today and discussed strategies to not earn more discipline points and a goal for [them] to also be able to earn a point back each week. We then made a points contract from the discussion."
5. On February 12, 2024, the Director of Special Services sent an email to the Parent and the IEP Team that indicated, "If the hearing committee determines that [the Student] is, in fact expelled, if an evaluation is agreed to, we will offer [the Student] our After Hours Program."
6. On February 12, 2024, a PWN to conduct a reevaluation was requested. Evaluations requested were for social/emotional status/behavior, general intelligence, academic performance, communicative status, and transition skills. The Parent "believes the [S]tudent is twice exceptional. Currently, the [S]tudent's IEP is for the exceptionality of gifted only. The team is offering an evaluation to determine if [the Student] meets the criteria for special education and specially designed instruction under any of the other eligibility categories." The Parent signed consent on February 13, 2024.
7. On February 12, 2024, the Director of Special Services emailed the Parent in response to a Parent's email, "The addition of accommodations from a 504 to an IEP does not constitute a change in exceptionality. Nor does it imply [a] special education determination. In this case, your [S]tudent remains a [S]tudent with a gifted IEP that does not have protections for disciplinary measures under state statute. However, because you have brought forth your concerns with another potential exceptionality, I will offer and encourage a comprehensive evaluation to be conducted. If the hearing committee determines that [the Student is], in fact, expelled, if an evaluation is agreed to, we will offer [the Student] our After Hours program."
8. On February 13, 2024, the HR Generalist/Classified, Executive Admin. Asst. to the Supt. of HR emailed Parent 2, "[Parent 2], Attached please find the hearing results for [the Student] from [the Asst. Superintendent of Human Resources]."
9. On February 15, 2024, the Director of Special Services emailed the Parent, "assigned [the Assistant Director of Special Education] to appeal process … In the interim, we stand ready, willing, and able to provide [the Student] services via After Hours. We will provide transportation to and from the program, which is 4-6 M-Th at the [Learning Center]. This is an online program with special education teachers there to facilitate. We can start this as early as Tuesday afternoon. After reviewing [their] decision, if you are in disagreement with the [D]istrict's position, you may appeal to the [District Board of Education]."
10. On February 15, 2024, a PWN indicated a "Material Change in Services" and a "Substantial Change in Placement." "Beginning 2/15/2024 After Hours services added

temporarily as the appeals process to the manifestation hearing take place … Direct Gifted services for this school year a (sic) ceased on 2/15/2024 and will resume at the end of [their] current long[-]term suspension date which is the first day of the 2024-2025 school year. This could change depending on the results of the appeal process." The request for consent was not signed by the Parents at that time.

11. On February 29, 2024, the Parents emailed the Assistant Director of Special Services and stated, "[The Student] is currently staying with [their] [Other Parent] in Washington State since they are acknowledging [their] OHI since it was in previous records. You can stop the transportation as well as remove [them] from after school. We still need to finish [their] IEP, which I have not heard anything back from [their] IEP manager after telling [them] I didn't agree with how [they] wrote out the PWN."
12. During interviews with the Complaint Investigator, the Parent shared the Student's behavior issues were relatively recent. Prior to that, the main concern was the Student's failure to complete assignments. It wasn't until recently that the Student started experiencing difficulties with teachers and engaging in outbursts. In eighth grade, the Student's behavior deteriorated after returning from visitations with the Parent 2 despite changes in medication and counseling. The Parent described the disability-related behaviors that were a manifestation of the Student's disabilities to include:
    a. Spontaneous decisions with no clear purpose or reason;
    b. Lack of memory of actions;
    c. Difficulty with authority figures;
    d. Standoffish behavior when tested in front of others; and
    e. Attention-seeking behavior, both positive and negative.
13. The Parent believed the reasons for the expulsion were the "collection of discipline points as a whole."
14. During an interview with the Complaint Investigator, the Special Education Director reported the Student was expelled from school because the Student engaged in several inappropriate and deliberate behaviors. The Student brought a weapon to school, stole from teachers, hid the weapon in the ceiling of the boy's bathroom, vandalized the bathroom, and made poor decisions. These actions resulted in the Student reaching 60 points on the District's discipline point system, triggering an expulsion hearing.
15. The Social Studies Teacher reported during an interview with the Complaint investigator that the Student was expelled because of getting into a teacher's belongings, hiding a knife in a bathroom, being tardy, being off-task, being disrespectful to teachers, and having large outbursts in the office.
16. According to the Gifted Special Education Case Manager, the Student was expelled due to a series of behaviors that resulted in the Student accumulating discipline points that met the expulsion threshold. The final actions that contributed to the Student's expulsion included skipping classes and vandalizing a bathroom. Additional behaviors, such as stealing from teachers, were also noted. Overall, the Gifted Special Education

Case Manager acknowledged that the Student's ADHD contributed to some of their disruptive behaviors but emphasized that other behaviors, such as vandalizing a bathroom and stealing, were not related to ADHD. The Gifted Special Education Case Manager mentioned that not all teachers assigned points for the Student's classroom disruptions because they were due to ADHD and that the Student's expulsion was due to a series of non-ADHD behaviors that resulted in accumulating discipline points and reaching the expulsion threshold.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.534 and K.S.A. 72-3436, a child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated any rule or code of conduct of the school district may assert any of the protections provided for in this act if the school district had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. 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, 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. Additionally, if the parent of the child previously has requested an evaluation of the child, or the teacher of the child, or other personnel of the school district previously 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.

A school district shall not be deemed to have knowledge that a child is a child with a disability if the parent of the child has not allowed an evaluation of the child or has refused services under this law, or the child has been evaluated but it was determined that the child was not a child with a disability. If a school district does not have knowledge that a child is a child with a disability prior to taking disciplinary action against the child, the child may be subjected to the same disciplinary action as is applied to children without disabilities who engage in comparable behaviors. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary action described by this act, an evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district and information provided by the parents, the school district shall provide special education and related services in accordance with the provisions of this act, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities, which may be long-term suspension or expulsion from school.

The impact of the Student's ADHD included being easily distracted, completing and turning work in on time, exhibiting attention-seeking behaviors, disrupting class activities, and being

disrespectful. The primary reasons for the expulsion recommendation included vandalism, lying, theft, and bringing a "blade" to school. The statements from District staff consistently indicated that the "ADHD -] like" behaviors were frequently addressed in the classroom and the Student did not receive discipline or behavior points for those particular behaviors. The more significant behaviors were not consistent with the Student's disability-related behaviors of ADHD. The District determined that the behaviors under examination for expulsion were not related to the disabilities that the District was aware of at the time the behaviors occurred, which resulted in a recommendation for expulsion.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the District expelled the Student from school behaviors that were a manifestation of the Student's IDEA [-] eligible disability.

Investigator

Tania Tong, Licensed 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).

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, NEWTON PUBLIC SCHOOLS
ON MARCH 20, 2024

DATE OF REPORT APRIL 26, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #373 Newton Public Schools on behalf of ------ by his mother, ------ and stepfather, ------. In the remainder of the report, ------ will be referred to as "the student." ------ is the student's stepfather. In the remainder of the report ------ will be referred to as "the complainant" or as "the stepfather." ------ will be referred to as "the parent" or "the mother," and together ------ and ------ ------ will be referred to as "the parents."

The complaint is against USD #373, Newton Public Schools and is the responsible party of this complaint. In the remainder of the report, USD #373 will be referred to as "the district". Special education services for Newton Public Schools are provided by Harvey County Special Education cooperative. In the remainder of the report this special education coop will be referred to as "the coop."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on March 20th and the 30-day timeline ends on April 19th, 2024. The complaint investigators requested and received an extension, so the revised timeline is April 26, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigators Nikki Crawford and Donna Wickham reviewed all evidence and documentation, which was provided by both the district and the parents. Additionally, the complaint investigators contacted the district and family by phone and email several times to clarify evidence. The stepfather was interviewed on March 25th, 2024 and the mother was interviewed on April 15th, 2024. Tenae Alfaro, building principal, Deanna Folkers, IEP Case Manager and Reagan Seidl, Director of the coop were interviewed on April 12, 2024. The principal and coop director were interviewed again on April 17, 2024. The following documentation and information were used in consideration of the issues:

1. Student's Progress Report for 2022-2023 school year dated April 4, 2023.
2. Data card April 5, 2023.
3. District Emergency Safety Interventions policy and procedures for complaints, revised July 24, 2023.

4. Documentation of staff training topics and training outline related to student's IEP and behavior intervention plan for the 2023-2024 school year, dated August 15, 2023.
5. Student behavior summary graphs for Non Disruption, Non Defiance and Non Aggression from August 17, 2023 to March 20, 2024.
6. Student behavior reports from August 18, 2023-March 25th, 2024.
7. Email exchange among special education teacher, aide, speech and language therapist, social worker, school psychologist, principal and teacher dated between September 15, 2023 at 10:14 a.m. and September 17, 2024 at 9:09 a.m.
8. Notice of Meeting, dated September 17, 2023, signed waive of notice by parent on September 18, 2023.
9. Functional Behavioral Assessment dated September 20, 2023.
10. Individualized Education Program, dated September 28, 2023.
11. Prior Written Notice, Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent, dated September 28, 2023, parent signed consent September 28, 2023
12. Staffing notes dated January 22, 2024.
13. Email exchange between case manager and mother dated February 13, 2024 between 3:29 p.m. and 3:49 p.m.
14. Email from case manager to teacher, principal, and social worker, dated February 14, 2024 at 9:09 a.m.
15. Email from social worker to case manager dated February 14, 2024 at 12:44 p.m.
16. Data Cards from January 17-31, 2024 and February 1-21, 2024.
17. Behavior star data sheets February 22, 2024 and February 23, 2024.
18. ABC Recording Form dated February 26, 2024.
19. Email between the school psychologist and mother, dated March 4, 2024 at 1:22 p.m. and 1:41 p.m.
20. Email exchange between school personnel, dated March 18, 2024 at 1:12 p.m. and 3:56 p.m. and March 19th at 8:56 a.m.
21. Student schedule with staff names dated March 18, 2024.
22. Voicemail recording from principal left for mother, 50 seconds dated March 19, 2024.
23. Seclusion details/Incident Report, dated March 18, 2024.
24. Email exchange between stepfather and principal dated March 20, 2024 between 5:18 p.m. and 6:14 p.m.
25. Email from principal to stepfather, dated March 20, 2024 at 11:15 p.m.
26. Email from principal to mother dated March 21, 2024 at 3:11 p.m.
27. Interview with coop director dated March 25, 2024.
28. Interview with stepfather dated March 25, 2024.
29. Progress Report for 2023-2024 school year, Quarters 1, 2, and 3, dated April 4, 2024.

30. Email exchange between stepfather and superintendent dated April 4, 2024 between 12:52 p.m. and 6:07 p.m.
31. District's Response to Allegations, dated April 5, 2024.
32. Email exchange between stepfather and superintendent dated April 8, 2024 between 2:47 p.m. and 3:21 p.m.
33. Email between complaint investigator and coop director dated April 12, 2024 between 8:37 a.m. and 9:04 a.m.
34. Interview with mother on April 15, 2024.
35. Email from principal to complaint investigator dated April 15, 2024 at 5:53 p.m.
36. Email between complaint investigator and principal dated April 16, 2024 between 2:56 p.m. and 6:18 p.m.
37. Clarification call with principal and coop director on April 17, 2024.
38. Spreadsheet of school staff trained in Crisis Prevention Institute (CPI), undated.

Background Information

The student is an eight year old second grader at a district elementary school where he is eligible for special education and related services under the category of developmental disability. He has medical and psychological diagnosis for Autism Spectrum Disorder Level 2, Attention Deficit Hyperactivity Disorder (ADHD), and Disruptive Mood Dysregulation Disorder (DMDD).

A TASN Autism & Tertiary Behavior Support Consultant is regularly accessed to support the student beyond the services provided by the district and coop. The TASN consultant has supported the student since kindergarten including observations and input on modifications and accommodations included in the September 28, 2023 IEP to address the student's behavior. A consultant from Greenbush also provided support in the past, but not this current IEP year.

According to the student's most recent IEP dated September 28, 2023 he shows a need for specially designed instruction in the areas of social emotional skills, reading, communication, transportation, and paraprofessional support. He also receives accommodations and modifications for the noted areas of need.

He receives 30 minutes of special education service in a resource room five days every week to work on reading, 20 minutes five days a week for social skills, 15 minutes twice a week for speech/language instruction, and 20 minutes one day per week with the social worker to focus on social emotional skills. He utilizes special education transportation every day and 355 minutes of paraprofessional support five days a week in the regular education classroom.

According to an email from the coop director, the student is eligible for his three year evaluation on May 19, 2024. The school psychologist reported to the coop director that the student's mother did not want to complete a reevaluation until the student's tenth birthday.

The school stated the family moved into the district and began the 2018 school year in the district. The student received Part C services until October 2018 when he transitioned to Part B services.

Issues Investigated

1. ISSUE ONE: The USD #373, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP by failing to offer emergency snacks on March 18, 2024 and using a location for seclusion events or incidents (SAD, office, staff) as behavior intervention during the 2023-2024 school year.
2. ISSUE TWO: The USD #373, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the student's parents with detailed documentation of the student's behavioral incidents during the 2023-2024 school year.
3. ISSUE THREE: The USD #373, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to train staff on appropriate handling of behavioral and/or seclusion events during the 2023-2024 school year.

Issue One

The USD #373, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP by failing to offer emergency snacks on March 18, 2024 and using a location for seclusion events or incidents (SAD, office, staff) as behavior intervention during the 2023-2024 school year.

Applicable Law

Federal regulations 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. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

This issue has two components that will be investigated separately, 1) the use of emergency snacks in the event of problem behavior; and 2) using seclusion events as behavior intervention.

The parents described the March 18, 2024 situation in which they were called by phone with:

an urgent need to calm [student], who had been isolated from his peers and placed in a room alone, a situation confirmed by his audible distress hear in the background of the call. Upon [mother's] arrival at the school at around 9:55 AM, she encountered a concerning scene,

[student] had been moved to an alternate location from his initial placement, and upon tracking his location, [mother] discovered [student] being held in a windowless cement room, overseen by [teacher], [para], and [para]. The justification for his confinement was never provided by Staff members and [mother] had no information in reference to any events leading up to this moment. The teachers (sic) were asking [mother] to help figure out what was wrong, but were unable to provide ANY information as to what lead to this point (sic). It was swiftly ascertained by ------ that ------'s distress stemmed from hunger, a condition explicitly accommodated within his IEP through the provision of emergency snacks. This necessary intervention was neglected by the staff, exacerbating the situation unnecessarily. Upon [mother's] intervention, a snack was finally retrieved and provided to [student], leading to an immediate de-escalation of his distress.

Additionally, the parents alleged that the student is regularly placed in seclusion for disruptive behavior in addition to the event on March 18, 2024. They state that the district reacts to his behavior rather than addressing his behaviors proactively.

The district responded that snacks are not mentioned in the student's behavior intervention plan (BIP) or IEP and that they follow the BIP as it is written. They further responded that the seclusion is not a regular part of the student's plan and would only use seclusion in a situation that is consistent with state guidelines for emergency seclusion, but not as a part of his special education program.

Use of emergency snacks.

The stepfather stated in an interview on March 25, 2024 that offering the student food is a good strategy to help the student eliminate hunger as a trigger and to move on quickly to identify the root problem for his behavior. The stepfather stated he has communicated this as an effective strategy to the school staff.

The mother stated in her interview on April 15, 2024 that providing emergency snacks is important as a behavioral intervention, but also one of his medications has a side effect of increasing appetite. She stated that she has provided snacks for her son to the school. Finally, she stated that she has shared this information with the district since the student was in kindergarten.

During the district interview on April 12, 2024 the special education teacher reported that the student can ask for snacks at any time which are provided by the school and the parents, but snacks are not a formal part of his behavioral intervention plan.

The September 28, 2023 student's IEP nor BIP include snacks as an accommodation or intervention.

Use of seclusion.

The September 28, 2023 IEP and BIP, which includes a Crisis Management Plan do not mention use of seclusion.

The Crisis Management Plan states, "In the event that [student] is unable to gain control of his behavior and/or work appropriately in the office within a reasonable amount of time, parents may be consulted and may be used as an intervention. If behaviors cannot be managed by his Behavior Intervention Plan and he becomes a danger to himself or others, school administration will be notified and administration will make decisions regarding how to proceed. Building and district disciplinary rules may be applied and the IEP team will be notified of any action of suspension/ expulsion and will review the Behavior Intervention Plan to determine whether modifications and/or changes are needed."

The mother clarified the role of the parents to consult during the April 15, 2024 interview by stating that when the student is upset or dysregulated the district may call the mother for the student to talk with to learn why he is upset. She explained that sometimes he will tell her and work through the problem with her when he is too upset to talk with school staff.

The BIP, dated September 28, 2023 includes the use of a sensory room as a choice during breaks. An intervention in the BIP states, "2. If unsafe behavior continues, [student] will be sent to the office." The BIP does not describe whether "office" is the room located near the cafeteria where the student may go in the morning when the cafeteria is too overstimulating and is also referred to as the "get ready" room or the school office where the principal and administrative staff are located.

The mother reported in the April 15, 2024 interview that she is unclear about the protocol of where the student goes when staff determine he is not able to stay in the general education classroom due to behavioral issues.

An email exchange between the parents and principal on March 20, 2024 stated that "it was my understanding that seclusion (where a child is in a room by his/herself either with the door closed and held by an adult or by being restricted from exiting the open door) was not needed on Monday because he was able to keep himself and staff safe."

An email exchange between the superintendent and parents dated April 8, 2024 discussed seclusion events addressed by Kansas state regulations that are not addressed by IDEA and not investigated as part of this complaint.

The district explained during an interview on April 12, 2024 that when the student's behavior escalated on March 18, 2024, he was not able to calm with his usual strategies. He was taken to the safe room to calm but due to some safety concerns with the student pulling on a light switch box, the decision was made for him to move to the room off of the cafeteria that he often goes in the morning as an alternate to the cafeteria. This room was chosen because an alternate room where he would go was occupied with another student and the staff wanted to provide him an area where he would not be seen or heard by other students. The district stated that food had previously been offered to the student, but he had declined. When

passing through the cafeteria to the room he smelled the food from breakfast and lunch preparations and stated he was hungry.

The district stated during an interview on April 16, 2024 that when the student exhibits noncompliance he goes to an area (family room) outside of the classroom, the quiet room (also used for typical peers near the office/library) that is noted in his September 28, 2023 BIP, the get ready room (one located beside the cafeteria) or the safe room.

The district stated during the April 12, 2024 interview that while the school discussed the get-ready room with the family sometime during kindergarten they may not have continued to talk about its purpose and availability for the student as an option to the cafeteria in the morning until taken to morning classes.

Conclusion

Based on document review it is not found that the IEP nor BIP included a provision to offer emergency snacks to the student. It is noted that the family has reported that emergency snacks is an effective intervention for the student to rule out that as the basis for behavior so the IEP team may want to consider this for the student. Based on the foregoing however, it is not substantiated that the district failed to follow the student's IEP by failing to offer emergency snacks on March 18, 2024.

Based on interviews with the stepfather on March 25, 2024, the mother on April 15, 2024 and the principal and coop director on April 17, 2024, it is clear there is not a shared understanding between the family and school of how seclusion is defined. The district stated in an interview on April 17, 2024 that they are meeting with the family to get that shared understanding. It is found that the student is provided many alternate rooms to deescalate, gain sensory regulation and as a choice. Based on the foregoing ***it is not substantiated*** that the district is using a location for seclusion events or incidents (SAD, office, staff) as behavior intervention during the 2023-2024 school year. It is recommended that the family and school discuss seclusion and clarify the role of using separate settings in the IEP, behavior intervention plan and crisis management section of the IEP.

Issue Two

The USD #373, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the student's parents with detailed documentation of the student's behavioral incidents during the 2023-2024 school year.

Applicable Law

Two regulations are appropriate to investigate this issue relative to IDEA.

First, state regulations at K.A.R. §91-40-25 (a)(1)(2) states each agency shall allow the parents of an exceptional child an opportunity to inspect and review all education records and participate in any meeting concerning their child with respect to the following: (1) The identification, evaluation, or education placement of the child; and (2) the provision of FAPE to the child.

Second, federal regulations at 34 C.F.R. §300.320(a)(3) and Kansas statutes at K.S.A. §72-3429(c)(3) state that the individualized education program must include a statement of 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.

Analysis: Findings of Fact

The parent alleged that they made requests for documentation of the March 18, 2024 behavior incident and previous seclusions. They stated that the principal denied the March 18, 2024 incident was seclusion, directly contradicting the experiences and observations made by the mother during the incident. They additionally state they are unsure how the student's behavior intervention plan and behavioral goals are improving the student's behavior – that the behavior check sheets were too much information and the star data sheets do not provide enough information to be consistent with the student at home.

The district reports that daily documentation of the student's behaviors is shared with the parents and that it appears the parents review the data and work with the student to improve his behavior at school. The principal offered that when the student receives an office referral there is documentation sent home with the daily behavior data sheet and that she also often communicates by phone and text when the student has had a particularly difficult day or when teachers notice a new behavior. A quarterly progress report is mailed to the parents and includes his social/emotional goals with a summary of current data.

The findings of Issue one are incorporated herein by reference.

The IEP dated September 28, 2023 documents that the IEP goals will be monitored and reported quarterly. The student's progress reports show that the goal progress is reported quarterly consistent with the district's quarters.

The mother reported in the April 17, 2023 interview that while she receives the quarterly progress reports she does not receive quarterly behavior data summaries that would help her understand the student's behavior patterns, nor often adequate information when the student has had behavioral outbursts at school. She requested a change in the format of daily data cards earlier this year but was not involved in the revision nor knew when they were to be implemented. She states the new data cards, star sheets, do not offer helpful information such as the behavior triggers or where the behaviors occurred.

In a phone call with the principal and coop director on April 17, 2024 the principal offered to reach out to the mother to get clarity on what additional information she would like included on the current daily data sheet. The principal also clarified that quarterly progress reports are mailed to the parents, and she will ensure that bar charts of the three identified social emotional behaviors will also be included in the future.

An email shows that the parents requested a detailing of the March 18, 2024 behavior incident, and that the principal and coop direct both responded addressing the incident. An email sent by the principal on March 21, 2024 showed that a description of the event of March 18, 2024 was sent to the parent.

Conclusion

Based on the foregoing, *it is not substantiated* that the district failed to provide the student's parents with detailed documentation of the student's behavioral incidents during the 2023-2024 school year.

Issue Three

The USD #373, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to train staff on appropriate handling of behavioral and/or seclusion events during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.119(b) state that each SEA shall carry out activities to ensure that teachers and administrators in all public agencies are provided with technical assistance and training necessary to assist them in this effort.

Further, federal regulations at 34 C.F.R. §300.320(a)(4) and Kansas statutes at K.S.A. §72-3429 state that an individualized education program must include supports for school personnel that will be provided for the child.

Analysis: Findings of Fact

The parents alleged that the staff working with their student were not adequately prepared to respond to behavioral concerns of their child without jeopardizing his safety and resorting to overly restrictive practices, specifically seclusion. The mother expressed concern in the April

15, 2024 interview that teachers are not trained enough to support the student which results in reactive interventions rather than proactive support. She asserts that staff are not specifically trained in support of students with autism, ADHD, or oppositional defiant behaviors.

The district responded that all staff at the school have completed annual Emergency Seclusion Intervention training at the beginning of the school year and staff hired throughout the school year complete this training as well to understand when seclusion and restraint is used as an emergency procedure. Additionally, nine staff at the school are Crisis Prevention Intervention (CPI) trained. Finally, the student behavior intervention plan includes a number of steps in recognizing problem behavior, and how to address the behavior to ensure safety and student dignity. The district notes that they are working separately with the family about concerns related to the general education emergency safety interventions (ESI) requirements that do not fall under IDEA and are not a part of this investigation.

The findings of Issues one and two are incorporated herein by reference.

The September 28, 2023 IEP included, "Meeting with TASN and Autism teams as needed, and weekly meetings with the team to discuss [student's] progress, modifications, and accommodations in the Supports for School Personnel Section. The IEP did not address seclusion or ESI.

The September 28, 2023 IEP Supports for School Personnel section includes "Meeting with TASN and Autism teams as needed and weekly meetings with the team to discuss [student's] progress, modifications, and accommodations".

The district reported in their April 5, 2024 response that the team meets regularly with the TASN Autism Specialist to discuss tricks and techniques that support the student weekly or bi-weekly as the student's behavior warrants. Any new strategies generated at these meetings are shared with the staff who work with the student.

The district reported during the interview on April 12, 2024 and provided documentation of training received by paraprofessionals for the 2023-2024 school year which included reviews of IEPs, behavior plans, behavior charts, CPI, and conscious discipline on August 15, 2023. Staff also received training about the behaviors of students with autism on September 19, 2023; conscious discipline on September 28, 2023; and behavior support review on November 30, 2023. The special education teacher reported that she meets with the paraprofessionals regularly to discuss related concerns.

Documentation provided by the district showed the staff in the school who are current with CPI training. The district reported in an April 15, 2024 email that they replaced a non-CPI trained paraprofessional who had been working with the student due to the stepfather's request that staff who support the student "are properly trained in line with state standards and his specific educational and emotional needs" which the district interpreted as CPI training.

Conclusion

This investigation only addressed staff training regarding the student's IEP and BIP and did not investigate the family's primary concern related to the event on March 18, 2024. As seclusion, nor ESI were included as part of the student's IEP or BIP it is outside the scope of the complaint investigators to investigate. It is found that the IEP did include personnel training and documentation showed it was conducted. Based on these findings, ***it is not substantiated*** that USD #373 failed to train staff on appropriate handling of behavioral and/or seclusion events during the 2023-2024 school year.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was not found, based on review of documentation and interviews. Corrective action is not required.
2. ISSUE TWO: A violation of K.A.R. §91-40-25(a)(1)(2) and K.A.R. §91-42-2 was not found, based on review of documentation and interview. Corrective action is not required.
3. ISSUE THREE: A violation of state and federal regulations at 34 C.F.R. §300.119(b), 34 C.F.R. §300.320(a)(4) and K.S.A. §72-3429 was not found based on review of documentation and interview. Corrective action is not required.

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).

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 #255
ON MARCH 29, 2024

DATE OF REPORT APRIL 29, 2024

This report is in response to a complaint filed with our office by -------, advocate, on behalf of ---------. For the remainder of this report, ------- will be referred to as "the student." ------- will be referred to as "the complainant" or "the advocate." ------- will be referred to as "the student's mother" or "the parent." USD #255 contracts with the South Central Kansas Special Education Cooperative (SCKSEC) for the provision of special education and related services to students enrolled in the district. In the remainder of this report, "the district" will refer to both of these agencies.

Investigation of Complaint

The investigator spoke with the complainant on April 5, 2024. On April 8, 2024, the investigator spoke by telephone with Richard Spencer, Assistant Director of Special Education for SCKSEC. On April 11, 2024, the investigator spoke by telephone with the student's mother and the complainant in a conference call. The investigator spoke with Kaynette Scheck, building principal, and Lindsay Rhodes, special education teacher, in a conference call on April 16, 2024. The investigator spoke by telephone with Dr. Meagan Etheridge, the Director of Special Education for the SCKSEC on April 19, 2024.

On April 9, 2024, the student's mother gave written consent for the investigator to share personally identifiable information with the complainant.

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

- Psychological Evaluation dated June 6, 2021
- Basis for Eligibility Determination dated August 31, 2022
- IEP for the student dated February 6, 2023
- Email exchange dated November 10 through 13, 2023 between the special education teacher and the Coaching Specialist for the district
- Notice of Special Education Meeting dated November 13, 2023
- IEP for the student dated November 27, 2023
- Email exchanges dated November 27, 2023 between the special education teacher, the school psychologist, the occupational therapist, the physical therapist, and the speech/language pathologist

- On-task data sheet covering the period of November 7 through 20, 2023
- Email dated January 4, 2024 from the physical therapist to the special education teacher
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent signed by the student's mother on January 9, 2024
- Email dated January 11, 2024 from the special education teacher to the speech/language pathologist
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated January 11, 2024
- PowerSchool grade report for the student's Science class for February 7 - 9, 2024
- Email dated February 8, 2024 from the student's mother to the special education teacher
- Email dated February 9, 2024 from the special education teacher to the student's mother
- February 16, 2024 email exchange between the special education teacher and the student's mother
- Functional Behavior Assessment (FBA) and Behavior Intervention Plan dated March 21, 2024
- Email exchanges dated April 3, 2024 between the building principal and the student's general education teacher for English/Language Arts and Social Studies and his general education teacher for Math and Science
- Notice of Meeting dated April 4, 2024
- Speech/Language Evaluation Report dated April 4, 2024
- Report of assessments conducted by the school psychologist on April 4 and 5, 2024
- Response to Request for Assistive Technology Assistance dated April 2024
- Basis for Eligibility Determination dated April 15, 2024
- Term Grades for the student for the 2023-24 school year
- On-line Academic Calendar for the district for the 2023-24 school year
- Examples of modified assignments for ELA, social studies, and science
- Transcriptions of email correspondence between the parent and school staff during the periods of February 7, 2023 and May 8, 2023 and August 23, 2023 and April 10, 2024

Background Information

This investigation involves an 11-year old boy who is enrolled in the 5th grade in his district's elementary school. According to the student's mother, he was adopted at age one month. He has three siblings who were also adopted.

In a telephone conference call with the investigator and the complainant on April 11, 2024, the student's mother reported that the student was diagnosed at an early age with ADHD and Oppositional Defiant Disorder (ODD). He participated in at-risk preschool programs to address socialization needs and received in-home support to address behavioral issues. A psychological evaluation was conducted through a private agency in June 2021. That evaluation confirmed the student's ODD diagnosis and determined the presence of a Recurrent Depressive Disorder. The student continues to receive support through a local mental health agency.

The student first received special education support through the district at age 3. As a part of a 3-year reevaluation completed in August 2022, the student was determined eligible for special education services because of deficits in the areas of reading comprehension, reading fluency, and math calculations.

According to the student's current IEP, he receives special education support from a paraeducator in the general education classroom during the "independent portions" of his reading, math, social studies, and science classes. He also is provided with a number of accommodations/modifications as well as an electronic reader to assist with reading of books for the Accelerated Reading program as well as "more complex ELA [English Language Arts] novels."

The complainant states that she is a self-employed advocate who represents students and families across the country in addressing special education issues. She has entered into a contractual arrangement with the parents to represent them with regard to this complaint. By report of the advocate, she has communicated with the student's building principal, his special education teacher, and the district superintendent.

Issues

Five issues were identified in this complaint:

1. The district has failed to implement the accommodations specified in the student's IEP;
2. the district failed to complete a special education evaluation in a timely manner;
3. the district has denied the student a free appropriate public education (FAPE) because the service minutes specified in his IEP were not provided;
4. the district failed to write an IEP that was reasonably calculated to challenge the student to make progress; and
5. the district failed to collect data and accurately report the student's lack of progress on goals and failed to properly address the student's lack of progress.

Issue One

The district has failed to implement the accommodations specified in the student's IEP.

Complainant's Position

The complainant asserts that the student has not been allowed to use headphones to listen to music and has not been provided movement breaks. The complainant contends that there has been no reduction in the amount of math problems assigned, and assignments have not been "chunked" as required. According to the complainant, the district took no action regarding requests from the student's mother that the student be provided with these accommodations.

District's Position

It is the position of the district that the student has been provided with all of the accommodations specified in his February 6 and November 27, 2023 IEPs, including those specified in this complaint.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. Federal regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special education and related services provided in conformity with an Individualized Education Program (IEP).

Investigative Findings

An annual review of the student's IEP was completed on February 6, 2023. In attendance were the student's mother, the building principal, the student's special education teacher, and his general education teacher. The IEP team determined that the student should be provided with the following accommodations:

- a movement break for five minutes each period whenever the student feels overwhelmed or is having an off-task behavior issue;
- preferential seating when in a group of students during class time;
- whenever a timed test is offered in class, the test will not be used for grading; and
- access to the resource room for a quiet environment when the student is having trouble focusing on tasks.

The student's IEP was revised on November 27, 2023. According to the November 2023 IEP, the student was to be provided with all of the accommodations included in his February 2023 IEP as well as the following additional accommodations:

- a 25% reduction in the amount of problems on worksheets given for class independent work;
- permission to listen to music using headphones during independent work time to assist the student to focus;
- allowing up to 30-45 seconds of wait time for responses to oral questions about lesson content;
- "chunking" of assignments that are over two pages in length;
- allowing the student to type written assignments when the assignment is multiple sentences in length; and
- receiving a copy of class notes any time note taking is assigned in ELA, math, science, and social studies when the notes are more than 3 pages in length.

In a conference call with the investigator and the complainant on April 11, 2024, the student's mother stated that the student has reported to her that these accommodations have not been provided to him. Neither the complainant or the parent provided specific examples of the district's failure to implement accommodations noting that it is "difficult to prove that something hasn't been done." However, the parent stated that she would anticipate that she should see folds in his worksheets which would indicate that a given assignment has been chunked, but she reported that the assignments brought home by the student have not been folded in the manner described.

The student has been enrolled in seven general education classes for the 2023-24 school year:

- Band,
- Math,
- Physical Education,
- Reading (English Language Arts),
- Science,
- Social Studies, and
- Vocal Music.

English Language Arts (ELA)/Social Studies: According to an email from the student's ELA (Reading) and Social Studies teacher to the building principal, the student is always free to get up and move around. The teacher states that she has never stopped the student from a movement break or forced him to be seated when he was trying to move around. According to the teacher, the student is frequently reminded that he can go to the resource room. While he sometimes exercises that option, he does not go often.

In her email, the teacher stated that she has never prohibited the student from listening to music or stopped him from listening to music if he arrives at her classroom doing so.

With regard to the reduction in the amount of problems required for daily assignments, the teacher states:

"I take 25% of the questions off of his daily classwork assignments, including his reading/word analysis, and conventions. I don't reduce the ...bell work [review questions posted on the board for all students to work on at the beginning of the school day prior to the beginning of the instructional day], but I also don't penalize him if he doesn't get it done in the allotted time frame when they come in (he almost always does though)."

Examples of modified ELA and Social Studies assignments showing a reduction in requirements were provided by the district.

Because classroom assignments for all students have been scaled by the teacher to be broken into smaller sections, there has not been a time when the student was given an assignment over two pages in length - the length of an assignment that must be "chunked" as specified in the student's November 27, 2023 IEP.

The student has earned grades of B-, B+, and A (82%, 89%, and 94%) over the first three quarters of the school year in his Reading (ELA) class. His Social Studies grades for that same period have been A-, A, and A (92%, 93%, and 97%).

Math and Science: The general education teacher in charge of the student's math and science instruction stated in an email to the building principal that while she does not routinely ask the student if he needs a movement break or if he wants to go to the resource room, the student has not asked to be allowed to exercise either option. The teacher stated that she "check[s] in with [the student] multiple times in a period to see if he needs anything." The teacher also reported that the student "used to listen to music frequently," he hasn't done so recently but is aware that the accommodation is available to him.

In the conference call of April 11, 2024, the student's mother confirmed that the student's math assignments are being reduced.

The student has earned grades of A-, B, and B- (90%, 86%, and 80%) over the first three quarters of the school year in his Math class. His Science grades for that same period have been B, A, and A (84%, 95%, and 95%).

An example of how the student's Science assignments are reduced was provided by the district.

Band, Physical Education, and Vocal Music: In none of these courses is the student assigned homework or given assignments of more than two pages in length. These classes afford the student opportunities for movement. It is reasonable to assume that the use of headphones would interfere with class activities.

Summary and Conclusions

The complainant provided no direct evidence to support the allegation that the district has failed to provide the student with the accommodations specified in his November 27, 2023 IEP. No specific instances when the student was denied a movement break or the use of

headphones was cited in the complaint or reported by the complainant or the student's mother.

The student's mother acknowledges that his math assignments have been reduced. Additionally, the district has provided multiple examples of how accommodations have been implemented in the student's ELA, science, and social studies classes. The completion of multi-page assignments is routinely accomplished by the entire class over multiple days. No assignments have been given to the student that have required him to complete more than two pages on his own at any one time, so implementation of the chunking accommodation has not been needed.

The structure of the student's music, band, and PE classes have not necessitated the implementation of accommodations which would in some instances interfere with class activities.

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

Issue Two

The district failed to complete a special education evaluation in a timely manner.

Complainant's Position

The complainant asserts that during an IEP team meeting for the student held on November 27, 2023, additional evaluations were requested by the student's mother and agreed to by the district. According to the complainant, these evaluations had not been completed at the time this complaint was filed even though the complainant had contacted the student's special education teacher and the building principal to inquire about the status of the evaluation.

District's Position

The district acknowledges that during the November 27, 2023 IEP team meeting, the student's mother did request additional testing be completed in the areas of assistive technology, dyslexia, dysgraphia, and language pragmatics. After receiving parental consent for the reevaluation in January 2024, staff began the reassessment process and shared the results of the reevaluation at a meeting conducted on April 15, 2024.

Applicable Statutes and Regulations

Any evaluation that is conducted for a child currently identified with an exceptionality is considered a reevaluation. Schools must ensure that a reevaluation of each child with an exceptionality is conducted if conditions warrant a reevaluation, or if the child's parents or teacher requests a reevaluation, but at least once every three years (K.S.A. 72-3428(h)(1)(B)).

When parents make a request for an evaluation (whether oral or written), the Kansas State Department of Education (KSDE) has determined that, unless there is an unusual

circumstance, 15 school days is a reasonable time for providing parents with a Prior Written Notice of the district's proposal to conduct the evaluation or the district's refusal to conduct the evaluation (See KSDE Memo, "Reasonable Time" to respond to parent request for evaluation, January 8, 2002, at https://www.ksde.org/Default.aspx?tabid=614). KSDE also applies this same standard with regard to any parent request related to identification, evaluation, placement, or the provision of FAPE. Accordingly, 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 for a reevaluation. Parental consent must be obtained before a district can conduct a reevaluation (K.S.A. 72-3428(j) and K.A.R. 91-40-27(a)(1)).

Kansas has established a 60 school-day timeline for conducting the initial evaluation consistent with federal regulations (K.A.R. 91-40-8(f); 34 C.F.R. 300.301(c)). By extension, that timeline also applies to reevaluations. The timeline starts upon receipt of written parental consent to conduct the reevaluation, and ends with the IEP team meeting to review the results of the reevaluation and to make any necessary revisions to the student's IEP.

Whenever a school proposes to conduct a reevaluation, the school must provide Prior Written Notice to the parents of the child that describes any evaluation procedures the school proposes to conduct (K.S.A. 72-3428(b); K.S.A. 72-3430; 34 C.F.R. 300.304(a)). The purpose of providing notice to the parents is so they understand what action the public agency is proposing (in this case, to conduct a reevaluation) and the basis used for determining the action is necessary. The Prior Written Notice must include - among other specific requirements - a description of the action proposed by the agency, which must include a description of any evaluation (K.S.A. 72-3428(b); 34 C.F.R. 300.304(a)(1)). Districts are not required to obtain parental consent before reviewing existing data as a part of an evaluation, reevaluation, or a Functional Behavior Assessment (FBA) (K.A.R. 91-40-27(e)(1)).

Investigative Findings

An IEP team meeting for the student was conducted on November 27, 2023. In attendance were the student's mother, the building principal, the student's special education teacher, two of his general education teachers, and a mental health liaison. The complainant participated virtually.

According to the student's November 27, 2023 IEP, the parent asked for additional testing to be conducted related to assistive technology, dyslexia, dysgraphia, and language pragmatics. According to the student's IEP, the parent also requested a "formal behavior assessment." The school psychologist - the individual whose responsibility it is to complete such special education paperwork for the district as evaluation consent forms - was not in attendance at the meeting. However, the special education teacher who was present sent a message to the school psychologist - as well as the speech/language pathologist, the occupational therapist,

and to the physical therapist who oversees assistive technology assessments - to make them aware of the parent's request.

On January 11, 2024, the special education teacher sent the parents prior written notice of the district's proposed reevaluation - 22 school days after the parent's expressed request for reevaluation at the November 27, 2023 IEP team meeting. On January 17, 2024, the parent provided written consent for the reevaluation, thereby beginning a 60 school day timeline for completion which would end on April 22, 2024.

On February 8, 2023, the student's mother sent an email to the student's special education teacher, writing:

> *"I wanted to connect and see if [the student] has had any testing done."*

The special education teacher responded to the student's mother on February 9, 2024 stating:

> *"I know there has been some observations toward the functional behavior assessment. I will email [the school psychologist] to see where he is on this. Then let you know (sic)."*

On February 16, 2024, the student's mother sent another email to the special education teacher writing:

> *"...Also this occurred: At IEP meeting on 11-27-23, mom has requested an evaluation done on [the student's] language pragmatics. The speech language specialist was notified through email on 11-27-202 (sic)."*

The special education teacher responded via email on February 16, 2024, writing:

> *"I will talk with the speech and language specialist about his testing."*

No evidence of any further follow-up with the parent was provided by the district. In a telephone conference call with the building principal and the investigator on April 16, 2024, the special education teacher stated that she and the parent had talked about the evaluation at some point when the parent came to the school, but no documentation of that discussion was provided to the investigator.

Evaluation reports provided by the district show that the speech/language pathologist conducted an evaluation on April 3, 2024. The Wechsler Intelligence Scale for Children - Fifth Edition (Wisc-V) was administered by the school psychologist on April 4, 2024 as was the Woodcock-Johnson test of achievement and the Beery Test of Visual Motor Integration. Four observations related to the development of an FBA were conducted (January 31, February 15, March 28, and April 3, 2024). A report developed in April 2024 by the Assistive Technology Team Representative was provided by the district.

Notice of a special education meeting to review the results of the reevaluation and discuss possible changes to the student's IEP was emailed to the student's mother on April 4, 2024. A hard copy of the notice was also sent home with the student on that same date. The meeting

was held on April 15, 2024 - 54 school days from the date the student's mother provided written consent for the district to conduct the reevaluation.

Summary and Conclusions

The district completed a reevaluation of the student within the required 60 school day timeline following receipt of parental consent. That reevaluation addressed all areas identified by the parent in her November 2023 request. A violation of special education statutes and regulations *is not substantiated* on this aspect of this issue.

However, the district did not request parental consent within a "reasonable" time defined by the KSDE (15 school days from the date of the parent's request for a reevaluation). A violation of special education statutes and regulations *is identified* on this aspect of this issue.

Issue Three

The district has denied the student a free appropriate public education (FAPE) because the service minutes specified in his IEP were not provided.

Complainant's Position

According to the complainant, the student's IEP requires that he receive special education services in math, science, and social studies. However, when the paraprofessional who supports the student in these classes was unavailable, the student was not provided with the required service.

The complainant also asserts that unless the student requests support on classroom assignments when the paraprofessional is available in the classroom, he does not receive any special education services. As a result, the student has not been consistently completing class assignments. It is the position of the parent that when the student brings home an assignment with no work completed, no support has been given to the student during his independent work time.

District's Position

While the district stipulates that paraeducator support was unavailable to the student over a three day period due to staff illness, it is the position of the district that there is no evidence to support the contention that this break in service denied the student a FAPE.

Applicable Statutes and Regulations

As noted above under Issue One, federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. Federal regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special

education and related services provided in conformity with an Individualized Education Program (IEP).

Investigative Findings Regarding Paraeducator Absences

The student's February 2023 IEP stated that the student was to receive special education staff support every day in the general education classroom "for a portion of the day as his same/aged peers for ELA and math." When the student's IEP was revised on November 27, 2023, the IEP team clarified and expanded the "IEP Anticipated Services" section to show that the student would receive 35 minutes of special education services in the general education classroom every school day during each of four classes - reading (ELA), math, social studies, and science. The parent provided written consent for the implementation of these services on January 9, 2024.

In a telephone conference call with the investigator and the complainant on April 11, 2024, the parent stated that it was her understanding that this support would be provided by a paraeducator who would help the student understand class assignments and focus on those assignments during independent study time.

According to the district, a number of staff members were absent due to illness in early February 2024. The district has two staff members assigned to provide coverage for an absent paraeducator. However, on February 7, 8, and 9, 2024, neither of those individuals was available to provide coverage during the student's Science class. Paraeducator support was available during the student's ELA, math, and social studies classes.

The student's Science teacher does not assign homework every day. No assignments were given on February 7 or 9, 2024. A quiz was given on February 8, 2024, and the student scored 5.75 out of 6 which earned him an A grade.

Summary and Conclusions Regarding Paraeducator Absences

The district's plan for the provision of coverage for paraeducator absences effectively addressed the illness of a paraeducator in three of the student's general education classes over a period of three days during February 2024. However, the district acknowledges that coverage was not provided to the student for the required 35 minutes of special education service in his science classroom over that same three day period as required by the student's November 27, 2023 IEP. A violation of special education statutes and regulations is substantiated on this issue.

However, support from a paraeducator is intended to enable the student to understand and focus on class assignments during independent study time in the classes. On the three days when paraeducator support was not provided to the student during science, no assignments were given to the class. No evidence was presented to show that the absence of the

paraeducator resulted in any harm to the student. Under these circumstances, no corrective actions are warranted.

Investigative Findings and Conclusions Regarding Alleged Failure to Provide Support to the Student Unless Requested

Neither the complainant nor the parent provided any specific examples in support of this allegation. Absent any direct evidence, the investigator was unable to establish whether any violation of special education statutes or regulations had occurred.

Issue Four

The district failed to write an IEP that was reasonably calculated to challenge the student to make progress.

Complainant's Position

The complainant contends two of the annual goals included in the student's February 2023 IEP were met by the end of the first monitoring period, but these goals were not revised or replaced by more challenging goals.

Additionally, the complainant contends that the district failed to properly address the student's identified needs in the areas of reading fluency and math calculation because the student's February 2023 IEP did not include goals related to these deficits.

Applicable Statutes and Regulations Regarding the Development of Challenging Annual Goals

A student's IEP should aim to enable the student to make progress toward the student's annual IEP goals and in the general education curriculum. The IEP must be reasonably calculated to enable the child to make "progress appropriate in light of the child's circumstances" (Endrew F. v. Douglas County School District (137 S. Ct. at 999).

The Endrew decision recognizes that teams should have high expectations for the progress of a student and should craft challenging and ambitious IEP goals. However, goals should not be so ambitious that there is little chance that a student will actually achieve them. The team must draw on current data and their collective expertise to create a goal that strikes a balance between being ambitious and challenging and being realistic.

Once the IEP team has developed measurable annual goals for a child, the team must include a description of how the child's progress toward meeting the annual goals will be measured. This measure of progress will enable parents, children, and educators to monitor progress during the year, and, if appropriate, to revise the IEP to be consistent with the child's instructional needs. The idea is to use progress monitoring information in a formative way, to help with decision-making about instructional changes that may be needed.

The individualized education program (IEP) is to be reviewed at least once every 12 months, to determine whether the annual goals for the child are being achieved and to revise the IEP as appropriate. The IEP must include a description of when parents will be provided periodic reports about their child's progress toward meeting the annual goals. An example might be through the use of quarterly or other periodic reports concurrent with the issuance of district report cards (K.S.A. 72-3429(c)(3); 34 C.F.R. 300.320(a)(3)). The reporting may be carried out in writing or through a meeting with the parents (including documentation of information shared at the meeting). Whatever the method chosen, progress toward the goals must be monitored in the method indicated on the IEP and progress reports should include a description of the child's progress towards the child's measurable annual goals.

Special education statutes and regulations do not contain any requirement for the revision of an annual goal if the goal is met before the next annual review.

Investigative Findings Regarding the Development of Challenging Annual Goals

Under the section of the student's February 6, 2023 IEP entitled "Academic Achievement," two areas of need were identified by the IEP team: passage comprehension and off-task behavior. An annual goal was developed for each of these identified areas of need. A properly constituted IEP team - which included the parent - established target performance levels for the student for each of these goals based upon available baseline data.

Passage Comprehension

The student's February 6, 2023 IEP contained the following goal related to passage comprehension:

> *" By the end of the IEP, when presented with how, why, and what-if questions after reading a story silently, [the student will answer comprehension questions with 80% accuracy four of five trials."*

According to the "Baseline" for the reading goal, the student was - at the time the goal was written - able to read a passage and answer 7 out of 10 questions for 70% accuracy.

According to the student's February 2023 IEP, the parent would receive "progress reports at the same time intervals and in the same manner as general education. For this student this will be through written report and/or parent conference." Grade reports are provided to parents quarterly in this district.

Reports on the student's progress toward attainment of his annual goals was provided through written reports which were either mailed or hand-delivered to the parent. The goal was first monitored on March 10, 2023. At that time, the student was demonstrating an accuracy level of 85%. However, only one month had passed since the goal was developed. The

goal was monitored again on May 4, 2023. At that time, the student was demonstrating 80% accuracy on this task.

According to the special education teacher, she did not revise the goal because the student had shown a pattern of lower performance on goals for the first semester of previous school years. The teacher stated that she wanted to see how the student performed on this goal at the beginning of the 2023-24 school year before considering any change to the target performance level.

This goal was monitored again on October 13, 2023. At that time, the student was demonstrating 92% accuracy for this task. A new comprehension goal was developed for the student when the IEP team met on November 27, 2023, well ahead of the 12-month period covered by the student's February 6, 2023 IEP.

There is no evidence to suggest that the student's reading comprehension instruction was in any way limited during the period of February 6 through November 27, 2023 by the target established in this annual goal.

Behavior

The student's February 6, 2023 IEP included the following goal related to behavior:

> *"By the end of the IEP, [the student] will display on task behavior in class in and out of the general education classroom for 80% of the school day."*

The baseline for this goal stated that the student had "moments of struggle on task completion. He will take an extended amount of time on an assignment. He often has to be redirected to get back on task. He is currently doing this 70% of the day."

Progress toward attainment of this goal was first reported to the parent in the manner previously described on March 10, 2023. At that time, the student was demonstrating on-task behavior 89% of the school day. By May 4, 2023, he was on-task 78% of the school day. When this goal was monitored on October 13, 2023, the student was on-task 72% of the time.

Summary and Conclusions Regarding the Development of Challenging Annual Goals

Two annual goals were developed by a properly constituted IEP team at a meeting on February 6, 2023. The student's progress toward attainment of these goals was monitored and reported to the parent quarterly - on the same schedule and in the same manner that class grades for all students are reported to parents in this district.

No evidence was presented to suggest that the student's instruction was limited in any way by the established criteria for success in attaining the goal. While the student exceeded the target level for reading comprehension during three monitoring periods, statutes and regulations do

not mandate a change to an annual goal under such circumstances. A violation of special education statutes and regulations is not substantiated on this issue.

Applicable Statutes and Regulations Regarding Development of Annual Goals for Math Computation and Reading Fluency

A formal complaint must allege a violation that occurred not more than one year before the date the complaint is received and filed with the commissioner of education (K.A.R. 91-40-51(b)). This issue relates to the development of an IEP for this student on February 6, 2023 - more than 12 months prior to the date this complaint was received on March 27, 2024. While implementation of that IEP has been investigated because that implementation fell within the designated window, IEP team decisions made outside that window regarding what was to be included in the document were not.

Issue Five

The district failed to collect data and accurately report the student's lack of progress on goals and failed to properly address the student's lack of progress.

Complainant's Position

According to the complainant, progress reports indicated that the student was making progress on his behavior goal even though his skills were actually regressing.

Applicable Statutes and Regulations

As noted above under Issue Four, a student's IEP is to be reviewed at least once every 12 months, to determine whether the annual goals for the child are being achieved and to revise the IEP as appropriate. The review and revision of the IEP is intended to address any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate. Progress monitoring information can assist a student's IEP team with decision-making about instructional changes that may be needed.

If the student is not making progress or the progress is not sufficient to meet the annual IEP goals and make appropriate progress in the general education curriculum, the IEP team should meet to discuss the lack of progress and consider meeting more frequently than once a year.

Investigative Findings

The student's February 6, 2023 IEP included the following goal related to behavior:

"By the end of the IEP, [the student] will display on task behavior in class in and out of the general education classroom for 80% of the school day."

The baseline for this goal stated that the student had "moments of struggle on task completion. He will take an extended amount of time on an assignment. He often has to be redirected to get back on task. He is currently doing this 70% of the day."

The student's progress toward attainment of this goal was reported to the parent through quarterly progress reports. Progress was first reported on March 10, 2023. At that time, the student was demonstrating on-task behavior 89% of the school day. Data had only been collected for one month at the time progress was reported.

By May 4, 2023, he was on-task 78% of the school day - below the level reported at the time of the March monitoring but above baseline levels. When this goal was monitored on October 13, 2023, the student was on-task 72% of the time. While this was below the two previously reported on-task levels, the student was still performing above baseline levels. According to the special education teacher, the student was settling into a new classroom, and she anticipated the student's on-task behavior would improve by the next quarterly monitoring period.

Although the student's IEP was revised at the end of November 2023 - before the next monitoring and reporting date - data had been taken on this goal during the period of November 7 through November 20, 2023. That data showed the student to be on-task 83% of the time, above the previously established annual goal target level of 80%.

Summary and Conclusions

The student's progress toward attainment of his behavior goal was reported to the parent quarterly. While the student demonstrated greater than expected growth during the first month after the goal was established, his on-task performance fell nearer to baseline levels over the next two monitoring periods only to increase again during the second quarter of the 2023-24 school year. While lower than the student's performance when monitored one month after the goal was developed, his progress during the second and third monitoring periods remained above baseline levels. Data taken during the fourth quarter of monitoring showed the student to be on track to attain his annual goal. A violation of special education statutes and regulations is not substantiated on this issue.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations on an issue related to this complaint. Additional noncompliance was identified during the course of this investigation.

Specifically, a violation was substantiated with regard to 34 C.F.R. 300.101 and 34 C.F.R. 300.17 which requires the provision of a FAPE through conformity with a student's IEP. In this case, the district failed to provide the student with 35 minutes of special education services for each of three days when a paraeducator was unavailable in one of the student's classes due to illness. However, as noted above under Issue Two, the district has a plan in place to cover paraeducator absences, and there was no evidence to show that the student was harmed by this limited interruption in service. Therefore, no corrective actions are ordered with regard to this violation.

However, this investigation uncovered a violation of the "reasonable time" requirement established by KSDE when responding to a parent's request for an evaluation or reevaluation.

Therefore, USD #255 and the SCKSEC are directed to take the following actions:

1. Submit to Special Education and Title Services (SETS) by no later than May 29, 2024, a written statement of assurance stating that it will comply with the "reasonable time" standard of 15 school days for responding to a parent's request for evaluation or reevaluation by presenting the parent with prior written notice requesting consent for the evaluation or reevaluation OR prior written notice denying the parent's request.
2. By no later than May 29, 2024, submit to SETS a plan for the training of special education staff regarding this requirement.

Further, USD #255 and the SCKSEC shall, within 20 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



Diana Durkin
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).

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 #261

ON MARCH 29, 2024

DATE OF REPORT APRIL 29, 2024

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

The Complaint is against USD # 261, Haysville Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #261.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint. A complaint is considered to be filed on the date it is delivered to both the KSDE and the school district. In this case, the KSDE initially received the complaint on March 29, 2024, and the 30-day timeline ended on April 28, 2024.

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video on April 22, 2024. The following District staff were interviewed on April 19, 2024:

1. School Psychologist
2. Director of Special Services
3. Special Education Teacher (Case Manager)
4. Reading Intervention Teacher
5. Building Principal
6. Speech Pathologist
7. Assistant Principal

In completing this investigation, the Complaint Investigator reviewed documentation provided by the Parent 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:

Parent:

1. Kansas State Department of Education Complaint Response, 03/29/24
2. Formal Complaint Request Form, 03/27/24
3. Email, re: transportation and more, 02/29-03/01/24

4. Email, re: [Student], 10/16/23-11/01/23
5. Email, re: [Student] IEP, 02/27-02/28/24
6. Email, re: formal request, 03/05-03/28/24
7. Email, re: IEP, 12/12/23-02/21/24
8. Individualized Education Plan, 12/07/23
9. Email, re: [Student], 09/20-09/25/23
10. Staffing Summary, 09/27/-12/01/23
11. Email, re: [Student] distance from HMS, 11/01-11/02/23
12. Email, re: [Student], 10/10/23
13. Prior Written Notice for Evaluation or Reevaluation and Request for Consent, 08/29-08/31/23
14. Email, re: [Student]e, 03/19-03/21/24
15. Email, re: [Student] IEP, 02/21/24
16. Email, re: IEP/PWN, 11/27-12/05/23
17. PWN/RFC, 09/27
18. Email, re: need a copy, 02/28/24
19. Reevaluation/Continuing Eligibility Team Report, 09/27/23

District:

1. Records Release, 04/03/24
2. Teacher Letter, 04/05/24
3. Email, re: bussing, 08/16/23
4. Email, re: [Student], 10/10/23
5. Dates of Attendance, 03/27/24
6. Historical Grades, 03/27/24
7. Email, re: [Student], 10/16/23
8. Email, re: [Student], 10/17/23
9. Email, re: [Student], 10/17/23
10. Email, re: [Student], 10/18/23
11. Email, re: [Student], 10/18/23
12. Email, re: fwd: [Student], 10/18/23
13. Email, re: [Student], 10/31/23
14. Email, re: [Student] distance from HMS, 11/02/23
15. Email, re: [Student] IEP, 11/16-11/17/23
16. Email, re: IEP/PWN, 12/05/23
17. Email, re: IEP, 02/21/24
18. Email, re: [Student] IEP, 02/21/24

19. Email, re: need a copy, 02/28/24
20. Email, re: transportation and more, 02/29-03/01/24
21. Email, re: [Student], 03/19/24
22. Email, re: re: formal request, 03/27/24
23. Email, re: re: formal request, 03/28/24
24. Email, re: re: formal request, 03/28/24
25. IEP, 12/07/23
26. Consent to Communicate And Send Files Electronically, 9/27/23
27. Email, re: [Student] general intelligence, 09/26/23
28. Email, re: [Student] reading, 09/21/23
29. Email, re: fwd: [Student], 10/10/23
30. Speech Attendance Log 2023-2024
31. Staffing Summary, 11/01/23
32. PWN/RFC, 11/01-12/12/23,
33. Initial and Re-evaluation Cover Sheet, 09/27/23
34. PWN, 08/29-08/31/23
35. 10 Day Notice of Meeting, 08/29/23-08/31/23
36. Staffing Summary, 09/27/23
37. PWN, 09/27/23-10/10/123
38. Reevaluation/Continuing Eligibility Team Report, 9/27/23
39. School Psychologist Report, 9/12-9/19/23
40. Formal Complaint Response, 4/9/24
41. Email, re: re: assignments, 02/22/24
42. Email, re: re: document shared with you: "Notes - [Student] Meeting", 11/17-11/28/23
43. Email, re: re: [Student] schedule change, 11/01-11/03/23
44. Email, re: re: [Student] IEP meeting 9/27, 09/25/23
45. Progress Report, 04/09/24
46. Progress Report, 04/09/24

Background Information

This investigation involved a 7th grade student enrolled at Haysville Middle School in USD #261. The Student is currently receiving special education or related services as a child with a specific learning disability per the Individuals with Disabilities Education Act (IDEA). Beginning in November 2023 they began receiving Tier III support for speech. They have 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. They were receiving speech therapy prior to kindergarten and the parent reported that their speech was not

improving and impacting their behavior. In November 2023, their parents had their speech evaluated at Private Speech Clinic. The child lives at home with their parents.

Issue One

USD #261, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to include transportation as a related service after multiple requests from the Parent. Further, the Parent alleged that these decisions were based on general education standards rather than the Student's unique needs. The Parent also alleged that the District failed to provide the Individualized Education Plan (IEP) documents in a timely manner after IEP meetings.

Positions of the Parties

The Parent alleged that on August 15, 2023, they met the Student's IEP Case Manager at the Middle School's Open House and formally requested transportation services for the Student. According to the Parent, the request was denied, and the District failed to provide any Prior Written Notice (PWN) regarding the denial of transportation services. The Parent indicated that they made additional transportation requests in August 2023, at the IEP meeting in September 2023, and it was discussed again in November 2023.

The Parent alleged that the District exhibited a pattern of failing to provide IEP documents promptly. After an IEP meeting, a draft IEP was promised for review, but the Parent had to wait 14 days and send a follow-up email before receiving it. Similarly, there was a 26-day delay between another IEP meeting and the provision of an IEP and PWN.

The District acknowledged the Parent briefly spoke with the Special Education Teacher (Case Manager) regarding transportation on August 15, 2023 during Open House. The Special Education Teacher spoke to the School Psychologist on August 16, 2023, indicating the Parent inquired about special transportation. On August 29, 2023, the School Psychologist followed up with the Parent regarding the special transportation request as well as to schedule the annual IEP and reevaluation meeting. The Parent indicated to the School Psychologist that the request for special transportation was due to Parent disabilities. The Parent agreed to wait to discuss special transportation at the September 27, 2023 IEP meeting.

During the annual IEP meeting held on September 27, 2023, the Parent requested transportation again. They shared their house was 2.5 miles away based upon the three different paths mapped online. The LEA Representative (Assistant Principal) indicated that they would have to speak with the Transportation Director to gather information on how the transportation department calculated the mileage when determining if a Student was eligible for transportation. On March 1, 2024 the District offered general transportation to the Student and specialized transportation to the Student once the Parent presents the District with a

medical statement about the Parent's medical concerns that prevent them from transporting the Student to school.

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Parent and staff in the District.

1. On August 16, 2023, the Case Manager emailed the Parent, "I talked with [the School Psychologist]. [They] said [the Student] would need to show a need for special bussing by having a severe disability or being unable to be on a regular bus. [They will] call you today."
2. On September 21, 2023, the Parent requested a copy of the Student's IEP from the previous year. The School Psychologist sent the Parent a copy of the previous year's IEP the following day.
3. A PWN dated September 27, 2023, indicated the Parent ``requested special transportation services; the [S]chool rejected this request due to there not being a need for this service." The District attempted to obtain a signature from the Parent on September 27, 2023, September 29, 2023, and October 10, 2023.
4. On October 10, 2023, the Case Manager emailed the Parent a draft IEP from the October 10, 2023, IEP meeting. The Case Manager also emailed the PWN explaining the Student's services. The Case Manager let the Parent know they were allowed to review it. The Case Manager stated, "The PWN requires a signature before we can close out the IEP for this reevaluation year. The page labeled 261 PWN is the form we need to have signed and returned to the [S]chool."
5. On October 18, 2023, the Parent emailed the Principal, "I wanted to make you aware that [the Student] will not be returning to [the School] until the intimidation tactics and threats made by the school psychologist cease and I can be assured that [the Student] will be able to get [their] educational needs met and that [their] IEP has not been closed and [their] special education services have not been discontinued."
6. On November 1, 2023, a PWN indicated special education and related services, appropriate educational placement, and changes to modifications on the IEP were considered. The Student will "continue to receive special education services in the general education setting for Math, ELA, Science, and Social Studies." The PWN also rejected the Parent's request for special transportation due to the Student not needing this service, and the District would look into transportation options. The PWN was completed correctly and included the required elements.
7. On November 27, 2023, an email from the Director of Special Education to the Parent indicated, "I am attaching the IEP and the Prior Written Notice completed from the 11/1/2023 meeting. The PWN is dated as it was delivered on 11/17/2023 as I intended on getting it sent to you once I heard back from the case manager, but we were unable to connect before Thanksgiving break. Once you are able to review the IEP accommodation we were working on (which is record 3 under the accommodation

page). I will update the mailed date to send through HelloSign once you are able to review the last part of the IEP we discussed during the meeting. If you have any concerns/questions with how the accommodation is described, please let me know. Thank you for reviewing this wording to see that it describes our discussion and the needed accommodation."

8. On December 7, 2023, an IEP indicated that the Parent would be sent one copy of the IEP in their native language or another mode of communication. The Notice of Destruction of Special Education Records stated, "Special education records for each student with an exceptionality are maintained by the [S]chool [D]istrict until no longer needed to provide educational services to the student."
9. On December 12, 2023, the Parent emailed the Director of Special Education, stating, "I am not likely to get the IEP reviewed and signed before Christmas break. … [I] [s]till would like a better understanding of the transportation situation as well before signing. The map shows it's more than 2.5 miles so I'm struggling to see why it's not on [their] IEP." The Director of Special Services responded to the Parent stating, "The only thing that changed in the IEP from our meeting was the single accommodation we discussed to find the best wording."
10. On December 12, 2023, the Director of Special Education emailed the Parent stating, "At this point with the attempts to obtain a signature, we have now had to complete the IEP for reporting purposes. We can reschedule a meeting to discuss transportation needs based upon [their] not receiving FAPE if [the Student] cannot make it to [S]chool to receive [their] services. I know when I visited with the transportation department, it was mentioned that [the] calculation of the miles is a straight line, it is not based upon the roads to the location. I believe that is why it wouldn't meet the 2.5 miles, unfortunately."
11. On December 12, 2023, the Director of Special Services emailed the Parents indicating, "We have to submit the reporting data to KSDE so that is what we have done based upon [their] last IEP. We can hold another meeting to discuss any further changes based upon what we discussed during the 11/1/23 meeting and the updated accommodation that was sent to you through email. We can also visit about your request for transportation services again during this meeting."
12. On February 21, 2024, the Parent emailed the Director of Special Services stating, "I need a copy of the IEP that is currently being used to meet [the Student's] IEP needs."
13. On February 29, 2024, an email from the Parent to the Director of Special Services indicated, "First I wanted to let you know that I am looking forward to your follow[-] up on my request for the signed PWN or consent to remove services. I am requesting that future communication be in emails so there are no misunderstandings."
14. During an interview with the Complaint Investigator, the Special Education Teacher indicated when the Parent requested special transportation, the Special Education Teacher consulted the School Psychologist for guidance due to their limited experience. The School Psychologist then contacted the Parent regarding the transportation. The Special Education Teacher was unsure if it was standard practice for the School

Psychologist to issue PWN's within the District, as they assumed the Case Manager typically handles that responsibility.

15. During an interview with the Complaint Investigator the Special Education Teacher was asked if they had provided the Parent with a copy of the IEP at the conclusion of the IEP meeting. The Special Education Teacher stated, "[The Parent] would've left with a draft copy." When asked what was the expectation around when a final copy would be provided the Special Education Teacher replied, "I usually do it after it has been completed. So once we get the signed documents back, like the [P]rior [W]ritten [N]otice and just make sure [the Parent] is okay with everything and I've submitted it, then I send them a copy of the final IEP."
16. During an interview with the Complaint Investigator the Special Education Teacher indicated that the School Psychologist and the Special Education Teacher initially contacted the Parent to gather documentation for a reevaluation. When they didn't receive a response, the Special Education Teacher was unable to finalize the reevaluation or confirm the Parent's agreement with the proposed changes. During the IEP meeting, the Special Education Teacher did not sense any disagreements from the Parent regarding the termination of speech services and special education support for math. While the Special Education Teacher doesn't explicitly recall discussing special transportation at the end of the meeting, they believe there were no objections raised at that time.
17. During an interview with the Complaint Investigator, the Special Education Teacher stated the Student had never received special transportation according to Web Kids. When asked what their understanding of the reasons for the Parents' request for specialized transportation was, "The Spouse has Parkinson's, so [they have] a difficult time like getting [the Student] to and from school, [the Parent's] got other health conditions that sometimes can affect [their] ability to drive. … The health issues between the [P]arents is what is sparking the special transportation request." The Special Education Teacher shared that they were made aware of the transportation request the night of Open House, on August 15, 2023. The Student had no disability reasons that would require special transportation.
18. During an interview with the Complaint Investigator, the Special Education Teacher indicated the Parent inquired if they had missed a copy of their Student's IEP that needed their signature. The Special Education Teacher explained that the Parent had taken the PWN home to review and sign. It was noted that once the signed notice was returned, the IEP process could be finalized. In a forwarded email to the School Psychologist, the Special Education Teacher expressed some concern about the situation, finding the Parent's questions odd since the Parent was aware that they had the documents at home.
19. The Parent was interviewed by the Complaint Investigator. The Parent shared that they were not provide IEP documents in a timely manner because the initial IEP documents took from September 27, 2023 to October 10, 2023 for a copy to be given to the Parent. The second meeting that, "we had with the [S]chool to redo the IEP and address

transportation happened in November." The Parent indicated they didn't receive "a copy of that one until … I believe it was November 27th when I requested that copy because I had not seen it. … So from November 1st to November 27th, I still had not gotten the IEP and the [PWN], which was sent on the 27th. Now, that [PWN], the information on there was not accurate because [they] showed that [they] had sent it to me on the 17th, which [they] didn't. And then did confirm that also in [their] email to me saying that [they] would amend and correct that."

20. During an interview with the Complaint Investigator regarding the unsigned PWN the Parent shared, "Like I said, my understanding when I got that documentation on the 10th was that they were going to give me some time to look it over review it, talk to [the Spouse] about it, and if we agreed, sign the PWN."

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.320, K.S.A. 72-3429(c)(4), and K.A.R. 91-40-18(d), Kansas has specific requirements for Individualized Education Programs (IEPs) to ensure they comprehensively support students with exceptionalities. IEPs must clearly outline the special education services, related services, supplementary aids (including research-based accommodations when possible), and program modifications the child will receive. They must also detail how the school will support staff in assisting the student.

IEPs must be transparent regarding service delivery. They must specify the start date, frequency, location, and duration of each service. The amount of time dedicated to each service should be clearly stated. Additionally, each Parent must be provided a final copy of the IEP at no cost to the Parent.

The Parent made multiple requests for transportation during 2023-24 school year. On September 27, 2023, the District provided the Parent with a PWN rejecting the Parent request for special transportation services due to there "not being a need for this service." An Additional PWN was provided to the Parent about the rejection of the Parent's request for special transportation on November 1, 2023. After the two IEP meetings the District provided the Parent with copies of the Student's IEP at no cost to the Parent within nine and 16 school days of the IEP meetings.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the Student required special transportation that the District failed to provide the Student or failed to provide the Parent with paperwork in a timely manner.

Issue Two

USD #261, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the Parent with Prior Written Notices in a timely or legally correct manner when denying the Parent's requests for transportation services for the Student.

Positions of the Parties

The Parent alleged that the School District exhibited a pattern of non-compliance related to Prior Written Notices. After a meeting on November 1, 2023, the District took 26 days to provide a PWN regarding transportation services. The Parent claimed that this PWN was legally deficient, as it failed to explain the reasons for the denial, explore other transportation options, or cite the data used to make the decision. The Parent also alleged that the School District implemented an IEP for the Student without obtaining a signed Prior Written Notice.

The District responded that the School Psychologist emailed the Parent letting the Parent know that the need for special transportation would need to be determined and they would follow up with the Parent. During the annual IEP meeting on September 27, 2023, the Parent requested transportation again. The Team discussed transportation and at that time, there was no documentation of need for special transportation. The Prior Written Notice to the Parent refusing special transportation was provided on September 27, 2023 after the annual IEP meeting. It was again provided to the Parent by mail on September 29, 2023 and by email on October 10, 2023. The IEP was provided to the Parent on October 10, 2023 through email from the Special Education Teacher. During a conversation with the School Psychologist by phone, the Parent requested the weekend to review the IEP. During the IEP meeting on November 1, 2023, the Parent requested transportation. On March 1, 2024 the District offered transportation to the Parent.

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Parent and staff in the District.

1. A PWN dated September 27, 2023, indicated that the Student's primary exceptionality was "LD-Specific Learning Disability." Changes in services indicated a change in placement indicating that the Student will continue to receive "special education services in the general education setting for Math, ELA, Science, and Social Studies. Special education services in the special education setting for Math will end on 10/12/2023 (at the end of the 9 weeks). The following accommodations were added to the IEP: separate setting for assessments, additional time for assessments, access to study guide during tests, frequent reminders of due dates for assignments and tests." The PWN was completed correctly and included the required elements.

2. On October 10, 2023, the Case Manager emailed the Parent, "You took the Prior Written Notice with you to read over and sign it after you read it. We do need it because asap because [sic] [the Student's] IEP is out of compliance now. We can't close out the new IEP without having the signed PWN on file. If you have it, can you sign it and send it back tomorrow? If you don't, I will have [the School Psychologist] print another and I can send it home with [the Student]. Once we get that back, I can get the new IEP closed out and get you the official copy of it."
3. According to a Complaint Document the Director of Special Services indicated to the Parent, "During the meeting on 11/1/2023, you agreed to [the Student] no longer receiving SL services and removing the math lab special education services. You had also requested special transportation during this meeting. A PWN was sent multiple times with notice of the agreed removal of services and the rejection of transportation services as a need had not been documented at the time. Although you responded to email indicating that you didn't have time to review the sent documents, you did not indicate that you were not in agreement with the removal of the SL services or Math Lab services. You did indicate that you were still unsure of the transportation situation and that you would not sign the documents until transportation was worked out. I responded to your email stating that we should reconvene a meeting after the new year to discuss transportation."
4. On November 2, 2023, the Parent emailed the Director of Special Services indicating, "I do need to look into transportation. I have a medical issue that causes blurred vision and temporary blindness and we are now facing Parkinson's with [the Spouse]." The Director of Special Services responded, "Thank you for providing this information. I will talk with [the Transportation Provider] to find out how they determine distance from a house to the school building."
5. On November 16, 2023, the Case Manager emailed the Director of Special Services, "The IEP is still open and [the Student] is being pulled for speech services but I thought the plan was to pull [the Student] from speech since [they are] doing well."
6. On December 5, 2023, the Director of Special Services sent an email to the Parent indicating, "I just wanted to reach out again regarding the IEP and Prior Written Notice I sent to you on 11/27/2023. Do you have any questions or can I go ahead and email it to you for signature?"
7. During an interview with the Complaint Investigator, the Parent shared that after the September 27, 2023 IEP meeting, the Parent expected the School to finalize the IEP document and send it to them for review. By October 10, 2023, they hadn't received it and inquired about the status. The Parent indicated the PWN was given to them to sign, but they maintained they never received the full IEP for review. According to the Parent the School seemed to be pressuring them to sign the PWN without seeing the finalized IEP, which the Parent was not comfortable doing. Finally, on October 10, 2023 they received a copy of the proposed new IEP. The Parent shared that there were different accommodations for the Student, "in terms of some extra time to work on assignments,

things like that." The Parent shared that they asked about missing assignments, checks for understanding, and whether there were comprehension issues.

Applicable Regulations and Conclusions

According to K.A.R. 91-40-26, when a district takes action (or refuses to take action) regarding an exceptional child, the notice provided to parents must be clear and comprehensive. It must explain why alternative options were rejected and outline other relevant factors influencing the decision. Importantly, notices must be written in everyday language and provided in the parent's native language or preferred communication style whenever possible. If the parent's primary language isn't written, the district must orally translate the notice, ensure understanding, and keep records of these steps. The district must provide a copy of procedural safeguards (parents' rights) once a year, along with specific triggers like initial referrals, complaints, disciplinary actions, or upon the parent's request. Finally, should the parent ask, or a due process complaint be filed, the district must inform the parent about free or low-cost legal resources in the area.

The District provided the Parent with PWN that included the required elements and provided the notices to the Parent within 9-16 school days after the IEP meetings.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the district failed to provide the Parent with legally complaint PWNs in a timely manner.

Issue Three

USD #261 removed speech-language and math services from the Student's IEP without the Parent's consent or proper notification in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA).

Positions of the Parties

The Parent alleged that the District wrongfully removed the Student's speech and additional math services from the Student's IEP without obtaining the legally required written consent from the Parent.

The District responded that after the September 27, 2023 IEP meeting where removal of speech-language services and math lab (resource) services were recommended to be discontinued, the PWN was provided on the following days, September 27, 2023, by mail on September 29, 2023, and by mail October 10, 2023. The Special Education Teacher emailed the Parent providing them a code to access the IEP and the PWN. The IEP was provided to the Parent on October 10, 2023. During the second IEP meeting held on November 1, 2023, another discussion of removal of speech/language services as well as removal of the math lab (resource) services was held. During the meeting the Parent agreed to the Student no longer

receiving speech-language services as well as removal from math lab. The District offered compensatory services on February 28, 2024.

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Parent and staff in the District.

1. On September 12, 2023, a School Psychologist Report indicated the Student's "cognitive deficit in Auditory Processing is strongly linked to [their] achievement deficit in reading. [Their] cognitive deficit in Visual Processing is strongly linked to [their] achievement deficit in math." According to the Woodcock-Johnson IV Achievement Test, the Student scored in the low average range, at the 18th percentile in Broad Mathematics. The Student's Math Calculation score was at the 17th percentile, and the Math Problem Solving Score was at the 11th percentile.
2. On September 21, 2023, the Case Manager sent an email to the School Psychologist which indicated that the Language Arts Teacher suggested the Student be moved from their Tier 3 class to a Tier 2 class for reading.
3. On September 25, 2023 the Case Manager emailed the Assistant Principal, "This is [the Student's] reevaluation year. After [the School Psychologist] completed [their] general intelligence and discussion with me and some other teachers, we decided that it's time to reduce [the Student's] services. We are proposing that [the Student] is removed from my resource math class but will stay in Tier 3. Hopefully next year, [they] will be able to move up to Tier 2. We are also moving [the Student] from Tier 3 reading to Tier 2 reading. [The Speech Therapist] is also dismissing [the Student] from speech. [The School Psychologist] called [the Parent] and [they weren't] too happy about the math issue. I'm also not sure if [they are] aware that [the Student] is being dismissed from speech yet. We really need to have backing from you because it's important for [the Student's] education to be pushed out. [The School Psychologist] and I both feel like we are holding [them] back at this point which is not [the Student's] LRE.
4. On September 27, 2023 a Speech Attendance Log indicated, "Exited 9-27-23 [Parent] refused to sign paperwork so had to continue service beginning 10/17 [Parent] signed N/C to exit week of Nov - 6- 10th."
5. On September 27, 2023, the initial and re-evaluation cover sheet indicated the exceptionality changed to the "Primary Exceptionality was LD-Specific Learning Disability."
6. On October 10, 2023, according to the Formal Complaint Response, "The IEP was provided to the Parent with an [sic] code to access the IEP and the Prior Written Notice through the IEP system. … During the IEP meeting, the Parent indicated they agreed with discontinuing speech-language and math lab services since the Student no longer met eligibility or a need for services. Therefore, [Speech] services were discontinued from September 28, 2023 until October 17, 2023 until the [P]arent indicated they were not signing the Prior Written Notice for the proposed changes during the September

27, 2023, IEP meeting. Math lab (resource) services were not discontinued as the team had proposed to make the changes on October 16, 2023 at the start of the 9-weeks."

7. On October 16, 2023, a Staffing Summary indicated, "Multiple communication attempts were made to ask [the Student's Parent] to make a decision on the change in services. [The Student's Parent] told the [S]chool [P]sychologist that [they were] not going to sign anything. The prior exceptionalities, services, and accommodations will continue because [P]arents refuse to make any changes. Speech/language impairment will continue to be listed as the secondary exceptionality. [The Student] will receive special education support in the general education classroom for ELA, math, science, and social studies. [The Student] will also receive support in the special education setting for 40 minutes for math. [The Student] will also receive Speech/Language Therapy for 20 minutes, once a week. No changes will be made to [the Student's] accommodations."
8. On October 17, 2023, the Director of Special Education stated, "I have visited with the [S]chool [P]sychologist. Essentially, after the reevaluation was completed a recommendation of dismissal of SL services and a change in services for math was recommended."
9. On October 17, 2023, the Principal sent an email to the Parent indicating, "I understand that yesterday you received a phone call from [the School Psychologist] regarding the IEP paperwork you elected to take home to read through, at the conclusion of the meeting on September 27th. Were you able to get your questions answered from this conversation? If not, do we need to schedule a meeting so those questions can be answered?"
10. On October 18, 2023, the Director of Special Education emailed the Principal indicating, "I would modify this sentence-With the IEP, to finalize those services, paperwork will need [to be] completed and signed regardless of what those services look like, to state something like, 'As a team, we will need to complete the IEP and required documents to finalize the IEP.' I do not feel it would be beneficial to try to explain in an email whether or not parental consent would be required based upon the proposal of services. It can be confusing and if we indicate we may not need consent, it may create automatic frustration. I think this can be explained during the meeting and I would be happy to be part of that meeting."
11. On October 18, 2023, the Principal emailed the Parent indicating, "I apologize, as my intention was to never give you the impression that anything was being pushed under the rug. I just want to provide you the opportunity to sit down with me and connect regarding your concerns and discuss your thoughts on the proposed services. [The Student] can return to school at any time and receive the services [they] started the school year with, but I think it would be helpful to meet in person so that we can hear and accurately address your concerns, both with the proposed special education services and with school personnel."

    The Parent responded, "I absolutely want to address the IEP. But what I won't do is allow you to act like what [the School Psychologist] did, didn't happen and that it was in any way acceptable."

12. On October 18, 2023, the Director of Special Services sent an email to the Parent indicating, "I wanted to send a quick follow-up email in regards to the discussion that has been occurring over email. [The Principal] and I have visited and do feel that if we could set up a time in person to discuss the concerns and devise a plan moving forward, then we will be able to ensure we get [the Student's] services in place and address the personnel situation as well. We are looking forward to getting a meeting scheduled as soon as possible. [The Student] can return to school with the assurance that educational needs will be met based upon the services [they have] been receiving on [their] last IEP. These services would remain in place until consent is provided (if consent is required) for any change in services."
13. On November 1, 2023 the Assistant Principal emailed the Case Manager, "At [the Student's] IEP there was discussion that based on [the Student's] test scores there is no longer a need for two math classes. We are ready to make the schedule change and would like to start on this Monday. [Case Manager], can you please provide your input for [the Teacher] as to what math class [the Student] needs to be removed from and what class was discussed [that the Student] would go into."
14. On November 3, 2023, the Case Manager responded to the Assistant Principal, "I feel [their Parent] would be okay if we presented to [them] that we should put [the Student] in Life [S]kills for the remainder of the semester but then [the Student] can start Leadworthy in January. We told [the Parent] if we started Leadworthy at the start of the quarter, [they] would have missed half the class. [The Parent] seemed okay with that option during the meeting. We never promised [them] anything during the meeting. We told [them] that we would have to talk with [the Teacher] to find out what worked best with [their] schedule for whichever class [the Student] would be in for 2nd quarter."
15. On November 3, 2023 the Assistant Principal emailed the Principal, "These two classes are not the classes [the Parent] was under the impression [the Student] would be moved into. Who do you feel should call [the Parent]. [sic] This change should be happening by Monday."
16. On November 17, 2023 the Director of Special Education sent an email to the Case Manager indicating, "I edited the accommodation to where I think it will make [the Parent] feel we are addressing [their] concern and also should be manageable accommodation. It is the 'reference material…' accommodation. Will you let me know if it makes sense? I am going to send the IEP an updated PWN to the [P]arent once I hear from you."
17. On November 28, 2023, the Director of Special Services emailed the Case Manager, "Thank you for looking over the accommodation and the changes. I emailed the documents to [the Parents] last night and asked them to look at the accommodation that was updated since our meeting. I let them know once I heard from them I would sent the documents through hello sign to obtain consent on the PWN. I will keep you posted."
18. On December 1, 2023, a Staffing Summary indicated that "Due to [the Student's] progress in speech and improvement in formal language testing, it is recommended

that [the Student] be exited/dismissed from speech-language services at this time. Currently, [they are] receiving A's and B's in most of [their] classes, with the exception of one D due to a missing assignment."

19. The IEP dated December 7, 2023, indicated in the area of expressive and receptive language, "[The Student's] articulation, voice and fluency were observed and assessed informally throughout the testing session. All are within normal limits and intelligibility in conversation is 100%. Oral mechanism is appropriate for speech sounds and there are no concerns." Test scores on the OWLS-II indicated:
    a. Listening Comprehension Scale for receptive language-85 standard score, average range;
    b. Oral Expression Scale for expressive language-88 standard score, average range; and
    c. Oral Composite for overall oral language score -85 standard score, average range.
20. The IEP dated December 7, 2023, indicated the IEP Distribution process stated the Parent would be sent one copy of the IEP in their native language.
21. On December 7, 2023, an IEP meeting indicated the "Student's cognitive abilities were assessed using the Woodcock-Johnson-IV Tests of Cognitive Abilities … General Intellectual Abilities score exceed those of approximately 8% of children [their] age (SS-79)." The test was given during the reevaluation process for this IEP. The IEP indicated the Student did not have any special communication needs.

    The School Psychologist sent an email on September 26, 2023, which indicated, "[The Student] has strengths in Comprehension-Knowledge, Fluid Reasoning, Short-term Working Memory, Long-term Retrieval, and Processing Speed. [The Student] has deficits in Auditory Processing and Visual Processing. [The Student's] cognitive deficit in Visual Processing is strongly linked to [their] achievement deficit in math." The Student qualified for Special Education because of a Specific Learning Disability.

    In the area of math, the IEP indicated the Student loves to go to math class and enjoys it. The Student is "fluent in [their] multiplication facts 1-12. [They use their] resources if [they] get stuck. … [The Student] took an automaticity assessment on FastBridge and [the Student] scored a 33 which placed [them] in the 20th percentile. This is considered to be low average as math automatically is a relative strength for [them]."

    The math goal was, "By 9/26/2024 when given math problems encompassing order of operations, integers, rational numbers, expressions, or equations, [the Student] will use a variety of mathematical strategies to correctly solve the problems with 90% accuracy or higher as measured by teacher data collection or classroom assignments or quizzes."

    Parent Concerns/Considerations indicated, "[The Parent] was concerned with the accommodations that [the Student] was receiving. [They] had some suggestions which we added to the list. [They were] worried that [the Student] needed a centralized area

to find [their] work that needed to be completed. This was addressed during the IEP meeting. We discussed [a] change in placement for [the Student] that needed to happen due to [the Student's] excelling in [their] classes."

22. Special Education/Related Services on the IEP dated December 7, 2023, indicated:
    a. Special Education Services in the General Education Setting, for Core Math, 5 days a week, starting September 27, 2023, through the remainder of the IEP year.
    b. Special Education Services in the Special Education Setting, for Math Lab, 5 days a week, starting September 27, 2023, through November 1, 2023.
    c. Accommodations included:
        i. Checks for understanding, each day in class session in the general education math class during the entire class period, starting September 27, 2023, and ending September 26, 2024.
        ii. "[The Student's] cognitive testing shows that [they have] deficits in Visual Processing. This will necessitate that [they have] frequent check[s] for understandings in the math class for success."
        iii. Chunk directions each day when class is in session, during all core and elective classes, for the duration of the class period, starting September 27, 2023, through September 26, 2024.
        iv. "[The Student] has a deficit in auditory process[ing] which will necessitate for [the Student] to have directions chunked."
        v. The Student will reference page/location of material content related to the assignment questions, each day class is in session when given an assignment with information containing more than two pages for the duration of the assignments starting November 1, 2023, and ending September 26, 2024.
        vi. The Student will use visuals and manipulatives each day in math class, when in session for the duration of the class period, starting September 27, 2023, through September 26, 2024.
        vii. "[The Student] has a math deficit as well as visual processing deficits. In order to maintain success in math class, [the Student] will need access to math visuals or math manipulatives."
    d. Under Supplementary Aids and Services the IEP indicated the Student did not require special needs transportation this school year or next year.
    e. The Parent signed a Consent to Communicate and Send Files Electronically which indicated the Parent agreed to "give permission and consent to send confidential information concerning the provision of prior notice, notice of meetings, and other special education services or special education-related, personally-identifiable information regarding [the Student]."

23. On February 21, 2024, the Case Manager emailed the Director of Special Services indicating, "[The Parent] didn't respond after I sent [them] the last email telling [them] that this is the copy of the IEP that you and [the Parent] agreed on during your meeting. My only guess is [their] concern over [the Student's] math grade. [The Student] is currently failing my class but prior to last week, [they] spent nearly every day in the counseling office or nurses office as well as 5 absences this quarter in my class."
24. On February 21, 2024, the Case Manager emailed the Parent a copy of the IEP the Parent had requested.
25. On February 22, 2024 the Case Manager sent an email to the Parent, "I allow my students to make up any missing work until a week before grades are due which will be March 1st. [The Student] has turned in one of the missing assignments and was almost done with another as of 7th hour today!"
26. On February 28, 2024, the Parent emailed the Director of Special Services and requested a copy of the signed written consent to remove the Student from speech and math services.
27. On March 1, 2024, the Director of Special Services emailed the Parent stating, "In response to your request for the signed PWN for consent to remove services, as you are fully aware, we do not have a signed consent form. We have held several meetings and attempted to obtain written consent on the PWN, but never received a written response on the PWN from you. … [T]he Kansas Sped Process HB, indicates the following: 'Additionally, informed parental consent is not required to make a material change in services if the school can document that;
    a. It made reasonable efforts to obtain such consent;
    b. The child's parent has failed to respond; or
    c. If the change is made under the discipline provisions.'"
28. A timeline of procedures indicated:
    a. During a meeting on November 1, 2023, the Parent agreed to the Student no longer receiving speech and language services and removing the math lab special education services. Transportation services were requested by the Parent. A PWN was sent multiple times with notice of the agreed removal of services and the rejection of the transportation services as a need had not been documented. The Parent shared the online road maps from the Parent's house to the School showed 2.5 miles or more.
    b. On February 21, 2024, the Parent indicated they needed a copy of the IEP currently being used with the Student. The Parent indicated they did not feel the District was supporting the Student.
    c. On February 28, 2024, the Parent requested a copy of the signed consent to remove speech and math services. The Parent again shared their health concerns that were impacting their ability to transport the Student to school. During a phone conversation, the Director of Special Services asked the Parent

for written documentation from a physician indicating the health concerns that impacted the ability to transport the Student to the School.

29. On March 1, 2024, the Director of Special Services emailed the Parent that the Team discussed options for transportation. The Team wanted to consider transportation on a bus to the School. "We thought this option would give [the Student] the opportunity to ride the bus with non-identified peers and still receive the transportation services that are needed. The general transportation would be [the Student's] least restrictive placement."
30. On March 19, 2024, the Principal emailed the Parent information the Parent requested as follows:
    a. Speech:
        i. 9/27/2023 - Initial meeting -exited speech services, which was discussed in the meeting.
        ii. 10/17/2023 - Started seeing the Student again for speech.
        iii. 11/6/2023 - Exited speech services.
    b. Math:
        i. 11/6/2023- Exited from resource double block math. The student was enrolled in "Leadworthy as an elective."
31. A Progress Report dated April 9, 2024 indicated the Student was currently at 84% for the goal, "When given math problems encompassing order of operations, integers, rational numbers, expressions, or equations [the Student] will use a variety of mathematical strategies to correctly solve the problems with 90% accuracy or higher as measured by teacher data collection or classroom assignments or quizzes."
32. A Progress Report dated April 9, 2024 indicated the Student was currently able to "produce at 4 or more sentences on a given topic with at least 80% accuracy." The Student met the goal.
33. During an interview with the Complaint Investigator, the Vice Principal stated, "[The Parent] ha[d] asked that [the Student] not have the double math anymore, which was with the math, the same math teacher. And we verbally agreed that we would move [the Student] into that class, into the [L]eadworthy class." The Vice Principal indicated that the Parent asked for a change in schedule.
34. During an interview with the Complaint Investigator, the Vice Principal shared that the Student started the change in math schedule in October and had ended at the semester break in December. The Vice Principal indicated after the semester break the elective classes changed.
35. During an interview with the Complaint Investigator the Speech Pathologist indicated the Student had a history of receiving speech therapy for expressive and receptive language concerns. In sixth grade, their progress was "remarkable," suggesting the Student might soon exit the program. During their seventh-grade re-evaluation, formal testing, including the OWLS II, indicated average scores for listening comprehension and oral expression. The Student also maintained strong academic grades. Based on

these results, in consultation with the Student's Parent, it was agreed the Student would be exited from speech therapy services.

36. The Speech Pathologist shared during an interview with the Complaint Investigator that the Parent initially agreed to exit the Student from speech therapy services during the September 27, 2023, IEP meeting. After, the IEP process began, and the Speech Pathologist left the meeting as they were no longer involved. It was later discovered that the Parent had not officially signed the exit paperwork. Attempts to get the signature afterward failed. This led to some miscommunication, as the Speech Pathologist resumed services starting October 17, 2023, under the belief the Student had not exited. Eventually, it was confirmed the Student did indeed exit services after 4 weeks of speech therapy instruction.
37. During an interview with the Complaint Investigator when asked if there were any speech therapy sessions that the Student missed because of the miscommunication, the Speech Pathologist replied the Student, "would only miss the week of, um, October 2nd through the [6th] and the [9th] through the 12th. So those were the only two weeks that [the Student] would've missed while they were trying to obtain the signature."
38. During an interview with the Complaint Investigator, the Principal described the other math class as a higher level than the resource math class the Student had previously attendeed. This change was made because the Student's performance indicated they were working above the level of their peers in the resource class. The move also freed up a period in their schedule, allowing the Student to take an elective course focused on character development and life skills. The Student moved from two math classes to one math class. The Principal believed the math class provided support for the Student.
39. During an interview with the Complaint Investigator , the Special Education Teacher didn't recall any disagreements arising during the IEP meeting. The Special Education Teacher believed there was an understanding that the Student wouldn't require speech, special education math services, or specialized transportation. While the Special Education Teacher couldn't specifically remember the transportation aspect being discussed, they were confident about the other two services being agreed upon. This IEP meeting occurred in September of 2023.
40. During an interview with the Complaint Investigator, the Director of Special Services explained the different tiered ELA class levels as Tier 3 and Tier 2 ELA classes both provided extra support for struggling readers. Tier 3 classes involved smaller groups of students, proceeding at a slower pace than Tier 2. They also focused on core standards, rather than aiming to cover all the standards covered in a typical (Tier 1) class. Students in Tier 3 might include both general and special education students.
41. During an interview with the Complaint Investigator, the School Psychologist indicated during the three-year reevaluation and IEP meeting, it was determined that the Student continued to qualify for special education services under their learning disability exceptionality. The team agreed to remove speech services. After discussing test scores, teacher reports, and current grades, the School Psychologist made their case

for reducing the Student's math resource services. However, the Parent requested more time to consider this change. The School Psychologist prepared a PWN outlining the proposed changes and sent it home with the Parent for their review and decision. They also sent a refusal for the special transportation request, as it did not align with the Student's specific needs due to their disability. In October, the School Psychologist followed up as they had not yet received a response, likely because the original PWN indicated the service change for math resources would initiate on October 16, 2024.

42. The School Psychologist indicated during an interview with the Complaint Investigator that the Parent agreed to discontinue speech services but needed more time to consider reducing the Student's math resource services. There was no clear indication of disagreement with this change, only a request for additional time to make the decision. Regarding the denial of special transportation, the School Psychologist reiterated that it couldn't be provided due to its focus on the Parent's disability rather than the Student's. While the Parent's exact response to this isn't recalled, the School Psychologist was clear in conveying the decision to deny the request.
43. When the Parent was interviewed by the Complaint Investigator. The Parent shared that during an IEP meeting in September [2023], the Parent and the school team discussed potential changes to the Student's IEP, including adjustments to math, speech, and transportation requests. According to the Parent discussions were ongoing, and the Parent left the meeting without signing anything. The Parent requested that the School send them a copy of the updated information typed into the IEP (as it was being worked on live during the meeting), so the Parent could carefully review it before making decisions about services and potential changes.
44. During an interview with the Complaint Investigator, the Parent shared that their understanding was that, "the Student's old IEP would remain in place until we got a copy of the new IEP and looked it over and if we agreed to it, we signed the PWN and that would then implement the new IEP. That IEP could not be put in place until we had signed a [P]rior [W]ritten [N]otice." When asked by the Complaint Investigator if the Parent was in agreement to the changes to the speech and language services, the Parent replied, "I think I wanted to talk it over with [the Spouse] and just let them know what they were saying about it and, as a family, to sit down and see if that was what was best for the Student. … but if that's what they recommended and there was justification there, that would've been fine. I just, like I said, needed time to look it over. And then you've seen where it went from there." When asked about math, the Parent replied, "The same."

Applicable Regulations and Conclusions

According to K.A.R. 91-40-27(a)(3)(f), the District is generally required to obtain parental consent before conducting initial evaluations, reevaluations, significantly altering services, or substantially changing the placement of an exceptional child. Exceptions exist for changes stemming from graduation, exceeding the age of eligibility, or disciplinary procedures (K.A.R. 91-40-33 through 91-40-38). If a parent withholds consent, the district has the option, but not

the obligation, to pursue the evaluation or change through due process or mediation procedures to challenge the parent's decision.

The Student's reevaluation results and present level of performance indicated that changed to the Student's IEP were warranted. The IEP Team discussed this at the September 27, 2023 IEP meeting and determined that speech language would be discontinued and math services would be reduced. There was no indication at the meeting that the Parent disagreed with these changes. The District made multiple attempts to obtain the Parent's signature on the PWN that detailed these changes. After realizing that the Parent was not going to sign the PWN, the District resumed speech services and the math services had not yet been adjusted.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the District improperly removed speech-language and math services from the Student's IEP without the Parent's consent or proper notification.

Issue Four

USD #261 implemented an IEP that was not approved by the Parent in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA).

Positions of the Parties

The Parent alleged that the District implemented the Student's IEP despite the lack of a signed PWN. The Parent requested a copy of the current IEP in use and was given an unsigned draft. According to the Parent, when they reiterated the need for the current, in-use IEP, the IEP Case Manager confirmed that the School was using the unsigned draft.

The District responded that after the September 17, 2023 IEP meeting where removal of speech-language services and math lab were recommended to be discontinued, the Parent was provided with the PWN in person, on September 27, 2023 by mail on September 29, 2023 and by email on October 10, 2023. The IEP was provided to the Parent on October 10, 2023 through email from the Special Education Teacher. During the IEP meeting on October 10, 2023, the Parent agreed to discontinue speech-language services and math lab services since the Student no longer met eligibility or a need for services. Therefore the speech-language services were discontinued from September 28, 2023 until October 17, 2023 whenthe Parent indicated they were not signing the PWN for the changes proposed during the September 17, 2023 IEP meeting. Math lab services were not discontinued. A PWN was sent multiple times regarding the removal of services. Several attempts were made, several meetings occurred, and communications were given to the Parent to obtain a signed PWN. The District offered compensatory services on February 28, 2024.

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Parent and staff in the District.

1. The Complaint Investigator interviewed the Principal. The Complaint Investigator asked about an email exchange that happened between the Parent and the Principal where the Parent made a statement that it was their intention to “get the School District broom out and sweep it all under the rug.” The Principal shared during an email exchange, the Parent accused the School District of intending to "sweep everything under the rug" regarding an incident. The Parent felt that school staff were intimidating their Student and engaging in unprofessional behavior towards them. While the specific details of a conversation between the Parent and the School Psychologist remain unclear, it seems the Parent's concerns stemmed from issues related to obtaining signed paperwork.
2. During an interview with the Complaint Investigator the Director of Special Services indicated during the November 1st meeting, concerns were raised regarding specific accommodations and goal-setting within the IEP. The team collaborated with the Parent to revise the wording of both the accommodation and the goal. To ensure clarity and feasibility of implementation, the revised wording was then reviewed with the Case Manager.
3. During an interview with the Complaint Investigator, the Parent indicated that they did receive a copy of the IEP that was added to at the follow-up meeting on November 1, 2023.

Applicable Regulations and Conclusions

According to K.A.R. 91-40-16(2) the district has 10 school days to start services after receiving written parental consent unless they can show a reasonable cause for delay.

The District implemented that changes that had been made at the IEP meetings within 10 days of the IEP meetings in which the decisions had made made. The District made multiple attempts to obtain the Parent’s signature on the PWNs that detailed the changes to the Student’s special education services.

Based on the foregoing, according to IDEA and Kansas special education regulations, it *is not substantiated* that the district failed to implement the Student’s IEP within required timelines or that the District implemented an IEP following the proper procedures to obtain the Parent’s consent.

Issue Five

USD #261 denied the Parent's request for copies of the Student's special education records on March 28, 2024 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA).

Positions of the Parties

The Parent alleged that during a visit to the District office, the Parent was allowed to review the Student's educational records but was denied copies despite requesting them at the beginning of the meeting. According to the Parent, the Director of Special Education, initially indicated that the Director needed to seek approval before providing copies and later refused the request entirely. In the Parent's view, this implied that the District provided copies at their discretion.

The District responded that on March 5, 2024, the Parent made a formal request to review the Student's special education records. On March 6, 2024, the Director of Special Services responded to the Parent request. On March 25, 2024 the Director of Special Services emailed the Parent informing them the special education records would be available to review in the special education office on March 28, 2024 and asked if the Parent would like for the special education department to work with the building for the other educational records. The Parent indicated that they would need access to all educational records. On March 28, 2024, the Director of Special Services emailed the Parent stating they were able to speak to the Superintendent and the District would copy the requested educational records at no charge.

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Parent and staff in the District.

1. On March 5, 2024, the Parent sent an email to the Director of Special Services, "This is a formal request to review [the Student's] educational records. Please let me know when that can be arranged."
2. On March 27, 2024, the Director of Special Services sent an email to the Parent letting the Parent know where they could pick up records for their Student.
3. On March 28, 2024, the Director of Special Services emailed the Parent, "We will copy the requested educational records at no charge. You will be able to pick the documents up from the office … on Wednesday, April 3, 2024. Please let me know if that day works for you. If not, we can schedule for another day that works for your schedule."
4. On March 28, 2024, the Parent emailed the Director of Special Services stating, "I appreciate your recap of our conversation this morning, no matter how incomplete. I assume it was just an oversight on your part when you forgot to mention that you didn't have to provide me with copies of my child's education records."

5. On April 3, 2024, a signed Records Release Request indicated the Parent picked up a copy of the Student's Special Education records.
6. During an interview with the Complaint Investigator, the Special Education Teacher recalled that the Parent did not directly request all educational records. The only request the Parent made was for a copy of the Student's IEP. The Special Education Teacher provided a copy of the IEP on February 21st [2024] after the Parent forwarded a request from the School's Reading Teacher.
7. During an interview with the Complaint Investigator, the Director of Special Services indicated that they had provided access to the records as they understood that to be the legal requirement. However, due to the cost of producing copies, they sought guidance from the Superintendent to inquire about charging parents. The Superintendent clarified that the District should provide copies of educational records at no cost to the Parent.
8. During an interview by the Complaint Investigator, the Parent shared that they made a records request to obtain information about their Student's IEP. There was confusion about which version of the IEP had been submitted to KSDE. According to the Parent, the School District may have either prematurely closed the Student's existing IEP or implemented a new IEP without obtaining the necessary parental signature on a PWN. The Parent was trying to clarify what data was sent to KSDE and whether the District was using the correct, legally binding version of the Student's IEP.
9. During an interview with the Complaint Investigator, the Parent stated, "I did make a formal request for that. I went and sat down and looked over the record at the meeting. I asked if I could take a couple of screenshots while I was at that meeting. I asked [the Director of Special Services] if I could have copies, and [they] told me [they] would have to talk to [their] supervisor to find out if they could do that. And I said, 'Well, it's our right by law to have copies of those." The Parent indicated that they did receive the records request.

Applicable Regulations and Conclusions

According to K.A.R. 91-40-25(a) parents of exceptional children have the fundamental right to access and review all their child's educational records. This includes records related to how the child is identified for services, evaluated, placed within the school setting, and how their Free Appropriate Public Education (FAPE) is provided.

Based on the foregoing, according to IDEA and Kansas special education regulations, it *is not substantiated* that the District denied the Parent's request for copies of the Student's special education records

Issue Six

USD #261 denied the Student a free appropriate public education (FAPE) when the Student missed school because special education transportation services were not provided. Further, the Complaint alleges that the Student was denied a FAPE when the District stopped providing speech-language and math services to the Student, and the Student was removed from all classes for two days to complete progress monitoring in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA).

Positions of the Parties

The Parent alleged that repeatedly denying the Student transportation impacted the Student's ability to access their education. The Parent alleged that speech and language services may have been removed from the Student's IEP without proper parental consent or a PWN which impacted the Student's access to their education. Additionally, the Student was pulled from classes for two days and assigned a substantial amount of work, demonstrating a last-minute rush to gather data for the IEP.

The District responded that the Parent requested transportation during Open House on August 15, 2023. The Parent indicated to the School Psychologist that the request for special transportation was due to Parent disabilities, at which point the School Psychologist indicated they would follow up with someone to gather more information as special transportation considerations were typically requested and needs determined if it was related to the Student's disability. The Parent requested transportation again at the IEP meeting held on September 27, 2023. On September 29, 2023 the LEA Representative (Assistant Principal) reached out to see if there were any options regarding transportation. The Transportation Director indicated the Student was not eligible for transportation because of the distance requirement from home to the School. During a phone conversation with the Director of Special Services, the Parent was asked to provide written documentation from a physician indicating the health concerns that impacted the Parent's ability to transport the Student. In reviewing the attendance logs, the Student has missed September 25 and September 26 for vacation. The Student missed October 12, 16, 17, and 18, 2023. The Student had two additional excused absences on October 26, 2023, and January 19, 2024. The District offered transportation on March 1, 2024. The District offered compensatory services on February 28, 2024.

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Parent and staff in the District.

1. According to the Formal Complaint Response, on September 29, 2023, "the LEA [R]epresentative ([A]ssistant [P]rincipal) during the annual IEP meeting reached out to

the Transportation Director as well as the Support/Homeless Services Coordinator & Foster Care Liason to see if there were any options regarding transportation. The Support/Homeless Services Coordinator & Foster Care Liason responded stating the family must qualify for services through McKinney Vento or Foster Care to be eligible for transportation for the Student. Other transportation suggestions such as the Haysville Hustle (public transportation) or a bicycle was suggested."

2. According to the Formal Complaint Response, on September 29, 2023, "Conversations were also held with the [T]ransportation [D]irector that indicated the Student is not eligible for transportation because of the distance requirement from the [S]chool building to their home. The LEA [R]epresentative (Assistant Principal) shared this information with the Parent."
3. On October 16, 2023, the Parent emailed the Principal, "I wanted to make you aware that [the Student] will not be returning to [the School] until the intimidation tactics and threats made by the [S]chool [P]sychologist cease and I can be assured that [the Student's] educational needs will be met and that [their] IEP has not been closed and [their] special education services have not been discontinued."
4. On October 17, 2023, the Principal emailed the Director of Special Services, "I have visited with the [S]chool [P]sychologist. Essentially, after the reevaluation was completed a recommendation of dismissal of SL services and a change in services for math was recommended. [The Parent] was not in agreement with the change in services and has indicated [they do] not want to sign any documents. I have reached out to [the School Psychologist] and we will visit regarding the communication to [the Parent]."
5. On October 17, 2023, the Parents emailed the Principal indicating, "Can you provide me with a time frame in which you plan to have resolved? [The Student] would like to return to school. I want to make sure that this issue is resolved so wr [sic] can make that happen for [them]."
6. On October 17, 2023, the Principal emailed the Other Parent, "I appreciate your flexibility in giving me the time to make this happen. In review of the information provided to me from the IEP team members here within the [S]chool, the recommendation for Speech Language dismissal was presented, as well as, changing services to the Math portion of [their] IEP. As I understand it, the change was presented based on the reevaluation data, [their] Fastbridge data, and the teacher input. When looking deeper into this recommendation it was presented that [the Student] will still receive special education support services in [their] IEP through inclusion rather than in the resource Math room."
7. On November 1, 2023, a Staffing Summary indicated the Parents had concerns about the School Psychologist and a Teacher on staff. "[The Student] came home with a stack of papers. [The Student] said, 'I don't know what I did.' [The Teacher] told me I had to do all of these and it had to be turned in on a specific day. … [The Student] indicated [the Teacher] was not happy with IEP [sic] and the IEP needed to be done differently." The Teacher denied those statements,, but felt like there were statements in the IEP that

reflected that thinking. The Parent felt the delivery of the re-evaluation information was "rushed and didn't make sense."

"The [T]eam updated the IEP to reflect changes in the wording in the reading goal for clarification, math PLAFFP, and accommodations /modifications. All the additional wording was the help with understanding. The [T]eam agagreeed [sic] with the removal of SL as a secondary exceptionality and the removal of SL services. The [T]eam was in agreement with the change in math lab class to Leadworthy since [they] no longer need the additional special education math class."

8. According to the Formal Complaint Response, on December 12, 2023 communication occurred between the Parent and the Director of Special Services. The Parent indicated they would like a better understanding of the transportation situation before signing consent indicating the online maps show more than 2.5 miles, so they are struggling to see why it is not on the Student's IEP. The Director of Special Services reiterated that transportation for all students is calculated through a system the transportation department uses which often reflects a straight line rather than what the online maps show. It was also suggested by the Director of Special Services to set up a meeting after the winter break to discuss the [P]arental concern that without special transportation the Student would not receive FAPE. At the time, the Director of Special Services did not see the Student not receiving FAPE as the Student was in attendance and receiving special education services.
9. According to the Formal Complaint Response, on March 1, 2024 the Director of Special Services tried to call the Parent to follow up regarding their discussion with the KSDE regarding transportation, but received the Parent's voicemail. The Director of Special Services followed up with an email communication, "[T]hey spoke with the Kansas State Department of Education and they indicated it is not an unreasonable request to ask for documentation indicating the Parent's health concerns impacting their ability to transport the Student."
10. On March 1, 2024, the District offered transportation and was continuing to offer transportation through general transportation. "Special Transportation was offered on March 1, 2024 and is continuing to be offered and would be included within the Student's Individualized Education Plan with the documentation indicating the inability of parental transportation due to worsening medical conditions."
11. On April 5, 2024, a teacher responded to the Parent's allegation of waiting "until the last minute to collect data for [their] part of the IEP. … No data came to me from the previous year, so I followed up with 2 other [T]eachers to confirm. [The Student] would need to do 5-4th grade passages, 5-5th grade passages, and 5-6th grade passages. … This was brought to my attention as what needed to be completed until the IEP update request came to me before the meeting (upwards of 2 weeks ahead of time). … Due to being distracted, [the Student] was moved into the library to work on the work in hopes that [they'd] focus to get the work done." The Teacher indicated the Student was pulled out of class for assessments during their class period and not for full days.

12. During the 2023-2024 school year, attendance records indicated the Student was absent 10 percent of the time from October 16, 2023, through April 19, 2024.
13. During the 2023-2024 school year, the Student's grades for the Quarter 4 were:
    a. Band 7-A;
    b. Guided Study-P;
    c. Language Arts 7-B;
    d. Leadworthy II-A;
    e. Math 7 Essentials-B;
    f. Reading 7 Concepts-B; and
    g. Science 7-B.
14. During an interview with the Complaint Investigator, the Principal was asked what forms of transportation were accessible to the Student. The Principal shared the Student was initially transported to and from school exclusively by their Parent. During the first IEP meeting, a transportation request was made. The Parent supported their request with documentation from Google Maps outlining different potential routes, likely to address the District's two and a half mile transportation guideline. The Parent proposed three routes that exceeded the 2.5-mile range, but the exact distances weren't verified. Based on discussions, the routes likely fell somewhere between slightly exceeding 2.5 miles up to around 3 miles in length.
15. During an interview with the Complaint Investigator, the Principal shared the District's practice for determining a student's eligibility for transportation likely involves identifying an existing bus route that either already passes through the student's neighborhood or could easily.
16. The Reading Intervention Teacher shared during an interview with the Complaint Investigator that to collect progress on the Student's reading comprehension, they found grade-level fiction and nonfiction passages on ReadWorks. The Reading Intervention Teacher printed these passages, along with comprehension questions, and asked the Student to complete them during class time. Occasionally, the Student also worked on these assignments during a school-wide guided study period.
17. During an interview with the Complaint Investigator, the Reading Intervention Teacher shared that the Student primarily missed opportunities to complete the reading assignments during their class time. However, there were one or two instances where the Student also missed a guided study period at the end of the day with the Guided Study Teacher to work on the assignments. Aside from the Reading Intervention Teacher's class and the occasional guided study period, the Student did not miss any other class time to work on the progress measures.
18. During an interview with the Complaint Investigator, the Director of Special Services indicated during prior meetings, including the November 1st [2023] meeting, both Parents indicated health concerns that could worsen over time and impact their ability to transport the Student. No formal medical documentation outlining these concerns was provided. The Parent submitted maps detailing the distance from their home to

the general education route, but these distances were not verified by the District's official transportation data system. It was confirmed that the District does not typically make exceptions allowing students who are slightly beyond the qualifying distance to access general education transportation routes.

19. During an interview with the Complaint Investigator, the School Psychologist indicated they were in the process of setting up a three-year reevaluation for the Student when the Special Education Teacher informed them that the Parent had requested special transportation. The School Psychologist included this request in their planning when they later scheduled the reevaluation meeting with the Parent. During the meeting, they discussed the testing involved in the reevaluation and sought clarification about the special transportation request, as this was a new type of request for the School Psychologist.
20. During an interview with the Complaint Investigator, the School Psychologist shared after the initial meeting, they learned that the Parent also had a disability that would progressively limit their ability to provide transportation. The School Psychologist was unsure how to handle this request, as it focused on the Parent's disability rather than the Student's. They consulted with the Assistant Director of Special Education, to clarify how to proceed. Following this conversation, the School Psychologist understood that special transportation would not be provided and would need to submit a refusal as the request was not based on the Student's exceptionality. The Student did not have a need for special transportation based on the Student's own learning disability.
21. During an interview by the Complaint Investigator, when asked what days did the Student miss school due to lack of having transportation, the Parent stated, "I don't have the exact dates, but I know that there were somewhere between five and seven days at least this, between August of last year and to current," (Parent, P1, 00:54) The Parent shared that both Parents "have medical issues that sometimes preclude us from being able to drive." (Parent, P1, 01:23) When asked if the Parent had provided anything in writing about the medical conditions to the District, the Parent replied, "I have not at this point because nothing was requested of me. It wasn't until the last probably six days that anything was even requested. Before that, there were all kinds of reasons that they had for not providing transportation. But I will tell you, when I communicated the need for transportation, I did communicate to them why." (Parent, P1, 01:40)
22. The Parent shared during an interview with the Complaint Investigator that after the September 27, 2023 IEP meeting, the School Psychologist repeatedly pressured the Parent to sign the PWN. The Parent explained their busy schedule with special needs children and their spouse's health condition, indicating that the Parent needed more time for review. The School Psychologist became impatient despite their attempts to communicate. On October 16, 2023, the School Psychologist called and questioned the Student about their school absence while the Parent was briefly outside. Upon taking the call, the Parent was again asked about the IEP and PWN, and the Parent reiterated that they hoped to finish their review by the end of that week. (Parent, P6, 16:49)

23. During an interview with the Complaint Investigator, the Parent shared at that point in time, the School Psychologist told the Parent that they could not wait any longer and that since the Parent was not cooperating with the School Psychologist, they were going to close the Student's IEP and the Student would no longer have special education services. (Parent, P6-P7, 18:26)
24. During an interview with the Complaint Investigator, the Parent was asked what disability-related reasons they thought the Student had that required transportation, the Parent replied, " I'm not sure. … I know [they] have a diagnosis of ADHD. [The Student] has anxiety. [They have] some depression going on, those kind of things." The Parent shared that the anxiety would be "an extreme issue for [them] getting to School on [their] own." (Parent, P7, 19:22)
25. During an interview with the Complaint Investigator, the Parent shared that the Student had been "sexually assaulted about a year and a half ago, two years ago maybe, and [they don't] go out alone." The Parent shared that this caused extreme anxiety and the School was aware of it. The Parent shared that the School had a copy of the Protection From Abuse Order that was filed against the perpetrator. The Parent shared the sexual assault resulted in the Student's disabilities of depression and anxiety. (Parent, P8, 20:26)
26. During an interview with the Complaint Investigator, the Parent shared before the September IEP meeting, the Student was removed from their classes for two days and given a substantial stack of work to complete, for progress monitoring purposes. This occurred after a teacher reportedly called the Student's IEP "stupid," causing them significant distress. The Parent learned about the situation when the Student came home upset with the large packet of assignments. According to the Parent, the Student was instructed to work on them independently in another teacher's room. The Parent intervened and told the Student to focus on regular schoolwork. (Parent, P11, 28:01)

Applicable Regulations and Conclusions

According to K.A.R. 91-40-1(z), every child with an exceptionality is entitled to receive a FAPE. Parent rights are intended to ensure that children receive a FAPE. A FAPE is defined as "special education and related services that are provided at public expense, under public supervision and direction, and without charge, meet the standards of the state board, include an appropriate preschool, elementary, or secondary school education, and are provided in conformity with an individualized education program.

There is no verifiable evidence that the Student missed school due to a lack of transportation. The records provided show that the Student missed four days of school when the Parent elected to have the Student not attend school when they were upset with the School Psychologist. Further, the District was not required to provide the Student with special transportion. The Student's performance records indicated they were passing their classes, making progress toward their IEP goals, and no longer required speech services or the same

amount and type of math services. There is no evidence that the Student's completion of progress monitoring assessments unreasonably excluded the Student from their classes.

Based on the foregoing, according to IDEA and Kansas special education regulations ***it is not substantiated*** that the district failed to provide the Student with a FAPE.

Investigator

Tania Tong, Licensed 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).

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 March 29, 2024
Against Unified School District No. 261

DECISION OF THE APPEAL COMMITTEE

Background

The matter commenced with the filing of a complaint, by --------, on behalf of her child, --------, received on March 29, 2024. In the remainder of the decision, -------- will be referred to as "the parent", or "the appellant", and -------- will be referred to as "the student". An investigation of the complaint was undertaken by complaint investigator, Tania Tong, on behalf of the Special Education and Title Services team at the Kansas State Department of Education. Following that investigation, a Final Complaint Report, addressing the parent's allegations, was issued to both parties on May 1, 2024. The Final Complaint Report concluded there were no violations of special education laws and regulations.

Thereafter, the parent filed an appeal of the Final Complaint Report. Upon receipt of the appeal, an Appeal Committee was appointed. The Appeal Committee reviewed the parent's appeal and supporting documents, the original complaint filed by the parent, the Final Complaint Report, and the district's response to the appeal. The Appeal Committee now issues this Final 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.

Parents' Appeal

The parent submits a 36-page appeal, inclusive of a copy of the parent's 20-page original formal complaint. The remaining pages contain further arguments and a timeline of events from the start of the 2023-2024 school year to the filing of the appeal. The parent offers these arguments to re-

litigate the original issues rather than provide any detailed statement of the basis for alleging that the report is incorrect. Following the "timeline of events" section is a list of documents the district provided the investigator during the formal complaint investigation, most of which are not cited as evidence in the actual report, and the parent's "rebuttal/thoughts" on each document. The "rebuttal/thoughts" again serve as an attempt to re-litigate the issues rather than provide a detailed statement of the basis for alleging that the report is incorrect.

In the introduction of the appeal, the parent includes a list of complaints about the investigator, noting that the complaint originally filed with KSDE, "was hacked apart, portioned, excluded, bundled and not reviewed in its entirety by Tania Tong". While the parent conveys dissatisfaction with how the investigator organized or presumably reviewed documents, this statement falls short of the standard under K.A.R. 91-40-5(f) since it does not provide a detailed statement as to what in the final report is allegedly incorrect because of the investigator's perceived methods.

The Appeal Committee does not conduct a separate investigation. The Appeal Committee only reviews the appeal, original complaint, and supporting documents to determine whether there is sufficient evidence to support the investigator's finding. As such, the Appeal Committee will not make any new findings based on the arguments presented in the appeal.

The Appeal Committee takes this opportunity to emphasize the standard applied in an Appeal Committee's review. Under K.A.R. 91-40-5(f), the Appeal Committee is tasked with reviewing the evidence to ensure there is sufficient evidence to support the investigator's findings and conclusions. Stated another way, the preponderance of the evidence must support that the investigator's finding is more likely than not. In this case, a review of the record shows the investigator considered 65 different pieces of evidence to form the basis of her findings and conclusions. The report also notes that, along with the 65 documents cited, the investigator reviewed numerous "additional documentation". While the total number of documents reviewed does not definitively indicate the evidence is sufficient, the quality of the evidence may support a conclusion was more likely than not. Here, the documents cited, and reviewed, and noted in the report, include various PWNs provided to the parent, numerous email communications between the parent and the district, the student's IEP, and interviews with various school personnel and the parent. These documents are also discussed under each of the six issues investigated. Based on a review of the documentation and interviews with the parties and witnesses, the investigator is in the best position to determine the credibility of the evidence.

A review of the report shows the investigator, in fact, considered all issues, for which KSDE possesses jurisdiction to investigate, as presented by the appellant in her original formal complaint. The following issues were appropriately excluded from the investigation, as KSDE does not possess jurisdiction in these matters:

- Complaint #6 – Whether threats and intimidation were used by the district to obtain parental consent to change the services offered in the student's IEP.

- Complaint #7 – Whether the district failed to act when staff allegedly violated state and federal special education laws and regulations.
- Complaint #8 – Whether the district failed to act in good faith by way of personnel reprimands.

Regardless, because the appellant failed to file an appeal providing a detailed statement of the basis for alleging the report is incorrect, the Appeal Committee will not determine whether sufficient evidence exists to support the findings and conclusions investigated in the complaint report.

This is the final decision on this matter. There is no further appeal. This Appeal decision is issued on this, the 28th day of May 2024.

Appeal Committee

Brian Dempsey; Assistant Director of Special Education and Title Services,

H. Dean Zajic; Assistant Director of Special Education and Title Services,

Dr. Crista Grimwood; Dispute Resolution Coordinator.

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #379
ON APRIL 1, 2024

DATE OF REPORT MAY 1, 2024

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

Investigation of Complaint

Laura Jurgensen, complaint investigator, exchanged multiple emails with the parent and offered to interview her as part of this investigation. Because of the parent's schedule she requested the complaint investigator email her question to which she would respond. On April 25, 2024, the complaint investigator emailed the parent questions, and the parent responded the same day. On April 23, 2024, the investigator spoke, via Zoom, with Matt Weller, principal of student's school; Leah Knitter, student's kindergarten teacher; Jennifer Swihart, kindergarten reading intervention teacher, and Jennifer Begnoche, school psychologist. The complaint investigator also exchanged multiple emails with district staff collecting and clarifying information. For the remainder of this report, Mr. Weller will be referred to as "principal," Ms. Knitter will be referred to as "kindergarten teacher," Ms. Swihart will be referred to as "kindergarten reading intervention teacher," and Ms. Begnoche will be referred to as "school psychologist."

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

- Parent Provided ASQ-3 on Student Completed by Student's Doctor, undated.
- Documentation of District Policies, Practices, and Procedures.
- Parent Provided Book Chapter on Phonological Skills, Literacy, and Dyslexia, Feb. 24, 2016.
- Student Progress, Quarters 1–3, 2021–22 School Year.
    - This document is not relevant to the current investigation as it is outside the investigation timeframe.
- Prior Written Notice Proposing to End Special Education Services, Parent's Refusal, and Student's Individualized Education Program (IEP), May 4, 2022.
    - This document is not relevant to the current investigation as it is outside the investigation timeframe.
- District 2023–24 Calendar, Jan. 9, 2023
- Student IEP Team Meeting Summary, Apr. 27, 2023.
- Reevaluation of Student, Apr. 27, 2023.

- Prior Written Notice Proposing to End Special Education Services and Parent's Consent, Apr. 27, 2023.
- Prior Written Notice Refusing Parent's Request for Initial Evaluation, May 3, 2023.
- Emails from Parent to Teacher Regarding Dyslexia Screening, Jan. 2 and 9, 2024.
- Email from Principal to Parent and Teacher Responding to Parent's Request for Dyslexia Screening, Jan. 12, 2024.
- Parent Provided Student's Doctor's Referral for Outside Evaluation of Student, Including Dyslexia, Jan. 15, 2024.
- Dyslexia Screener Results for Student, Feb. 9, 2024.
- Parent Provided Examples of Student Work, Feb. 16, 2024, and undated.
- Email from Parent to Principal Regarding Dyslexia Screening, Feb. 26, 2024.
- Student's aimswebPlus 2023–24 Reading Scores, Feb. 29, 2024.
- Student Progress, Quarters 1–3, 2023–24 School Year.
- Attachment to Parent's Feb. 26, 2024, Email to Principal, Chapter 3 of the Kansas Special Education Process Handbook with Parent's Comments and Highlights.
- Prior Written Notice Refusing Parent's Request for Initial Evaluation, Mar. 18, 2024.)
- Email from Principal to Parent with Notes from Feb. 22, 2024, Student Intervention Team Meeting, Mar. 19, 2024.
- Email from Parent to Principal Notifying District of Formal Complaint, Apr. 1, 2024.
- District's Response to Formal Complaint, Apr. 12, 2024.
- Student's aimswebPlus 2023–24 Phoneme Segmentation Scores with Teacher Note to Parent, Apr. 17, 2024.
- Student's aimswebPlus 2023–24 Phoneme Segmentation Scores, Apr. 23, 2024.
- Student's aimswebPlus 2023–24 Early Literacy Score Snapshot, Apr. 23, 2024.
- Dyslexia Screener Results for Student, Apr. 24, 2024.
- Websites from Parent on Dyslexia, Apr. 25, 2024.

Background Information

The student is a kindergartener that has attended school in her current school building since preschool. (District Staff Interview, Apr. 23, 2024.) In preschool, the student was on an IEP focused only on the area of speech and language. (Student IEP Team Meeting Summary, Apr. 27, 2023.) At the end of the 2022–23 school year, the student's IEP Team decided that she was no longer eligible for special education services and the parent consented to ending the student's special education services. (Prior Written Notice Proposing to End Special Education Services and Parent's Consent, Apr. 27, 2023.) The IEP Team decided to end the student's services, based on a reevaluation of the student that assessed the student in the areas of health/motor, vision, hearing, communication, social/emotional, and academic and noted no cognitive concerns and found the student to demonstrate age-appropriate skills in all areas. (Reevaluation of Student, Apr. 27, 2023.) School staff describe the student as sweet, kind, and capable. (District Staff Interview, Apr. 23, 2024.)

In the written complaint, the parent presented one issue:

Issue One

Did USD 379 follow child find requirements with this student? 34 C.F.R. § 300.111(a)(1)(i); K.A.R. §§ 91-40-7(a), (b)(2)–(3), (c).

Applicable Law

The regulations implementing the Individuals with Disabilities Education Act (IDEA) require that each state, "must have in effect policies and procedures to ensure that . . . [a]ll children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated." 34 C.F.R. § 300.111(a)(1)(i). Kansas fulfills this responsibility through K.A.R. § 91-40-7, which requires each local board of education to "adopt and implement policies and procedures to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction" K.A.R. § 91-40-7(a). This regulation also requires each local board to have "policies and procedures that include age-appropriate screening procedures that meet the following requirements for children from ages five through 21, observations, instruments, measures, and techniques that disclose any potential exceptionality and indicate a need for evaluation, including hearing and vision screening as required by state law; and implementation of procedures ensuring the early identification and assessment of disabilities in children." K.A.R. § 91-40-7(b)(2). A local board is required to refer a child who is enrolled in public school if "[s]chool personnel have data-based documentation indicating that before the referral or as a part of the referral, all of the following conditions were met:

(A) The child was provided with appropriate instruction in regular education settings that was delivered by qualified personnel.

(B) The child's academic achievement was repeatedly assessed at reasonable intervals that reflected formal assessment of the student's progress during instruction.

(C) The assessment results were provided to the child's parent or parents.

(D) The assessment results indicate that an evaluation is appropriate." K.A.R. § 91-40- 7(c)(2).

Analysis: Findings of Fact

The district has adopted policies and procedures that K.A.R § 91-40-7(a) requires, "to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction." (Documentation of District Policies, Practices, and Procedures.) The district has also adopted the screening policies and procedures that K.A.R. § 91-40- 7(b)(2) requires. (Documentation of District Policies, Practices, and Procedures.) As part of its screening policies and procedures, the district uses a dyslexia screener. (District Staff Interview, Apr. 23, 2024.)

On January 2 and 9, 2024, the parent emailed the student's kindergarten teacher requesting a dyslexia screening for the student. (Emails from Parent to Teacher Regarding Dyslexia

Screening, Jan. 2 and 9, 2024.) The kindergarten teacher forwarded the parent's email to the principal and the principal responded to the parent and the kindergarten teacher on January 12 providing information on the school's dyslexia screener and indicating he was seeking more information from the school psychologist and would get back to the parent and the kindergarten teacher. (Email from Principal to Parent and Teacher Responding to Parent's Request for Dyslexia Screening, Jan. 12, 2024.) The parent stated in an email to the complaint investigator that the parent considered this request to be for an initial evaluation to determine whether the student had an exceptionality and, because of that exceptionality, needed special education and related services. (Parent Email to Complaint Investigator, Apr. 25, 2024.) The district did not consider this request from the parent to be a request for an initial evaluation as the parent's request focused only on a screening and the district screening procedures for school-aged children included a dyslexia screening. (District Staff Interview, Apr. 23, 2024.)

On February 9, the kindergarten reading intervention teacher administered the school's dyslexia screening to the student. (District Staff Interview, Apr. 23, 2024.) The dyslexia screener instructions indicate that the student fails the screener if the student fails the Phonological Awareness section or any two sections. (Dyslexia Screener Results for Student, Feb. 9, 2024.) The screener indicates that if a student misses 12 or more out of 48 items, the student fails the Phonological Awareness section. (Dyslexia Screener Results for Student, Feb. 9, 2024.) The student failed the Phonological Awareness section by missing 34 items. (Dyslexia Screener Results for Student, Feb. 9, 2024.) School staff believe that "the failure of the [Phonological Awareness] section was due to lack of exposure" to the concepts assessed. (District's Response to Formal Complaint, Apr. 12, 2024.)

As part of the school's system of general education interventions all kindergartners participate in small group reading intervention. (District Staff Interview, Apr. 23, 2024.) The kindergarten team looks at Pathways to Reading data (kindergarten reading curriculum) and AimsWeb data (screening data) to establish the reading intervention groups. (District Staff Interview, Apr. 23, 2024.) School staff move students between these groups throughout the school year as the student's performance changes and varying student needs arise. (District Staff Interview, Apr. 23, 2024.) The student started the school year in a reading intervention group with higher performing students, then moved to the reading intervention group with the lowest performing students who are not receiving special education services, and is now in the reading intervention group of students performing at grade level. (District Staff Interview, Apr. 23, 2024.) The information district staff provided in the interview is supported by the district's written policies and procedures on its general intervention system. (Documentation of District Policies, Practices, and Procedures.)

An additional part of the school's system of general education intervention is to hold monthly student intervention team meetings, where school staff can bring data on students where staff are concerned with the student's progress. (District Staff Interview, Apr. 23, 2024; Documentation of District Policies, Practices, and Procedures.) Because the parent had raised

concerns about the student to the kindergarten teacher, the kindergarten teacher decided to bring those concerns to the student intervention team and to invite the parent, acting as the student's spring parent teacher conference. (District Staff Interview, Apr. 23, 2024.) The kindergarten teacher did not have her own concerns about the student that she would have otherwise brought to the student intervention team meeting but wanted to give the parent a place to discuss her concerns with other school staff. (District Staff Interview, Apr. 23, 2024.) At this meeting the student intervention team discussed the student's data and school staff provided the parent with the results of the February 9 dyslexia screening. Notes from that meeting indicate, "[Student] is still needing support with sounding out words. However, she has made great progress in sounding out the end of words." (Email from Principal to Parent with Notes from Feb. 22, 2024, Student Intervention Team Meeting, Mar. 19, 2024.)

On February 26, the parent emailed the principal with the subject "[Student] -dyslexia screening" and requests that the student "be screened because she may need additional assistance." (Email from Parent to Principal Regarding Dyslexia Screening, Feb. 26, 2024.) The parent attaches the chapter on initial evaluation and eligibility from the Kansas Special Education Process Handbook with the parent's highlights and comments and indicates in the email that "I don't necessarily want her in special education but would like her to be screened because she may need additional assistance." (Email from Parent to Principal Regarding Dyslexia Screening, Feb. 26, 2024.) Because this was the parent's second request for a dyslexia screening and the district had screened the student for dyslexia, district staff treated this email as a request for an initial evaluation and responded with a Prior Written Notice. (Prior Written Notice Refusing Parent's Request for Initial Evaluation, Mar. 18, 2024.) The school psychologist followed the district's procedures for reviewing student data, discussing student data with staff knowledgeable about the student, including the student's kindergarten teacher and reading intervention group teacher, and coming to a decision about whether to propose an initial evaluation or refusing the parent's request for an initial evaluation. (District Staff Interview, Apr. 23, 2024.) The district refused the parent's request for an initial evaluation, based on a review of student's data ("progress of kindergarten standards, aimsweb data, lexia, and classroom data") and determined that those data indicated the student was on target and did not indicate an evaluation was appropriate. (Prior Written Notice Refusing Parent's Request for Initial Evaluation, Mar. 18, 2024.) The district responded to the parent's request for an initial evaluation within a reasonable amount of time, 11 school days from the date the parent made the request. (34 C.F.R. § 300.503(a); Kan. State Dep't of Educ., Kan. Special Educ. Process Handbook 6 (2022), https://www.ksde.org/Portals/0/SES/PH/PH-complete.pdf?ver=2022-09-14-115937-777; District 2023–24 Calendar, Jan. 9, 2023.)

District policies and procedures do not require more frequent measures of progress monitoring to collect child progress data unless a child is not responding to the core instructional procedures. (Documentation of District Policies, Practices, and Procedures.) This student was responding to the core instructional procedures, so district policies and

procedures did not require more frequent measures of progress monitoring, but school staff decided to take this on to ensure it was responding to the parent's concerns. (District Staff Interview, Apr. 23, 2024.) During this complaint investigation and following the district's decision to refuse the parent's request for an initial evaluation, progress monitoring data showed that the student reached the established phoneme segmentation goal, and the kindergarten teacher shared this data with the parent. (Student's aimswebPlus 2023–24 Phoneme Segmentation Scores with Teacher Note to Parent, Apr. 17, 2024.) The student's aimswebPlus Early Literacy Composite Score is above 80%, which means that the student has "greater than 80% chance of achieving spring performance goals" in the areas of Letter Naming Fluency, Letter Word Sounds Fluency, Phoneme Segmentation, and Nonsense Word Fluency. (Student's aimswebPlus 2023–24 Early Literacy Score Snapshot, Apr. 23, 2024.) Based on this Early Literacy Composite Score, the student's risk level is considered low. (Student's aimswebPlus 2023–24 Early Literacy Score Snapshot, Apr. 23, 2024.) The kindergarten reading intervention teacher administered the dyslexia screening to the student again on April 24, 2024. (Dyslexia Screener Results for Student, Apr. 24, 2024.) The student again failed the phonological awareness section by missing 28 items. (Dyslexia Screener Results for Student, Feb. 9, 2024.)

Conclusion

This investigator's review of district policies and procedures on child find and screening confirm that the district has adopted the policies and procedures that K.A.R. § 91-40- 7(a) and K.A.R. § (b)(2)–(3) require. (Documentation of District Policies, Practices, and Procedures.) The district carries out its child find and screening procedures through its general education intervention process. (Documentation of District Policies, Practices, and Procedures.)

The district's interpretation of the parent's January 2 and 9 emails requesting a dyslexia screening for the student as not being a request for an initial evaluation for special education services is reasonable. The focus of the parent's request is only on screening for dyslexia, not at all on whether, if the student had dyslexia, the student might need special education and related services. (Emails from Parent to Teacher Regarding Dyslexia Screening, Jan. 2 and 9, 2024.) The district had followed its established process for screening, including screening for dyslexia, to respond to the parent's request and to screen the student for dyslexia. (Documentation of District Policies, Practices, and Procedures; Dyslexia Screener Results for Student, Feb. 9, 2024.) Kansas statutes indicate that the "screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation" (K.S.A. § 72-3428.) The kindergarten reading intervention teacher screening the student in response to the parent's request is not an evaluation. Because this screening is not an evaluation, the district was not required to give the parent a Prior Written Notice. (K.S.A. § 72-3430(b)(2).) The district's interpretation of the parent's February 26 email requesting a dyslexia screening as a request for an initial evaluation for special education as the district had, by that time, completed a dyslexia screening of the

student and the parent provided an annotated copy of the Kansas Special Education Process Handbook chapter on initial evaluation and eligibility, with the parent's comments about how she believed those requirements pertained to the student. (Email from Parent to Principal Regarding Dyslexia Screening, Feb. 26, 2024.) The district met its obligation to respond to the parent's request for an initial evaluation with a Prior Written Notice. (Prior Written Notice Refusing Parent's Request for Initial Evaluation, Mar. 18, 2024.)

The district provided sufficient evidence to support its refusal of the parent's request for an initial evaluation and to show it met its child find obligations under K.A.R. § 91- 40-7(c)(2). This regulation requires that school staff must "have data-based documentation indicating that before the referral or as a part of the referral, all of the following conditions were met " First, the student must have been provided with appropriate instruction in regular education settings that was delivered by qualified personnel. (K.A.R. § 91-40-7(c)(2)(A).) The district provided its procedures for carrying out appropriate instruction, provided information in the district interview that explained how school personnel carried out appropriate instruction, and submitted student progress data showing the results of the provided instruction. (Documentation of District Policies, Practices, and Procedures; District Staff Interview, Apr. 23, 2024; Student's aimswebPlus 2023–24 Reading Scores, Feb. 29, 2024.) Second, the district must have repeatedly assessed the student's academic achievement at reasonable intervals. (K.A.R. § 91-40-7(c)(2)(B).) The district provided data and information to support its monitoring of the student's progress. (Student's aimswebPlus 2023–24 Phoneme Segmentation Scores, Apr. 23, 2024; Student's aimswebPlus 2023–24 Early Literacy Score Snapshot, Apr. 23, 2024; District Staff Interview, Apr. 23, 2024.) Third, the district must have provided the student's results to the parent. (K.A.R. § 91-40- 7(c)(2)(C).) The district provided information showing this data was provided to the student's parents, as well as the results of the student's dyslexia screening. (District Staff Interview, Apr. 23, 2024.) The final step of the district's obligations under K.A.R. § 91-40-7(c)(2) is for the district to decide whether the student's assessment results indicate that an evaluation is appropriate. (K.A.R. § 91-40-7(c)(2)(D).) These discussions and decisions require district staff to look across all of the student's data and determine whether an evaluation is appropriate. District staff did that with this student and explained the data reviewed, the district's decision, and the basis for that decision in its Prior Written Notice refusing to evaluate. (Prior Written Notice Refusing Parent's Request for Initial Evaluation, Mar. 18, 2024.) Based on the foregoing, this investigation concludes USD 379 ***did not violate*** its obligations under K.A.R. §§ 91-40-7(a), (b)(2)–(3), (c)(2).

Investigator

Laura N. Jurgensen

Laura N. Jurgensen
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).

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 APRIL 4, 2024

DATE OF REPORT MAY 6, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of -------- by her mother, --------. In the remainder of the report, -------- will be referred to as "the student." -------- will be referred to as "the complainant" or "the parent" or "the mother." -------- is --------'s father and in the remainder of the report will be referred to as "the father." Together, -------- and -------- will be referred to as "the parents."

The complaint is against USD #207 Ft. Leavenworth Public Schools. In the remainder of the report, USD 207 will be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on April 4, 2024 and the 30-day timeline ends on May 6, 2024.

Evidence Reviewed

Gwen Beegle, Complaint Investigator, interviewed the parent by telephone on April 9, 2024, April 17, 2024 and April 30, 2024. Additional interviews included: USD # 250 Director of Special Education, Diana Greer on April 9, 2024 and Julia Kauffman on April 29 and April 30, 2024. The Complaint Investigator also received emails from the parent and USD # 207 personnel between April 17, 2024 and May 1, 2024.

During the investigation, the Complaint Investigator reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The following documentation and information were used in consideration of the issue(s):

Documents, emails, and district response

1. The student's IEP dated November 1, 2022
2. Communication log with entries from August 2023 to January 2024
3. Notice of Meeting dated October 6, 2023 for a meeting on October 12, 2023 with parents' signatures dated October 10, 2023 and October 12, 2023 waiving 10 day notice

4. Excusal from IEP meeting for Vision teacher dated October 12, 2023 with parents' signatures giving consent on the same date
5. Excusal from IEP meeting for Speech Language Pathologist (SLP) dated October 12, 2023 with parents' signatures giving consent on the same date
6. Excusal from IEP meeting for paraprofessional Registered Behavior Technician dated October 12, 2023 with parents' signatures giving consent on the same date
7. Student's IEP Interim and Team Discussion dated October 12, 2023 with parent signature acknowledging receipt of parent rights and signatures of attendees
8. Prior Written Notice on special education services, placement, and changes to the IEP dated October 12, 2023 for a meeting of the same date with parental signature giving consent on October 12, 2023
9. Staffing notes dated October 12, 2023
10. Prior Written Notice on changes to the IEP with attached Health Care/Crisis Plan dated October 23, 2023 with parent signature giving consent dated October 25, 2023
11. Progress Monitoring for the student's IEP, with entries dated December 15, 2022; March 10, 2023; May 18, 2023; October 18, 2023 and December 14, 2023.
12. Communication Log for the student with entries dated January 30, 2024 - April 1, 2024
13. Service logs: Adaptive PE, Anderson Consultation, Lanciault-SLP, DeFoe, Gibson, Burns - SLP, Vision, Kuhl, Martin, Parton, Instructional Coaching, Phelps, Occupational Therapist (OT)
14. Email exchange between the parent and Donna Greer (Special Education Director), Kathi Martin (Structured Learning Teacher), Tyler Fowler (Middle School Principal), Keith Mispagel (Superintendent of Schools) and the father beginning on January 10, 2024 at 6:40 p.m. and ending on January 17, 2024 at 8:02 a.m.
15. Email exchange between the parent and Tyler Fowler and Keith Mispagel beginning on February 1, 2024 at 3:53 p.m. and ending on February 1, 2024 at 4:10 p.m.
16. Email exchange between the parent and Julia Kaufman (Instructional Coach) beginning on January 31, 2024 at 9:30 p.m. and ending on February 1, 2024 at 9:06 a.m.
17. Draft IEP dated February 6, 2024
18. The student's IEP, dated February 6, 2024 and March 5, 2024 to be initiated on March 21, 2024, including the Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP).
19. Prior Written Notice for services, placement, and changes to the IEP dated March 5, 2024 and unsigned by the parents
20. Prior Written Notice for other changes to the IEP dated April 8, 2024 with the parent signature giving consent on the same date
21. The student's IEP Amendment dated April 8, 2024
22. The student's 2023-24 attendance log, undated
23. The district's response to the complaint, received April 23, 2024

Staff Qualifications

24. List of paraeducators and tier levels, undated
25. Credentials of RBT: Paras
26. Jeremiah Miller supervision log, January through May 2024
27. Gwen Blacketer supervision log, January through May 2024
28. Health Occupations Credentialing Verification of License, Speech Language Pathologist for Peggy Sue Burns, November 3, 2006 through October 31, 2024
29. Professional License for Julie Marston, Elementary Education and Visually Impaired, August 8, 2022 through February 9, 2028
30. Health Occupations Credentialing Verification of License, Speech Language Pathologist for Catherine Lanciault, August 21, 2023 through October 31, 2024
31. Kansas State Board of Healing Arts licensee and registrant search, Occupational Therapist, Tiffany Stark, February 25, 2024 through March 31, 2025.
32. Board Certified Behavior Analyst Certification (BCBA) for Claire Foster, 2018-2024
33. Board Certified Behavior Analyst Certification (BCBA) for Brittany Mitchelson, 2013-2024
34. Kansas State Board of Education Professional License for Barbara Anderson, Early Childhood Education EC-3 and Early Childhood Handicapped, 2021-2026.
35. Kansas State Board of Education Professional License for Nancy Boatright, Elementary K-9, Intellectual Disability Adaptive K-12, and Intellectual Disability Functional K-12, 2021-2026
36. Kansas State Board of Education Emergency Substitute License for Ann Marie Defore, 2023-25
37. Kansas State Board of Education Professional License for Theresa Gibson, English Language Arts 6-12, 2023-2028
38. Kansas State Board of Education Professional License for Julia Kauffman, Early - Late Childhood Generalist K-6 and High Incidence Special Education K-6, 2021-2026
39. Kansas State Board of Education Professional License for Kathi Martin, Adaptive Special Education K-6 and 6-12, Early - Late Childhood Generalist K-6, and Low Incidence Special Education K-12, 2023-2028.
40. Missouri Department of Elementary and Secondary Education Educator Credentials for Kathi Martin
41. Mandt Certifications through 2024 for Jennifer Allen, Melissa Baker, Gwendolyn Blacketer, Ann DeFore, Stephanie Garcia, Amanda Kuhl, Kathi Martin, Jay Miller, Donell Phelps, Samantha Stiles, and Michelle Thornton

Background Information

The student attended middle school in the district as a 6th grade student with other health impairments in special education or with special education support for the entirety of her school day. The student had a health plan due to a seizure disorder, food allergies, vagal nerve

stimulation, and optic nerve hypoplasia, which caused blindness in her left eye and vision impairment in her right eye. The student's IEP dated March 21, 2024 stated that deficits in social and cognitive skills required the use of continual special education support throughout the day. Her vision impairment required the use of accommodations during the school day, and her behavior challenges which included refusing to work required the completion of an FBA and initiation of a BIP in March, 2024. The IEP included goals in communication, math, occupational therapy/motor, reading, sensory/behavior, writing, and social emotional/behavior domains; and her special education and adaptive services included core special education in a special education setting, special education support in general education settings such as specials and lunch, adapted physical education, direct and indirect speech language services, indirect vision services, and occupational therapy.

Issues Investigated

1. ISSUE ONE: The USD #207 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by providing special education instructional services in the core structured learning classroom for the duration of time specified in the IEP during the 2023-24 school year
2. ISSUE TWO: The USD #207 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide appropriately qualified staff to meet the unique needs of the student during the 2023-24 school year

Issue One

The USD #207 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by providing special education instructional services in the core structured learning classroom for the duration of time specified in the IEP during the 2023-24 school year

Applicable Law

Federal/State statutes and regulations at 34 CFR 300.39 defines special education as specially designed instruction at no cost to the parent to meet the unique needs of a child with a disability. Further 34 CFR 300.320(a)(4) requires that the IEP include "a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child: (i) To advance appropriately toward attaining the annual goals; (ii) To be involved in and make progress in the general education curriculum. . . and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and nondisabled children."

Federal regulations 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.

Analysis: Findings of Fact

The parent alleged that, due to the abrupt departure of the student's special education teacher in the fall of 2023, the student's special education services, specifically the 315 minutes per day of special education in a special education setting, were not provided. The parent alleged that the district had documented times when the student had completed her work on the IEP objectives early in the day and subsequently allowed the student to watch television for the remainder of the school day. The parent attributed this failure to provide specially designed instruction to a lack of qualified personnel in the classroom who knew how to provide a full school day of instruction. The parent alleged that the school sent only a few pages of school work (coloring) home with the student during the fall semester as evidence of the student's instruction.

The district responded that the student's services had been provided despite the changes in personnel in the structured learning classroom. The district responded that the teacher's health leave had been extended during the fall of 2023 and then the teacher retired, requiring the district to provide two emergency substitutes for the student's classroom. The district responded that it had provided extensive instructional coaching support to all the teachers who served in the classroom and additional paraprofessional supervision and support by an instructional coach and other teachers. The district responded that the middle school used more computer apps for student work rather than paper and pencil tasks typical in the student's elementary school placement last year.

The district reported and provided documentation that two substitutes had been placed in the student's classroom, first a regular substitute, then an emergency substitute. The district reported and provided documentation that the district's instructional coach provided in classroom support to both substitutes and to the teacher before her retirement. According to the instructional coach and supported by the coaching services log, the in-classroom support occurred from 2 to 4 hours a week with structured coaching sessions that included lesson planning, observation, instructional modeling, supervision of paras, support/training of the substitutes to effectively supervise paras, in addition to additional time providing general support the classroom, at least 3 days per week and at times more often. The district reported and provided documentation that two additional teachers provided supportive coaching or instruction in the structured learning classroom this year.

The student's IEP dated November 1, 2022 showed the following services: indirect adaptive physical education, attendant care during recess and lunch (60 minutes), specials (special education in a general education classroom - 50 minutes), occupational therapy (pull out 20

minutes three times per week), speech language therapy (pull out 20 minutes two times per week and indirect services), indirect vision services, and core instruction in a special education classroom for 315 minutes 5 days a week. It included a health plan and two IEP goals in communication, two in math, one in motor, two in reading, two in sensory/behavior, one in social emotional/behavior, and one in written language. The IEP included several accommodations, including the repetition of directions, breaking work into chunks, preferential seating, reteaching, verbal reminders, monitoring for seizure activity, extra time, frequent positive feedback, token board, presentation of visual material to the right side, talk to text, scribe, visual schedule, and a bright strip to the left of the desk.

On October 12, 2023 the district provided Prior Written Notice (PWN) to the parent to create an interim IEP to extend the current IEP while a Board Certified Behavior Analyst (BCBA) conducted a Functional Behavior Assessment (FBA), to which the parent's gave consent on the same date. The student's interim IEP did not change the student's services or goals but extended the timeline for the IEP to February 16, 2024. Progress reports during this period showed some progress on goals other than the OT, sensory/behavior and social emotional/behavioral goals, leading to the initiation of an FBA.

The IEP team met on February 6, 2024 and on March 5, 2024 to develop a proposed IEP dated March 5, 2024, to go into effect on March 21, 2024. This IEP included the student's FBA and Behavior Intervention Plan (BIP). According to a PWN dated April 8, 2024, an amendment to the IEP added, at the parent's request, two additional observations to the FBA to better characterize the student's needs. The parent signed giving consent on the same date.

The parent reported that one of the draft IEPs stated that Zari had completed her work for the day. Upon examination of the IEP resulting from meetings on February 06 and March 5, 2024 (to go into effect on March 21, 2024), the investigator found this statement, referring to an observation for the student's FBA conducted on December 6, 2023 between 11:00 am to 1:00 p.m.: "[Para D] told [another staff] that Zari had finished all of her work for the day and that she had been asking for coloring, so he brought markers and coloring sheets" (p. 6 of 10, FBA section). When asked to explain this statement, the district reported that it referred to the period of time of the observation from 11:00 am to 1:00 p.m., over a lunch period, and that this was not typical of the student's instructional day. The district provided a copy of the student's schedule in place from August, 2023 to January 2024 which included 3 minute passing periods between the following academic subject periods: ELA (47 minutes), Intervention (30 minutes) Life Skills (47 minutes), Math (47 minutes), Social Studies (17 minutes and 75 minutes broken by the lunch period), Science/Math (47 minutes), specials, and advisory (29 minutes) for a total of 339 minutes, excluding lunch (30 minutes), passing periods and specials (47 minutes).

The student's FBA included in the March 21, 2024 IEP and April 8, 2024 amendment showed a chart of work completion and protests to work during the months of October, 2023 through

January, 2024. The FBA noted that the classroom staff had changed during the data collection period and the analyst stated that the change had not affected work completion, except briefly in a positive direction.

The instructional coach reported that the student's behavioral program included a token economy which allowed the student to ask for breaks, and that the student's work pace is characterized by about 15 minutes of work on a non-preferred task (more on a preferred task or instructional format) followed by a 3 to 5 minute break, excluding transitions and interruptions caused by any behavioral challenges.

The parent provided a copy of the home school communication log in place during the fall semester. Unlike the more detailed communication log put into place in January, 2024 at the parent's request, this log provided general comments on the student's activities during the day and the exchange of materials between home and school. The parent also provided a copy of coloring pages sent home as student work during the fall semester. When asked about the lack of academic work sent to the parent during the fall semester, the district reported that this resulted from a change from the elementary style of paper and pencil activities to the middle school's interactive and computer-based activities that produced fewer products. The district reported that coloring is a preferred activity and used as part of instructional activities when possible.

The home school communication log put into place in January, 2024 shows specific IEP related instruction occurring throughout the student's school day. No incidences of early dismissals other than the typical school schedule were found in either version of the communication log.

The district provided service logs that showed that the student's direct and indirect speech language therapy, indirect vision and direct occupational therapy services were provided during the 2023-2024 school year to date.

Conclusion

In this case, the parent was concerned that the student was not receiving a complete school day of instruction, specifically the 315 minutes occurring in the district's structured learning classroom. There is no evidence that the FBA observation of finishing work early on December 6, 2023 extended beyond the period observed or characterized the student's academic program as completing early each day. The district provided a student schedule showing the student's activities during the school day. The communication log provided to the parent during the fall 2023 does not provide enough information to conclude that the district failed to provide the instructional services required by the student's IEP in the structured learning classroom. Therefore, it is found that no violation of 34 C.F.R. 300.323(c)(2) can be documented in regard to the 315 minutes of special education in a special education setting.

Based on the foregoing, it is not substantiated that USD # 207 failed to implement the student's IEP, specifically by providing special education instructional services in the core

structured learning classroom for the duration of time specified in the IEP during the 2023-24 school year.

Issue Two

The USD #207 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide appropriately qualified staff to meet the unique needs of the student during the 2023-24 school year

Applicable Law

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) require 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.

Kansas regulations at K.A.R. 91-31-34 (b) (2-5) allow for the use of qualified substitute teachers based on their availability. If a teacher with an appropriate license or certificate is not available, the education system shall use a substitute teacher holding a valid Kansas teacher license or certificate in any field or subject. If a substitute teacher holding a valid Kansas teacher license or certificate is not available, the education system shall use a substitute teacher holding a valid Kansas substitute teaching license or certificate. If a substitute teacher holding a valid Kansas substitute teaching license is not available, the education system shall use a person who holds a baccalaureate degree and an emergency substitute teaching license or certificate. If a person holding a baccalaureate degree and an emergency substitute teaching license is not available, the education system shall use a person who has been licensed or certified by the state board as an emergency substitute teacher.

In addition, in Kansas 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.

Analysis: Findings of Fact

The parent alleged that she was not notified of the teacher changes occurring in the structured learning classroom, including the teacher's sick leave and subsequent retirement. The parent alleged that there had only been a special education teacher for one or two months during the school year. The parent alleged that the classroom's special education support from the instructional coach is not the same as the special education instructional services listed in the IEP. The parent questioned the qualifications of the various paraeducators in the classroom, noting the frequent changes in services provided by paraeducators rather than the one to one paraprofessional assigned in prior years.

The district responded that the teacher who had been on medical leave at the beginning of the school year informed a parent of her impending resignation around January 12, 2024, before the district received her formal resignation. The district responded that, as soon as the teacher's resignation was received, the district posted the position on January 29, 2024. The district responded that the state allows for the use of emergency substitutes in this situation. The district responded that qualified teachers and substitutes staffed the structured learning classroom.

The district reported and provided documentation that two substitute teachers had been placed in the student's classroom during the medical leave and following the resignation of the assigned classroom teacher.

The district reported the following: The teacher, K. Martin, had been on medical leave at the beginning of the school year, and T. Gibson was assigned as a substitute in the classroom from August 15, 2023 to October 12, 2023 during the medical leave. K. Martin returned to the classroom from October 16, 2023 to December 4, 2023. A. DeFore provided support to K. Martin for two days during this period. After December 4, 2023, A. DeFore served as an emergency substitute; T. Gibson provided support in the classroom with A. DeFore for 5 days.

The district reported that, in addition to an instructional coach (J. Kaufman), additional qualified teachers provided support to the classroom. B. Anderson provided assistance in lesson planning, implementing group social lessons, modeling lessons, observing and providing feedback, supporting data collection and progress monitoring for 4 hours per week beginning in January, 2024 through April, 2024 (service log). The district reported that N. Boatright provided direct instruction to the student two days a week, beginning April 19, 2024.

Teacher	Category	Qualifications
K. Martin.	Teacher	Professional License: Adaptive Special Education K-6 and 6-12, Early-Late Childhood Generalist K-6, Low Incidence Special Education PreK-12
T. Gibson	Substitute	Professional License: English Language Arts 6-12
A. DeFore	Substitute	Emergency Substitute License
J. Kaufman	Instructional Coach	Professional License: Early-Late Childhood Generalist K-6, High Incidence Special Education K-6
B. Anderson	Classroom Support	Professional License: Early Childhood, Early Childhood Handicapped
N. Boatright	Elementary Teacher and Middle School Classroom Support	Professional License: Elementary, Intellectual Disability Adapted Intellectual Disability Functional

When asked about A. DeFore's further qualifications, the district provided documentation of her B.S. in Elementary Education and prior experience as a paraeducator, substitute and full-time teacher in other states. The district reported that her prior experience in other special education classrooms in the district had been positive, including direct observation by the instructional coach.

The district reported and provided documentation that the district's instructional coach provided in classroom support to both substitutes and to the teacher before her retirement. According to the instructional coach and supported by the coaching services log, the in-classroom support occurred from 2 to 4 hours a week with structured coaching sessions that included lesson planning, observation, instructional modeling, supervision of paras, support/training of the substitutes to effectively supervise paras, in addition to additional time providing general support the classroom, at least 3 days per week and at times more often.

According to the district, 10 paraprofessionals worked with the student. Of these, two (Baker and Kuhl) were Tier 2 Paraprofessionals and the remainder (Allen, Blacketer, Garcia, Miller, Parton, Phelps, Stiles and Thornton) were Tier 1 Paraprofessionals. Three (Parton, Blacketer and Miller) were Registered Behavioral Technicians (RBTs). The district reported that the paraprofessionals' "education and experience that meets (or exceeds) the minimum requirements for paraeducators established by KSDE. They are all high school graduates and have completed orientation sessions addressing confidentiality, the services to be provided, and the district's policies and procedures concerning special education. They have also participated in other trainings that assist them with their job duties." The district provided resumes, supervision logs, or training records for the paraprofessionals.

The following staff persons have current certificates in Mandt Training: Allen, Baker, Blacketer, DeFore, Garcia, Kuhl, Martin, Miller, Phelps, Stiles, Thornton.

The district reported that although "one to one" paraprofessionals are not assigned to allow for the possibility of small group instruction in the classroom, there is a person trained in the student's BIP and health plan with the student at all times of the day.

The district provided evidence of licensure for the following persons who provided related services or consultative services in the student's IEP:

Provider	Qualification
C. Foster	Board Certified Behavior Analyst
B. Mitchelson	Board Certified Behavior Analyst
P. Burns	Speech Language Pathologist License
C. Lanciault	Speech Language Pathologist License
J. Marston	Professional License: Visually Impaired PreK-12, Elem. Education
T. Stark	Occupational Therapist
C. Turner	Professional License: Physical Education PreK-12

Conclusion

In this case, the parent was concerned that the resignation of the structured learning classroom teacher led to the staffing of the classroom with unqualified educators during the 2023-24 school year. In this instance, the district has used substitutes as permitted by the Kansas regulations while seeking a fully qualified licensed educator. The district has additionally added supportive coaching and in classroom modeling by qualified educators during the school year to improve the skills of the substitutes. The paraeducators meet the standards of the state and are being provided training as required by the Kansas regulations.

Based on the foregoing, ***it is not substantiated*** that USD #207 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide appropriately qualified staff to meet the unique needs of the student during the 2023-24 school year

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. 300.323(c)(2) was not found, based on the facts listed above. . Corrective action is not required.
2. ISSUE TWO: A violation of 34 C.F.R. 300.156(a) and (c) was not found, based on facts listed above. Corrective action is not required.

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).

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, OLATHE PUBLIC SCHOOLS
ON APRIL 15, 2024

DATE OF REPORT MAY 15, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #233 Olathe Public Schools on behalf of -------- by his mother --------. In the remainder of the report, -------- will be referred to as "the student." -------- is the student's mother and in the remainder of the report she will be referred to as "the complainant," "the parent," or as "the mother."

The complaint is against USD #233 Olathe Public Schools. In the remainder of the report, USD #233 will be referred to as "the district." The student attends Oregon Trail Middle School and in the remainder of the report this middle school will be referred to as the "school."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on April 15, 2024 and the 30-day timeline ends on May 15, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigators Donna Wickham reviewed all evidence and documentation, which was provided by both the district and the parent. Additionally, the complaint investigators contacted the district and family several times by phone and email to clarify evidence. The complaint investigator contacted the mother by phone on April 20, 2024 and April 22, 2024 and by email to clarify specific points. The complaint investigator interacted with the district by phone and email to clarify evidence and a phone interview was conducted with Nicholas Hofmeier, Case Manager /Resource Teacher; Johnathan Lynk - Building Principal; Matt Kunstman - Special Services Coordinator and Ashley Niedzwiecki - Assistant Director of Special Services on May 7, 2024. The following documentation and information were used in consideration of the issues:

1. Individual Education Program dated January 19, 2024
2. Email exchange between mother and special education resource teacher dated between April 12, 2024 at 2:52 p.m. and April 15, 2024 at 7:55 a.m.
3. Kansas City Zoo and Aquarium Field Trip Permission Form
4. Gradebook Copy for student Quarter 4 dated March 22, 2024, through April 16, 2024

5. Student Period Attendance for 2023-2024 school year dated through April 17, 2024.
6. Email exchange between mother and complaint investigator dated May 4, 2024 between 4:02 and 5:09 p.m.

Background Information

The student is a twelve year old seventh grader at the district middle school where he is eligible for special education and related services under the category of speech/ language. The student has a medical diagnosis of ADHD, and the parents reported at the January 17, 2024 IEP that he does not take medication. He receives 50 minutes of direct special education service outside of the regular education classroom (resource room) three days every week for 50 minutes where he either is taught information that will help him to better learn the content being taught in his core classes or to review core curriculum. He additionally receives 25 minutes of special education services from a speech language pathologist 2 days every week. Finally, he receives 25 minutes of social work services 1 day every week and15 minutes of social work services 1 day every week. The district explained that some of the social work services are provided through a lunch bunch club to learn social skills. He receives five accommodations for instruction, six academic accommodations and social skills training and daily check-ins are listed as social emotional accommodations.

Issues Investigated

ISSUE ONE: USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP on April 17, 2024, specifically delivering service minutes when service providers were out of the building and the student was left behind.

ISSUE TWO: USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the student access to nonacademic and extracurricular activities on April 17, 2024.

Issue One

USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP on April 17, 2024, specifically delivering service minutes when service providers were out of the building and the student was left behind.

Applicable Law

Federal regulations 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. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are

implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

The parent alleged that when the parent learned that her student would not be allowed to attend a field trip on April 17, 2024 two days earlier on April 15, 2024. She stated that her son was told he will have to sit in a room all day while the rest of the students attend the trip. The parent stated she was led to believe that the student's special education teacher will be on the field trip so won't receive his special education service that day.

The district responded that on April 17, 2024 the seventh grade class was scheduled to attend a field trip at the Kansas City Zoo and Aquarium. In preparation for this field trip all parents were asked to sign a permission slip, which in part, qualifies who may attend by stating, "7th Grade Students with passing grades and in good standing". The student's parent did sign this form. Unfortunately, according to the student's grade reports, the student had an F in math on the day of the field trip, and therefore did not meet the qualifications required to attend. The student and the parent were informed of this decision. The policy was applied to all students. On April 15, 2024, the parent was notified that the student was not a student in good standing (due to the student's F in math) and would not be permitted to attend the field trip, despite the student not having any missing work. Regardless attendance records show that the student was called out as "ill" by the parent for the entire day on April 17, 2024, the day of the field trip. Therefore, the student did not miss any service minutes due to his ineligibility to attend the field trip because the parent unilaterally called the student out sick on the day of the field trip, negating the district requirement to provide services on that day.

The period attendance for the 2023-2024 school year showed that the student was absent on April 17, 2024. The mother reported in an email on May 4, 2024 to the complaint investigator that she "called him in because I didn't want him sitting in a room all day without even being serviced."

Conclusion

Based on the foregoing, ***it is not substantiated*** that USD #233 failed to implement the student's IEP on April 17, 2024, specifically delivering service minutes when service providers were out of the building and the student was left behind. Although the district would be obligated to provide special education services when the student remained in the school building or if the student's case manager was absent, the student was absent on that day, so the district was under no obligation to provide the services or demonstrate their capacity or plan to provide the services.

Issue Two

USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the student access to nonacademic and extracurricular activities on April 17, 2024 due to an earned grade.

Applicable Law

Kansas state statutes at K.S.A. §72-3429(4)(B)(1) states the IEP for each exceptional child shall include a statement of the program modifications or supports for school personnel that will be provided for the child to participate in extracurricular and other nonacademic activities.

Federal regulations at 34 C.F.R. §300.117 and K.A.R. §91-40-3(b)(1) states that each 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.

Analysis: Findings of Fact

The parent alleged that the student was not able to attend a 7th grade field trip because he did not earn a passing grade in math. She stated that he has an IEP goal for math and is not in remedial math because it is not offered in spite of her son performing at least two grade levels below. She reported he was not missing any work and the grade is based purely on ability and the teacher weights grades making tests a higher percentage than daily work.

The district responded that the student received his accommodations written in his current IEP, but there is nothing in the student's IEP which requires the district to modify the student's grades.

The January 19, 2024 IEP verifies that the student's math performance is below grade level and an IEP goal is written to improve performance. The IEP further includes accommodations for instruction, classroom and homework assignments and testing. No accommodations for grading are recorded in the student's IEP.

Instruction	Assignments	Testing
Frequent checks for understanding	Extended time to complete work	Extended time
Verbal and visual cues regarding directions and new information	Shortened assignments	Take test in a quiet, non-competitive setting
Positive reinforcement	Read aloud	Reduce number of choices
Allow additional wait time		Text to Speech directions/ test items
Preferential Seating		Reduce number of test items
Adult support math and ELA		

The district reported during the interview on May 7, 2024 that the student had taken a test that needed to be retaken to show his work and was provided two additional weeks to study

prior to retaking. The student retook the test and did not pass. This resulted in the student not earning a passing grade.

The field trip permission slip stated that students not earning a passing grade or in good standing would not be allowed to eligible for the field trip.

An email sent by the mother on April 12, 2024 stated, "*Good Afternoon Can you check and make sure [student'] math tests are being modified? II thought that was part of his accommodations. He is really struggling with the math. Although I realize he can be resistant I do think the pace is what the challenge is. He's also very worried about his grades and not being able to attend the field trip next week. He has an f in math but it's test scores not missing work. Can they keep kids with IEPs from field trips for academics?*" to which the student's case manager replied later that day, "*He does receive accommodated assessments. He also had access to formulas and a calculator on this last assessment. As for the pace I have been in [math teacher's] room to co-teach and she does a good job with pacing. I know [student] had been resistant to help throughout much of the year, but from what I had understood he was doing better when getting help from adults—I would just encourage him to continue to be advocating for himself. This morning it was a battle of me trying to get him to accept doing missing work. [Student] has had opportunities to seek assistance from his teachers and myself and has not been doing so. I have tried telling all my students that they can come to me during resource, before school starts, and after school. We still have a significant amount of the semester left and I am more than happy to assist [student] in any way possible. As a 7th grade group the decision was to only allow students in good standing, and those that did not have any F's. Students have been reminded repeatedly in their classes of this for the last few weeks. Unfortunately, there are a few that don't get to go the Zoo trip. Teachers were accepting work up until the end of the school day and have been entering material as it has came in. However, tough as it is, there are a few who don't get to attend.*"

On April 15, 2024, the student's case manager contacted the parent again, stating, "*Although he does not have any missing assignments, he is not considered eligible due to the "F" in math. [Student] had 2 opportunities on the assessment (one in which he was caught cheating). It was repeatedly stated to the students that they would not be able to attend if they had an 'F.'* "

Conclusion

This issue was determined to be based in the district's implementation of the student's accommodations since the student was not eligible to attend the field trip due to a failing grade, rather than the student's access to a fieldtrip (34 C.F.R. §300.117 and K.A.R. §91-40-3(b)(1)). It is found that the district demonstrated that the accommodations were implemented for the student to earn passing grades. Based on the foregoing, ***it is not substantiated*** that USD #233 failed to provide the student access to nonacademic and extracurricular activities on April 17, 2024.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was not found, based on interview and attendance records. Corrective action is not required.
2. ISSUE TWO: A violation of K.S.A. §72-3429(4)(B)(1) was not found, based on review of evidence and interview. Corrective action is not required.

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).

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 13, 2024

DATE OF REPORT MAY 14, 2024

This report is in response to a complaint filed with our office by --------, on behalf of her daughter, --------. For the remainder of this report, -------- will be referred to as “the student.” -------- will be referred to as "the student's mother" or "the parent." USD #259 will be referred to as “the district."

Investigation of Complaint

The investigator spoke with the Erica Shores, Mediation and Due Process Supervisor for the district, on April 19, 24, and 2 and May 13, 2024. On April 30, 2024, the investigator spoke by telephone with the parent.

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

- IEP for the student dated April 25, 2023
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated May 17, 2023
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated August 28, 2023
- Email exchange dated August 29 - 30, 2023 between the parent and a Families Together advocate
- Notice of Meeting dated September 1, 2023
- IEP and 504 Team Meeting Notes dated September 13, 2023
- IEP Amendment Form dated September 13, 2023 and accepted by the parent on October 9, 2023
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated September 13, 2023 and accepted by the parent on October 9, 2023
- Notice of Meeting dated October 24, 2023
- Multidisciplinary Team Report dated November 14, 2023
- Signature page for multidisciplinary team meeting of November 14, 2023
- IEP for the student dated November 14, 2023
- IEP & 504 Team Meeting Notes dated November 14, 2023

- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated November 14, 2023
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated November 15, 2023
- Notice of Meeting dated February 22, 2024
- Functional Behavior Assessment (FBA) dated March 5, 2024
- IEP for the student dated March 6, 2024
- IEP & 504 Team Meeting Notes dated March 6, 2024
- Signature page for March 6, 2024 IEP team meeting
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent dated March 25, 2024
- Letter dated March 25, 2024 from the principal to the parent
- Email exchange dated March 27 - 28, 2024 between the parent and the student's case manager/special education teacher
- On-line calendar for the district for the 2023-24 school year
- General education student contact log covering the period of August 13, 2021 to April 29, 2024
- Email dated April 19, 2024 from the parent to the art teacher for the student's school
- Special education student contact log
- USD 259 Attendance Reporting Procedures for Inexcusable Absences
- District Truancy Brochure including USD 259 Board Policy 1461 Reporting Process - Pupils Not Attending School And Inexcusably Absent Pupils (Truant)
- Screenshot of amended Discipline Profile for the student

Background Information

This investigation involves an 8-year old girl who is completing the 2nd grade in one of the district's magnet schools. According to the parent, the student has been given a diagnosis of Level 3 Autism Spectrum Disorder (ASD), the most severe form of the disorder. ASD level 3 is characterized by severe challenges in social communication as well as extremely inflexible behavior and difficulty coping with changes in routine. Changing focus from one activity to another may be very difficult and cause significant distress. Children with level 3 autism are generally nonverbal or have the use of only a few words of intelligible speech. Initiation of social interaction is typically very limited.

An evaluation conducted by a private children's hospital in May of 2019 determined that the student met criteria for a diagnosis of global developmental delay with delays in cognitive, receptive, and expressive language.

According to the parent, the student also struggles with sleep regression problems and has been diagnosed with Anxiety.

The student did not attend preschool. In August of 2021, the parent requested that a special education evaluation of the student be conducted. At the time, the student was receiving outside speech and occupational therapy

During the 2022-23 school year, the student was enrolled in a Mixed Abilities classroom where the majority of the students had been diagnosed with autism. At the beginning of the 2023-24 school year, following a relocation of the family, the student transferred to her current school where she initially enrolled in a general education classroom but shortly thereafter moved to a Mixed Abilities classroom. The student also receives services from a speech/language pathologist, an occupational therapist, and an adapted PE teacher.

Issues

In her complaint, the parent alleges multiple violations of FAPE (the provision of a free appropriate public education).

Issue One

The district was unprepared to meet the needs of the student at the start of the 2023-24 school year which resulted in the student missing three days of special education services. Additionally, the district altered and falsified attendance records to show that the student had been suspended from school for these three days.

Parent's Position

The parent asserts that she was asked by the building principal to keep the student out of school because staff was unprepared to meet the student's needs. According to the parent, these days were incorrectly coded in the student's attendance report as "suspensions" even though the parent had been assured that the student had in fact not been suspended. It is the position of the parent that the student's attendance records were altered to inaccurately reflect that the student's behavior resulted in a disciplinary consequence that led to her absence.

District's Position

The district stipulates that required special education services were not provided on the student's first two days of attendance during the 2023-24 school year.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. Federal

regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special education and related services provided in conformity with an Individualized Education Program (IEP).

The Family Educational Rights and Privacy Act (FERPA) gives a parent the right to request that a school change educational records regarding their child which the parent believes to be inaccurate or misleading. If the school decides not to amend the record, the parent has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent has the right to place a statement with the record setting forth his or her view about the contested information.

Investigative Findings

Both the parent and the district confirm that the parent visited the student's current school on August 16, 2023, one day following the start of the district's academic year. The parent told the principal that the student would be coming to the school, and the principal provided the parent with a tour of the building. According to the principal, the parent was shown a third grade classroom, a resource room, and the Mixed Abilities classroom. The parent asked when the student could start school and was told that the student could start on August 17, 2023.

Staff at the school was initially unaware of the student's need for a special education placement. When the student arrived at school on August 17, 2023 she was placed in a general education 2nd grade classroom, but staff quickly determined that the student was non-verbal and needed the support of the Mixed Abilities classroom. Throughout the morning, the student was running from the building, onto the playground and into the parking lot. The principal contacted the parent around noon explaining that the school needed time to review the student's IEP and put a plan in place to keep the student safe. The principal told the parent that the student could return to school on Monday, August 21, 2023. The parent asked whether the student was being suspended and was assured that she was not, that the school needed more time to put the student's IEP in place.

The district subsequently determined that the two days when the student did not attend school at the request of the principal should not be coded as excused absences. This was because the district wanted to ensure that those two days would count toward the 10-day maximum the district could remove a student with a disability from school before a manifestation determination hearing would be required and special education services would have to be provided during the period of the student's removal. The school subsequently changed the reporting code for these two days as out-of-school suspensions.

On August 29, 2023, the student arrived at school but would not go to her classroom. Instead. she laid down on the floor of the office. Both the student's mother and her father (who lives out of state) were contacted to try to solicit their help in moving the student. After being unable to reach the student's mother, the principal sent staff to the student's home. The parent then came to the school and took the student home.

The district acknowledges that the coding change related to the student's August 17, 18, and 29, 2023 absences was not reported to or explained to the parent at the time the change was made. A screenshot provided by the district on May 13, 2024 shows that the district has amended the Daily Attendance record for the three August dates. The record includes an "Attendance Note" which reads

> *"Principal approval - requested parent keep student home on August 17 and 18 because the school needed additional time to prepare to serve the student appropriately. Principal-excused absence for August 29 removal."*

The student's educational records previously included a "Student Discipline Profile" documenting incidents on August 17 and 18, 2023 and another for August 29, 2023. As shown in a screenshot provided by the district to the investigator on May 13, 2023, these incidents have been deleted from the student's profile.

In an effort to resolve this complaint, the district offered a proposal to the parent to provide the student with 3 days of compensatory service to address the lapses in service for August 17, 18, and 29, 2023. As of the writing of this report, the parent had not agreed to the district's proposal. An IEP team meeting is scheduled for May 22, 2024 at which time the parent will be provided with a formal offer of compensatory services.

Summary and Conclusions

For two days at the beginning of the 2023-24 school year, the district was not prepared to ensure a safe learning environment for the student to receive the special education services required by her IEP. On these two days the district asked the parent to keep the student at home while staff made preparations to appropriately serve the student. On a third day in August 2023, the parent was called to the school to assist staff in moving the student from the office. Though the parent was not directly asked to take the student home, the district did not contest the parent's choice to do so. The district stipulates that the student is entitled to compensatory services for these three days.

Because the student was for three school days not provided with the special education services required by her IEP, a violation of special education statutes and regulations ***is substantiated*** on this aspect of this issue.

With regard to alleged FERPA violations, the district has amended the student's educational records to accurately reflect the reason the student did not attend school for the three days in August 2023 addressed under this issue. Incident reports for these 3 days which were previously included in the student's record have been removed. If the parent does not agree with these changes, she may request a hearing. No other action will be required related to this aspect of this issue as a result of this investigation.

Issue Two

The district failed to consider the student's disability when reporting the student as truant.

Parent's Position

It is the position of the parent that the district failed to consider the student's sleep regression diagnosis when determining that the student to be truant

Applicable Statutes and Regulations

The Kansas Compulsory School Attendance Law (K.S.A. 72-3120) places responsibility with school boards of education to determine the validity of excuses for absences and to designate one or more employees as responsible for notifying the Department of Children and Families (DCF) or the county/district attorney of unexcused non-attendance (K.S.A. 72-3121).

At K.S.A. 72-3121(c)(1), statutes establish guidelines regarding when the inexcusable absence of a student must be reported (three consecutive school days or five school days in any semester or seven school days in a school year, whichever occurs first). A student is considered inexcusably absent if he or she is absent for all or a significant part of a school day without a valid excuse acceptable to the board designated reporter. Prior to making a report, the designated employee of the board must notify the parent that continued failure of the student to attend school without a valid excuse will result in a report being made to the secretary for children and families or to the county or district attorney (K.SA. 72-321(d)).

Investigative Findings

In order to comply with state requirements, the district has established policies regarding reporting procedures for inexcusable absences (Board Policy 1461). The policy establishes the "3, 5, 7 Rule" which mirrors state requirements regarding the number of days of inexcusable absences. The policy defines "substantial part of the school day" for an elementary student as being "inexcusably absent one and one half hours in either the morning or afternoon of a school day."

Board Policy 1461 defines a "valid excuse for absences" as

1. Medical or dental treatment, examination or recuperation;
2. Death/serious illness in immediate family;
3. Approval by school authorities, secured prior to the absence;
4. Circumstances or conditions which, in the opinion of the attending school principal or designee constitutes a valid excuse; and
5. Under the law (ICEOMC), WPS may grant up to 5 days excused absences per school year for a military-connected student whose parent or guardian is an active duty Guard or Reserve member who has been called to duty for, is on leave from, or is immediately returned from deployment to a combat zone or combat support posting; if absence is

preapproved; student is in good standing; student has a prior record of good attendance; missed work is completed and turned in within allotted time period; and the absence is not during standardized testing dates.

According to a document entitled "USD 259 Attendance Reporting Procedures For Inexcusable Absences" provided by the district, Board Policy 1461 includes the following notation:

"Students accumulating more than 12 days/96 periods of illness will be considered to have excessive absences and will be required to provide a doctor's note for all future absences OR be recorded as truant/inexcusably absent."

The "Family Handbook" for the student's school provides direction as to the "Notification of an Absence." As stated in the handbook,

"Parents/Guardians of students absent from school are to call the attendance line...by 9:15 AM the day of the absence. Please leave the following information on voice mail:

- *Identify yourself*
- *Student's name and grade*
- *Date(s) of absence*
- *Reason for absence (please be specific i.e. doctor's appointment, illness, out of town, etc...)*

Absence will only be excused for the following reasons:

- *Illness*
- *Doctor's or dentist's appointments*
- *A family death or serious illness*
- *Court/judicial appearance*
- *Religious observations*
- *School sponsored activities*

All other absences (other than those listed above) are unexcused unless approved by a principal prior to the absence..."

According to documents provided by the district and the parent, the student did not attended school for all or part of 36 days between August 17, 2023 and April 18, 2024. Three of these days fell within the first full month of the school year and have been discussed above under Issue One. For all but 6 of the remaining 28 days, the student's absences were excused for reasons including illness, weather, or medical/dental or were listed as "school related" or "early out." Two absences had been previously approved. By January 23, 2024, the student had accumulated 12 days of absence due to illness.

According to the Mediation/Due Process Supervisor for the district, while the parent continued to report absences due to the student's illness after the student had missed 12 days of school during the 2023-24 school year, the school did not have a doctor's note on file and began counting the student's absences due to illness as unexcused.

According to the district, front office staff at the student's school informed the parent of the need for a doctor's note when the parent called to report the student's absence on each of these 6 days.

Six absences - all falling between January 24 and March 4, 2024 - were shown as "Truant/Inexcusable." These included absences on the following dates:

- January 24, 2024,
- January 25, 2024,
- January 26, 2024,
- February 7, 2024,
- February 28, 2024, and
- March 4, 2024.

Records provided by the district show that the student attended school for 210 minutes (out of a 390 minute school day) on 4 of the 6 unexcused days.

On March 25, 2024, the building principal sent a letter to the parent stating

> *"The Compulsory Attendance Law enacted by the legislature of the State of Kansas requires that the school report to the Department for Children and Families (DCF) and to the Kansas Commission of Education the names of non-attending (truant) pupils with inexcusable absences. A truant pupil is a student who has missed, inexcusably, a substantial portion of three (3) consecutive days from school, five (5) days in a semester, and/or seven (7) days in a school year."*

The record shows that three of the "truant/inexcusable" absences fell on consecutive days (January 24-26, 2024) and all 6 "truant/inexcusable" absences fell within the second semester of the 2023-24 school year, thereby triggering the required reporting.

During a telephone call with the investigator on April 30, 2024, the parent stated that she had provided the district with a "Letter of Medical Necessity" dated March 8, 2023 which had been written by a treating physician on the topic of the student's "Sleep Regression Cycles." According to the parent, she had presented the letter to the "front desk" staff at the student's previous school in the Spring of 2023.

This letter was discussed during an IEP team meeting on November 14, 2023 in reference to the student's need for extended school year services. According to meeting notes, the parent "offered to send [the letter] over." When this complaint (which included a copy of the letter) was received by the district, staff from the student's current school attempted to track down the copy of the letter provided during the 2022-23 school year, and contacted the student's previous school of attendance. However, the letter was not found.

As stated in the March 8, 2023 Letter of Medical Necessity which was provided by the parent,

> *"...triggers include a break in her Academic routine, requiring additional time resources, and accommodations in order to help her manage symptoms related to her Anxiety and Autism.*

The sequence of her Sleep Regression cycles vary depending on the length of the break in routine. Winter Break for example may require several weeks to adapt and adequately adjust [the student's] needs to fit into her usual Academic Routine.

Her Summer Break magnifies the recovery time by at least 3 times the amount needed to recover.

Symptoms related to an ongoing sleep regression cycle include behavioral changes including irritability, elopement, regression in day to day tasks, and an accumulating bout of Anxiety that has caused a negative shift in her ability to communicate her needs.

The primary goals for the requested accommodations are to include but not be limited to, additional time to adjust to her Academic routine after extended breaks. This may include but not be limited to excusing tardiness, as [the student] requires additional rest and accommodations to be fully prepared to attend to a full school day."

None of the dates of unexcused absence fell after a school break (Winter Recess, Spring Recess, etc.) Only one unexcused absence occurred on a Monday.

The "Medical information/Health Summary" portion of the "Special Considerations" section of the student's April 25, 2023 IEP and all subsequent revisions of the IEP made thus far during the 2023-24 school year have included the following statement:

"Diagnosis: Level 3 Autism Spectrum Disorder and sleep regression"

The student does not have a Health Care Plan, and none of the IEPs which have been implemented for the student during the 2023-24 school year require any specific accommodations related to sleep regression.

Summary and Conclusions

While all of the IEPs in place for the student during the past 12-month period covered by this complaint have included a reference to the student's autism diagnosis and related sleep regression, none of these IEPs have specified any accommodations associated with sleep regression. The Letter of Medical Necessity provided by the parent when submitting this complaint speaks to sleep regression problems associated with extended breaks in school routine, but none of the student's unexcused absences occurred after such a break.

The parent consistently complied with district policy and reported the student's absences. Records show that until the student had accumulated 12 absences due to illness, absences due to illness were excused. However, once these absences had reached the 12-day total for the school year, the district began counting additional absences reported by the parent as due to illness as truancies since the school did not have a required doctor's letter on file.

The district met its responsibility for developing policies regarding the reporting of truancy in compliance with the Kansas Compulsory School Attendance Law. Requirements regarding the

reporting of truancy in Kansas apply to all students and do not fall under special education statutes and regulations. The student's IEP does not require any accommodations or modifications regarding the application of state truancy reporting requirements for this student because of her sleep regression. Under these circumstances, a violation of special education statutes and regulations *is not substantiated* on this issue.

Additional Comments

In an effort to resolve this aspect of this complaint, the district committed to meeting with the parent to review the content of the Letter of Medical Necessity and to review the report of truancy in light of that discussion.

Issue Three

The district has failed to provide the student with a FAPE because it has, during the 2023-24 school year, denied the student opportunities to participate with general education peers in "special" classes, lunch and recess.

Parent's Position

The parent asserts that she was unaware until March of 2024 that the student was not participating in art, music, PE, lunch, and recess with general education students. It is the position of the parent that by keeping the student in the mixed abilities classroom for the majority of her school day, the district has restricted the student's ability to work on social goals. The parent also contends that the FBA conducted by the district was invalid because it did not include data taken while the student was participating in her special classes.

Applicable Statutes and Regulations

As noted above under Issue One, federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. Federal regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special education and related services provided in conformity with an Individualized Education Program (IEP).

Educational placement refers to the educational environment for the provision of special education and related services rather than a specific place, such as a specific classroom or school (K.A.R. 91-40-1(t)). For children with disabilities, the special education and related services must be provided in the environment that is least restrictive, with the general education classroom as the initial consideration. The decision must be based on the child's needs, goals to be achieved, and the least restrictive environment for services to be provided. Least restrictive environment (LRE) means the child is provided special education and related

services with peers who are not disabled, to the maximum extent appropriate (K.A.R. 91-40-1(ll)). The group of persons determining placement must consider how the child with a disability can be educated with peers without disabilities to the maximum extent appropriate, and how he/she will participate with children without disabilities in other activities such as extracurricular and nonacademic activities.

Investigative Findings

An annual review of the student's IEP was conducted on April 25, 2023. The review was conducted by a properly constituted IEP team which included the parent and a parent advocate. According to the "Statement of Special Education/Related Services section of the student's April 25, 2023 IEP (which remained in place for the start of the 2023-24 school year):

> *"[The student] will receive all her daily special education services in the special education setting participating without non-exceptional peers to work on her IEP goals, functional academics, curriculum based on extended standards, and daily living skills. This will include visual supports, works systems and access to her communication book for lunch, recess and any class or school assemblies or field trips, during which she will be with non-exceptional peers. [She] will receive attendant care services during lunch and recess [and] will have the opportunity to attend PE, Music, Library, and Art with grade level peers with para support...direct OT services 15 min one time a week. This may be pull out service or in classroom individual or group service...[and she] will receive adapted PE (2 times weekly for a total of 40 mins). [The student] will have direct Speech-Language services 30 minutes weekly, typically this will be served in 2-15 minute or 3 10-minute sessions, but this may vary based on need."*

According to the district, the student was offered opportunities to participate in specials (art, PE, library, and music) beginning with her first week of attendance for the 2023-24 school year. At that time, the student would leave her classroom but would then drop to the floor and refuse to get up - generally for the duration of the special class period.

An IEP team meeting regarding the student was held on September 13, 2023. The parent attended the meeting virtually. Notes from the meeting show that strategies had been put in place to reduce opportunities for the student's elopement from the classroom. The notes state that the student was being provided with para support for lunch and recess, but "both [were] being done in the classroom due to concerns of elopement."

Throughout the first quarter of the school year, the student participated in Adapted Music twice weekly in her Mixed Abilities classroom with her classmates. Additionally, she received Adapted PE services as specified in her IEP.

While opportunities continued to be available for the student to participate in specials into November 2023, it became common for the student to refuse to leave her classroom. When the time came for the student to leave the classroom for a "special" class, she would drop to the floor and refuse to get up.

A meeting was conducted on November 14, 2023 for the purpose of reviewing the results of a reevaluation that had been requested by the parent. Notes from that meeting (which was attended remotely by the parent), describe an incident when the student had gone to another classroom for adapted music supported by a paraeducator and then resisted returning to the Mixed Abilities classroom. The general education music teacher who was present for the meeting reported that the student had come to her class once since the beginning of the school year. Meeting minutes reflect that the student would

> *"...spend the majority of her day in a mixed abilities classroom. She has para support during lunch, recess and specials. The team offers specials to [the student] but [she] often does not want to go."*

The student's IEP was reviewed and revised on November 14, 2023. Under the section of the IEP entitled "Statement of Special Education/Related Services," the IEP states that

> *"[The student] will receive attendant care services during lunch and recess [and] will have the opportunity to attend PE, Music, Library and Art with her grade level peers with para support."*

According to the "Least Restrictive Environment (LRE)" section of the student's November 14, 2023 IEP,

> *"[The student] will not participate with non-exceptional peers when receiving services in a mixed abilities classroom. She may participate with General Education Peers during non-academic activities with special education support."*

According to the prior written notice form signed by the parent on November 19, 2023,

> *"The team believes the data shows [the student's] least restrictive environment is spending the majority of her day in a mixed abilities classroom participating with non-exceptional peers. [The student]will be offered participation with non-exceptional peers during recess, lunch, and specials. [She] will receive para support during those times."*

The meeting notes also reflect that there had been "an uptick in peak behavior, i.e. dropping to the floor and refusing to move or eloping." The school team wanted to "open a Functional Behavior Assessment to detail what is driving her elopement and developing a plan to prevent peak behavior" - behavior that was limiting the student's ability to participate in special classes and other general education activities. The parent gave written consent for a "limited scope reevaluation" on November 19, 2023.

Baseline date for the FBA was taken during the period of November 20 through December 14, 2023 focusing on the target behavior of elopement. Interventions were developed and implemented during the period of November 20, 2023 through January 26, 2024. The FBA was reviewed on March 6, 2024 in a meeting attended by the parent and her IEP advocate. Under the section entitled "Review of Existing Data," it was noted that

> *"Attempts are being made to get [the student] to participate in grade level specials with general education peers. [The student] often becomes overwhelmed and will elope specials or drop to the ground in the hallway to indicate refusal to go to specials. Music is the most successful at this time."*

In an April 30, 2024 telephone call with the investigator, the parent stated that she did not believe the Functional Behavior Assessment to be valid since it did not include observations of the student during specials.

Notes from the March 6, 2024 IEP team meeting show that the parent asked about the student's participation in specials and about the support system in place to address elopement. The school psychologist noted that since elopements had decreased, a behavior goal for "increased participation for leaving the classroom would be a good idea...being able to attend specials for half the time."

The district proposed adding a Behavior Plan to the student's IEP as well as an annual goal to address the student's transitions to and participation in "instructional and/or recreation activity locations outside the classroom, 50% of all opportunities per week" without elopement or avoidance behaviors. At the time this goal was proposed, the student was - according to the proposed IEP - making appropriate transitions 33% of the time.

As of the writing of this report, the parent has not given her written consent for the district to implement the behavior intervention plan or the behavior goal, telling the Mediation/Due Process Supervisor for the district that services should continue to be provided to the student under the provisions of her November 19, 2023 IEP.

The section of the proposed March 2024 IEP entitled "Statement of Special Education/Related Services" continued to show that the student would receive attendant care during lunch and recess and stated that the student would "have the opportunity to attend PE, Music, Library, and Art with grade level peers with para support."

The "Least Restrictive Environment (LRE)" section of the proposed March 2024 IEP states that the student "may participate with General Education peers during non-academic activities with special education support."

Upon returning from Spring Break, records provided by the district show that the student's participation in specials increased significantly and that there were only two occasions of elopement that resulted in the student being brought back to the mixed abilities classroom.

Throughout the 2023-24 school year, the student has been provided with lunch. On days when the student refused to leave her classroom to go to the cafeteria, the student's lunch was brought to her in the mixed abilities classroom. Attendant care was provided to the student for lunch regardless of the setting.

In an email on March 28, 2024, the student's IEP Case Manager/special education teacher stated that the district "started last Monday the 18th with taking [the student] to afternoon recess."

Summary and Conclusions

The student's April, September, and November 2023 IEPs have stated that the student would have opportunities to participate in classes and activities with general education peers. None of these IEPs specify how much time each day the student was required to spend with general education students.

In an effort to better understand the elopement and resistance behaviors that were interfering with the student's participation in special classes and other general education activities, the district obtained parental consent to complete an FBA. The parent contends that the FBA was not valid because the district did not include in the assessment data taken while the student was attending a special class. However, the focus of the FBA was on behaviors that were occurring at the time the student was leaving her mixed abilities classroom to go to a general education opportunity and were limiting her participation in general education opportunities.

At the March 6, 2024 IEP team meeting, the district proposed adding a behavior plan and a behavior goal that would move toward the student's participation in half of the general education opportunities available to her. The parent did not agree to the addition of that goal and has stated that the student should continue to be served under the provisions of her November 19, 2023 IEP.

Evidence presented in the course of this investigation shows that the student has been presented with opportunities to participate in classes and activities with general education peers, but the student's refusal to leave her mixed abilities classroom or her failure to safely and successfully transition to alternate settings have frequently kept her from taking advantage of those opportunities. A violation of special education statutes and regulations *is not substantiated* on this issue.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations on an issue specified in this complaint. Specifically, a violation was substantiated with regard to 34 C.F.R. 300.101 and 34 C.F.R. 300.17 which require the provision of a FAPE through conformity with a student's IEP. In this case, the district failed to provide the student with special education services for three days during the first month of the 2023-34 school year.

Therefore, USD #259 is directed to take the following actions:

1. Submit to Special Education and Title Services (SETS) by no later than May 29, 2024, a written statement of assurance stating that it comply with 34 C.F.R. 300.101 and 34 C.F. R 300.17 by providing special education services in conformity with the student's IEP.
2. By no later than June 14, 2024, USD #259 shall provide the parent with a plan for the provision of 3 days of special education service to compensate the student for services missed on August 17, 18, and 29, 2023.
    a. The parent shall have the option of accepting or rejecting the district's proposal.
    b. The parent shall notify the district of her decision to accept or reject the district's plan within 3 business days of the date the plan is presented to her by the district.
    c. The district shall provide SETS a copy of the proposed plan within 5 business days of the day the proposed plan is presented to the parent and shall at that same time notify SETS of the parent's decision.

Further, USD #259 shall, within 20 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



Diana Durkin

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).

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 #402
ON APRIL 16, 2024

DATE OF REPORT MAY 20, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of -------- by his parent, --------. In the remainder of the report -------- will be referred to as "the student" and -------- may be referred to as "the complainant", "the parent", or as "the mother".

The complaint is against USD #402 (Augusta Public Schools) who contracts with the Butler County Special Education Interlocal #638 (BCSBC) for special education services. In the remainder of the report, these two responsible public agencies may be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows approximately 30-days to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on April 16, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation, which was provided by both the district and the complainant.

The following documentation and information were used in consideration of the issues:

1. Formal Complaint dated April 14, 2024 written by the mother
2. Response to the allegations dated April 25, 2024 and written by April Hilyard, Director of the Butler County Special Education Interlocal #638 (BCSBC)
3. Referral for Initial Special Education Evaluation dated October 23, 2023
4. Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent dated October 23, 2023
5. Notice of Special Education Meeting dated December 21, 2023
6. Notice of Meeting Acknowledgement dated January 12, 2024
7. Evaluation Report dated January 12, 2024
8. Individualized Education Program (IEP) dated January 12, 2024

9. PWN for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change of Placement, and/or Request for Consent dated January 12, 2024
10. Copy of notes from the January 12, 2024 IEP team meeting written by Aimee Carey, General Education Science Teacher
11. Letter to the parents of the student dated January 19, 2024 written by Brettany Williams, School Psychologist
12. Emails dated January 15 through January 18, 2024 between the parent and Denise Walton, Assistant Director of Special Education for the BCSBC
13. The student's grade record for the 2023-24 school year

Also as part of the investigation, the parent was interviewed by telephone on May 3, 2024. In addition, the LEA provided additional clarification and documentation on May 14, 2024.

Background Information

The student is a 12-year old male currently enrolled in the sixth grade in USD #402 and attends his neighborhood school, Augusta Middle School. The student has spent his entire educational career in USD #402. The student was initially evaluated during the first grade and identified as a student with a disability under Section 504 due to a medical diagnosis of attention deficit hyperactivity disorder (ADHD), which was determined to have a substantial impact on a major life activity. An individual accommodation plan was developed to provide accommodations in the general education setting and is still being implemented during the current school year.

Both the parent and the LEA acknowledge that the student was referred for an initial special education evaluation by the parent at the end of the first quarter in October 2023. The parent expressed concerns regarding the ongoing impact of ADHD and his academic progress. In addition, the parent was concerned with his written expression skills, both his ability to put his thoughts and ideas into written form as well as his poor handwriting which was often illegible to both the reader and the student himself. The parent indicated the student complains of sore fingers and hand cramping when completing written assignments.

Both the parent and the LEA acknowledge that the parent provided written consent for an initial special education evaluation which was subsequently completed on January 12, 2024. At that time, the student was determined to be eligible for special education and related services under the exceptionality categories of Specific Learning Disabilities (primary) and Other Health Impairment due to the medical diagnoses of ADHD (secondary). An IEP was developed on that same date with parent participation and the LEA provided the parent with prior written notice and request for consent for initial eligibility , initial services, and initial placement on January 12, 2024.

Issues Investigated

Based on the written complaint, one issue was identified and investigated.

Issue One

USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), changed the student's placement to a more restrictive setting by moving the student from the white team to the blue team in order to receive special education services during the 2023-24 school year.

Positions of the Parties

The parent reported that USD #402 violated the IDEA in regards to providing the proposed special education services in the least restrictive setting. Since the beginning of the 2023-24 school year, the student was assigned to the White Team which consisted solely of general education teachers; however, in order to access the proposed special education services in the January 12, 2024 IEP, the student would be forced to move to the Blue Team which includes general education and special education teachers as well as special education paraprofessionals. The parent believes this constitutes a change in the student's educational placement to a more restrictive setting and she refused to provide written consent for initial placement and services.

The LEA reported the student was assigned to general education classes taught by general education teachers on the White Team rather than the general education classes taught by general education teachers on the Blue Team at the beginning of the 2023-24 school year.

USD #402 noted that both teams provide general education instruction to sixth grade students using the sixth grade general education curriculum at Augusta Middle School. The district reported that the Blue Team also includes special education staff who provide specialized instruction to students in both the general education classroom setting as well as the special education classroom settings.

In order for the student to receive the special education services proposed in the January 12, 2024 IEP, the student would need to transfer from the White Team with no certified special education teachers to the Blue Team consisting of both appropriately certificated general education and special education teachers. The district believes that a change of Team assignment is not a change of placement but rather a change in the classroom assignment as the student would still be placed in the general education setting but just taught by a different team of general education teachers. This change in classroom assignment would then make it possible for the student to have access to the special education teachers who work with the general education teachers on the Blue Team for providing the special education services required by the IEP.

Applicable Law

Federal regulations implementing the IDEA at 34 C.F.R. 300.115 require school districts to ensure a continuum of placement options is available to meet the needs of children with disabilities for special education and related services in the least restrictive environment (LRE). The continuum includes various educational settings, such as general education class, special classes, special schools, home instruction, instruction in hospitals, and instruction in institutions.

Kansas regulations implementing the IDEA at K.A.R. 91-40-1(t) states that the terms "Educational placement" and "Placement" mean the instructional environment in which special education services are provided.

Chapter 6: Educational Placement and Least Restrictive Environment (LRE) in the Kansas Special Education Process Handbook states,

> *Although each school is not required to establish or maintain all options on the continuum, it must make an option available if the individual needs of a child require a specific placement option* . . . This continuum of various types of classrooms and settings in which special education is provided is intended to ensure that a child with a disability is served in a setting where the child can be educated successfully with other children without disabilities to the maximum extent appropriate.
>
> In addition, although each school building is not required to be able to provide all the special education and related services for all types and severities of disabilities at the school, the school district has an obligation to make available a full continuum of alternative placement options that maximize opportunities for its children with disabilities to be educated with nondisabled peers to the extent appropriate. In all cases, placement decisions must be individually determined on the basis of the child's abilities and needs and on each 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 Register, August 14, 2006, p. 46588.) To help schools make the full continuum available, K.S.A. 72-3411 identifies and authorizes the options that districts have for meeting the LRE requirement by providing services within its schools; in the home, hospital, or other facilities; through a contract with another district; through a cooperative agreement with one or more districts; or through a contract with a private nonprofit or a public or private institution. Facilities where special education services are provided must be equivalent to those where general education classes are held.

Federal regulations at 34 C.F.R. 300.503(a) requires school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, educational placement, or the provision of FAPE to the student. Federal regulations at 34 C.F.R. 300.300(b) also requires school districts to obtain informed written consent prior to providing initial special education and related services to the student.

Analysis: Findings of Fact

An IEP team meeting was held on January 12, 2024 with the parent in attendance. The purpose of the meeting was to review the results of the initial special education evaluation, determine eligibility for services, and the development of an IEP, if appropriate. IEP team meeting notes reflect average reading and math achievement but significant delays in written expression and possible signs of dysgraphia.

The PWN dated January 12, 2024 informed the parent that the student was eligible for special education services under the disability categories of Specific Learning Disability (primary) and Other Health Impairment due to his medical diagnosis of ADHD (secondary) based on the results of the special education evaluation completed on that same date.

The PWN dated January 12, 2024 also informed the parent that the district was proposing to provide the student with 120 minutes per day of special education instruction through a placement in a general education setting. The district noted this support was proposed to be provided through a reassignment of the student to the Blue Team rather than the student's current White Team assignment. USD #402 indicated the change was based on the expertise of the Blue Team, which was an existing team of general education teachers and special education staff who were trained and experienced in providing a variety of appropriate strategies for providing special education instructional support in the general education setting.

Interviews and emails dated between January 15 and January 18, 2024 show the parent did not want the student to be reassigned to a different team. She was concerned with the stigma of changing class assignments mid-year and the amount of time it took the student to develop a good rapport with his current teachers on the White Team. The parent was not in agreement with the proposed reassignment to the Blue Team and she reached out to the School Psychologist to seek additional information and options.

Multiple emails were exchanged between the parent and the Assistant Director of Special Education for BCSEC on January 15, 2024 providing additional information and responding to the parent's concerns. In the final email communication from the district, the district summarized its position as follows:

> *I want to clarify that we aren't refusing to provide the services the IEP team collaborated on. The structure of services does require [the student] to have different regular education teachers; however, staff assignment is not an IEP team decision. You absolutely have the right*

> *not to give consent, but the team is ready, willing, and able to provide those now if you choose. I did attach the prior written notice. Please let me know how I can help, I know this is a big decision and respect your time to think!*

On January 19, 2024, documentation shows the parent refused to give written consent for the initial special education services. The PWN includes the following statement:

> *[The student's] mother wants to decline services this semester so as to not change [the student's] classes.*

The School Psychologist provided a letter to the parent on January 19, 2024 summarizing the district's response to the PWN which stated:

> *[The student's] IEP team met on 01/12/2024 and determined he should receive 120 minutes of special education services in the general education classroom. The team determined this is the most appropriate and least restrictive education plan for [the student]. The school continues to recommend [the student] receive these services and placement as described on his IEP. This letter is to inform you that the school (Augusta Middle School and USD #402) is ready, willing and able to provide the services agreed to by his IEP team and described on his IEP.*

Conclusion

Federal regulations implementing the IDEA at 34 C.F.R. 300.115 require school districts to ensure a continuum of placement options is available to meet the needs of children with disabilities for special education and related services in the least restrictive environment (LRE). Kansas regulations implementing the IDEA at K.A.R. 91-40-1(t) states that the terms "Educational placement" and "Placement" mean the instructional environment in which special education services are provided.

In this case, USD #402 provides general education services and placement for all sixth grade students through both a White Team and Blue Team at Augusta Middle School. Thus, both the White Team and the Blue Team provide the same general education instructional environment. The district's practice is to provide any required special education support services to students by assigning the identified student to Blue Team, which is comprised of an existing team of general education teachers and special education staff who were trained and experienced in providing a variety of appropriate strategies for providing special education instructional support in the general education setting.

After finding the student eligible for special education, the district proposed an IEP which required both general education and special education services. In order to implement the proposed IEP, the student would be required to move from receiving general education instruction from the White Team to receiving the general education instruction from the Blue Team in order to have access the special education support required by the proposed IEP

based on the current practice of USD #402. Since the general education instruction would still be provided in a general education environment, albeit with a different group of general education teachers, the student's placement would only change based on the amount of special education support services provided in the general education setting.

In USD #402, those special education services would have been provided via the trained and experienced Blue Team of general and special educators. Therefore, the reassignment of the student from the White Team to the Blue Team would not be considered a more restrictive general education setting simply because of a change in the general education teacher of each class.

In addition, federal regulations at 34 C.F.R. 300.503(a) requires school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, educational placement, or the provision of FAPE to the student. Federal regulations at 34 C.F.R. 300.300(b) also requires school districts to obtain informed written consent prior to providing initial special education and related services to the student.

In this case, the parent was provided with appropriate prior written notice describing the student's eligibility for special education services, the proposed special education services to be provided, and the proposed reassignment to the Blue Team so the student could access the proposed special education services. The parent refused to provide written consent for the special education services and placement to start during the current semester and the district did not make any changes in the student's current assignment to the White Team during the 2023-24 school year.

Based on the foregoing, a finding of noncompliance is not substantiated against USD #402 because the district practice of having a team of special education staff assigned to support only one team of general education teachers did not restrict the student's access to the general education environment as required by the proposed IEP and thus, did not result in a more restrictive placement for the student.

Investigator

Nancy Thomas

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).

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)

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #457, GARDEN CITY PUBLIC SCHOOLS
ON MAY 3, 2024

DATE OF REPORT JUNE 3, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #457 Garden City Public Schools on behalf of -------- by his mother --------. In the remainder of the report, -------- will be referred to as "the student." -------- is the student's mother and in the remainder of the report she will be referred to as "the complainant," "the parent," or as "the mother."

The complaint is against USD #457 Garden City Public Schools. In the remainder of the report, USD #457 will be referred to as "the district." The student attends Victor Ornelas Elementary School and in the remainder of the report this elementary school will be referred to as the "school."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on May 3, 2024 and the 30-day timeline ends on June 3, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator Donna Wickham reviewed all evidence and documentation, which was provided by both the district and the parent. Additionally, the complaint investigator contacted the district and family several times by phone and email to clarify evidence. The complaint investigator contacted the mother by phone on May 14, 2024 and May 25, 2024 to clarify issues and evidence. The complaint investigator interacted with the district by phone and email to clarify evidence and a phone interview was conducted with Gina Galpin (Director of Special Education), Josh Guymon (Assistant Superintendent USD 457), Jennifer Cunningham (Attorney for USD 457), Tracy Leiker (Principal of Victor Ornelas Elementary School), Ashley Hurd (Speech Language Pathologist), Theresia Woods and Darci Nelson (special education teachers) on May 20, 2024. The following documentation and information were used in consideration of the issues:

1. Individual Education Program dated March 1, 2023.
2. Student Progress Reports dated October 27, 2023, January 8, 2024, March 25, 2024.
3. Consideration of Special Education Reevaluation, Waiver Request dated November 27, 2023, signed by parent November 27, 2023.

4. Prior Written Notice for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent, dated March 1, 2023, parent consent signed March 6, 2023.
5. Individual Education Program dated February 19, 2024.
6. Prior Written Notice for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent, dated February 19, 2024 parent consent signed February 19, 2024.
7. Speech and Language Pathologist service log dated between February 19, 2024 through May 8, 2024.
8. Speech and Language Pathologist record, dated May 10, 2024 and May 15, 2024.
9. District response dated May 20, 2024.

Background Information

The student is a five year old kindergartener at the district elementary school where he is eligible for special education and related services under the category of autism and language impairment. The student was evaluated for special education services on May 13, 2021. Prior to that the student was receiving services under Part C of IDEA through Russell Child Development Center. The student started the school year for half day, but during his IEP dated February 19, 2024 the student increased his school services to full days of kindergarten in a RISE program.

The student has five IEP goals and receives 380 minutes of special education with 20 minutes of speech and language services 3 days a week in a RISE program classroom and 400 minutes of special education service 2 days every week in a RISE program classroom. He qualified for Extended School Year services as well.

Issues Investigated

ISSUE ONE: USD #457, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP in regard to providing correction, discipline and access to the iPad for instructional programming (e.g., communication, choice making, transitions) during the 2023-2024 school year.

ISSUE TWO: USD #457, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to craft the student's IEP based on the student's needs and present levels of functioning during the 2023-2024 school year.

Issue One

USD #457, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP in regard to providing correction, discipline and access to the iPad for instructional programming (e.g., communication, choice making, transitions) during the 2023-2024 school year.

Applicable Law

Federal regulations 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. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

The parent alleged that the student's IEP is not being followed. An incident occurred during the fall resulting in her student being restrained. At that time, she believed that changes were being made, however, a new incident occurred on May 6, 2024. The mother stated that she was not notified about this incident until the following day. She stated that her son was punished for taking another student's rice bowl that the other student was no longer using. She stated that the cup was "ripped out of his hands twice" causing her student to have a behavioral reaction and being sent to time-out. She stated that they use restraint because he is spoiled, doesn't get disciplined enough or taught." Further, she alleged that the student is not being provided an iPad for communication, and instead is using ASL.

The district responded that the student's IEP does not describe specific ways to provide correction or discipline, however the IEP does state that staff should receive training on de-escalation strategies and physical disengagement skills and staff will use a structured approach to daily routines and work and the staff are doing that. The district responded that the teachers receive ongoing training and consultation from the Region 7 TASN consultant to ensure the student's program is highly structured, has routine and relies on positive reinforcement. Further, the autism case manager consults with the student and staff regularly to provide ongoing support in maintaining and improving the student's program.

In regard to the student's access to Augmentative or Alternative Communication (AAC), the District responded that the student's IEP has an accommodation for the student to have access and a goal for multi modal communication – therefore he uses his ACC device (iPad) as well as ASL to communicate. Further, the speech language pathologist (SLP) has documentation that she has been working with the student during speech/language sessions to use his iPad. She also works with staff to support them in the implementation of the iPad in the classroom. The iPad is kept in the student's classroom daily and is accessible to him.

Two IEPs were in effect during the 2023-2024 school year. One IEP was dated March 1, 2023 and the second IEP was dated February 19, 2024.

The March 1, 2023 IEP lists a behavior goal, "By March 2024, When [student] is frustrated, he will limit his aggressive behaviors (biting, hitting, pinching, head butting) with adult support for 3/5 opportunities". The Progress Report with reporting dates of March 8, 2023, May 12, 2023, October 27, 2023, and January 8, 2024 documented progress was made with this goal. The May 12, 2023 progress report documented that staff were attempting to teach the student replacement behaviors. Two Supports for Staff were documented in this IEP as well. First, a structured approach to daily routines and work with monthly classroom training for 30 minutes weekly. A second Staff Support listed annual training in verbal de-escalation strategies and physical disengagement skills.

The March 1, 2023 IEP also lists a communication goal, "By March 2024, when given visual and verbal prompts, [student] will use pictures, signs, iPad, and/or words to label and request items to communicate his want/needs in 70% of opportunities." The progress reports dated March 8, 2023, May 12, 2023, October 27, and January 8, 2024 all report progress made with the goal. It is reported that his iPad was broken in December, 2023.

The February 19, 2024 IEP documents that the student's behaviors impact the learning of self or others and is met by a goal, "By February 2025, when escalated [student] will limit his physical aagressions (biting/hitting) with adult support on 4/5 opportunities." The February 19, 2024 IEP also includes a communication goal, "By February 2025, [student] will use pictures, signs, iPad, and/or words to label and request items to communicate his wants/needs in 75% of opportunities." An AAC device is written as an Accommodations to be used daily, all day in the school setting and supports for school staff to include training in verbal deescalation strategies and physical disengagement skills. The Progress Report dated March 22, 2024 documented that the student is using the iPad during center time.

The district's response to the complaint, dated May 20, 2024 documented that teachers have been learning about the Structured Teach framework through the Kansas Department of Education's (KSDE) Technical Assistance System Network (TASN) during the 2023-2024 school year.

The district response dated May 20, 2024 also reported that both certified teachers in the RISE room have received Crisis Prevention Interventions (CPI) training in both de-escalation and appropriate CPI holds. Theresia Woods completed training on August 14, 2023 and Darci Nelson completed the training on January 12, 2024.

In the May 20, 2024 district response, the district stated that teachers encourage the student to use the device, but do not force him. They report he, "often gets upset when using the device and has become physical. The teacher carries the device with her to the gym and recess every day when they leave the classroom. When the AAC device was first introduced to

[student], he became frustrated and broke the device on two occasions. As a result, the teacher has tried to slowly introduce the AAC device into centers, but [student] has continued to be resistant to using the device consistently. [Student] has been making progress in being able to sustain attention and stay seated at the table for breakfast, snack, lunch, and centers."

The district reported during the May 20, 2024 interview and a log provided by the speech language pathologist (SLP) documented that on May 10, 2024 the mother came to school and spoke with the speech language pathologist. Since that meeting the mother has been modeling and assisting the student use his iPad throughout the school day.

The district response reported that on May 13, 2024 the mother brought the student's personal device used at home to school for the student to use. The district reported during their interview on May 20, 2024 that the personal device looks different from the format on the school-issued device and also includes movies, games, and YouTube. Since bringing the personal communication device to school, teachers have noticed the student regressing and relying on the personal communication device for movies, games, and YouTube to sit and stay seated at a table.

Conclusion

Based on the foregoing, ***it is not substantiated*** that USD #457 failed to implement the student's IEP in regard to providing correction, discipline, and access to the iPad for instructional programming (e.g., communication, choice making, transitions) during the 2023-2024 school year. The student's IEP has goals, accommodations and staff supports for behavior and the communication device.

The two behavioral incidents that were reported in the complaint resulted in restraint and were addressed by state and district emergency restraint procedures rather than special education procedures. Restraint procedures were not included in the student's IEPs during the 2023-2024 school year. The parent expressed concern that the discipline and correction used with the student triggered the behavior resulting in restraint. It was found that the district addresses behavior primarily with teaching replacement behaviors, educating the student in a highly structured classroom, catching problem behaviors early and attempting to redirect with choice making, taking away things that he could break or hurt himself with, or reminding the student to have "gentle hands."

In regard to the student's access to the iPad for instructional programming it is found that the district is providing the student access to the iPad throughout the school day, but also allowing the student to communicate with other modalities, gestures, vocalizations, choice making, and signs. It is recognized that the mother has come in the classroom at the end of the school year and modeled to the student and staff to use the iPad for communication. The district reports that the student uses the iPad to communicate more routinely with the mother than the school staff.

Issue Two

USD #457, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to craft the student's IEP based on the student's needs and present levels of functioning during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.324 and state statutes at K.S.A. §72-3429 state that in developing each child's IEP, the IEP team shall consider: (1) The strengths of the child and the concerns of the parents for enhancing the education of their child; (2) the results of the initial evaluation or most recent evaluation of the child; (3) the academic, developmental and functional needs of the child; (4) in the case of a child whose behavior impedes the child's learning or that of others, the use of positive behavioral interventions and supports and other strategies to address that behavior; (5) in the case of a child with limited English proficiency, the language needs of the child as such needs relate to the child's IEP; (6) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child; (7) the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and (8) whether the child requires assistive technology devices and services.

Analysis: Findings of Fact

The complainant alleged that the student has autism and the student's IEP and staff do not address his disability. They instead punish him and ask him to do things he cannot do because of his autism.

The district responded that the mother was an active participant in creating both IEPs dated March 1, 2023 and February 19, 2024 that have been implemented during the 2023-24 school year to meet the student's individual needs. The mother provided parental input throughout the IEP as documented on the Parent Input/Legal Education Decision-Maker Input page. On the Prior Written Notice (PWN), the mother checked the box that she gave consent to implement the IEP as written. Both IEPs addressed the student's current individual needs through appropriate goals, accommodations, and services that were developed by the IEP team which included the mother. The present levels of performance and needs of the student are clearly documented in all sections including Health, General Intelligence, Social-Emotional, Academics, Communication, and Motor/Other (fine and gross motor skills and adaptive skills).

A special education evaluation was conducted to determine eligibility for services on May 20, 2021 in anticipation of the student turning three and transitioning from Infant Toddler, Part C services to Part B services. The Parent signed consent to waive a re-evaluation for a special education evaluation on November 27, 2023.

The student's initial IEP dated March 1, 2023 was developed based on the May 20, 2021 evaluation and input from the IEP team, including the mother. This IEP proposed five goals focusing on behavior, tracing letters, matching colors, shapes, and numbers 1-20, and using multimodal communication methods to express wants and needs. The goals are consistent with the May 20, 2021 evaluation and staff observation written into the March 1, 2023 IEP.

The student's IEP dated February 19, 2024 proposed five goals focusing on behavior, tracing name, matching letters, matching shapes, and numbers, and using multimodal communication methods to express wants and needs. The goals showed progress reported in the progress reports and evaluation data written into the IEP.

The staff reported during the district interview on May 20, 2024 that the student's highest areas of concern are social emotional (communicating especially as it relates to behavior) behavior and academics. They report that the student has multiple incidents of physical aggression, but that it is improving. They state that the student's behavior has increased with the addition of his home iPad because he wants to use it for watching movies and YouTube rather than for communication.

Conclusion

An IEP describes a child's educational program including services and is developed with parents, school professionals, and the student (when appropriate). Each IEP must be developed with consideration of the individual child's capabilities, strengths, needs, and interests and assists teachers and other staff to have very specific, well-defined measurable annual goals for each eligible child. It should function as the tool that directs and guides the development of meaningful educational experiences, thereby helping the child learn skills that will help them achieve his or her goals. In reviewing the proposed goals in both IEPs, they appear to be consistent with the evaluation reported from the 2021 evaluation and current assessment, progress reports and teacher observation. The IEP records parent input as well.

Based on the foregoing, ***it is not substantiated*** that USD #457 failed to craft the student's IEP based on the student's needs and present levels of functioning during the 2023-2024 school year.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was not found, based on interview and documentation. Corrective action is not required.
2. ISSUE TWO: A violation of 34 C.F.R. §300.324 and K.S.A. §72-3429 was not found, based on review of evidence and interview. Corrective action is not required.

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).

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 #512
ON MAY 31, 2024

DATE OF REPORT MAY 31, 2024

This report is in response to a complaint --------- filed with our office, on behalf of their daughters, ---------. For the remainder of this report, --------- will be referred to as "Student 1" and --------- will be referred to as "Student 2."--------- will be referred to as "the father," --------- will be referred to as "the mother," and the two will be referred to collectively as "the parents."

Investigation of Complaint

K.A.R. § 91-40-5(c)(5) requires that the complaint investigation include "[a] discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded." Laura Jurgensen, complaint investigator, held this discussion with the parents via Zoom on May 20, gathering additional information and verifying the specific allegations to be investigated. Laura Jurgensen provided the specific allegations to be investigated to the parents in an email on May 20. The parents did not dispute how the complaint investigator framed the issues to be investigated. The parents also provided a great deal of documentation for the complaint investigator to consider as part of the investigation. The district provided the investigator with a response to the issues the investigator identified, as well as all documentation and data the investigator requested.

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

- Parents' Complaint, May 1, 2024.
- Document from Father Summarizing Information for Complaint Investigation Issues, May 28, 2024.
- Document from Mother Summarizing Information for Complaint Investigation Issues, May 28, 2024.
- Emails between Parents and School Staff that Parents Provided, Sept. 8, 2023– May 28, 2024.
- District's Response to the Complaint, May 28, 2024.
- The investigator reviewed the following documents only to review Student 1's progress as part of the Issue 1 FAPE determination:
    - Student 1 IEP, Sept. 26, 2022.
    - Student 1 Progress Report for Sept. 26, 2022, IEP, Oct. 14, 2022, Jan. 3,
- 2023, Mar. 21, 2023.
- Student 1 Grade Card for the 2022–23 School Year, May 25, 2023.

- Student 2 IEP, Nov. 7, 2022.
- Student 1 IEP, Sept. 14, 2023.
- Student 1 Progress Report for Sept. 14, 2023, IEP, Oct. 13, 2023, Dec. 21, 2023,
- Mar. 8, 2024, May 28, 2024.
- Student 1 Grade Card for the 2023–24 School Year, Mar. 22, 2024.
- Student 2 IEP, Oct. 10, 2023.
- Student 2 Progress Report for Oct. 10, 2023, IEP, Oct. 17, 2023, Jan. 4, 2024.
- Student 2 Reevaluation, Nov. 30, 2023.
- Student 2 Proposed IEP, Nov. 30, 2023.
- Student 2 Prior Written Notices Proposing to Incorporate IEP Changes Based on Nov. 30, 2023, Reevaluation, Nov. 30, 2023, Jan. 19, 2024.
- Student 2 IEP Team Attendance Forms, Dec. 11, 2023, Jan. 19, 2024.
- Student 2 IEP, Feb. 21, 2024.
- Student 2 Request for Consent for Special Education Action, Feb. 22, 2024
- Student 2 IEP Amendment, Mar. 4, 2024.
- Emails between Parents and School Staff that District Provided, Mar. 5–18, 2024.
- Student 2 Progress Reports for Feb. 21, 2024, IEP, Mar. 20, 2024, May 30, 2024.
- Student 2 Grade Card for the 2023–24 School Year, Mar. 22, 2024.
- 2023–24 School Year Gifted Evaluation Data for Students' School, May 24, 2024.
- 2023–24 School Year Students Identified with Gifted USD 512 Reported to the Kansas State Department of Education, May 31, 2024.

Kansas regulations require that a complaint "allege a violation that occurred not more than one year before the date the complaint is received" K.A.R. § 91-40-51(b)(1).

Therefore, this complaint investigator did not consider any information either party submitted dated prior to May 1, 2023, except for the items listed above for the indicated purpose.

Background Information

This complaint is focused on two siblings who attend the same elementary school. (Parents' Complaint, May 1, 2024.) Student 1 is a third grader identified as gifted and not identified with a disability. (Student 1 IEP, Sept. 14, 2023.) Student 1 was identified as gifted beginning in November 2021, during her first-grade year. Student 1's September 14, 2023, IEP indicates that she "is an extremely bright student who has a huge passion for learning and is always seeking out a challenge" and that her "performance in general education demonstrates a need for greater depth and complexity in learning tasks."

Student 2 is a first grader reported to be "a bright, kind student" who "enjoys helping other students and teachers." Student 2's Other Health Impairment identification "requires specially designed individualized instruction to acquire, maintain and generalize

social/emotional/behavioral skills across settings." (Student 2 IEP Amendment, Mar. 4, 2024.) Student 2 was initially identified with a speech or language impairment and after the student's November 30, 2023, reevaluation the district proposed a change in identification and to change the student's speech services to indirect services, based on the reevaluation data. (Student 2 IEP, Nov. 7, 2022; Student 2 Reevaluation, Nov. 30, 2023; Student 2 Prior Written Notices Proposing to Incorporate IEP Changes Based on Nov. 30, 2023, Reevaluation, Nov. 30, 2023, Jan. 19, 2024.)

Issues

In the written complaint, the parents presented several concerns, many of which are not eligible for investigation under this complaint process as they do not represent an allegation that the district violated state or federal special education legal requirements. K.A.R. § 91-40-51(a). Following a discussion with the parents to gather information and identify, verify, and record the allegations for this complaint investigation, the complaint investigator emailed the parents the list of concerns not eligible for investigation through this process and resources to try to resolve those concerns. (Email from Complaint Investigator to Parents, May 19, 2024.) Many of the parents' concerns not eligible for investigation through this process focused on alleged bullying, harassment, retaliation, and discrimination involving both students. (Parents' Complaint, May 1, 2024.) This complaint investigation does not have the authority to resolve these concerns, however, this complaint investigation can and must determine, based on the parent's complaint, whether these underlying concerns impacted each student's right to FAPE. (K.S.A. § 72-3410(a)(2); K.A.R. § 91-40-2, -51(a).) The parents allege three issues able to be investigated under this complaint process:

Issue One: Did USD 512 provide Student 1 with a free appropriate public education (FAPE)? K.S.A. § 72-3410(a)(2); K.A.R. § 91-40-2.

Issue Two: Did USD 512 provide Student 2 with a free appropriate public education, including ensuring that the IEP Team considered whether the student's behavior interfered with her learning or that of others and, if so, considered the use of positive behavioral interventions and supports, and other strategies, to address that behavior? 34 C.F.R. §§ 300.101, .324(a)(2); K.S.A. §§ 72-3410(a)(2), -3429(d)(4); K.A.R. § 91-40-2.

Issue Three: Did USD 512 ensure the students' school followed child find requirements to identify, locate, and evaluate all children who may be gifted residing within the school's jurisdiction? K.A.R. § 91-40-7(a).

Issue One: FAPE for Student 1

Did USD 512 provide Student 1 with a FAPE? K.S.A. § 72-3410(a)(2); K.A.R. § 91-40-2.

Applicable Law

Kansas statute requires each local board of education to ". . . provide a free appropriate public education for exceptional children enrolled in the school district . . .." (K.S.A. § 72-3410(a)(2).) Kansas special education law provides rights and protections for "[e]xceptional children" which means "children with disabilities and gifted children."

K.A.R. § 91-40-2(v). Kansas special education regulations define FAPE as "special education and related services that meet the following criteria: (1) Are provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the state board; (3) include an appropriate preschool, elementary, or secondary school education; and (4) are provided in conformity with an individualized education program." (K.A.R. 91-40-1(z).) There is not Kansas case law specifically analyzing FAPE for a gifted child. Because Kansas law requires FAPE for "exceptional children" and does not distinguish between the FAPE offering for a child with a disability and a child who is gifted, this complaint investigation will rely on the United States Supreme Court's FAPE analysis under Endrew F. to determine whether this district provided this student with FAPE. To meet its FAPE obligation to a child with an exceptionality, the local board of education ". . . must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (*Endrew F. v. Douglas Co. Sch. Dist*., 580 U.S. 386 (Mar. 22, 2017.))

Analysis: Findings of Fact

The analysis of whether a child received FAPE must be grounded in the definition of special education, ". . . specially designed instruction provided at no cost to parents to meet the unique needs of an exceptional child" (K.S.A. § 72-3404(i).) To understand the "unique needs" of Student 1, we must consider the student's present levels of academic achievement and functional performance and how the student's exceptionality impacts the student's access to and progress in the general curriculum. (K.S.A. § 72-3429(c)(1).) We then look to the student's measurable annual goals to determine whether the goals align with the student's present levels and impact and access to the general curriculum. (K.S.A. § 72-3429(c)(2).) Next, we consider whether the student's services are aligned with the student's needs and designed to enable the student to make progress toward their goals and in the general curriculum. (K.S.A. § 72-3429(c)(4).) This is the analysis the Court lays out in *Endrew F.*, allowing us to determine whether the IEP is "reasonably calculated." (*Endrew F. v. Douglas Co. Sch. Dist.*, 580 U.S. 386 (Mar. 22, 2017.) Finally, we consider the key factor in determining FAPE, data on the student's progress, to determine whether that progress is "appropriate in light of the child's circumstances." (*Endrew F. v. Douglas Co. Sch. Dist*., 580 U.S. 386 (Mar. 22, 2017.)

The following table shows the previously described information for Student 1 for the student's September 14, 2023, IEP.

Present Levels of Academic Achievement and Functional Performance	Impact of Exceptionality on Child's Involvement in and Progress in the General Education Curriculum	Measurable Annual Goals (Academic and Functional)	Special Education and Related Services	Progress Toward Goals and in General Curriculum	Additional Considerations
• Current grades are satisfactory. • Math and reading Measures of Academic Progress (MAP) scores in the 99th percentile. • Needs challenging extensions to things the whole class is learning. • "Areas for potential improvement include time management, organization, and assignment completion."	Needs greater depth and complexity in learning tasks.	"Over the course of this IEP year, given time and resources, [Student 1] will identify a real-world issue or problem, research to gain sufficient background knowledge to take an action, and create a product or presentation that will raise awareness or propose solutions to the identified problem."	• Specialized curriculum within a gifted center to achieve greater depth and complexity in learning tasks. • No related services	• District report indicates Student 1 made progress on her IEP goal in all four quarters of this school year. • On the student's grade card, in all skills evaluated, the student scored as making expected progress or exceptionally good progress.	Student 1's goal is linked to a Kansas State Board of Education standard.

Student 1's present levels provide the academic information needed for the IEP Team to determine Student 1's academic baseline by including relevant academic data.

However, Student 1's present levels do not provide the functional performance information needed to determine Student 1's baseline by stating these needs as "potential" and not providing any information about how Student 1 is currently performing in these areas so that progress may be measured. Kansas State Department of Education (KSDE) guidance on present levels of academic achievement and functional performance defines functional performance as, "the ability to apply academic skills in a variety of ways and in a variety of settings. Functional performance is also observed in how the student engages in the routine activities of everyday life, including communication, mobility, behavior skills, social skills, and daily living skills." (Kansas State Department of Education, *Present Levels of Academic Achievement & Functional Performance (PLAAFPs)*, https://www.ksde.org/Portals/0/SES/KIAS/PLAAFP.pdf,

March 2017.) Student 1's IEP Team is correct to mention the student's functional needs that it did, but the IEP must go further, not to identify just potential functional needs, but actual functional needs and to provide relevant data and information to help the IEP Team understand the student's current performance in the identified need.

The impact of exceptionality statement makes the student's academic needs clear to the IEP Team. The student's goal aligns with her academic present levels and impact of exceptionality but makes no mention of the student's "potential" functional needs. (Student 1 IEP, Sept. 14, 2023.) Student 1's goal establishes expectations of reasonable progress for the student designed to meet her need for "challenging extensions." (Student 1 IEP, Sept. 14, 2023.) The description of Student 1's special education services is stated in her IEP as, "[Student 1] has a gifted exceptionality. Their performance in general education demonstrates a need for greater depth and complexity in learning task." This statement does not describe the specially designed instruction the student will receive but appears to be a restatement of Student 1's impact of exceptionality. Kansas special education regulations define special education as:

> *specially designed instruction . . . [which is] . . . adapting, as appropriate to the needs of each exceptional child, the content, methodology, or delivery of instruction . . . [t]o address the unique needs of the child that result from the child's exceptionality . . . .* (K.A.R. § 91-40-1(kkk), (lll).)

The statement in Student 1's IEP does not explain how the content, methodology, or delivery of instruction will be adapted to meet her needs identified in her present levels, including her functional needs.

Student 1's IEP Progress Report indicates she made "Adequate Progress" each quarter of the 2023–24 school year on her IEP goal. (Student 1 Progress Report for Sept. 14, 2023, IEP, Oct. 13, 2023, Dec. 21, 2023, Mar. 8, 2024, May 28, 2024.) The student's IEP meets requirements to describe how the student's progress will be measured and when progress reports will be reported under K.S.A. § 72-3429(c)(3). However, Student 1's 2023–24 school year Quarter 2–4 progress reports do not meet statutory requirements to report ". . . on the progress *the child* is making toward meeting the annual goals" (K.S.A. § 72-3429(c)(3) [emphasis added].) Quarter 1 meets this requirement by explaining the activities in which Student 1 is engaged that appear to relate to the student's IEP goal and the progress she is reported to be making on that goal. (Student 1 Progress Report for Sept. 14, 2023, IEP, Oct. 13, 2023, Dec. 21, 2023, Mar. 8, 2024, May 28, 2024.) However, in Quarters 2–4, the progress report appears to reference all students participating in gifted services, rather than speaking specifically about Student 1 and her progress on her measurable annual goal by using the words "students," "child," "we," and "they," and never specifically referring to Student 1 by name or otherwise. Progress reports must include clear explanations of progress for the specific student at the focus of the progress report and to that student's goal.

To continue the FAPE analysis, we will now consider the relationship within and between IEP components across Student 1's most recent two IEPs to determine whether the individual IEP components showed growth, decreased, or stayed the same across IEPs.

Component	September 26, 2022, IEP	September 14, 2023, IEP
Present Levels of Academic Achievement and Functional Performance	• Current grades are satisfactory. • Math and reading MAP scores in the 99th percentile. • Appreciates choice and the freedom to be creative. • Needs higher-level resources, extension and enrichment projects, flexible group, and differentiation through tiered assignments. • "An area of possible improvement is helping her to not overthink a task and to have the confidence to push ahead with her ideas without affirmation. [Student 1] sometimes struggles with time management/assignment completion, perfectionism, and social interaction."	• Current grades are satisfactory. • Math and reading MAP scores in the 99th percentile. • Needs challenging extensions to things the whole class is learning. • "Areas for potential improvement include time management, organization, and assignment completion."
Impact of Disability on Child's Involvement in and Progress in the General Education Curriculum	Needs greater depth and complexity in learning tasks.	Needs greater depth and complexity in learning tasks.
Measurable Annual Goals (Academic and Functional)	"By the end of this IEP year, given [Student 1's] need to explore and further develop her strengths and interests, [Student 1] will write focused questions to help explore and develop her passion areas and will complete a variety of products to demonstrate newly acquired knowledge and skills."	"Over the course of this IEP year, given time and resources, [Student 1] will identify a real-world issue or problem, research to gain sufficient background knowledge to take an action, and create a product or presentation that will raise awareness or propose solutions to the identified problem."
Special Education and Related Services	• Specialized curriculum within a gifted center to achieve greater depth and complexity in learning tasks. • No related services.	• Need for greater depth and complexity in learning tasks. • No related services.
Progress Toward Goals and in General Curriculum	• District report indicates Student 1 made progress on her IEP goal in all four quarters of this school year. • On the student's grade card, in all skills evaluated, the student scored as making expected progress or exceptionally good progress by the end of the school year.	• District report indicates Student 1 made progress on her IEP goal in all four quarters of this school year. • On the student's grade card, in all skills evaluated, the student scored as making expected progress or exceptionally good progress.

A comparison of the most recent two IEPs shows the same gap regarding clearly identifying Student 1's present functional needs, which would allow the IEP Team to address those needs through a goal and services. There is alignment between Student 1's academic needs in each IEP and her goal. Her goals show growth from year-to-year by moving from identifying focused questions to undertaking research. Neither IEP includes the clarity required in a statement of special education services to enable the IEP Team to understand how the content, methodology, or delivery of instruction within those services will be adapted to meet her needs identified in her present levels, including her functional needs, nor to those statements present a clear connection to her IEP goal for the relevant IEP. Ultimately, Student 1 made progress on her IEP goals and within the general curriculum.

Conclusion

In their complaint, the parent's alleged that several concerns unable to be investigated through this investigation were denying Student 1 FAPE. While the investigation cannot focus on the parents' concerns, this investigation can and must determine whether Student 1's IEP was reasonably calculated to enable her to make progress in light of her circumstances. (*Endrew F. v. Douglas Co. Sch. Dist*., 580 U.S. 386 (Mar. 22, 2017.) Student 1's IEP Progress Reports and grade cards indicate she made progress on IEP goals and in the general curriculum. However, this investigation has identified a number of required elements missing from Student 1's September 14, 2023, IEP or that are not appropriately aligned.

Student 1's September 14, 2023, IEP includes a gap between the student's current level of functional performance and the student's goal and special education services by not clearly stating the student's current level of functional performance and, if Student 1 has functional needs, not addressing those needs within the student's goal(s) and services. Additionally, Student 1's IEP does not include a description of special education that meets the requirements of K.A.R. § 91-40-1(lll). Finally, Student 1's 2023–24 IEP Progress Report for Quarters 2–4 does not provide a description of this student's progress on her IEP goal. These deficiencies create an IEP for Student 1 that is not reasonably calculated to provide FAPE.

Based on the foregoing, this investigation concludes that USD 512 *violated its obligation* to ensure that Student 1's IEP include a statement of her present levels of functional performance as K.S.A. § 72-3429(c)(1) requires, does not include a description of special education services as K.S.A. § 72-3429(c)(4) requires, and Student 1's 2023–24 IEP Progress Report for Quarters 2–4 do not meet the requirement to provide information ". . . on the progress the child is making toward meeting the annual goals . . ." as K.S.A. § 72-3429(c)(3) requires.

Issue Two: FAPE for Student 2

Did USD 512 provide Student 2 with a free appropriate public education, including ensuring that the IEP Team considered whether the student's behavior interfered with her learning or that of others and, if so, considered the use of positive behavioral interventions and supports, and other strategies, to address that behavior? 34 C.F.R. §§ 300.101, .324(a)(2); K.S.A. §§ 72-3410(a)(2), -3429(d)(4); K.A.R. § 91-40-2.

Applicable Law

Federal and Kansas special education regulations requires each local board of education to ". . . provide a free appropriate public education for exceptional children enrolled in the school district" (34 C.F.R. § 300.101; K.S.A. § 72-3410(a)(2). Kansas special education regulations define FAPE as "special education and related services that meet the following criteria: (1) Are provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the state board; (3) include an appropriate preschool, elementary, or secondary school education; and (4) are provided in conformity with an individualized education program." (K.A.R. 91-40-1(z).) To meet this obligation, the local board of education ". . . must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (*Endrew F. v. Douglas Co. Sch. Dist*., 580 U.S. 386 (Mar. 22, 2017.)) When a child's behavior interferes with their learning or that of others, the IEP Team must ". consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior" (34 C.F.R. § 300.324(a)(2); K.S.A. § 72-3429(d)(4).)

Analysis: Findings of Fact

The analysis of whether a child received FAPE must be grounded in the definition of special education, "specially designed instruction provided at no cost to parents to meet the unique needs of an exceptional child" (34 C.F.R. § 300.39(a)(1); K.S.A. §72-3404(i).) To understand the "unique needs" of Student 2, we must consider the student's present levels of academic achievement and functional performance and how the student's exceptionality impacts the student's access to and progress in the general curriculum. (34 C.F.R. § 300.320(a)(1); K.S.A. § 72-3429(c)(1).) We then look to the student's measurable annual goals to determine whether the goals align with the student's present levels and impact and access to the general curriculum. (K.S.A. § 72- 3429(c)(2).) Next, we consider whether the student's services are aligned with the student's needs and designed to enable the student to make progress toward their goals and in the general curriculum. (K.S.A. § 72-3429(c)(4).) This is the analysis the Court lays out in Endrew F., allowing us to determine whether the IEP is "reasonably calculated." (*Endrew F. v. Douglas Co. Sch. Dist*., 580 U.S. 386 (Mar. 22, 2017.) Finally, we consider the key factor in determining FAPE, data on the student's progress, to determine whether that progress is "appropriate in light of the child's circumstances." (*Endrew F. v. Douglas Co. Sch. Dist*., 580 U.S. 386 (Mar. 22, 2017.)

The following table shows the previously described information for Student 2 for the student's March 4, 2024, IEP.

Present Levels of Academic Achievement and Functional Performance	Impact of Exceptionality on Child's Involvement in and Progress in the General Education Curriculum	Measurable Annual Goals (Academic and Functional)	Special Education and Related Services and Placement	Progress Toward Goals and in General Curriculum	Additional Considerations
• Data from multiple math and reading assessments. • Information on Student 2's current reading intervention focus outside of special education and progress monitoring data. • Behavior Assessment System for Children-Third Edition Behavioral Symptoms Index puts Student 2's concerning behaviors in the Clinically Significant range (based on mother and teacher ratings) and At-Risk range (based on father	"[Student 2] requires specially designed individualized instruction to acquire, maintain and generalize social/emotional behavioral skills across settings. Learning objectives are based on Kansas State and Career Ready Standards, yet an individual approach is required."	• "Within 36 instructional weeks, [Student 2] will demonstrate an independent use of learned routines, skills and strategies as measured on an informal social engagement rubric by scoring 2.5 or more per targeted skill (quarterly average) – **1.** Initiates conversation with peers **2.** Takes turns during social conver-sations **3.** Joins group activities that have already started	• Specially designed instruction in the special education setting to support Student 2's progress toward her IEP social/emotional/behavior goals. • Indirect speech and language consultative services	• District report indicates Student 2 made progress on her IEP goal in the two quarters of this school year since they were put into place. • On the student's grade card, in all skills evaluated, the student scored as making expected progress or exceptionally good progress by the end of the third quarter except	Student 2's goals are each linked to a Kansas State Board of Education standard.

Student 2's present levels provide a great deal of the relevant academic and functional data and information from her November 3, 2023, reevaluation needed for the IEP Team to

determine Student 2's baseline academic and functional data. Student 2's impact of exceptionality statement makes the student's social, emotional and behavior needs clear to the IEP Team. The student's goals align with her present levels and impact of exceptionality by focusing on specific behavioral, social, and emotional needs rated low in student's baseline data. Student 2's IEP description of special education services articulates the specially designed instruction the student will receive and its purpose. Student 2's IEP Progress Report indicates she made "Adequate Progress" in the 2023–24 school year Quarter 3 on each of her IEP goals, the two quarters since they were put into place. For Quarter 4, Student 2 made "Adequate Progress" on her social engagement goal and met her behavior goal. The father also acknowledges this progress in a summary document he created stating, "[s]ince completion of the revised IEP, [Student 2's] in-school issues have mostly gone away."

To continue the FAPE analysis, this investigation would typically consider the relationship within and between IEP components across Student 2's recent IEPs to determine whether the individual IEP components showed growth, decreased, or stayed the same. However, Student 2's previous IEPs were completely focused on speech and language and not behavior because, at that time, her IEP Team determined her behavior was not interfering with her learning or that of others. (Student 2 IEP, Nov. 7, 2022.) Student 2's November 3, 2023, reevaluation changed Student 2's eligibility category from Speech and Language to Other Health Impairment and, based on the speech and language reevaluation data discontinued Student 2's goals focused on speech and language and changed her special education services in this area to consultative. (Student 2 Reevaluation, Nov. 30, 2023.) Because of the change in Student 2's needs there are not IEP components that would be expected to have a relationship across IEPs under which this investigation would look for progress.

Regarding the IEP Team's obligation to consider whether Student 2's behavior interfered with her learning or that of others, the district submitted multiple documents showing its efforts to discuss this topic with parents and come to consensus. At the parent's request, the district agreed to comprehensively reevaluate Student 2 including conducting a functional behavior assessment. (Student 2 Reevaluation, Nov. 30, 2023.) At the November 30, 2023, eligibility meeting the district came with a draft IEP proposing to meet Student 2's social, emotional, and behavior needs the reevaluation identified, including a behavior intervention plan that would be part of Student 2's IEP. (Student 2 Proposed IEP, Nov. 30, 2023.) When the parents and district staff did not agree on the proposed IEP, the district met its obligation to offer what it believed to be FAPE by issuing the parents a Prior Written Notice proposing to incorporate changes to Student 2's IEP based on Student 2's reevaluation. (Student 2 Prior Written Notice Proposing to Incorporate IEP Changes Based on Nov. 30, 2023, Reevaluation, Nov. 30, 2023.) When parents declined to consent to the changes which required their consent, the district scheduled another IEP Team meeting for December 11, 2023. (Student 2 IEP Team Attendance Form, Dec. 11, 2023.) When the December 11, 2023, discussion did not conclude, the IEP Team scheduled another meeting for January 19, 2024. (Student 2 IEP Team Attendance Form, Jan.

19, 2024.) When the January 19, 2024, discussion did not result in consensus, the district met its obligation to offer what it believed to be FAPE by issuing the parents a Prior Written Notice proposing to incorporate changes to Student 2's IEP based on Student 2's reevaluation. (Student 2 Prior Written Notice Proposing to Incorporate IEP Changes Based on Nov. 30, 2023, Reevaluation, Jan. 19, 2024.) The IEP Team set February 12, 2024, as its next meeting date and the parents asked to reschedule for February 21. (Email from District Special Education Director to Complaint Investigator, May 31, 2024.) On February 21, 2024, the IEP Team came to consensus and the next day the parents consented to the items that required their consent. (Student 2 IEP, Feb. 21, 2024; Student 2 Request for Consent for Special Education Action, Feb. 22, 2024.) Student 2's IEP Team met again on March 4, 2024, and came to consensus on amending Student 2's IEP to add accommodations to further support her behavior. (Student 2 IEP Amendment, Mar. 4, 2024.) The parents consented to the items requiring their consent on March 16, 2024. (Student 2 Request for Consent for Special Education Act, Mar. 16, 2024.)

Conclusion

In their complaint, the parent's alleged that several concerns unable to be investigated through this investigation were denying Student 2 FAPE. While the investigation cannot focus on the parents' concerns, this investigation must determine whether Student 2's IEP was reasonably calculated to enable her to make progress in light of her circumstances. (*Endrew F. v. Douglas Co. Sch. Dist.*, 580 U.S. 386 (Mar. 22, 2017.) This investigation identified all required items as present in Student 2's March 4, 2024, IEP and determined that required items are appropriately aligned, which created an IEP for Student 2 that is reasonably calculated to provide FAPE. Student 2's IEP Progress Reports and grade cards indicate she made progress on IEP goals and in the general curriculum.

Parents always have the right to continue IEP conversations when they do not believe what a district is offering provides their child with FAPE. These parents exercised that right multiple times and continued to advocate for what they believed their daughter needed. The district has an obligation to offer FAPE and did so multiple times after the completion of Student 2's reevaluation. The district has an obligation to ensure the IEP Team considers whether Student 2's behavior impeded her learning or that of others and met this obligation through the student's reevaluation, including a functional behavior assessment. The district then demonstrated that it ensured Student 2's IEP Team considered behavior supports by offering multiple IEPs, including a behavior intervention plan, meeting multiple times to consider and reconsider behavior supports and amending the student's IEP to further address the student's behavior needs.

Based on the foregoing, this investigation concludes that USD 512 *did not violate its obligation* to provide Student 2 with a free appropriate public education, including by ensuring that Student 2's IEP Team considered whether the student's behavior interfered with her learning

or that of others and considered the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

Issue Three: Systemic Gifted Child Find

Did USD 512 ensure the students' school followed child find requirements to identify, locate, and evaluate all children who may be gifted residing within the school's jurisdiction? K.A.R. § 91-40-7(a).

Applicable Law

Kansas regulation requires that each local board of education ". . . adopt and implement policies and procedures to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction " K.A.R. § 91-40-7(a). Kansas special education law provides rights and protections for "[e]xceptional children" which means "children with disabilities and gifted children." K.A.R. § 91-40-2(v). In Kansas, a child is eligible to be identified as gifted once they are "school age," which is "the age at which the local board of education provides educational services to children without disabilities, through the school year in which the child graduates from high school" K.S.A. § 72-3404(g); K.A.R. § 91-40-1(ddd)(1).

Analysis: Findings of Fact

The parents' specific concern is that they believe the practice at their children's school is not to evaluate any student for gifted before the third grade and to not begin an evaluation for gifted if it is too close to summer break, in violation of child find requirements. (Parents' Complaint, May 1, 2024; Complaint Investigator Discussion with Parents, May 20, 2024.)

The district's child find procedures, described on its website, make clear that the district follows state procedures for evaluating students who may have an exceptionality, and specifically delineates the relevant age range as beginning at age five. (Shawnee Mission School District, *Screenings and Referrals*, https://www.smsd.org/academics/special-education/screenings-and-referrals.) The following is KSDE 2023–24 data on students identified as gifted attending the same school as the students at the focus of this investigation, following business rules that require suppression of any data value below ten.

Grade	Number of Students Identified
2	< 10
3	< 10
4	< 10
5	< 10
6	< 10

For the 2023–24 school year, the district conducted multiple evaluations of students at this building to determine if each student is gifted. Data on the grades of students evaluated is as follows:

Grade	Number of Students Evaluated
1	< 10
2	< 10
4	< 10
5	< 10

Despite the necessary data suppression, this data shows that this building has identified students as gifted, including Student 1 who was identified as a first grader. Of those first and second graders evaluated for gifted this school year, multiple were found eligible. Of the evaluations for gifted, three of them were started in the month of April, the latest beginning 19 school days before the end of the school year.

Conclusion

The district's procedures on the minimum age for conducting a special education evaluation, as well as gifted identification and evaluation data for this school, refute the parents' assertions that this school has established practices of not conducting gifted evaluations before a child is a third grader and do not begin a gifted evaluation if it is late in the school year. The district has identified and evaluated multiple students as gifted below the third grade and begins gifted evaluations well into the spring. Based on the foregoing, this investigation concludes that USD 512 did not violate its obligation to followed child find requirements to identify, locate, and evaluate all children who may be gifted residing within the students' school's jurisdiction.

Summary of Conclusions and Corrective Action

Issue One

The district violated K.S.A. § 72-3429(c)(1), K.S.A. § 72-3429(c)(4), and K.S.A. § 72- 3429(c)(3), based on the findings of fact listed above. Corrective action is required, as follows:

1. Within 10 calendar days of the date of this report, USD 512 must submit a written statement to KSDE Special Education and Title Services (SETS) that it will comply with:
    a. State legal requirements at K.S.A. § 72-3429(c)(1) which require the district to ensure that a gifted student's IEP includes a statement of the student's present levels of functional performance;
    b. State legal requirements at K.S.A. § 72-3429(c)(4) which require the district to ensure that a gifted student's IEP includes a description of special education services that makes clear the adaption to the content, methodology, or delivery of instruction to address the unique needs of the gifted student that result from the gifted student's exceptionality; and

   c. State legal requirements at K.S.A. § 72-3429(c)(3) which require the district to ensure it provides progress reporting specific to an individual gifted child.

2. Before the first day of the 2024–25 school year, USD 512 must convene Student 1's IEP Team or use the IEP amendment process described in K.S.A. 72- 3429(b)(4) to write a statement in Student 1's IEP of the student's present levels of functional performance that complies with K.S.A. § 72-3429(c)(1) and, based on that updated statement, determine whether the IEP Team needs to revise the student's goal(s) and special education and related services to ensure alignment with the updated statement. The IEP Team must also ensure a description of special education services is included in Student 1's IEP that complies with K.S.A. § 72-3429(c)(4). USD 512 must submit the revised portions of Student 1's IEP to SETS no later than the first day of the 2024–25 school year. If the IEP Team decides not to revise Student 1's goal(s) and special education and related services to ensure alignment with the updated statement, USD 512 must submit IEP Team meeting notes to SETS that explain this decision and the reason for the decision.
3. Within 10 business days of the date of this report, USD 512 must provide the parent with a revised IEP Progress Report for the 2023–24 school year that provides information on the specific progress Student 1 made toward meeting her specific annual goal during the 2024–25 school year. USD 512 must provide SETS with the revised IEP Progress Report on the same date it provides it to the parents.
4. Due Dates:
   a. June 13, 2024: 1.;
   b. June 17, 2024: 3.; and
   c. August 13, 2024: 2.

Issue Two

This investigation found no violations and there is no corrective action.

Issue Three

This investigation found no violations and there is no corrective action.

Investigator

Laura N. Jurgensen

Laura N. Jurgensen 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).

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 #261
ON MAY 8, 2024

DATE OF REPORT JUNE 4, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of --------, by his parents, --------. In the remainder of the report, -------- will be referred to as "the student." -------- will be referred to as "the mother". -------- will be referred to as "the father". Collectively, the parents will be referred to as "the parents", or "the complainants".

The complaint is against USD #261, Haysville Schools. In the remainder of the report, USD #261 will be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date on which it was filed. A complaint is considered filed on the date on which it was received by KSDE. In this case, the KSDE initially received the complaint on May 8, 2024, and the 30-day timeline ends on June 8, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Ashley Niedzwiecki, reviewed all evidence and documentation, which was provided by both the district and the complainants. The following documentation and information were used in consideration of the issues:

1. Parent's written allegations. [E.1]
2. District's written response to the allegations. [E.2]
3. Information gathered during an interview, with the parents, conducted on May 13, 2024. [E.3]
4. Information gathered during an interview, with the Director of Special Services, Dr. Angie Karraker, conducted on May 21, 2024. [E.4]
5. Information gathered during a second interview with the parents, conducted on May 22, 2024. [E.5]
6. Emergency Safety Intervention (ESI) Report dated April 4, 2024 [E.6]
7. Parent's ESI Notification Letter dated April 5, 2024. [E.7]

Background Information

The student is currently a second-grade student attending Rex Elementary in the district. The student has been identified as a student with an exceptionality. The student was initially

enrolled in the district during the 2021-2022 school year as a first grader. Both parents teach in the district.

Issues Investigated

1. ISSUE ONE: Whether USD #261, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), improperly disclosed educational records with a district employee(s) following an incident on April 4, 2024.

The parents allege additional allegations in the formal complaint. However, following a review of the written complaint, [E.1] and discussions with the parents, [E.3] it was determined that KSDE does not possess jurisdiction over these matters. Therefore, the following issues will not be investigated. Both parties were notified of the decision not to investigate these issues prior to the completion of this investigation.

2. ISSUE TWO: Whether USD #261 properly followed Emergency Safety Intervention (ESI) procedures.
3. ISSUE THREE: Whether USD #261 improperly permitted a district employee to engage with the student, resulting in threats and slander against the student.
4. ISSUE FOUR: Whether USD #261 engaged in retaliatory behaviors against the parents following both 1) a request for the district to cease any interaction between a specific Safety Resource Officer (SRO) and the student and 2) the filing of a police report against the SRO.

These issues may be handled through the district's internal review process, the district's human resource department, and/or the Office of Civil Rights.

Issue One

Whether USD #261, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), improperly disclosed educational records with a district employee(s) following an incident on April 4, 2024.

Applicable Law

Under state and federal law, districts are required to protect the privacy of any student, or student's family, regarding personally identifiable records, files, and data directly related to the student. (K.S.A 72-6311(b)(2); 34 C.F.R. 300.610). Personally identifiable information includes but is not limited to, information such as the name of the child, the child's parents; address; personal identifiers such as the child's social security number or student number; indirect identifiers, such as the student's place of birth or mother's maiden name; other information that, alone or in combination, is linked or linkable to a student that would allow a reasonable person in the school community, without personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the

LEA reasonably believes knows the identity of the student to whom the education records relate. (K.A.R. 91-40-50; 34 C.F.R. 300.32; 34 C.F.R. 99.3).

Unless a parent consents to the release, or a Family Education Rights and Privacy Act (FERPA) exception applies, a district must prevent the disclosure of personally identifiable information to any unauthorized person. (34 C.F.R. 300.622). Disclosure means "to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record". (34 C.F.R. 99.3).

FERPA regulations allow some exceptions to the requirement to obtain parent consent before releasing records. All of these exceptions also apply to the confidentiality requirements in the federal special education regulations (34 C.F.R. 300.622(a)). One such exception is:

- Disclosure in connection with a health or safety emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals (34 C.F.R. 99.31(a)(10)).

Findings

The parents allege the district improperly disclosed personally identifiable information, related to the student, following an Emergency Safety Intervention (ESI) incident on April 4, 2024. [E.1] According to the parents, the principal of the elementary school, Ms. Laura Rogers, "broke FERPA by calling (the father's) employer and providing his boss with all the details of (the) April 4th situation." [E.1.] The parents claim Ms. Rogers "spoke freely" to the high school Assistant Principal, Ms. Cochran, about "our son, his IEP, & consequences." [E.1] The district claims no email communication was exchanged between the principals of the schools, and nothing in the record, or from the parents refutes this claim. [E.2]

The parents and the district agree the student was involved in an ESI on April 4, 2024. [E.3, E.4, E.5] Documents show Emergency Safety Interventions were executed between 1:23 pm and 1:44 pm. [E.2, E.6] The district and the parents confirm that following the ESI, the principal of the elementary school, Ms. Rogers, attempted to contact the father on this cell phone, without success. [E.2, E.4, E.5] All parties verify the mother was not contacted on the date of the incident, nor did any party attempt to contact her. [E.4, E.5] The record shows a notice of the ESI was properly provided to both parents on April 5, 2024. [E.7]

The parties further agree that following an attempt to contact the father, Ms. Rogers called the high school and spoke with Assistant Principal, Ms. Cochran. [E.2, E.4]. Both parties state that no message was left on the father's cell phone. [E.4, E.5] The district and the parents offer slightly varied accounts as to what was disclosed during the conversation between the principal of the student's school of attendance (Ms. Rogers), and the assistant principal of the father's school of employment (Ms. Cochran).

An Interview with Dr. Karraker, and written statements from Ms. Rogers and Ms. Cochran reveal:

- Ms. Rogers recalled contacting Ms. Cochran and stating, "I cannot get ahold of (the father) on his cell phone and it is important that I speak to him right away. Can you get him a message to call me?" [E.2]
- Ms. Cochran recalled that Ms. Rogers telephoned the high school and Ms. Cochran answered. [E.2] Ms. Cochran states that Ms. Rogers informed her that "she needed to speak with (the father) regarding his child." Ms. Cochran asserts that Ms. Rogers did not share information regarding the student's name or any specifics of the reason for the phone call. [E.2]
- A school administrator located the father in the school gym and directed him to go to Ms. Cochran's office. Once there the father was told to call Ms. Rogers. He did so from Ms. Cochran's office phone. Dr. Karraker could not recall whether Ms. Cochran stayed in the office or left while the father made the phone call. [E.4]

According to the parents:

- The father did miss a phone call from Ms. Rogers on April 4, 2024. He was unable to answer due to teaching a class at the time. [E.5]
- Soon after, the father was in the gym, helping with preparations for graduation, when the building Principal, Mr. Seeley, located him and asked him to go to Ms. Cochran's office. According to the father, Mr. Seeley did not indicate why Ms. Cochran needed to speak with him. [E.5]
- Once at Ms. Cochran's office, the father stated Ms. Cochran told him there was an incident at the elementary school involving his son, that several Safety Resource Officers were involved, and that he needed to call Ms. Rogers right away. [E.5]
- The father states Ms. Cochran excused herself from the office, and once alone, he called Ms. Rogers from the office phone. [E.5.]
- Following this, the father explained to Ms. Cochran that he needed to leave to deal with an incident involving his son at his son's school. [E.5]
- The father claims once he arrived at the elementary school, the situation was as Ms. Cochran described, specifically that there were several SROs involved. [E.5]

Additional statements were gathered during interviews, including:

- The district states it is not always necessary to contact a parent as soon as an ESI occurs. Depending on the situation, building administrators may wait to notify the parent until after the situation is under control. [E.4]
- The district states since an SRO was involved in this situation, and there was a physical threat of harm to the student or others, Ms. Rogers felt it was necessary to contact the parent as quickly as possible. [E.4]
- The parents state this incident was no worse than other incidents, and in fact, was less serious than some. [E.5]

- The parents state the mother was called to help de-escalate situations in the past. However, the district has recently stopped notifying her because the district felt it was interrupting her ability to perform her job responsibilities. [E.5]. The district does verify this. [E.4]
- The parents state that "Ms. Cochran didn't even know (the father) had a child in the district before the phone call." [E.5]
- Both parties agree the district has contacted the father, during past incidents involving the student, and left messages on his cell phone, without contacting high school administrators. [E.4, E.5]

Analysis

Confidentiality is important, especially when dealing with a student's educational records. The Individuals with Disabilities Act (IDEA) adopted FERPA regulations as they apply to parents' rights regarding their children's education records, including the right to consent to the disclosure of personally identifiable information. The IDEA also adopted exceptions to the requirement of parental consent, under certain circumstances.

In this case, documents show, and all parties agree, that a phone call was placed, and a conversation had, between the elementary school principal, Ms. Rogers, and the high school assistant principal, Ms. Cochran. A phone call alone does not violate FERPA regulations; however, the dialogue occurring during a phone call may violate FERPA regulations. As noted above, a FERPA violation occurs if a disclosure was made that permitted access to or the release, transfer, or other communication of *personally identifiable information* contained in education records by any means, including oral communication. (34 C.F.R. 99.3). To determine if FERPA was violated, it must first be determined whether the information communicated was *personally identifiable information* under the law.

Under state and federal law, personally identifiable information includes information such as the name of the child, the child's parents; personal identifiers such as the child's social security number or student number; indirect identifiers, such as the student's place of birth or mother's maiden name; other information that, alone or in combination, is linked or linkable to a student that would allow a reasonable person in the school community, without personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the LEA reasonably believes knows the identity of the student to whom the education records relate.

There is nothing in the record, from either the district or the parents, to indicate the name of the student was revealed, or that any other personal information, such as the student's ID number was shared. The parents do allege, in their written complaint, that Ms. Rogers communicated information related to the student's IEP and student consequences because of the April 4th, 2024, incident. However, the record does not substantiate this, and the parents offer no evidence in support of this claim.

Furthermore, neither the parents nor the district, indicate the disclosure of any indirect information related to the student, or that information was requested by a person the LEA reasonably believes knows the identity of the student.

There is also no evidence in the record to show that a reasonable person in the school community would be able to identify the student, with reasonable certainty, without personal knowledge of relevant circumstances based on the information relayed to Ms. Cochran. The weight of the evidence, provided by all parties, suggests that Ms. Rogers communicated to Ms. Cochran only that the father needed to contact her because of a situation occurring with his child. This limited information neither revealed the student's name nor any other identifiable information. Moreover, even if Ms. Rogers had revealed that SROs were involved, as the parents claim, this information does not rise to a level that would allow a reasonable person, in the school community, to identify the student with any reasonable certainty. As noted by the parents, "Ms. Cochran didn't even know (the father) had a child in the district before the phone call." If that is the case, it is even more unlikely that Ms. Cochran could be certain of a specific student's identity simply because Ms. Rogers suggested that an SRO was involved in a situation.

Therefore, because the information communicated was not personally identifiable information, the district did not violate FERPA.

Even if the information communicated to Ms. Cochran included personally identifiable information, the information meets one of the FERPA exceptions. As stated above, disclosure of personally identifiable information is permitted, without parental consent, if disclosed in connection with a health or safety emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals (34 C.F.R. 99.31(a)(10)). As stated by the district, and confirmed by the record, the student's behavior had escalated to the degree that an Emergency Safety Intervention was needed. An ESI is used when a student presents a reasonable and immediate danger of physical harm to self or others. The use of an ESI suggests a circumstance in which the health or safety of the student was in question.

Additionally, interviews reveal the district had included the parents in such situations, to de-escalate the student, especially if an SRO was involved or there was the danger of a physical threat to the student or others. The district states that since the situation posed a physical threat, Ms. Rogers felt it necessary to contact the father as soon as possible. Here, the weight of the evidence suggests Ms. Rogers may have conveyed the urgency of the situation to Ms. Cochran, as it connected to the health or safety of the student but did not reveal details of the student's education record. Therefore, even if the information was personally identifiable information, it meets a FERPA exception not requiring parental consent to disclose.

Conclusion

Based on the foregoing, a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically that the district improperly disclosed educational records with a district employee(s) following an incident on April 4, 2024, *is not substantiated*.

Summary of Conclusions/Corrective Action

ISSUE ONE: Whether USD #261, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), improperly disclosed educational records with a district employee(s) following an incident on April 4, 2024, *is not substantiated*.

a. No corrective action is required.

Investigator

Complaint Investigator:
Ashley Niedzwiecki

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.

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, DESOTO PUBLIC SCHOOLS
ON MAY 6, 2024

DATE OF REPORT JUNE 7, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #232 (DeSoto Public Schools) on behalf of ---------- by his mother, ----------. In the remainder of the report, ---------- will be referred to as "the student" and ---------- will be referred to as "the complainant", "the parent", or as "the mother."

The complaint is against USD #232 (DeSoto Public Schools). In the remainder of the report, USD #232 will be referred to as "the district." The student attends DeSoto High School which will be referred to as the "school" in the remainder of the report. Lee Hanson was the Director of Special Services in USD #232 until the beginning of December 2023 and will be referred to as the "Director of Special Services". Andrea West has been the Interim Director of Special Services since the end of January 2024 and will be referred to as the "Interim Director of Special Services". Michelle Smotherman is the Special Services Coordinator and will be referred to as the "Special Services Coordinator". Erin Krehbiel is the Occupational Therapist (OT) and will be referred to as the "OT". Alison Hanks is the Speech Language Pathologist (SLP) and will be referred to as the "SLP".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on May 6, 2024. On June 3, 2024 a one week extension was requested and granted by KSDE.

Evidence Reviewed

During the investigation, the Complaint Investigator Nikki Crawford reviewed all evidence and documentation, which was provided by both the district and the parent. Additionally, the complaint investigator contacted the district and mother on May 10, 12, 13, 15, 16, 17, 19, 20, 22 and June 3, 2024 by phone and email to clarify evidence and documentation. The following documentation and information were used in consideration of the issues:

1. Student's Triennial Psychoeducational Assessment Report from Summit Public Schools dated August 30, 2021.
2. Student's Individualized Education Program (IEP) from the previous school dated September 7, 2021 and amended on March 24, 2022.
3. Student's Move-in IEP from previous school dated September 28, 2022.

4. Comparable Services Chart (prior to IEP) created by USD #232 dated August 16, 2023.
5. Notice of Meeting dated August 28, 2023.
6. Student's proposed Annual IEP dated September 14, 2023.
7. Prior Written Notice dated October 31, 2023.
8. Email from school psychologist to mother dated November 10, 2023 at 12:42 p.m.
9. Email from mother to school psychologist dated November 11, 2023 at 6:01 p.m.
10. Email from school psychologist to mother dated November 12, 2023 at 1:48 p.m.
11. Email exchange between Director of Special Services and mother on November 13, 2023 at 12:49 p.m. and 3:10 p.m.
12. Email from school psychologist to mother dated November 14, 2023 at 10:33 a.m.
13. Email exchange between Director of Special Services to mother dated November 27, 2023 at 11:04 a.m and 12:47 p.m.
14. Email from school psychologist to mother dated November 28, 2023 at 11:36 a.m.
15. Email from mother to school psychologist dated November 29, 2023 at 9:42 p.m.
16. Email from Director of Special Services to mother dated November 30, 2023, 1:00 a.m.
17. Email from mother to school psychologist dated December 1, 2023 at 3:09 p.m.
18. Email exchange between mother and school psychologist on December 4, 2023 at 12:08 p.m., 1:05 p.m. and 4:03 p.m.
19. Comparison of move-in IEP and USD #232 proposed offer of FAPE, dated December 20, 2023.
20. Email from Special Services Coordinator to mother on December 21, 2023 at 6:00 a.m.
21. Email from mother to Special Services Coordinator on December 23, 2023 at 3:51 p.m.
22. Email from Special Services Coordinator to mother on January 4, 2024 at 2:27 p.m.
23. Email exchange between Special Services Coordinator and mother on January 26, 2024 at 8:33 a.m. and 9:58 p.m.
24. Email from Special Services Coordinator to mother on January 29, 2024 at 2:33 p.m.
25. Email from school psychologist to mother dated February 29, 2024 at 11:55 a.m.
26. Email from mother to school psychologist dated March 4, 2024 at 8:47 p.m.
27. Email from Special Services Coordinator to mother dated March 6, 2024 at 3:29 p.m.
28. Notice of Meeting dated March 8, 2024.
29. Email from Interim Director of Special Services to mother dated March 29, 2024 at 6:15 p.m.
30. Student's proposed IEP dated March 29, 2024.

31. Prior Written Notice for change in services dated March 29, 2024.
32. Email from mother to Interim Director of Special Services dated March 30, 2024 at 3:02 p.m.
33. Prior Written Notice for reevaluation dated April 1, 2024.
34. Emails from Interim Director of Special Services to mother dated April 1, 2024 at 7:01 p.m. and 7:04 p.m.
35. Screenshot of Interim Director of Special Services calendar dated April 1, 2024 showing a meeting to discuss the student's IEP with the district after the mother provided previous IEP dated September 7, 2021 with an update on March 24, 2022.
36. Email from Interim Director of Special Services to district IEP team members dated May 6, 2024 at 9:54 a.m.
37. Emails from Interim Director of Special Services to mother dated May 6, 2024 at 3:54, 5:54 and 6:24 p.m.
38. Email from mother to Interim Director of Special Services dated May 6, 2024 at 6:04 p.m.
39. Image of USPS mail tracking of consent documentation with most current location update on May 8, 2024 at 8:56 a.m.
40. Email from mother to complaint investigator on May 11, 2024 at 8:08 p.m.
41. Call with the Interim Special Education Director on May 13, 2024 at 9:24 a.m. lasting 25 minutes.
42. Phone call from mother on May 13, 2024 at 10:27 am for 17 minutes.
43. Email from mother to complaint investigator on May 13, 2024 at 2:24 p.m.
44. Call from mother on May 13, 2024 at 3:03 p.m. lasting 5 minutes.
45. Call with the Interim Special Services Director on May 13, 2024 at 3:26, lasting 7 minutes.
46. Interview with SLP, OT, and Interim Director of Special Services May 15, 2024 lasting 45 minutes.
47. ACT website at act.org https://www.act.org/content/act/en/products-and-services/the-act/registration/accommodations.html on May 15, 2024.
48. Student attendance record for 2023-2024 school year dated May 16, 2024.
49. Call with ACT representative on May 17, 2024 at 9:58 a.m. lasting 5 minutes.
50. Call with Interim Special Services Coordinator on May 20, 2024 at 10:30 a.m. lasting 36 minutes.
51. Report card for 3rd quarter grades for the 2023-2024 school year.
52. Occupational Therapy (OT) service logs for the 2023-2024 school year.
53. Speech Language Pathology (SLP) service logs for the 2023-2024 school year.
54. Call with mother on May 23, 2024, 9:34 am lasting 7 minutes.

Background Information

The subject of this complaint is a 16-year old male student enrolled in the 11th grade at DeSoto High School during the 2023-24 school year. He transferred into USD #232 on August 17, 2023 from Summit Public Schools in the state of California where he attended an alternative high school which used a curriculum based on a project based learning model. Enrollment paperwork and records received from the out-of-state school district showed the student had a current IEP in the state of California.

The student is living with a family in the district while his mother is currently residing in California. It is noted that USD #232 has recognized and included the mother as the parent of the student in all procedures and practices related to the IDEA even though she is living in another state.

Issues Investigated

Based on the written complaint and an interview with the complainant, four issues were identified and investigated.

Issue One

USD #232, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop an IEP that meets the student's needs with IEP team input including parent participation in the development of the student's IEP during the 2023-2024 school year.

Applicable Law

Federal regulations implementing the IDEA at 34 C.F.R. 300.322(a) 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.

Under federal regulations implementing the IDEA at 34 C.F.R. 300.323(f) if a child with a disability who had an IEP in effect in a previous public agency in another State transfers to a new public agency in a new State and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with a free appropriate public education (FAPE) which includes providing comparable services to those described in the child's IEP from the previous public agency until the new public agency determines whether the student is a student with a disability in the new state and develops, adopts, and implements a new IEP, if appropriate.

Section G in Chapter 4 of The Kansas State Department of Education Kansas Special Education Process Handbook, describes the procedure to be followed when a student with an IEP from another state transfers into a Kansas school district as follows:

When a child with an exceptionality, who has a current IEP in another state, transfers to a school district in Kansas, the new school district, in consultation with the parents, must provide the child with FAPE, including services comparable to those described in the child's IEP from the previous school district until the Kansas school district either adopts the current IEP, or conducts an initial evaluation of the child, if deemed necessary, and develops and implements a new IEP for the child. Comparable services have the meaning of services that are "similar" or "equivalent" to the services that were described in the child's IEP from the previous school, as determined by the child's newly designated IEP team in the new district (Federal Register, August 14, 2006, p. 46681). Accordingly, IEP teams should work together to come to a consensus in determining the content of the "comparable" services to be provided. If there is a dispute between the parent and the school district regarding what constitutes comparable services, the dispute could be resolved through mediation procedures or, as appropriate, the due process hearing procedures. If the parent disagrees with the new school district about the comparability of services, stay-put would not apply (Federal Register, August 14, 2006, p. 46682).

The new school district may: (a) adopt the current IEP; (b) develop and implement a new IEP; or (c) conduct an initial evaluation to determine eligibility, and develop and implement a new IEP. . . The new IEP generated from any of the three processes described above, in (a) through (c), is an initial offer of special education and related services in Kansas and is the initial Kansas IEP. As such, the district must have parent consent before implementing the services proposed in the initial Kansas IEP. If a parent refuses to consent, or fails to respond to the request for consent, to the initial services offered in the proposed initial Kansas IEP, the district may not provide those services, the district may not initiate due process or mediation procedures, and the district will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure of the district to provide the services specified in the proposed IEP (K.S.A. [72-3429(g))]. The parent retains the right to request mediation or a due process hearing to challenge the district's offer of initial services.

Analysis: Findings of Fact

The following finding of facts is based upon a review of the documentation noted previously and interviews with both parties.

1. The student transferred into USD #232 in August at the beginning of the 2023-24 school year from the state of California. USD #232 requested educational records from the previous school district, Summit Public School District, at the time of enrollment.
2. Summit Public School District provided USD #232 with a copy of an IEP dated September 28, 2022 and the most recent special education evaluation report dated August 30, 2021.

3. The September 28, 2022 IEP required individual counseling, specialized academic instruction, occupational therapy, college awareness, career awareness and speech/language to address ten goals; two speech and language goals focused on social language and problem solving; three transition goals including, career awareness, college awareness, and transition; a goal for written expression; a counseling goal to address emotional awareness; and three OT goals to address visual scanning, independent living and handwriting. This IEP also included 40 accommodations and modifications.
4. The student's most recent special education evaluation was conducted in the state of California on August 30, 2021 and documented that the student was eligible for special education and related services under the exceptionality categories of Other Health Impaired (OHI) due to medical diagnoses including Attention-Deficit/Hyperactivity Disorder (ADHD) and anxiety as well as a Specific Learning Disability (SLD) including a processing weakness in graphomotor/sensorimotor abilities and weakness in writing.
5. On August 24, 2023, the mother, student, and school staff met briefly to introduce themselves. No documentation of this meeting was provided by either party.
6. The Interim Director of Special Services reported the district agreed to adopt the September 28, 2022 IEP from the previous school at this meeting. However, the parent reported that she did not agree with the adoption of the September 28, 2022 IEP at this meeting but did acknowledge a discussion related to occupational therapy services for the student.
7. A Notification of Meeting dated August 28, 2023 was provided to the parent scheduling an IEP team meeting on September 14, 2023.
8. USD #232 provided the student with individual counseling, specialized academic instruction, occupational therapy, college awareness, career awareness and speech/language, along with 40 accommodations until the scheduled IEP team meeting on September 14, 2023. These services appear to be comparable to the services required by the student's transfer IEP dated September 28, 2022.
9. The parent participated in the September 14, 2023 IEP team meeting via Zoom; however, due to prolonged discussion, the IEP team agreed to continue the IEP team meeting on October 10, 2023.
10. USD #232 provided the student with comparable services until the continuation of the scheduled IEP team meeting on October 10, 2023.
11. On October 10, 2023 the parent participated in the continuation of the September 14, 2023 IEP team meeting via Zoom and, as a result of that meeting, USD #232 provided the parent with prior written notice on October 31, 2023 describing the initial offer of a Kansas IEP and requesting consent to initiate the proposed special education and related services.
12. The parent declined to provide consent for the proposed initial Kansas IEP on October 31, 2023.

13. Due to the lack of parental consent to the changes between the September 28, 2022 and the initial Kansas IEP from the September 14, 2023 meeting, the district scheduled a follow-up meeting on December 8, 2023 in an attempt to come to consensus with the mother to ensure IEP services were current and appropriate.
14. USD #232 continued to provide the student with comparable services until the scheduled meeting on December 8, 2023.
15. The parent participated in the December 8, 2023 meeting via Zoom where a side-by-side comparison of the September 28, 2022 IEP and the September 14, 2023 proposed initial Kansas IEP was reviewed and discussed.
16. As a result of this meeting, the parent was re-sent the prior written notice dated October 31, 2023 from the September 14, 2023 initial Kansas IEP meeting as the recommendations remained the same. However, the parent failed to respond to USD #232 by either granting or declining to provide consent to initiate the proposed services.
17. USD #232 continued to provide the student with comparable services.
18. A Notification of Meeting dated March 8, 2024 was provided to the parent scheduling an IEP team meeting on March 29, 2024.
19. Multiple emails between the parent and district staff were exchanged between the dates of the December and March meetings; December 23, 2023, January 4, 2024, January 26, 2024 and March 29, 2024. Based on these emails, it appears the parent wanted the district to use the March 24, 2022 amendment to the student's September 7, 2021 IEP as the transfer IEP rather than the September 28, 2022 IEP.
20. The parent participated in the March 29, 2024 IEP team meeting via Zoom and, as a result of the meeting, the parent was provided with prior written notice dated March 29, 2024 for notification of changes of less than 25% in services between the September 28, 2022 IEP and the March 29, 2024 proposed initial Kansas IEP.
21. The district also sent a prior written notice requesting consent to conduct a reevaluation of the student dated April 1, 2024.
22. The parent has not provided written consent for either a reevaluation of the student or the initial offer of a Kansas IEP.
23. USD #232 continued to provide the student with comparable services through the end of the 2023-24 school year.

Conclusion

Federal regulations implementing the IDEA at 34 C.F.R. 300.322(a) 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. It is noted that participation does not equate with agreement on the issues and the ultimate offer of a free appropriate public education (FAPE) by the public agency.

In this case, the parent participated in all meetings regarding the student's IEP held on August 24, 2023, September 14, 2023, October 10, 2023, December 8, 2023, and March 29, 2024. Based on the foregoing, noncompliance is not identified in regards to providing the parent the opportunity to participate in the IEP meetings for the student.

Under federal regulations implementing the IDEA at 34 C.F.R. 300.323(f) if a child with a disability who had an IEP in effect in a previous public agency in another State transfers to a new public agency in a new State and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with a free appropriate public education (FAPE) which includes providing services comparable to those described in the child's IEP from the previous public agency until the new public agency determines whether the student is a student with a disability in the new state and develops, adopts, and implements a new IEP, if appropriate.

In this case, the student transferred into USD #232 at the beginning of the 2023-24 school year with a current IEP dated September 28, 2022 and an eligibility determination from the state of California dated August 30, 2021. Please note that issues related to the student's reevaluation will be specifically addressed under ISSUE TWO.

Interviews found the parent and school staff did meet on August 24, 2023 to briefly discuss the special education services to be provided to the student prior to his IEP team meeting scheduled for September 14, 2023. It is unclear if these services were the result of the district's adoption of the California eligibility determination dated August 30, 2021 or the result of an agreement with the parent to provide comparable services. Regardless, the student received individual counseling, specialized academic instruction, occupational therapy, college awareness, career awareness and speech/language therapy, along with 40 accommodations which were comparable to the services found in the transfer IEP dated September 28, 2022 until the IEP team meeting on September 14, 2023.

USD #232 conducted an IEP team meeting on September 14, 2023 which was continued to October 10, 2023 with agreement of the IEP team members. In the interim, USD #232 continued to provide comparable services to the student. On October 31, 2023, USD #232 proposed an initial Kansas IEP and provided the parent with prior written notice and request for consent for initial services in the state of Kansas per the guidance in The Kansas State Department of Education Kansas Special Education Process Handbook. The parent signed the prior written notice indicating that she was declining to consent to the proposed initial Kansas IEP and services.

After failing to receive consent to implement the proposed initial Kansas IEP, USD #232 chose to continue to provide comparable services to the student and scheduled another meeting with the parent in an attempt to reach a compromise. Based on this action, it appears that USD #232 had accepted the most recent evaluation report and was considering the student as a student eligible for special education services in the state of Kansas. This meeting was held

on December 8, 2023 and resulted in a second offer of the same proposed initial Kansas IEP and prior written notice for consent for initial services in Kansas. However, the parent did not grant or decline consent for the initial Kansas IEP and special education services offered by USD #232. USD #232 continued to provide comparable services to the student.

The IEP team was reconvened on March 29, 2024 in a third attempt to follow the out-of-state transfer procedures. As a result of the IEP team meeting, the district provided the parent with a prior written notice for consent to conduct a reevaluation on April 1, 2024. In addition, USD #232 proposed a different initial Kansas IEP and again provided the parent with prior written notice and request for consent to initiate special education services in the state of Kansas. To date, the parent has not granted or declined consent for either the reevaluation or for initial special education services in the state of Kansas.

USD #232 has made three separate attempts to propose an initial IEP for the student in the state of Kansas. The parent declined the proposed IEP and initial provision of services on October 31, 2023 and did not respond to a second prior written notice following the December 8, 2023 meeting. USD #232 continued to provide comparable services to the student until another IEP team meeting was held on March 29, 2024. Following this IEP team meeting, USD #232 proposed a different initial Kansas IEP and again provided the parent with prior written notice for consent to initiate special education services in the state of Kansas; however, the parent did not provide the required written consent to initiate the proposed special education services.

Based on the foregoing, USD #232 has continued to make multiple efforts to work with the parent to develop an appropriate IEP throughout the entire 2023-24 school year and has provided the parent with multiple proposed initial Kansas IEPs and prior written notices for consent to initiate the proposed special education services. It is noted the parent initially declined to initiate special education services in the state of Kansas on October 31, 2023 but the district continued to provide comparable services to the student and made two additional attempts to reach a consensus with the parent. However, the parent has not responded to USD #232 by either granting or declining consent to initiate the services described in the most recent offer of an initial IEP dated March 29, 2024. As such, the district has made ongoing efforts and is found to be in compliance with the requirement to properly develop an IEP that meets the student's needs with IEP team input including parent participation in the development of the student's IEP during the 2023-2024 school year.

Although the district is not out of compliance with Issue One because they continued to provide FAPE through the provision of compensatory services while engaging with the parent in an attempt to develop an initial IEP in Kansas during the 2023-24 school year, USD #232 seemed unaware of the pertinent Kansas requirements and guidance. K.S.A. 72-3429(g) says that the new Kansas IEP is an initial offer of services and Section G in Chapter 4 of The Kansas State Department of Education Kansas Special Education Process Handbook which states, "As

such the district must have parent consent before implementing the services proposed in the initial Kansas IEP. If a parent refuses to consent, or fails to respond to the request for consent, to the initial services offered in the proposed initial Kansas IEP, the district may not provide those services, the district may not initiate due process or mediation procedures, and the district will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure of the district to provide the services specified in the proposed IEP (K.S.A. [72-3429(g))]. The parent retains the right to request mediation or a due process hearing to challenge the district's offer of initial services."

Again, while *noncompliance is not identified*, it is recommended that USD #232 review its policies, procedures, and practices regarding out-of-state transfers and provide training to all special education staff employed by the LEA to ensure all staff have a clear understanding of how to respond when a student with an IEP transfers into the school district from out-of-state.

Issue Two

USD #232, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to get parent consent prior to conducting formal special education evaluations during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.111(a)(1) requires school districts to ensure that all children with disabilities residing within the district boundaries and who are in need of special education and related services, are identified, located and evaluated, regardless of the severity of their disability.

Federal regulations at 34 C.F.R. 300.301(b) allows either the parents of the student or the school district to initiate a request for an initial evaluation to determine if the child is a child with a disability and in need of special education and related services.

Federal regulations at 34 C.F.R 300.300(a) require that public agencies provide parents with prior written notice and obtain written parent consent for an initial special education evaluation before conducting such an evaluation of the student.

Federal regulations at 34 C.F.R. 300.303(b)(2) requires public agencies to ensure that a reevaluation of each child with a disability is conducted at least once every three years, unless the parent and the public agency agree that reevaluation is unnecessary.

Federal regulations at 34 C.F.R. 300.300(c) require public agencies to provide parents with prior written notice and obtain written consent for a reevaluation for special education before conducting such an evaluation of the student. If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using consent override procedures which include documentation of reasonable efforts to obtain parent consent and that the student's parent has failed to respond.

Under federal regulations implementing the IDEA at 34 C.F.R. 300.323(f) if a child with a disability who had an IEP in effect in a previous public agency in another State transfers to a new public agency in a new State and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with a free appropriate public education (FAPE) which includes providing comparable services to those described in the child's IEP from the previous public agency until the new public agency determines whether the student is a student with a disability in the new state and develops, adopts, and implements a new IEP, if appropriate.

Analysis: Findings of Fact

The following finding of facts is based upon a review of the documentation noted previously and interviews with both parties.

1. The findings of Issue One are incorporated herein by reference.
2. The most recent reevaluation of the student was conducted in California on August 21, 2021.
3. While there is no documentation that USD #232 accepted the student's eligibility determination for special education and related services from the state of California; the district did treat the student as eligible for special education services in the state of Kansas by providing comparable services to the student during the entire 2023-24 school year.
4. The first documented request for a reevaluation of the student is found in the December 21, 2023 email from the Special Services Coordinator to the mother. The email refers to the December 8, 2023 meeting and states, "At that time, you continued to decline our offer of FAPE and indicated that you would like to think about mediation. You also mentioned an outside evaluation. We declined that offer because we have not conducted an evaluation in our district. We then offered you the option of our district conducting a re-evaluation." It is noted however, there was no prior written notice for consent included in the email.
5. January 4, 2024 and January 29, 2024 emails from the Special Services Coordinator to the parent also document the district's efforts to follow-up on the status of the district's request for consent for a reevaluation of the student.
6. In an April 1, 2024 email from the Interim Director of Special Services to the mother the director expressed that "the best course of action is to initiate a reevaluation to further assess (student's) current educational needs as well as obtain strong present levels". In communication with the investigator the Interim Director also stated that the school would like to begin the reevaluation soon because the reevaluation is due August 30, 2024 which will be a quick turnaround for school staff at the start of the school year.
7. USD #232 provided the parent with prior written notice dated April 1, 2024 requesting consent for a reevaluation of the student. This prior written notice was emailed to the parent through the Spedtrack system by the Interim Special Services

Director on April 4, 2024. In addition, another copy of the prior written notice was mailed to the parent via the United States Post Office on April 18, 2024.

8. The parent stated that she did not receive any prior written notice by post requesting consent to conduct a reevaluation from USD #232 in an interview on May 13, 2024.
9. USD #232 had made two separate attempts to obtain written consent from the student's mother on April 4, 2024 and April 18, 2024. However, the parent did not respond and the district proceeded to conduct the reevaluation of the student using the override procedures allowed in the IDEA.
10. As noted in the district's Formal Complaint Response, "Following no response at 30 days from the first contact, the IEP team moved forward with re-evaluation data collection in accordance with K.A.R. 91-40-17(e)(2); 34 C.F.R. 300.322(d)(1)."
11. It is noted that the district immediately stopped the reevaluation of the student when it received communication from KSDE staff on May 6, 2023 that the mother had filed a complaint due in part to the unconsented special education reevaluation.

Conclusion

Federal regulations at 34 C.F.R. 300.300(c) require public agencies to provide parents with prior written notice and obtain written consent for a reevaluation for special education before conducting such a reevaluation of the student. If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using consent override procedures which include documentation of reasonable efforts to obtain parent consent and that the student's parent has failed to respond. In this case, the district met its obligation to document reasonable efforts to obtain parent consent. The district requested consent for a reevaluation at the meeting on December 8, 2023, in emails on January 4, 2024, January 29, 2024 and April 1, 2024. Additionally, the consent was uploaded into the Spedtrack system on April 4, 2024 and sent via the United States Post Office on April 18, 2024.

Based on the foregoing, although USD #232 failed to get parent consent prior to conducting formal special education reevaluations during the 2023-2024 school year. The district is ***not out of compliance*** due to guidance offered in 34 C.F.R. 300.300(c), which allows consent override procedures including documentation of reasonable efforts to obtain parent consent.

Issue Three

USD #232, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP by providing the accommodation of extended time for ACT testing during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.320(a)(6) require that the IEP include a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments.

Analysis: Findings of Fact

The following finding of facts is based upon a review of the documentation noted previously and interviews with both parties.

1. The findings of Issue One are incorporated herein by reference.
2. The ACT is a standardized test used for college admissions in the United States. It is currently administered by ACT, a nonprofit organization of the same name. The ACT test covers four academic skill areas: English, mathematics, reading, and scientific reasoning. It also offers an optional direct writing test.
3. The September 28, 2022 IEP has accommodations of extra processing time and extended time for written assignments but not extended time for testing.

Conclusion

Federal regulations at 34 C.F.R. §300.320(a)(6) require that the IEP include a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments.

In this case, the student's September 28, 2022 IEP includes 40 different accommodations to support learning. However, extended time for testing is not included in this list of accommodations. It is noted that the ACT is not considered a State or district-wide assessment and the district has no authority to require ACT to provide a specific accommodation during the test administration. ACT has a procedure in place for students with disabilities to request appropriate accommodations be provided during the administration of the ACT.

Based on the foregoing, ***it is not substantiated*** that USD #232 failed to follow the student's IEP by providing the accommodation of extended time for ACT testing during the 2023-2024 school year.

Issue Four

USD #232, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP by providing Speech and Occupational Therapy during the 2023-2024 school year.

Applicable Law

Under federal regulations implementing the IDEA at 34 C.F.R. 300.323(f) if a child with a disability who had an IEP in effect in a previous public agency in another State transfers to a new public agency in a new State and enrolls in a new school within the same school year, the

new public agency (in consultation with the parents) must provide the child with a free appropriate public education (FAPE) which includes providing comparable services to those described in the child's IEP from the previous public agency until the new public agency determines whether the student is a student with a disability in the new state and develops, adopts, and implements a new IEP, if appropriate.

It is noted that based on the findings in Issue One, the student transferred into USD #232 from the state of California and was provided with comparable services to those described in the September 22, 2022 IEP throughout the 2023-24 school year while the district attempted to develop and implement a new IEP.

Analysis: Findings of Fact

The following finding of facts is based upon a review of the documentation noted previously and interviews with both parties.

1. The findings of Issue One are incorporated herein by reference.
2. USD #232 created a Comparable Services Chart dated August 16, 2023 which reflected OT and speech therapy services to be provided 30 minutes, one time per week which is what is required in the September 28, 2022 IEP.
3. The district provided OT and speech therapy logs documenting the days and times of services. These logs were compared against the student's attendance record and services were found to be consistent with services required in the September 28, 2022 IEP.
4. This schedule of service was provided until the March 28, 2024 prior written notice when OT was reduced to 23 minutes per week and speech therapy was reduced to 23 minutes per week. These changes of less than 25% do not require parental consent.

Conclusion

Under federal regulations implementing the IDEA at 34 C.F.R. 300.323(f) if a child with a disability who had an IEP in effect in a previous public agency in another State transfers to a new public agency in a new State and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with a free appropriate public education (FAPE) which includes providing comparable services to those described in the child's IEP from the previous public agency until the new public agency determines whether the student is a student with a disability in the new state and develops, adopts, and implements a new IEP, if appropriate.

In this case, the student's September 28, 2022 IEP required OT and speech therapy services to be provided for 30 minutes, one time per week. A review of OT and speech therapy service logs reflected that these related services were provided as required in the transfer IEP as

comparable services while the district attempted to develop an initial Kansas IEP during the 2023-24 school year.

Based on the foregoing, i***t is not substantiated*** that USD #232 failed to follow the student's IEP by providing Speech and Occupational Therapy during the 2023-2024 school year.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. 300.322(a) was not found based on the ongoing district efforts to properly develop an IEP that meets the student's needs with IEP team input including parent participation in the development of the student's IEP during the 2023-2024 school year. No corrective action is required.
2. ISSUE TWO: A violation of 34 C.F.R. 300.111(a)(1), 34 C.F.R. 300.301(b), 34 C.F.R. 300.300(a), 34 C.F.R. 300.303(b)(2), and 34 C.F.R. 300.300(c) was not found based on the consent override procedures including documentation of reasonable efforts to obtain parent consent. No corrective action is required.
3. ISSUE THREE: A violation of 34 C.F.R. §300.320(a)(6) was not found based on the fact that the ACT is not a State or district-wide assessment and USD #232 has no authority to require any accommodations during the administration of the ACT. Corrective action is not required.
4. ISSUE FOUR: A violation of 34 C.F.R. 300.323(f) was not found based on the provision of OT and SLT services comparable to those required by the student's out-of-state transfer IEP dated September 22, 2022. Corrective action is not required.

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).

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 #473
ON MAY 7, 2024

DATE OF REPORT JUNE 6, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of -------, -------, and Jacob Hopkins by their parent, -------. In the remainder of the report, ------- will be referred to as "Student A," ------- will be referred to as "Student B" and Jacob Hopkins will be referred to as "Student C." ------- will be referred to as "the complainant" or "parent", or "the mother."

The complaint is against USD #473 (Chapman Public Schools). In the remainder of the report, USD #473 will be referred to as "the district", "the local education agency (LEA)", or "the school". It is noted that Central Kansas Cooperative in Education (CKCIE) provides special education services for USD #473 Chapman 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 #473.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on May 7, 2024 and the 30-day timeline ends on June 6, 2024

Evidence Reviewed

During the investigation, the Complaint Investigator, Gwen Beegle, reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The following staff from USD 473 or CKCIE were interviewed on May 28, 2023: Casey Bell, CKCIE Special Education Coordinator; Ashley Stearns, Chapman Elementary, Principal; Sara Merritt, School Psychologist, Chrissy Collins, K-2 Special Education Teacher. The parent was interviewed on May 9, 2024. The following documentation and information were used in consideration of the issue(s):

For Student A:

1. Evaluation for Student A dated January 31, 2022, signed by the parent with agreement on the same date
2. Individualized Education Program (IEP) for Student A dated January 17, 2023

3. IEP Conference Summary IEP Team Considerations for Student A dated January 17, 2023
4. Prior Written Notice for special education services, substantial change in placement and material change to the IEP for Student A dated January 17, 2023 signed by the parent giving consent on the same date
5. Prior Written Notice for change of the IEP - substantial change in placement dated September 11, 2023 for a meeting on September 11, 2023, signed by the parent giving consent on September 14, 2023
6. IEP Amendment between IEP Meetings dated September 14, 2023 signed by the parent giving consent to amend the IEP without a meeting on the same date
7. Notice of Meeting dated December 11, 2023 for a meeting about Student A's IEP on January 10, 2024 and signed by the parent on December 14, 2023
8. Consent to excuse required member of the IEP Team for the General Education Teacher dated January 10, 2024 and signed by the parent giving consent on the same date
9. Individualized Education Program (IEP) for Student A dated January 10, 2024
10. Prior Written Notice for change in the IEP - material change in services, substantial change in placement and other changes for Student A dated January 10, 2024 and signed by the parent giving consent on the same date
11. Emails between Cristine Collins (Special Educator) and Megan Keller beginning January 8, 2024 at 10:16 a.m. and ending January 10, 2024 at 12:55 p.m.
12. Email from Megan Keller to Casey Bell with "January 2024 statement" dated May 13, 2024 at 8:49 p.m.
13. School nurse documentation for Student A, undated, with 5 entries dated September 11, 2023, September 14, 2023, December 12, 2023, February 13, 2024 and April 18, 2024.
14. Progress report for Student A dated December 8, 2023 with entries dated in March, May and October, 2023.
15. Progress report for Student A dated May 21, 2024 with entries in March and May, 2024
16. Prior Written Notice for change in the IEP - material change in services and other changes for Student A dated May 15, 2024 and unsigned by the parent
17. Additional information requested by the investigator, including student attendance, dated May 28, 2024.
18. USD 473 School Calendar

For Student B:

19. Evaluation for Student B dated January 31, 2022, signed by the parent with agreement on the same date

20. Progress report for Student A dated December 8, 2023 with entries dated in March, May and October, 2023.
21. Notice of Meeting dated December 11, 2023 for a meeting on January 10, 2024 about Student B's IEP and signed by the parent on December 14, 2023
22. Consent to excuse required member of the IEP Team for the General Education Teacher dated January 10, 2024 and signed by the parent giving consent on the same date
23. Individualized Education Program (IEP) for Student B dated January 10, 2024
24. Prior Written Notice for change in the IEP - material change in services, substantial change in placement and other changes for Student B dated January 10, 2024 and signed by the parent giving consent on the same date
25. Email exchange between Cristine Collins (Special Educator) and Connie Suther on January 8, 2024
26. Text exchange between parent and Ms. Suther (Kindergarten Teacher) dated April 17, 2024
27. Undated statement by S. Merritt (Speech Language Pathologist) regarding March 4, 2024 Parent Teacher Conference attendance
28. Conference Summary IEP Team Considerations for Student B dated May 14, 2024
29. Prior Written Notice for change in the IEP - material change in services for Student B dated May 15, 2024 and unsigned by parent
30. Progress report for Student B dated May 21, 2024 with entries in March and May, 2024

For Student C:

31. Undated emailed statement by Amanda Zook (School Nurse) regarding snacks for Student C
32. Emails from Katherine Wieters (Student Services Coordinator, USD 473) to Casey Bell dated May 10, 2024 at 3:19 p.m. and at 3:48 pm.
33. Undated email from Skye Roberts (Fifth Grade Teacher) to Casey Bell at 4:31 p.m.
34. Undated Notice of Meeting for Student C on September 27, 2023 signed by the parent on September 14, 2023
35. Individualized Education Program for Student C dated September 27, 2023

Pertaining to all students:

36. Email from parents to investigator dated May X
37. Letter from Sarah Loquist, CKCIE General Counsel to Crista Grimwood, KSDE, dated May 21, 2024 regarding proposed resolution

Background Information

Student A is a 5 year old student receiving special education services as a student with developmental disability, who attended kindergarten in USD #473 in the same grade and school as his twin, Student B. At 41 months of age, Student A was evaluated for special education. The evaluation determined delays in pre-academic/readiness development, communication, and social emotional skills.

Student B is a 5 year old student receiving special education services as a student with developmental disability, who attended kindergarten in USD #473 in the same grade and school as his twin, Student A. At 41 months of age, Student B was evaluated for special education. The evaluation determined delays in pre-academic/readiness development, communication, and social emotional skills. His IEP stated that he experienced delayed skills in reading and communication that required special education.

Student C is a 10 year old and attends the fifth grade in USD #473, receiving special education services in the category of Other Health Impairment with a secondary disability in speech and language, according to his evaluation dated October 5, 2022. His current IEP dated September 23, 2023 focuses on his academic needs in reading and mathematics and provides special education in both general and special education settings.

Issues Investigated

For Student A

1. ISSUE ONE: The USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop Student A's IEP, specifically by failing to address the student's disabilities (autism and ADHD), providing needed special education services (such as paraprofessional support) and providing needed accommodations.
2. ISSUE TWO: The USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a full day of school, specifically by shortening Student A's school day due to behavior problems or mistaken illness (Concerns A4 and A8)

For Student B

3. ISSUE THREE: The USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to notify and acquire parental consent for special education assessments, specifically those used to recommend the parent seek a medical diagnosis for ADHD for Student B
4. ISSUE FOUR: The USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop Student B's IEP, specifically by failing to address the student's disability

(ADHD) after the medical diagnosis, by removing him from speech therapy, and by failing to provide accommodations

For Student C

5. ISSUE FIVE: The USD #473, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop Student C's IEP, specifically by providing needed accommodations (extra snacks for weight) (Concern C2).
6. ISSUE SIX: The USD #473, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly implement Student C's IEP by removing the child from class to address sibling's needs (Concerns C1 and C3).

Issue One

The USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop Student A's IEP, specifically by failing to address the student's disabilities (autism and ADHD), providing needed special education services (such as paraprofessional support) and providing needed accommodations.

Applicable Law

The development of the IEP begins with the evaluation. Federal statutes and regulations at 34 CFR 300.304(c)(4) requires that the child be assessed in all areas related to the suspected disability, and 34 CFR 300.304(c)(6) and (7) require that the evaluation be sufficiently comprehensive to identify all the child's special education and related services needs and that tools and strategies provide relevant information to directly assist in determining the educational needs of the child are used.

Federal statutes and regulations at 34 CFR 300.324(a) require that in developing the child's IEP, the IEP team shall consider the following: the strengths of the child, the concerns of the parents, the results of the child's evaluation, the academic and functional needs of the child, the use of positive behavior interventions and supports if the child's behavior impedes learning, the need for braille or the impact of limited English proficiency, the child's communication needs, and the need for assistive technology. Federal regulations at 34 CFR 300.327 and state regulations at K.S.A. 91-40-25(a)(1) and (2) require that the district allow the parents to participate in any meeting with respect to the identification, evaluation, or educational placement of the child, and that the agency take steps to ensure that the parents are present and afford the opportunity to participate in each meeting concerning their child.

Additionally, the IEP must be revised at least annually and to address any lack of progress toward meeting goals, results of special education comprehensive evaluation, information provided by the parent, the child's anticipated needs, or other matters (34 CFR 300.324(b)(1)).

The revision of the IEP requires the review of special considerations in 34 CFR 300.324(a)(2) which specify the consideration of positive behavior supports for a child whose behavior impedes their learning or that of others, language needs for those with limited English proficiency, braille if visual impairments are present, and communication needs. In Kansas, a reasonable time to respond to parental requests such as the request for an evaluation or for an IEP meeting is three weeks, or 15 school days.

Analysis: Findings of Fact

In the written complaint, the parent alleged that the district had not written an IEP that addressed the student's known disabilities of autism and ADHD, failing to have enough paraprofessional help in the classroom and requiring the parent to come to school to act as his para in the classroom, failing to use accommodations such as fidgets, and sending the child home because of failure to manage his behavior or to consider him ill when he was not sick.

The district responded that the student came into kindergarten with an IEP calling for special education support in the general education setting for 60 minutes, 5 times per

week, beginning in August 2023; and 30 minutes of special education service in the special education setting for 30 minutes, 5 times per week, beginning in August 2023.

The student had behavior issues after starting kindergarten and the parents agreed to a shortened school day via IEP Amendment on September 14, 2024. As indicated in the IEP amendment and PWN, the district gradually increased the student's time until he was again attending a full day. The district further stated that the student was doing so well at the time of the IEP dated January 10, 2024 that the team determined that consultative services only were required. Shortly before the complaint was filed in this matter, the principal inaccurately informed the parents that the student would need to move back to a shortened school day. This should not have occurred. To remedy this error, the IEP team met with the parents to address all of the concerns set forth in the complaint on May 14, 2024.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #473

The student's evaluation dated January 31, 2022 determined that the student had a developmental disability and required special education. The student was evaluated by a team that included an early childhood special educator, school psychologist, speech pathologist, occupational therapist and physical therapist, using the Assessment Evaluation and Programming System and the Carolina Curriculum for Infants and Toddlers ' Preschoolers with Special Needs, comparing the student to the 32 to 47 months of age range. The evaluation determined that the student performed at levels below the expectations for a child of his age in fine motor skills, cognitive/adaptive skills, and preacademic readiness, which may have been affected by his language ability; the evaluation determined that he needed special education to assist him in pre-academic skills. The evaluation determined that the student performed at

levels below expectations in communication (grammatical structure, imitation, and verbal comprehension, along with articulation) and social emotional skills. The evaluation provided descriptive information on each topic from which educational needs and programming could be determined.

The student's IEP dated January 17, 2023, which was in place when he entered kindergarten during the 2023-24 school year, was developed by an IEP team that included his parent, special educator, general educator, occupational therapist and a person to interpret assessment results (SLP). The IEP stated that the student had needs and presented current performance in OT/fine motor skills, pre-academic skills, and communication. IEP goals were written in each of these areas: in brief, to improve visual motor skills, to use age appropriate grammar, and to follow the preschool/kindergarten curriculum. The IEP stated that the student did not have needs in the following areas: health, adapted physical education, adaptive behavior/daily living, reading, math, written language, and social emotional. Services required for the 2023-24 school year were 60 minutes of special education 5 days a week in the general education setting, 30 minutes 5 days a week of special education in the special education setting, 15 minutes of speech language 5 days a week in the special education setting, and transportation. At the IEP meeting, as reflected on the IEP and the conference summary, the parent provided input on her concerns about the student's behavior at home and reported his community speech therapy, health and upcoming behavioral screening.

Progress reports for the January 17, 2023 IEP noted adequate progress for each of the three IEP goals, rated in March, May and October, 2023.

The IEP was amended without a meeting on September 14, 2023, stating that between August 29, 2023 and October 6, 2023 the student's days would be shortened to half days, with the student leaving school after lunch and after 6 weeks the team would reconvene to determine the extension of his day. Between September 12, 2023 and January 17, 2024 the student would receive 165 minutes of special education in a special education setting 5 days a week, and 30 minutes of special education in a special education setting 5 days a week.

The district provided a Prior Written Notice dated September 11, 2023 for changes to the IEP including substantial change in placement requiring parental consent, which the parent signed giving consent on September 14, 2023. As in the IEP amendment above, between August 29, 2023 and October 6, 2023 the student's days would be shortened to half days with the student leaving school after lunch and from September 12, 2023 and January 17, 2024 the student would receive 165 minutes of special education in a special education setting 5 days a week, and 30 minutes of special education in a special education setting 5 days a week. In elementary schools, the school day begins at 7:55 a.m. and ends at 3:30 p.m. (7 hours 35 minutes, or 455 minutes).

As part of the evidence submitted to the investigation, the district provided an outside community psychological report dated December 2, 2023 to the investigator. The student had

been referred by his physician and taken by his parent to a licensed clinical psychologist for an autism evaluation. The report noted that the parent reported daily tantrums at home, among other difficulties. Besides the clinical interview with the parent and observations of the child, the psychologist completed the following: BASC-3 Parent Rating Scale (mother), Vineland-3 Parent/Caregiver Rating Form (mother), Social Responsiveness Scale (mother only, the student's teacher did not return the assessment) and Autism Diagnostic Observation Schedule, Module 2. The evaluation established a DSM-5 TR diagnosis of Autism Spectrum Disorder and made several recommendations, including further assessment for ADHD, treatment for sleep disorder, Applied Behavior Analysis (ABA) therapy and education for the parent, meeting with the IEP team to revise the IEP given the diagnosis, and parent and teacher educational materials.

The IEP dated January 10, 2024 reported marked progress at school, requiring only consultative services to support one IEP goal (to complete grade level assignments without special education support) and eliminating the speech/language and occupational therapy services due to the student's progress and meeting previous IEP goals. The IEP stated that the student failed his hearing screening. The IEP stated that the student did not have needs in the following areas: health, motor, pre-academic skills, communication, adaptive behavior/daily living, math, written language, and social emotional. The IEP stated he had needs in reading for which the special education goal was written. The parent attended the IEP meeting and gave permission for the general education teacher to be excused from the meeting. Other team members present were the special educator, Local Education Agency representative, speech language pathologist, occupational therapist. The district provided Prior Written Notice dated January 10, 2024, signed by the parent giving consent for a material change in services and a substantial change in placement. Progress reports for this IEP rated progress on the IEP goal as "adequate" in March and May 2024, although the May progress report showed that the student was unable to complete his work independently and the teacher reported regression in his behavior.

According to interviews, the district stated that the student's behavior changed suddenly after spring break. No IEP meeting was reported at this time. According to interviews with the school team, as a practice the school called the parent to calm the student, and the parent voluntarily stayed at the school for the remainder of the student's day or took the child home early after she had been called there. The school principal suggested a return to shortened school days and the student was placed on shortened school days May 6 - May 9, 2024 (a period of 4 days) at the end of the school year.

The IEP team including the parents met on May 15, 2024 according to the proposed resolution letter submitted by the district to KSDE. At that meeting, according to the district, the following actions were planned: (a) amend theIEP to add the medical diagnosis of autism to the health section without changing services or placement based on the diagnosis (b) changing the

practice of calling the parent to assist with student behaviors, relying on school staff instead, (c) seeking parental consent to complete a functional behavior analysis to create a behavior intervention plan (d) offering compensatory time for the 21 hours of school missed this spring prior to first grade, (e) trying interventions such as visual schedule, if/then visuals, visuals to be used as non-verbal communication, a weighted lap buddy or blanket prior to adding them as accommodations to the IEP through team agreement and (f) resuming para support at 300 minutes per week in the general educational setting to help address the increase in behaviors.

Prior Written Notice (PWN) dated May 15, 2024 was provided by the district to the investigator and reported to be mailed to the parents and included no parent signature. The PWN included three of the above suggestions (a) amend the IEP to add the medical diagnosis of autism to the health section without changing services or placement based on the diagnosis, (b) offering compensatory time for the 21 hours of school missed this spring prior to first grade, and (c) resuming para support at 300 minutes per week in the general educational setting.

Summary and Conclusion

In this case, the young student, who was receiving special education services as a child with developmental disabilities, demonstrated such concerning behavior upon entry into kindergarten in August, 2023 that the school team, with parental consent, shortened the student's school day. Upon the improvement of the student over the course of the fall semester, the school placed the student on a consultation only IEP, materially reducing services and substantially changing placement (IEP dated January 10, 2024). The IEP stated that the student had no further special education needs in social emotional, communication, or pre-academic development and included only one (reading) goal to complete his school work independently. The IEP dated January 10, 2024 eliminated both speech language and occupational therapy services, and changed the placement from special education in a special education setting (required during the shortened school day IEP amendment and PWN of September 14, 2023) and the 60 minutes of special education in general education,30 minutes of special education in special education and 15 minutes of pull out speech therapy (required by the January 17, 2023 IEP) to general education with no special education support and consultation services.

During the same period of time, a licensed community psychologist diagnosed the student with autism and made several significant recommendations for the student's education and treatment, including a revision of the IEP based on the new diagnosis. The school was in possession of this report and could have considered it or the new diagnosis reported by the parent, if not at the January 10, 2024 meeting, then certainly when the student's behavior subsequently escalated and the school required a return to shortened school days in May, 2024. Further, the school did not meet with the IEP team to revise the IEP as required by 34 C.F.R. 300.324(b) to consider, in this instance, the information provided by the parent

regarding the child's diagnosis and needs (including the community psychologist's evaluation and recommendations), the student's then evident anticipated needs, the student's lack of progress on the consultation only IEP, the student's behavior which interfered with learning, or his possible communication needs due to his delayed communication (documented in the student evaluation dated January 21, 2022).

Based on the foregoing, ***it is substantiated*** that USD #473 failed to properly develop Student A's IEP, specifically by failing to address the student's disabilities (autism and ADHD), providing needed special education services (such as paraprofessional support) and providing needed accommodations.

Issue Two

The USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a full day of school, specifically by shortening Student A's school day due to behavior problems or mistaken illness

Applicable Law

Free appropriate public education 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). Federal regulations 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. 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).

The Kansas special education statutes (K.S.A. 72-3403 to-3439) require parents to see that their child with a disability attends school so that their child can receive the special education and related services on the child's IEP. This means that for a child with a disability who has an IEP compulsory attendance may begin as early as age 3 (K.S.A. 72-3421) and continues through high school graduation or when the student ages out of special education.

The IEP Team of a child with a disability has authority to reduce the school day of the child when that is necessary in order to provide a free appropriate public education, see, Sierra Vista (AZ) Unified School District, 54 IDELR 35 (0CR 2009). That was a case where the Office for Civil Rights (OCR) said shorting the school day of a child with a disability administratively, instead of using a decision by an IEP team, was improper because it was not made on an individual basis with regard to whether the shortened school day was appropriate for the student with a

disability. The message from OCR in this case was that when an IEP team determines, on an individual basis, that a shortened school day is appropriate for a student, the IEP team may change the IEP to specify the extent to which the school day will be shortened. In Kansas, even if an IEP team makes such a decision it must also obtain written parental consent if the shortened school day constitutes a material change in services.

If a decision to shorten the school day is not made by the IEP team at an IEP meeting and no parent consent is obtained, shortening the school day based on the student's behavior must be viewed through the authority of the school district to remove a student for disciplinary reasons. School officials have the authority to remove students with disabilities from school for code of conduct violations and to determine if a disciplinary change of placement has occurred. Children with disabilities can be removed for short term suspensions for up to 10 days in a school year, or more if the behavior is not determined to be a manifestation of the child's disability (34 C.F.R. 300.530 (c)) or a disciplinary change of placement (34 C.F.R. 300.530(b)(1)).

At the 11th day and every day of suspension after that in a school year, special education and related services that are needed to enable the child participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP must be provided (34 C.F.R. 300.530(b)(2)). Additionally, school officials must determine if a pattern has developed by considering whether a disciplinary change of placement has occurred. To determine if a disciplinary change of placement occurred, school officials examine whether the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals and other factors such as: the length of each removal; the total amount of time the child has been removed; the proximity of the removals to one another; and any other unique circumstances on a case-by-case basis (34 C.F.R. 300.536(a) and (b); K.A.R. 91-40-33).

The Kansas Special Education Process Handbook includes a flow chart that states when a removal that cumulates to more than 10 school days, and shows a pattern of removal constituting a change of placement (34 C.F.R. 300.536(a)(1)(2) and 34 C.F.R 300.530(c)), an IEP meeting is required to (1) make a manifestation determination (Notice of action and Parent Rights immediately, and meeting within 10 school days. 34 C.F.R. 300.530(e), (h); and (2) If the behavior is a manifestation of the disability, develop a FBA and BIP, or review existing BIP, and make any changes needed to address behavior (34 C.F.R. 300.530(f)).

Federal/state statutes and regulations at 34 C.F.R 300.11(c) and K.A.R. 91-40-1(eee) state that a school day under IDEA means any day, including a partial day, that children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities. Given this definition, if a child is suspended for part of a school day, the partial day counts as a full day for purposes of determining if a change of placement has occurred, or if educational services are required

during the period of suspension. Early dismissals for behavioral violations of the code of conduct are partial days of attendance.

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.

Analysis: Findings of Fact

In the written complaint, the parent alleged that the district had inappropriately shortened the student's school days for months at a time due to his behavior problems or saying the child was ill when he was not sick.

The district responded that the parents agreed to the shortened school day on September 14, 2023 via an IEP Amendment and PWN and denied the allegation regarding the school nurse. The district responded that the parents were informed in error that the student would need to be placed back on shortened school days, and this was corrected in a meeting held with the parents on May 14, 2024. The district responded that the PWN has been mailed to parents and as part of that PWN, the parents were offered 21 hours of compensatory education for the student.

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 #473.

As noted in Issue One, the parent signed consent to change the IEP without a meeting on September 14, 2023. The associated PWN dated September 11, 2023 and signed on September 14, 2023 shortened school days from the period August 29, 2023 through January 17, 2024. In an interview and additional documentation provided to the investigator, the district reported that, upon the student's improved behavior, the school intentionally worked to improve adult-student relationships and systematically inserted full days into the student's schedule, allowing the student to return to full days following Thanksgiving break on November 27, 2023.

The following student attendance was provided by the district. The student began half days September 1, 2023. The week of October 30, 2023, the student attended one full day; the week of November 6, 2023 the student attended two full days, and the week of November 13, 2023 the student attended three full days. The following week was the week of Thanksgiving break when all students attended two days, and the student returned to a full day schedule beginning November 27, 2023. Two days were early dismissal for all students and the student stayed for the full schedule (October 23 and October 26, 2023). The student was sick and

absent on three days, October 6, 24, and 25, 2023). The student was sent home because of illness on September 14 and 15, 2023 and April 18 and 19, 2024.

The school nurse provided a statement showing the following dates and ailments: September 13 and 14, 2023 (fever, earache, headache, sleepiness and 24 hour symptom free requirement), December 12, 2023 (vomiting), February 13, 2024 (vomiting and headache), and April 18, 2024 (stomach ache, falling asleep).

The district reported that on April 24, 2024 the parent was called due to the student's behavior, and the parent asked a neighbor to pick the student up from school. The district reported that on May 1 and 3, 2024, the parent was called due to behavioral concerns and chose to take the student home early. From May 6 to May 9, 2024, the student was again placed on half days, and May 17, 2024 was the last day of school.

Comparing the attendance (above) to the USD 470 school calendar, the student attended school for half days on the following: September 1, 5, 6, 7, 8, 11, 12, 15, 18, 19, 20, 21, 22, 26, 27, 28, and 29, 2023; October 2, 3, 4, 5, 10, 11, 12, 13, 16, 17, 18, 19, 20, 30 and 31, 2023; November 1, 2, 6, 7, 13, and 14, 2023; and May 6, 7, 8, and 9, 2024. The parent was called for behavior problems and the student was taken home early on April 24, May 1 and May 3, 2024. No attendance information was reported by the district for the remaining days of the school year, May 10, 13, 14 and 15.

Summary and Conclusion

In this case, the IEP was amended to provide a shortened school day to the student who was exhibiting challenging behavior at school in his kindergarten year. The school asked for and received parental consent to shorten the school day in an IEP amendment, with an associated PWN provided and signed giving consent on September 14, 2023. Although the PWN dates the permission for the shortened day from August 29, 2023, according to Kansas regulations, parental consent must be given before a substantial change in placement or material change in services, as occurred in this case. Therefore, seven shortened days occurred prior to giving notice and obtaining parental consent to change the student's IEP (September 1, 5, 6, 7, 8, 11, and 12, 2023).

It is noted that the school team developed and implemented a systematic plan to return the student to a full day schedule prior to the end date (January 17, 2024) noted in the PWN dated September 11, 2023. However, the additional shortened school days directed by the school principal (four days, May 5-9, 2024) and resulting from calls to the parent (three days, April 24, May 1 and 3, 2024) were not included in a change of placement in the student's IEP amendment. In total, the student experienced 14 days of shortened school days due to behavioral concerns not addressed by the IEP.

School officials have the authority to remove a student for disciplinary violations for up to 10 days and to determine if a disciplinary change of placement has occurred. At the 11th day and

every day of suspension after that in a school year, special education and related services that are needed to enable the child participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP must be provided (34 C.F.R. 300.530(b)(2)). In this case, the school exceeded its authority to remove the student for disciplinary purposes without meeting with the IEP team to determine if the student's behavior could be addressed through revisions of the IEP, to determine if a change of placement had occurred when more than 10 days of removal had occurred, or to determine if the behavior was a manifestation of the disability and to respond accordingly.

Based on the foregoing, ***it is substantiated*** that USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a full day of school, specifically by shortening Student A's school day due to behavior problems or mistaken illness.

Issue Three

The USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to notify and acquire parental consent for special education assessments, specifically those used to recommend the parent seek a medical diagnosis for ADHD for Student B

Applicable Law

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. Federal regulations at 34 C.F.R 300.300(a) require that parental consent is sought for an initial evaluation to determine special education eligibility. In addition, 34 C.F.R.300.300(c) requires parental consent before a reevaluation except when reviewing existing data as part of an evaluation or reevaluation or when administering a test administered to all children, unless that test requires parental consent (34 C.F.R. 300.300(d)(1).

Analysis: Findings of Fact

In the written complaint, the parent alleged that Student B was tested at the school without the parent's knowledge or consent. The parent alleged that the teacher discussed testing information with her when she attended parent teacher conferences.

In the District's response to the complaint, the district denied assessing the student without parental consent. The district explained that the student's teacher asked the school psychologist to sit in on a parent teacher conference due to concern regarding attention. The district responded that at the conference the parent indicated her awareness of the problem

and was seeking medical advice. The district reported that the teacher later asked the parent about the medical advice received.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #473.

In an interview with the school psychologist, the psychologist stated that she did not do any individual testing for the purposes of special education evaluation or reevaluation. The school psychologist stated that she regularly uses an observational guide similar to a behavior checklist as a screening instrument in response to a teacher's concern about attention problems in children as a way to guide a conversation with parents and to determine if further psychological assessment is warranted. The school psychologist was present at the parent teacher conference when the teacher discussed this checklist with the parent who stated at the time that she was aware that the student had attention problems.

In a statement provided to the investigator along with the district evidence, the school psychologist explained: "[The parent] said she was planning on taking him to the doctor to discuss her concerns and that she already had a Vanderbilt to fill out on [Student A] so she was going to fill one out on [Student B] as well. She asked if I had an extra Vanderbilt [Vanderbilt ADHD Diagnostic Rating Scale] to fill out and I replied that yes, I did. I sent one to [the parent] and one to [the teacher]. Before I received either of them back, [the parent] had already obtained new copies from her doctor and had given them to the school principal [name] and she had already handed them out. I did not pull [Student B] for any direct testing."

The teacher reported that she texted with the mother about the doctor's evaluation. In a text exchange dated April 17, 2024, the parent said "also I should know something about the paperwork for [Student B] and his possible ADHD." The teacher replied, "Did you take him to the Dr? Or did you turn in the paperwork? How does that work?" and the parent replied, "dropped off paperwork today."

Summary and Conclusion

In this case, the teacher noted attentional difficulties in the classroom and sought assistance from the school psychologist, who provided a behavior checklist to guide the teacher's observation and which was subsequently shared with the parent at a parent teacher conference. No evidence that individual student testing occurred at school, despite some unclear communication about school personnel's participation in medical diagnostics directed by the student's doctor and family.

Based on the foregoing, ***it is not substantiated*** that USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to notify and acquire parental consent for special education assessments, specifically those used to recommend the parent seek a medical diagnosis for ADHD for Student B

Issue Four

The USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop Student B's IEP, specifically by failing to address the student's disability (ADHD) after the medical diagnosis, by removing him from speech therapy, and by failing to provide accommodations.

Applicable Law

Federal statutes and regulations at 34 CFR 300.324(a) require that in developing the child's IEP, the IEP team shall consider the following: the strengths of the child, the concerns of the parents, the results of the child's evaluation, the academic and functional needs of the child, the use of positive behavior interventions and supports if the child's behavior impedes learning, the need for braille or the impact of limited English proficiency, the child's communication needs, and the need for assistive technology. Federal regulations at 34 CFR 300.327 and state regulations at K.A.R. 91-40-25(a)(1) and (2) require that the district allow the parents to participate in any meeting with respect to the identification, evaluation, or educational placement of the child, and that the agency take steps to ensure that the parents are present and afford the opportunity to participate in each meeting concerning their child.

Additionally, the IEP must be revised at least annually and to address any lack of progress toward meeting goals, results of special education comprehensive evaluation, information provided by the parent, the child's anticipated needs, or other matters (34 CFR 300.324(b)(1)). The revision of the IEP requires the review of special considerations in 34 CFR 300.324(a)(2) which specify the consideration of positive behavior supports for a child whose behavior impedes their learning or that of others, language needs for those with limited English proficiency, braille if visual impairments are present, and communication needs.

Analysis: Findings of Fact

The parent alleged that the school removed the student from speech services over the objections of his teacher and that the IEP failed to address the student's disability after his diagnosis of ADHD. The parent alleged that the student needed accommodations which were not provided at school.

In the district's response to the complaint the district stated that Student B does not have an ADHD diagnosis. The district responded that Student B was also placed on a consultation only IEP on January 10, 2024 based on his progress in completing assignments, which was confirmed by his general education teacher. The district pointed to [Student B's] current IEP [dated January 10, 2024], PWN, and other related documentation to show that the parents gave consent to change special education services to consultation and to change speech services to consultation. The district reported that during the meeting on May 14, 2024 held to

discuss the concerns raised in the formal complaint, the parties agreed to resume special education services of 300 minutes per week in the general education setting for [Student B].

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #473. The findings of Issue Three are incorporated herein by reference.

Progress report on the goals of the IEP dated January 17, 2023 showed quarterly ratings of adequate progress on communication and pre-academic goals.

Consent to excuse a required IEP team member from meeting was signed by the parent giving consent on January 10, 2024.

The IEP team who developed the IEP dated January 10, 2024 included the parent, the principal as LEA representative, the special education teacher, the speech language pathologist, and the occupational therapist. The IEP listed the student's strengths and that he had no needs in health, motor, adaptive behavior, pre academic skills, math, written language and social emotional development. The IEP stated that the student had needs in reading and one goal was written, to complete grade level assignments without in class support, and provided consultation 10 minutes every nine weeks. The IEP provided a summary of the student's needs in communication and provided related services consultation in speech language 10 minutes every nine weeks.

The IEP dated January 10, 2024 listed no accommodations.

Prior Written Notice (PWN) dated January 10, 2024 for a change of the IEP (material change of services and substantial change of placement) exited the student from occupational therapy and changed the services to the consultation services listed in the IEP. Progress reports in March and May, 2024 on the IEP goal rated progress as adequate, noting on May 6, 2024: "After speaking with [the teacher], [Student B] is capable of completing his classwork with 80% accuracy with someone keeping him on task but is not reaching his goal of doing so without para support. He is having a very hard time staying focused which in turn is causing a bit of a struggle with classwork and frustration levels. He does struggle during writing block."

According to the proposed resolution dated May 21, 2024, the district believed that there was a miscommunication about whether the teacher was in accord with dismissing Student B from speech. The teacher was not present at the IEP meeting and she told the SLP that she was in agreement with dismissing Student B] from speech, because his goals were grammar and that can be achieved through the general education teacher modeling proper grammar in the classroom. In support of this statement, the district submitted a text message from the teacher which stated that she agreed with the speech language pathologist's proposal to decrease speech language services to consultation.

In a PWN to change the IEP (material change in services) dated May 15, 2024, the district stated that [Student B] will receive special education services for 300 mins per week in the general

educational setting at the beginning August 15, 2024 for the remainder of the current IEP period. This PWN was unsigned by parents.

The Conference Summary IEP Team Considerations dated May 14, 2024 stated that Student B did not yet have an ADHD diagnosis and although the parent had spoken with the doctor by phone, an appointment will occur after the school year to determine a diagnosis. According to the Conference summary, the school invited the parent to share the diagnosis with the school if it occurred.

Summary and Conclusion

In this case, the parent was concerned that the school had initiated discussions of ADHD in her child and at the same time had not developed an IEP that reflected that condition by revising the IEP and providing accommodations like fidgets in the classroom. This is a reasonable concern. However, in this case, the student had not been assessed by a medical practitioner for this medical condition, and the district did not complete additional testing to include in or to revise the student's comprehensive evaluation for special education, required every three years. The student's IEP dated January 10, 2024 did not include the requirement for fidgets or in class support, and the changes proposed in the PWN dated May 15, 2024 address the need for in-class attentional support by adding a paraprofessional support for the upcoming year. It is recommended that the district hold an IEP meeting for the student to complete the IEP addressing these needs before the student enters first grade in the 2024-25 school year.

The parent was also concerned that the child's speech therapy was removed prematurely over the objections of the teacher. The district provided evidence that the teacher did not object and accepted the responsibility of in class teaching of grammar. The parent is advised to address this and other concerns with the IEP team if the child does not progress in his speech and language development in the general classroom.

This student's comprehensive evaluation was completed in January, 2022 and due again in January, 2025. Based on the concerns raised by the parent, including her attention to receiving community professional care for her child, the consideration of attentional difficulties and the need for accommodations in the classroom, the parent can reasonably expect that the reevaluation will be thorough in all areas related to the child's disability so that the student's IEP can be developed to meet the student's educational needs, as required by 34 C.F.R 300.304(b)(c).

Based on the foregoing, ***it is not substantiated*** that USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop Student B's IEP, specifically by failing to address the student's disability (ADHD) after the medical diagnosis, by removing him from speech therapy, and by failing to provide accommodations.

Issue Five

The USD #473, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop Student C's IEP, specifically by providing needed accommodations (extra snacks for weight)

Applicable Law

Federal statutes and regulations at 34 CFR 300.324(a) require that in developing the child's IEP, the IEP team shall consider the following: the strengths of the child, the concerns of the parents, the results of the child's evaluation, the academic and functional needs of the child, the use of positive behavior interventions and supports if the child's behavior impedes learning, the need for braille or the impact of limited English proficiency, the child's communication needs, and the need for assistive technology. Federal regulations at 34 CFR 300.327 and state regulations at K.S.A. 91-40-25(a)(1) and (2) require that the district allow the parents to participate in any meeting with respect to the identification, evaluation, or educational placement of the child, and that the agency take steps to ensure that the parents are present and afford the opportunity to participate in each meeting concerning their child.

Additionally, the IEP must be revised at least annually and to address any lack of progress toward meeting goals, results of special education comprehensive evaluation, information provided by the parent, the child's anticipated needs, or other matters (34 CFR 300.324(b)(1)). The revision of the IEP requires the review of special considerations in 34 CFR 300.324(a)(2) which specify the consideration of positive behavior supports for a child whose behavior impedes their learning or that of others, language needs for those with limited English proficiency, braille if visual impairments are present, and communication needs.

Analysis: Findings of Fact

In the written complaint, the parent expressed concern that the student was not being allowed to receive the extra food he needed at school because the school required doctor's permission for him.

The district responded that a doctor's note was never required in order for [Student C] to receive extra snacks, that the student provided notes without being asked by the school nurse, and that any student would be permitted to have snacks in this way.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #473.

The student's IEP dated September 27, 2023 stated that the student took medication for ADHD and the student did not require a health plan. The IEP required 30 minutes of special education in a special education setting, 30 minutes of special education in general education for reading and 30 minutes of special education in general education for math. The IEP showed that the student was testing in the high risk category academically and that he had

goals in reading and math. Quarterly progress reports show that the student's progress was rated as adequate, except for one quarter on one math goal.

In its evidence, the district provided a statement from the school nurse, who stated that she had not asked Student C for doctor's notes. Student C brought two notes from medical personnel (dated January 16, 2024 and March 13, 2024) pertaining to the student's need for extra snacks due to his medical needs. The school nurse stated that the child brought supplies and can access the snacks freely during the day.

In an interview, the school principal stated that the student was permitted to access snacks in the same way as any student in the school would, and there was no need to write this as a unique health need in the student's IEP.

Summary and Conclusion

In this situation, there was no requirement for the student to have an accommodation or health plan for extra snacks at school as this is available for any student at the school. Based on the foregoing, ***it is not substantiated*** that USD #473, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop Student C's IEP, specifically by providing needed accommodations (extra snacks for weight).

Issue Six

The USD #473, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly implement Student C's IEP by removing the child from class to address sibling's needs.

Applicable Law

Federal regulations 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.

Analysis: Findings of Fact

In the written complaint, the parent expressed a concern that the student was being pulled out of class to attend to his brother's behavior and being asked to assist the school with his sibling's management.

In the district response, the district replied that the student was never removed from class to address his sibling's needs. The district stated that upon one occasion he was asked by the custodian in the hallway to speak to his younger brother who was experiencing "difficulty." After briefly speaking to his younger brother, Student C returned to his classroom.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #473. The findings of Issue Five are incorporated herein by reference.

In the evidence submitted by the district, the counselor provided statements dated May 10, stating that she met with Student C at his request 22 times during the school year and upon four occasions the student expressed worry about his siblings' health or behavior. The counselor denied that she had pulled the student from his class to discuss his siblings and stated that she did not know of anyone else doing so.

In the evidence submitted by the district, the fifth grade teacher provided the following summary of her interaction with the student when he returned to the classroom after speaking with his sibling at the custodian's request. The student stated that he might be pulled from class by the special educator to help handle his brother again, and that he had been pulled from the resource room to help with his brother who was having a rough day. The fifth grade teacher immediately went to inquire, and finding the special education coordinator, special education teacher, principal and custodian in the hallway, she asked them directly why Student C had been pulled from testing in the resource room. The others assured the fifth grade teacher that the student had completed his testing, that he had been asked to console his brother as he was walking back to class. The student did so, and then returned to class. Later in the day, the fifth grade teacher discussed the incident with the student, who stated that he had been in the hallway and not pulled from testing and that the special education teacher had not said she would pull him from class to help manage the student. The fifth grade teacher cautioned the student to be accurate in the way he reported things that happen.

Summary and Conclusion

The issue in this situation is whether Student C was being pulled from his own services and education in order to provide behavior management support to his sibling. No evidence supports this as occurring, and the student's services were not interrupted by the isolated incident described above.

Based on the foregoing, ***it is not substantiated*** that USD #473, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly implement Student C's IEP by removing the child from class to address sibling's needs

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R.300.324(a) and 34 C.F.R.300.324(b)(1) was found based on the facts that the district failed to develop and revise the student's IEP as required to consider concerns and information provided by the parent along with the student's lack of progress and needs including the student's behavioral challenges. Corrective action is required (as follows):

    a. CORRECTIVE ACTION:

i. By July 8, 2024 USD #473 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.300.324(a) and 34 C.F.R.300.324(b)(1) which require that the district develop and revise the IEP as required in the regulations.

ii. By July 8, 2024 USD #473 shall initiate scheduling an IEP team meeting and the IEP team meeting must consider, at a minimum, the following topics: outside information provided by the parent regarding autism and ADHD to the child's IEP, explanation of and consent for an FBA, increased special education services to address student disability and behavioral concerns, and consideration of additional supplementary aids, services or modifications. In addition, the IEP team shall consider whether the student's comprehensive evaluation should be concurrently conducted along with the proposed FBA in order to properly address the student's disability, behavior problems, and educational needs. Finally, the IEP team will add consideration of specific goals in communication/language and social emotional development to the IEP team agenda.

iii. By July 8, 2024 USD #473 shall arrange for KSDE approved professional development for the student's school and related district personnel on the obligations to hold IEP meetings based on parent concerns and student needs, to revise IEPs taking into account special considerations such as challenging behavior, to consider outside psychological reports and medical diagnoses provided by the parent, and to create goals and use accommodations recommended for students with autism, ADHD, and concomitantly occurring autism and ADHD.

iv. By September 15, 2024, USD #473 shall conduct the professional development described above and submit the agenda and participants to SETS.

2. ISSUE TWO: A violation of 34 C.F.R.300.530(b), 34 C.F.R.300.536(a), 34 C.F.R.300.503(a) and K.A.R.91-41-27(a)(3) was found based on facts listed above. Corrective action is required (as follows):

a. CORRECTIVE ACTION:

i. By July 8, 2024 USD #473 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.300.530(b), 34 C.F.R.300.536(a) which require the district to provide protections and follow procedures regarding discipline and children with disabilities.

ii. By July 8, 2024, USD#473 shall make an offer of at least 53 hours compensatory education to the family following the revision of IEP resulting from Corrective Action 2(a)(ii) if possible and if not, based on the student's disability related needs in anticipation of his first grade year. Compensatory education was determined by the length of the

school day multiplied by the number of days in violation rounded to the nearest hour. In this case, the school day of 455 minutes X 7 days is 53.08 hours. The district shall consult with the parent on the format and content of the compensatory education before making the offer. The parent may accept all, some, or none of the compensatory education offer, within 20 days of the school's written offer.

iii. By August 15, 2024, USD#473 shall provide the PWN showing the parental response to SETS as evidence of the district's compensatory offer and the parent's acceptance of all, some, or none of the compensatory education offered.

iv. By July 8, 2024 USD #473 shall arrange for KSDE approved professional development on IDEA discipline requirements for relevant district personnel, to include the student's principal and other administrators who use suspensions or shortened school days.

v. By October 30, 2024 USD#473 shall have conducted the professional development described above and submit the agenda and participants to SETS.

vi. By July 8, 2024 USD #473 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.300.503(a) and K.A.R.91-41-27(a)(3) which require prior written notice and consent (when consent is required) to occur before a change in services is implemented.

vii. By September 15, 2024 USE #473 shall review its policy on providing prior written notice, revise if necessary, and disseminate it to all administrators and special education providers. The district shall provide the policy and the nature of the dissemination to SETS as evidence of its completion.

2. ISSUE THREE: A violation of 34 C.F.R. 300.503(a) was not found, based on facts listed above. Corrective action is not required.
3. ISSUE FOUR: A violation of 34 CFR 300.324(a), 34 CFR 300.324(b)(1), 34 CFR 300.327 and K.A.R. 91-40-25 was not found, based on facts listed above. Corrective action is not required
4. ISSUE FIVE: A violation of [applicable law] was not found, based on facts listed above. Corrective action is not required
5. ISSUE SIX: A violation of [applicable law] was not found, based on facts listed above. Corrective action is not required

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).

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 #107 ROCK HILL PUBLIC SCHOOLS
ON MAY 15, 2024

DATE OF REPORT JUNE 18, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #107 Rock Hill Public Schools on behalf of -------- by his mother --------. In the remainder of the report, -------- will be referred to as "the student." -------- is the Student's mother and in the remainder of the report she will be referred to as "the complainant," "the parent," or as "the mother."

The complaint is against USD #107 Rock Hill Public Schools. In the remainder of the report, USD #107 will be referred to as "the district." The Student attends Rock Hills Sr. High School and in the remainder of the report this high school will be referred to as the "school."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on May 15, 2024 and the 30-day timeline ended on June 15, 2024. Subsequently, the Investigator requested an extension to clarify some of the issues.

Evidence Reviewed

During the investigation, the Complaint Investigator Donna Wickham reviewed all evidence and documentation, which was provided by both the District and the Parent. Additionally, the Investigator contacted the District and Parent several times by phone and email to clarify evidence. The Investigator spoke with the Mother by phone on May 18 and June 13, 2024 and by email on several occasions to clarify specific points. The Investigator interacted with the District by email to clarify evidence and a phone interview was conducted on June 3, 2024 with Amy McDill, Special Education Teacher along with Tammy Somogye the District's Attorney. The following documentation and information were used in consideration of the issues:

1. Individualized Education Plan and Staffing Summary dated April 19, 2023.
2. Prior Written Notice dated April 19, 2023, consent signed April 19, 2023.
3. Staffing Summary dated August 28, 2023.
4. Letter from Mother to Director of Special Education, dated December 8, 2023.
5. Email from Superintendent to Mother dated January 5, 2024 at 4:00 p.m.

6. Email exchange between Director of Special Education and School Psychologist dated January 10, 2024 between 12:51 p.m. and 3:04 p.m.
7. Email exchange between Director of Special Education and Mother dated between January 10, 2024 at 12:01 p.m. and January 25, 2024 at 8:01 a.m.
8. Prior Written Notice dated January 24, 2024
9. Email exchange between Mother and Superintendent dated January 29, 2024 between 4:37 p.m. and 4:52 p.m.
10. District Response received May 29, 2024.
11. Email from District's Attorney to Investigator dated June 13, 2024 at 2:33 p.m.

Background Information

The student will be a senior during the 2024-2025 school year where he is eligible for special education and related services under the category of Autism and Other Health Impaired because of a medical diagnosis of ADHD. During the 2023-2024 school year the Student had two IEPs in effect. The student receives special education and related services for speech language and psychological services.

This complaint addresses the implementation of the student's services during the school year, specifically accommodations, use of a paraeducator, and an office referral.

Isssue Investigated

USD #107, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP by discontinuing paraeducator support and not consistently implementing the student's accommodations (providing Cloze notes or notes of slide with room to take notes on the side of slide prior to class start; not allowing use of notes during quizzes and tests; not allowing the student to listen to music with headphones when he asked due to cell phone ban) and issuing an office referral for questioning how to take notes in study skills class and other classes where lecture notes and books notes are needed during the 2023-2024 school year.

Applicable Law

Federal regulations 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. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

The Parent alleged that special education and supplementary aides and supports written into the April 19, 2023 IEP were not implemented, specifically, 1) paraeducator support for English and Science classes was discontinued without notifying the parent or holding an IEP meeting; 2) accommodations for notetaking (Cloze notes or notes of slides for instruction) and use of notes for quizzes and testing were not consistently provided; 3) the accommodation for the student to listen to music was not implemented due to a cell phone ban; and finally, 4) issuing an office referral to the Student for questioning how to take notes in study skills class and other classes where lecture notes and books notes were needed.

The District responded that the April 2023 IEP team anticipated that the Student would be enrolled in English 11 and a science class during the 2023-2024 school and established special education services and supports accordingly. Things did not happen that way and the IEP team simply forgot to talk with the family about updating the IEP for that change. The District further responded that the Student's IEPs did not stipulate the use of notes on quizzes and tests. In regard to Cloze notes the District responded that they initially provided Cloze notes, but rather than assisting the Student to take better notes the Student was searching for words to fill in the blank and not reading or learning the materials. The District responded that the printout of PowerPoint slides was the notetaking method for History class. At times, the PowerPoint slides were not available at fifth hour for the Student to get ahead of sixth hour. The District stated that the slides were always available online after class, but not always available to use for notetaking. The District responded that the accommodation to listen to music was not specific to using a cell phone to listen to music and that other ways to listen to music were available to the Student to implement the accommodation. Finally, the District responded Student was not following school policy and that the office referral was appropriately assigned.

Discontinuing Paraeducator

The district admitted in their response received on May 29, 2024 and during their interview on June 3, 2024 that they were remiss in talking with the Parent and/or writing an IEP amendment/Prior Written Notice to reduce the paraeducator support when the student did not take a class for which a paraeducator had been determined in the IEP and when the student requested resource room assistance instead.

Notetaking Accommodation

The April 19, 2023 IEP listed the following accommodation, "Provision of Notes ([Student] will be provided cloze notes to complete and will be provided a printed copy of class notes with key details highlighted)."

The August 28, 2023 Staffing meeting notes record that the Parent requested the meeting to clarify accommodations and modifications. The following were recorded: Discussed accommodation #3 (cloze notes) as to how it related to Government class notes. A goal is to

increase independence over time with writing/finding more information and ensuring note taking provisions are available for all classes, assignments, and class expectations.

The January 24, 2024 Prior Written Notice recorded, "[Parent] sent an email on August 21, 2023, stating that she was requesting the IEP meeting because '[Student] is not receiving the accommodation of guided notes due to the verbiage in the IEP.' On August 28, 2023, [Special Education Teacher], [School Psychologist], and [Director of Special Education] met with [Parent] (at [Parent's] request) to discuss her concerns about accommodation #3. School staff in attendance discussed how they were implementing this accommodation and how they were going to support [Student] going forward with taking notes and utilizing them in class. Those in attendance at the meeting were in agreement that the accommodation included guided notes." The District clarified in a June 13, 2024 email to the Investigator that an IEP amendment was not issued as part of this Prior Written Notice.

The April 9, 2024 IEP listed the following accommodation, "In classes that have lecture notes the student will be given a copy of the lecture slides (with note taking slides) so that he can take his own notes. The notes will be available online and can also be printed for classes that have textbook or lecture note expectations. The student will also receive support and instruction from his classroom teachers, those that have textbook or lecture note expectation, on how to take notes during class lecture."

The Student's Special Education Teacher reported during the interview on June 4, 2024 that although there was not an IEP accommodation for using notes during quizzes or tests that during History class the Student could use notes for quizzes. She further stated that grades were not impacted by the Student not accessing notes.

The Student's Special Education Teacher reported during the interview on June 4, 2024 that Cloze notes worked well for Science and the Student's English class and grasp of the content really "took off" and the Student really did not need the Cloze notes to master the English content. She noted that the Cloze notes did not work as well for History class because he used the Cloze notes as more of a crutch rather than learning the content. She stated that the PowerPoint slides with room to take notes was a better match to the Student's history class, but there were times during fifth hour when the Student was preparing for sixth hour that the PowerPoints were not available ahead of time. She stated that the slides were available after class, but not ahead of time.

Listening to Music Accommodation

The April 19, 2023 and April 9, 2024 IEPs state the accommodation of, "The use of personal headphones (with or without music)" as a means to improve his focus during learning activities. The staffing notes for the April 9, 2024 IEP states that the Student likes to use headphones when working independently.

The District's response stated that a cell phone ban was put into place in the classroom due to students paying attention to phones instead of instruction or doing class work. The Student was given the opportunity to keep his cell phone in a location in the classroom that was close enough for him to use his ear buds to connect to his music, but the Student chose to put his phone in his locker during the class.

The Special Education Teacher stated during the June 4, 2024 interview that the student had access to headphones and music, but the student preferred his music on his cellphone because it was his own playlist.

The Student's Special Education Teacher reported during the interview on June 4, 2024 that the student had access to headphones with or without music. Since the Student could not use his cell phone during the Special education class, he left his phone in his locker rather than bring to class. Other students brought their cell phones to class and put them on the teacher's desk for safe keeping.

Issuing an Incident Report Incorrectly

The Incident Report dated April 23, 2024 at 2:21 p.m. for failing to follow instructions stated, "During life skills he said that I should be doing notes with him instead of life skills and I said no and that it was life skills time and that he would have time later to work on math notes. [Student] stated that he did not know how to take notes. I told him that we had practiced the whole first semester. He then said not out of the book I'm just copying it and I said that is what taking notes from a book is. He then said that his free time is always used on math and I said that was because he took 2 days to complete a test. He was timed for 5 minutes on his phone, hiding it under the desk while taking the math test, which he denied. He then got very upset that he did not give consent to timing him. I continued to redirect him to the instruction to begin working on his life skills course. Upon continued refusals I issued him an office referral for not following instructions.

On April 23, 2024 at 4:43 p.m. the Parent emailed the Principal about the office referral stating that the Student was advocating for himself and expressing concern about learning how to take notes, which was agreed upon in his April 9, 2024 IEP. The Principal replied to the parent on April 24, 2024 at 1:30 p.m. stating, "The referral system is in place for all students. Referrals are made when other efforts to encourage a student to comply with reasonable requests are ineffective."

The four district explanations for "Following Instructions" in the District handbook include, 1. Listen to the person, 2. Remain calm, 3. Do what you have been asked to do, and 4. Check back if necessary.

According to the District handbook, the first offense for a failure to follow a school social skill is a warning so the Student did not miss any instructional time.

Conclusion

Although only one issue of implementation was investigated each of the four allegations of IEP implementation will be addressed separately to explain to the District and Complainant the findings.

Based on the foregoing, ***it is substantiated*** that USD #107 failed to implement the student's IEP by discontinuing paraeducator support. It is acknowledged that the district was remiss in not amending the IEP and working with the student to explore types of support, but the district committed a procedural error in not meeting and/or amending the IEP.

It is further substantiated that USD #107 failed to continuously provide the student's notetaking accommodations as written in the IEP. The District acknowledged this during their explanation that they were continuously seeking to assist the student to individualize how he took notes in different classes. It was discovered that the Student's notetaking skills were impacted by the class. The Staffing notes were beginning to document this and beginning efforts were occurring to be responsive.

The student's accommodation for listening to music does not specify it must be provided through a cell phone and the district did provide other means for the student to listen to music. It is found that during the cell phone ban that alternate means for implementing the accommodation were available to the student, Using headphones and other music was not the student's preference. Therefore, ***it is not substantiated*** that USD #107 failed to provide the accommodation for the student to listen to music due to a cell phone ban.

It is found that the District followed school procedures and policies in issuing the Student an office referral for not following instructions. Therefore, ***it is not substantiated*** that USD #107 incorrectly issued the student an office referral.

Summary of Conclusions/Corrective Action

ISSUE ONE: A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was found, based on the facts above. Corrective actions are required as follows.

i. By July 17, 2024 USD #107 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. §300.323(c)(2) to ensure that the IEP team implements the Student's IEP.
ii. By July 17, 2024 USD #107 shall arrange for KSDE approved professional development for the student's school and related district personnel on revising the IEP documentation and implementing the Student's IEP.
iii. By the start of the 2024-2025 school year, USD #107 shall conduct the professional development described above and submit the agenda and participants to SETS.

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).

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 #500, KANSAS CITY KANSAS PUBLIC SCHOOLS
ON MAY 10, 2024

DATE OF REPORT JUNE 17, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #500 Kansas City Kansas Public Schools on behalf of -------- by his mother --------. In the remainder of the report, -------- will be referred to as "the student." -------- is the student's mother and in the remainder of the report she will be referred to as "the complainant," "the parent," or as "the mother."

The complaint is against USD #500, Kansas City Kansas Public Schools. It is noted that Wyandotte Special Education Cooperative provides special education services for USD #500, Kansas City Kansas Public Schools. In the remainder of the report, USD #500 and Wyandotte Special Education Cooperative will be referred to as "the district." The student attends J.C. Harmon High School and in the remainder of the report this high school will be referred to as the "school."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on May 10, 2024 and the 30-day timeline ends on June 10, 2024. Subsequently, the Complaint Investigators requested and were granted a one week extension to clarify documentation so that the timeline was extended to June 17, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigators Gwen Beegle and Lori Noto reviewed all evidence and documentation, which was provided by both the District and the Parent. The Investigators contacted the District and Parent by phone and email to clarify evidence. The Investigators spoke with the Mother by phone on May 16, 2024 and June 11, 2024 and then by email on May 16, 2024 and June 5, 2024 to clarify specific points. The Investigators spoke with the District by phone and email to clarify evidence numerous times and a phone interview was conducted with Wesley Rush, Special Education Coordinator on June 4, 2024 and June 10, 2024.

Some documentation was dated before May 10, 2023, exceeding the 12-month timeline for the investigation. While it was read by the Investigators for understanding and context it was

not considered in the investigative findings. The following documentation and information were used in consideration of the issues:

1. Evaluation/Eligibility Report dated March 9, 2023.
2. IEP dated March 9, 2023.
3. Meeting Summary dated March 9, 2023.
4. Prior Written Notice dated March 9, 2023, parental consent signed March 9, 2023.
5. IEP dated February 27, 2024.
6. Prior Written Notice dated February 27, 2024, consent provided April 9, 2024.
7. Contact Log dated February 29, 2024 at 8:00 a.m. to Mother by Special Education Coordinator.
8. Email exchange between Parent and SLC Teacher dated April 2, 2024 between 10:53 a.m. and 1:05 p.m.
9. Email exchange between Parent and Special Education Coordinator dated April 4, 2024 between 8:01a.m. and 8:02 a.m.
10. Meeting Summary dated April 9, 2024.
11. Email exchange between Parent and SLC Teacher dated April 9, 2024 between 10:53 a.m. and 1:05 p.m.
12. Email from Mother to Director of Special Education dated May 6, 2024 at 9:18 a.m.
13. Interview with Parent dated May 16, 2024.
14. Contact Log dated May 21, 2024 at 9:23 a.m. to Mother by Special Education Coordinator.
15. Screen shot of text message between Parent and Special Education Coordinator dated May 21, 2024 at 8:07 a.m.
16. IEP amendment dated May 21, 2024, Parent signed May 22, 2024.
17. Prior Written Notice dated May 21, 2024, Parent consent signed May 22, 2024.
18. District Response, dated May 24, 2024.
19. Interview with Special Education Coordinator, dated June 4, 2024.
20. Email exchange between Investigators and Parent, dated June 5, 2024 between 1:19 p.m. and 3:12 p.m.
21. Progress Notes Quarter 4 of the 2023-2024 school year.
22. Student schedule for the 2023-2024 school year.

Background Information

The Student is a fifteen-year-old tenth grader at a district high school. He is eligible for special education and related services under the category of specific learning disability. He has been enrolled in the district since preschool. His initial exceptionality was developmental delay in the area of communication. When he was in kindergarten it was determined that he was no longer eligible for special education services. In third grade, his Mother requested an evaluation due

to concerns with academics and communication and he was found eligible for services under the learning disabilities exceptionality in the areas of reading comprehension, oral expression and listening comprehension. He received a re-evaluation on March 9, 2023 and continues to qualify for services under specific learning disability.

The Student receives special education services for reading and writing in the regular education classroom.

Issues Investigated

ISSUE ONE: The USD # 500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide prior written notice and to ensure parental consent when a material change of services or substantial change of placement (25% or more) was made to the student's IEP.

ISSUE TWO: The USD # 500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to demonstrate adequate progress.

ISSUE THREE: The USD # 500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to provide parental participation in the development of the IEP, specifically the goals and services.

ISSUE FOUR: The USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to ensure that the educators providing services to the student have the appropriate qualifications.

Issue One

The USD # 500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide prior written notice and to ensure parental consent when a material change of services or substantial change of placement (25% or more) was made to the student's IEP.

Applicable Law

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.

Analysis: Findings of Fact

The Parent alleged that the District substantially reduced the Student's service minutes in the February 27, 2024 IEP from the previous IEP.

The District responded that the Student's minutes were not substantially reduced, but instead in the previous IEP, dated March 9, 2023 the reading and writing service minutes were combined. The February 27, 2024 IEP proposed separating the reading and writing service minutes, but the same amount of service would still be provided. The Parent did not agree with this change, so the district continued to provide the service minutes as written in the March 9, 2023 IEP. During the April 9, 2024 IEP meeting the IEP team discussed service minutes further and the Parent signed consent to implement the February 27, 2024 IEP service minutes.

While the District was composing their response to the complaint the District discovered that the Teacher accidentally reduced the number of service days from four days to two days of service a week to reflect the block scheduling. They proposed that this may have prompted the parent's allegation that the student's services were reduced. Upon discovering the reduction in service days, the Special Education Coordinator contacted the Parent to make the corrections through an IEP amendment.

The IEP dated March 9, 2023 documented special education services for reading and writing as 60 minutes four days a week (240 minutes weekly).

The IEP dated February 27, 2024 documented special education services for reading comprehension and fluency for 30 minutes two days a week (60 minutes weekly) and special education services for written expression for 30 minutes two days a week (60 minutes weekly) for a total of 120 minutes weekly.

The February 27, 2024 Prior Written Notice documented a material change in services (a decrease or increase of 25% or more of the duration or frequency of a special education service, a related service, or a supplementary aid or a service specified on your child's IEP.) The Description of the Action Proposed or Refused stated, "For the remainder of this IEP, [Student] will receive special education services for 30 minutes, 2 days a week for reading comprehension and fluency and 30 minutes, 2 days a week for written expression."

The District's Contact log recorded a phone call between the Parent and Special Education Coordinator on February 29, 2024 at 8:00 where the Special Educator Coordinator recorded, "This morning, I spoke with [Parent] to address her concerns from the recent IEP meeting. [Parent] expressed worries about [Student] receiving adequate support in his history class. I explained the differences in how services are provided at the high school level compared to elementary school, including various supports offered through accommodations and modifications. [Parent] mentioned that she would like to review everything and get back to me. I offered to visit [her employment location] to go over [Student's] IEP with her and explain his services in more detail, but she indicated that this would not be necessary at this time."

A series of email exchanges between the Parent and SLC Teacher on April 2, 2024 and between the Parent and Special Education Director on April 4, 2024 document the Mother reaching out to the district to further discuss the Student's IEP since she did not sign consent for a reduction of service minutes.

During the June 4, 2024 interview with the Special Education Coordinator it was related that the Mother remains concerned about support in the history class for reading and writing. The school does not offer collaborative teaching in history or science only in English and math classes. To address the Mother's concern the Special Education Coordinator offered that academic support for history could be met with a paraprofessional, however the Special Education Coordinator stated the Mother did not want this. The Special Education Coordinator also offered to provide direct reading instructional support during a class period other than English, but the Mother did not want the Student to miss other academic opportunities or electives, so she refused this offer as well. These discussions were not reported in the minutes or a Prior Written Notice.

The Parent reported she signed the February 27, 2024 PWN at the conclusion of the April 9, 2024 IEP meeting after the team discussed her concerns.

During the June 10, 2024 interview with the Special Education Coordinator it was clarified that the Student's block schedule includes ELA two days a week for 90 minutes and the Student attends other subject areas on the other days of the week, so special education service minutes are not delivered four days every week. The Special Education Coordinator explained however, that the collaborative teacher is in the ELA class for the full 90 minutes and the Student is likely receiving the total minutes, just not as written into the IEP. He stated that it was the case manager's intent to change the February 27, 2024 IEP to reflect that the student only attends ELA two days a week, but to keep the service minutes at 240 minutes weekly.

The IEP Amendment dated May 21, 2024 increases the Student's service minutes from 30 minutes two days a week to 30 minutes four days a week for each, reading comprehension and fluency written expression. The Parent signed consent for the IEP amendment on May 22, 2024.

The Prior Written Notice dated May 21, 2024 proposed a material change in services. The explanation was to provide additional support for the Student's reading comprehension, reading fluency, and written expression as discussed and agreed upon during recent conversations. Parental consent was provided on May 22, 2024.

Conclusion

It is determined that the District provided 180 minutes of service to the Student from the start of the school year through April 9, 2024 when the parent signed consent for the February 27, 2024 IEP reduction to120 service minutes weekly. The amount of 180 minutes of service was

determined based on the interviews that stated that the student received the services during the 2 weekly ELA blocks of 90 minutes.

It is further found that the District proposed a material change in services with the February 27, 2024 whether through a clerical error or an attempt to match services to the block scheduling. It is noted that the District immediately amended the IEP when the error in total service minutes was discovered, but the IEP minute frequency is still not able to be implemented as written if the student is to only receive the service minutes during ELA.

Based on the foregoing, ***it is substantiated*** that USD # 500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide prior written notice and to ensure parental consent when a material change of services or substantial change of placement (25% or more) was made to the student's IEP.

Issue Two

The USD # 500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to demonstrate adequate progress.

Applicable Law

Federal regulations at 34 C.F.R. §300.324(b)(1)(ii)(A) and Kansas Statutes at K.S.A. §72-3429(f)(2)(A) require that each agency shall ensure that the IEP team meets to revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum. In addition, federal regulations, 34 C.F.R. 300.17 and 300.39, require the district to provide children with disabilities with a free appropriate public education (FAPE). The United States Supreme Court has ruled that the standard for FAPE requires an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances, and not whether a court regards it as ideal (Endrew F. v. Douglas County School District, 137 S.Ct. 988 (2017). This is, of course, a very subjective standard, based on the unique abilities and challenges of each individual child. The court provided some clarity, saying that the goals for these students may differ, but "every child should have the chance to meet challenging objectives."

Analysis: Findings of Fact

The parent alleged that there is a lack of progress in her child's goals. The goals for the upcoming year are the same or similar to the prior year with the exception of rewording and lowering scores.

The district responded that based on the review of the goals and progress reporting periods on benchmarks for the goal, grades, and overall performance that the student has been making adequate progress in the general education curriculum in his least restrictive environment. During Quarters 1-3 of the 2023-2024 school year, the student was working on

four goals. He was making progress during some of the quarterly progress reporting periods on the benchmarks. He met one benchmark goal and did not make progress on some benchmarks, but the team continued to work on those goals. After the February 2024 IEP meeting the team reviewed progress and developed three goals which were implemented during Quarter 4. The Progress Report for Quarter 4 demonstrated progress for all goals.

The Present Levels of Academic Achievement and Functional Performance section of the February 27, 2024 IEP reports:

Based on the latest Fastbridge tests, [Student] is reading at the Lexile score of 820L. This is approximately the 5th-7th grade level. When reading instructional level text orally, [Student] reads at approximately 100 wpm at 96% accuracy. He does catch his errors and is able to self-correct most of the time. He gets nervous when asked to read and his reading sounds choppy. He occasionally substitutes small words for other words without changing the meaning of the text. He also reads the wrong tense of words at times. For instance, he will read "suggest" instead of "suggested." Written Expression [Student] can convey his ideas clearly while writing, although he does benefit with the use of graphic organizers. When writing narratives, he writes with great creativity. [Student] can make a claim and cite supporting evidence. Initially, he makes numerous grammatical and capitalization errors. For his first draft, he makes approximately one grammatical error per sentence. His most common errors are missing commas. With revisions, [Student] can write a multi-paragraph text with minimal grammar errors.

The April 9, 2024 IEP meeting minutes recorded the following:

- Mom stated that she gave [Student] a reading test and realized that he has gaps in reading/phonics, especially when reading nonsense words.
- The [Student's ELA teacher] stated that [Student] does well in her ELA class and that she has not noticed that he struggles with reading or writing. He currently has an A in the class.
- [Special Education Coordinator] stated that the high school model is different than elementary school. We do not offer reading classes but can offer academic support class. Mom declined that offer as she does not want him to miss out on another elective.
- [Special Education Coordinator] also stated that his grades do not suggest that he needs additional minutes. We can offer additional accommodations. Mom wants him to improve his reading so that he can be more independent. She wants him to be successful in college and he needs to be able to do his work independently.

The Student's progress on goals during the 2023-2024 school year are displayed below:

March 9, 2023 IEP	Quarterly Progress	February 27, 2024 IEP	Quarterly Progress
By March 8, 2024, given an independent level informational text, [Student] will correctly answer reading comprehension questions to improve his Lexile score to 950.	Quarter 1 of the 2023-2024 school year – exceeded goal at 990 from end of year score of 665 - rated as Making Progress to Annual Goal. Quarter 2 of the 2023-2024 school year dropped from 990 to 925 rated as Making Progress to Annual Goal. Quarter 3 of the 2023-2024 school year dropped from 925 to 820 rated as Not Making Progress to Annual Goal.	By February 26, 2025, given a literary text written at the Lexile level of 900-925 and 5 comprehension questions about the text, [Student] will answer the reading comprehension questions with 80% accuracy, on 2 out of 3 reading assessments.	Quarter 4 of the 2023-2024 school year - no score reported but rated as Making Progress to Annual Goal.
By March 8, 2024, when asked to read a familiar instructional level literary or informational text for 1 minute, [Student] will read the text aloud at a rate of between 146-169 WCPM (words correct per minute) with 95% accuracy, on 3 out of 4 progress monitoring assessments.	Quarter 1 of the 2023-2024 school year – did not read at this benchmark's fluency rate, his pronunciation is getting better, and he reads with fewer errors. - rated as Making Progress to Annual Goal. Quarter 2 of the 2023-2024 school year no % reported - rated as Not Making Progress to Annual Goal. Quarter 3 of the 2023-2024 school year read at approximately 100 wpm. His accuracy rate was 97%. He did appear nervous this time. - rated as Not Making Progress to Annual Goal.	By February 26, 2025, when asked to read an unfamiliar instructional level literary or informational text for 1 minute, [Student] will read the text aloud at a rate of between 140-160 WCPM (words correct per minute) with 95% accuracy, on 3 out of 4 progress monitoring assessments.	Quarter 4 of the 2023-2024 school year - reading at approximately 75 words per minute. If he is familiar with the text, he can read at a much higher rate. - rated as Not Making Progress to Annual Goal.

March 9, 2023 IEP	Quarterly Progress	February 27, 2024 IEP	Quarterly Progress
By March 8, 2024, when given a draft of the student's own work (e.g., from English, history, or science class), [Student] will correct at least 10 teacher-selected language convention skills (e.g. commas in compound and complex sentences, capitalization of proper nouns, and correct spelling of domain specific words) with 90% accuracy in 2 of 3 student drafts.	Quarter 1 of the 2023-2024 school year corrected 67% of the errors; corrected all of the spelling errors but still struggled with comma placement - rated as Making Progress to Annual Goal. Quarter 2 of the 2023-2024 school year no % reported but rated as Making Progress to Annual Goal. Quarter 3 of the 2023-2024 school year reported as able to correct all of the grammar mistakes. - rated as Goal Met	By February 26, 2025, given a writing prompt, [Student] will write a response correctly using commas after an introductory clause or phrase, to indicate direct address, to separate independent clauses, and to set off direct quotations 80% of the time.	New goal Quarter 4 of the 2023-2024 school year able to correctly place 100% of the commas after introductory phrases. rated as Making Progress to Annual Goal.
By March 8, 2024, given an independent reading level text and writing prompt, [Student] will compose a 6-8 sentence analysis paragraph in response to the text with 1 topic sentence, 3 pieces of relevant evidence from the text with an explanation that connects each piece of evidence to the topic sentence, and 1 concluding sentence in 2 of 3 texts as measured by student work samples.	Quarter 1 of the 2023-2024 school year can write a paragraph with a topic sentence, evidence, and a conclusion; however, his essays do not always address the prompt correctly - rated as Making Progress to Annual Goal. Quarter 2 of the 2023-2024 school year no data reported but rated as Making Progress to Annual Goal. Quarter 3 of the 2023-2024 school year Based on information from ELA teacher, Student met this goal. He does benefit from the use of a Graphic Organizer. rated as Goal Met		

The Special Education Coordinator stated during the June 10, 2024 interview with the Investigators that the District did not call an IEP meeting to address the student's lack of progress.

Conclusion

In this case it is found that the student's did not make progress on two of his four goals and the district did not propose to call an IEP meeting to discuss the student's lack of progress, instead, during the annual IEP the goal was continued with a reduced criterion, seemingly after

a year of instruction. The district did not report that there were any extenuating factors to explain the student's continually not meeting the goals, nor provide any instructional strategies tried to address the student not meeting benchmarks. Accordingly, it is concluded that the district failed its FAPE responsibility to provide the student with an opportunity to meet challenging goals and objectives.

Based on the foregoing, ***is substantiated*** that USD # 500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to demonstrate adequate progress.

Issue Three

The USD # 500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to provide parental participation in the development of the IEP, specifically the goals and services.

Applicable Law

Federal regulations at 34 C.F.R. §300.322 and Kansas regulations at K.A.R. §91-40-17 require agencies to take steps to ensure that one or both of the parents of an exceptional child are present at each IEP meeting or are afforded the opportunity to participate. These steps shall include the following: (1) Scheduling each meeting at a mutually agreed-upon time and place and informing the parents of the information specified in subsection (b) of this regulation; (2) except as otherwise provided in K.A.R. 91-40-37, providing written notice, in conformance with subsection (b) of this regulation, to the parents of any IEP team meeting at least 10 days in advance of the meeting. (b) The notice required in subsection (a) of this regulation shall meet the following requirements (1) The notice shall indicate the purpose, time, and location of the IEP team meeting and the titles or positions of the persons who will attend on behalf of the agency, including, if appropriate, any other agency invited to send a representative to discuss needed transition services.

Analysis: Findings of Fact

The Parent alleged that the IEP development was not a team effort. She stated that she felt that she had no say with regards to the number of service minutes and that it was already determined unless she was willing to give up an elective.

The District responded that the Parent participated in the IEP development and asked questions, shared concerns, and provided input for the IEP team. The first meeting was held on February 27, 2024, the team discussed the Student's IEP, and the Parent did not agree. She did not sign the PWN but did sign as a participant. A second IEP meeting was held on April 9, 2024, and the Special Education Coordinator attended to answer the Parent's questions and concerns. The Parent participated and provided written consent on the PWN which was originally written for the February 27, 2024 meeting, she signed with the April 9, 2024 date.

Documentation showed that IEP meetings were held on February 27, 2024 and April 9, 2024.

Documentation showed that the Parent participated in the February 27, 2024 IEP meeting.

Documentation showed that the Parent participated in the April 9, 2024 IEP meeting. Meeting Notes from the April 9, 2024 meeting recorded parent input and comments.

The parent had a phone conversation with the special education coordinator on May 21, 2024 to request her consent to amend the service minutes from 30 minutes twice a week to 30 minutes four times a week to support reading comprehension, reading fluency and written expression (per the phone log dated May 21, 2024 at 9:23 am). The parent expressed her continued concern regarding his reading and writing in history class. The special education coordinator offered the option of additional supports.

Documentation showed that the IEP amendment dated May 21, 2024 was not checked that the parent wished to call an IEP meeting to discuss the amendment. The Parent signed the IEP amendment on May 22, 2024.

Conclusion

While the Parent did not agree with the decisions made during the IEP meetings the IEP sign in sheets document that the parent participated. The Kansas Special Education Process Handbook states the following: "The IEP team should work toward consensus. It is not appropriate for an IEP team to make IEP decisions based upon a majority vote. If the IEP team cannot reach agreement the local education agency (LEA) representative at the meeting has the ultimate authority to make a decision and then to provide the parents with appropriate notice and request consent of the proposed action as appropriate."

Based on the foregoing, *is not substantiated* that USD # 500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) to provide parental participation in the development of the IEP, specifically the goals and services.

Issue Four

The USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to ensure that the educators providing services to the student have the appropriate qualifications.

Applicable Law

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) require 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.

Analysis: Findings of Fact

The Parent alleged that the staff working with her child are not appropriately trained to help improve her child's decoding skills.

The District responded that the teachers working with the Student are appropriately and currently licensed to work with students with learning disabilities.

According to the Kansas State Board of Education License #2295998484 the Student's case manager holds a Professional License in High Incidence Disabilities for grades 6-12 effective June 25, 2023 through June 25, 2028. The license first was effective May 26, 2017.

The collaborative teacher for the student's ELA class also holds a Kansas State Board of Education License #3142532994 in High Incidence Disabilities for grades PRK-12 effective July 1, 2022 through June 30, 2024.

The services provided to students in the general education classroom at the high school are implemented through a collaborative teaching model. There is a general education teacher and a special education teacher, providing instruction to the entire class together, with the special education teacher available for support to students with IEPs. Collaborative teaching is provided in both ELA and mathematics classes. The Student's special education case manager has more coursework and experience in mathematics, so she is assigned collaborative classes in mathematics. She prepares and monitors progress on the Student's IEP. The special education teacher assigned to the Student's ELA class has strengths in ELA, so he is assigned collaborative classes in ELA.

Conclusion

It is found that the Student's Case Manager and Collaborative Special Education teacher are currently and appropriately certified to teach students with learning disabilities. Based on the foregoing, *it is not substantiated* that USD # 500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to ensure that the educators providing services to the student have the appropriate qualifications.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. 300.503(a), K.A.R. 91-40-27(a)(3) and K.A.R. 91-40-1(mm) was found, based on facts listed above. Corrective actions are required (as follows):

   CORRECTIVE ACTION:

   i. By July 17, 2024 USD #500 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. 300.503(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 further that school districts must obtain parent consent before making a material change in services or a substantial change in placement.

   ii. By July 17, 2024 USD #500 shall arrange for KSDE approved professional development for the student's school and related district personnel on the obligations 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 and further that school districts must obtain parent consent before making a material change in services or a substantial change in placement.

   iii. By the start of the 2024-2025 school year, USD #500 shall conduct the professional development described above and submit the agenda and participants to SETS.

   iv. By the first date that student's return to school USD #500 shall conduct an IEP with all team members to 1) discuss and amend the IEP to provide special education services to address the student's reading and writing goals that can be delivered according to the student's block schedule; 2) discuss and/or amend the IEP based on the IEP decision of whether the special education services to address the student's reading and writing goals will be delivered during Science, History or other content classes; 3) offer compensatory instruction to the parent, who may accept none, some, or all of the offered services. The offer shall be no less than 1,620 minutes of compensatory education (calculated at 60 minutes for 27 weeks) directed toward the IEP goals on the February 27, 2024 IEP.

   v. The parents shall have 10 days to accept none, some, or all of the compensatory education offer. The district will provide PWN to the parents resulting from the parents' response to the compensatory education offer.

2. ISSUE TWO: A violation of 34 C.F.R. §300.324(b)(1)(ii)(A) and K.S.A. §72-3429(f)(2)(A) was found, based on facts listed above. Corrective actions are required (as follows):

i. By July 17, 2024 USD #500 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. §300.324(b)(1)(ii)(A) to ensure that the IEP team meets to revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum.

ii. By July 17, 2024 USD #500 shall arrange for KSDE approved professional development for the student's school and related district personnel on how to review student progress and their obligation to meet the IEP team to address any lack of expected progress toward the annual goals and in the general education curriculum.

iii. By the start of the 2024-2025 school year, USD #500 shall conduct the professional development described above and submit the agenda and participants to SETS.

3. ISSUE THREE: A violation of K.S.A. §72-3429(4)(B)(1) was not found, based on review of evidence and interview. Corrective action is not required.
4. ISSUE FOUR: A violation of K.S.A. §72-3429(4)(B)(1) was not found, based on review of evidence and interview. Corrective action is not required.

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).

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 15, 2024

DATE OF REPORT JUNE 19, 2024

This report is in response to a complaint filed with our office by -------- on behalf of their foster child, --------. For the remainder of this report, -------- will be referred to as "the student." -------- will be referred to collectively as "the complainants." -------- will be referred to individually as "the student's foster father." -------- will be referred to individually as "the student's foster mother." USD #233 will be referred to as "the district."

Investigation of Complaint

On May 23 and June 13, 2024, the complaint investigator spoke via telephone with Ashley Niedzwiecki, Assistant Director of Special Services for the district. On June 13, 2024, the investigator spoke again in a separate conference call with the Assistant Director and with Andy Heinecke, Special Services Coordinator for the district. On June 3, 2024, the investigator spoke by telephone with the complainants.

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

- Assessment report dated November 8, 2021
- Confidential Psychological Evaluation dated April 13, 2022
- Email dated September 8, 2022 from the building principal to the complainants
- Email dated September 9, 2022 from the foster mother to the building principal
- Evaluation report dated October 7, 2022 from the student's developmental pediatrician
- Email exchange dated February 22, 2023 between the general education classroom teacher and the complainants
- Email dated February 23, 2023 from the building principal to the complainants
- Diagnostic report dated February 24, 2023 from the student's developmental pediatrician
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated February 24, 2023
- Letter dated February 26, 2023 from the student's developmental pediatrician
- Email dated February 27, 2023 from the complainants to the building principal
- Email dated March 1, 2023 from the building principal to the complainants

- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated March 28, 2023
- Neuropsychological Assessment dated March 27 through April 20, 2023
- Notice of Meeting dated May 4, 2023
- Evaluation Report dated May 23, 2023
- Eligibility Determination Other Health Impairment dated May 23, 2023
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated May 23, 2023
- 504 Evaluation Report dated August 29, 2023
- 504 Accommodation Plan dated August 29, 2023
- Email exchange dated May 2-6, 2024 between the complainants and a special services coordinator
- Email exchange dated March 1 through March 8, 2024 between the complainants and the student's general education classroom teacher
- Email dated March 8, 2024 from the school counselor to the complainants and district staff
- Elementary Progress Report for the student for the 2023-24 school year
- Attachments to the complainants' formal complaint but not specified in the above listing including the following:
    - A timeline covering the period of June 2015 to May 15, 2024
    - Undated letter from a private speech/language pathologist who had evaluated the student
    - Memorandum dated January 21, 2011 from the Office of Special Education and Rehabilitative Services
    - Letter dated January 29, 2019 from the Office of Special Education and Rehabilitative Services

Background Information

This investigation involves an 8-year old girl who has just completed the 3rd grade in her neighborhood elementary school. According to the complainants, the student was exposed to alcohol, amphetamines, benzodiazepines, and opiates in utero. Records provided by the district and the complainants indicate that the student has an early history of neglect, instability, and stress.

The student was first placed with the complainants through the foster care system in September 2019 and was accepted into the district's preschool program for at-risk children. The student lived with the complainants and their biological daughter until July of 2020 when she moved out of state to live with a paternal aunt who planned to adopt the student. The biological mother's rights were officially terminated in July 2021. In April 2022, while still in the

care of her aunt, the student was diagnosed with Post-Traumatic Stress Disorder (PTSD) and Autism Spectrum Disorder (ASD).

The aunt's plan for adoption did not work out, and the student was returned to the foster care system. In August 2022, she was once again placed with the complainants who report that their adoption of the student is to be finalized on June 20, 2024.

The student was reenrolled in her current school district for the 2022-23 school year. The complainants were designated as educational decision makers for the student on September 8, 2022. In their complaint, the complainants state that they anticipated that "an IEP evaluation" would be in the student's future because of the student's medical history and behaviors, but they wanted to wait on that evaluation "to see how [the student] did during her transition."

The building principal sent an email to the complainants on September 8, 2022 stating that the student's classroom teacher had "shared…that you are inquiring about a possible sped evaluation for [the student]." The building principal reported that the classroom teacher was "collecting data" on the student's performance. According to the email, the student was "settling in and with her peer (sic) in performance and stamina. We will continue to watch and will reach out should anything arise. Please let me know if you have any questions or would like to discuss further."

In an email response to the building principal dated September 9, 2022, the student's foster mother wrote:

> *"…I don't see a reason to put her through IEP testing right now because she is doing fine at the moment. I wasn't planning on requesting services at the moment. I do think we're still honeymooning right now, so we'll see how things go as the months go by."*
>
> *In October 2022, the student was seen by a developmental pediatrician who recommended additional testing for the student and told the complainants that she would "likely need continued support in school."*

The complainants report that on February 9, 2023, they made a request for an initial special education evaluation of the student. On February 22, 2023, the student's general education classroom teacher sent an email to the complainants notifying them that the building level general education intervention team would be meeting on March 1, 2023 to share with the complainants "some additional ideas to support [the student] with focus and organizing in the classroom, discussing your concerns and we will together determine next steps."

The complainants responded via email on February 22, 2023 to say that they would not be available at the scheduled time and writing:

> *"Further, an hour-long meeting doesn't seem to be the best use of anyone's time as our concerns have been thoroughly documented in previous emails and conversations with [the*

> *classroom teacher] and other staff…out of respect for everyone's time, it makes sense to us to forego the meeting and proceed directly with full IEP testing.*
>
> *We were the ones who declined testing earlier in the year in hopes that we could manage [the student's] needs more conservatively, but over the last 6 months it has become clear that the measures we've already taken have been inadequate…I understand that some of her recent testing has been more encouraging, but…given her other diagnoses…she needs to be tested…We will not be swayed that she needs anything less than a full evaluation; please send consent for testing so we can proceed and complete the process before the end of the school year."*

On February 23, 2023, the building principal sent an email to the complainants to inform them that they would be receiving a prior written notice that the district had declined their request for an initial special education evaluation. The district provided the complainants with prior written notice of refusal to conduct an evaluation on February 24, 2023.

The prior written notice form indicated that the student's second grade teacher had stated that:

> *"…[the student] has made significant gains in her interventions in her classroom. [The student] started off the beginning of the year being flagged for 1st grade phonics support. She began [general education] interventions, and she passed the 95% interventions for skills 4 and 5 before winter break. She was a point away from passing skill 6, and it was determined to transition to fluency and comprehension group on grade level."*

According to the prior written notice form, a number of accommodations had been put in place for the student in her classroom including repeating directions, preferential seating near a peer model, extending time for assignments to be completed, and shortening assignments when the student had shown mastery of a skill. The student was making appropriate progress with the supports available to her in the general education setting. District reading assessments placed her above the 50th percentile in reading during both Fall and Winter assessments. While the student had placed at the 1st percentile in math on the Fall district assessment, her score on the Winter assessment placed her at the 76th percentile. According to the prior written notice form, the student's first and second quarter grades for the 2022-23 school year placed the student at level 3 (progressing) in all areas (reading, writing, speaking and listening, math, science, and social studies).

The February 24, 2023 prior written notice of refusal form shows that the team rejected the option of conducting an evaluation because:

> *"…the team currently is not providing supports at a level that indicate the need for specialized instruction and therefore don't indicate the need for a special education evaluation."*

As stated in the prior notice of refusal, the district planned to continue to implement general education interventions, adding a visual schedule, a check list for the end-of-the-day routine, access to noise canceling headphones, and chunking of work with frequent check-ins with her teacher to the existing list of accommodations.

After being provided with prior notice of the district's refusal to evaluate the student, the complainants engaged the services of an advocate.

The student was seen by a developmental pediatrician on February 24, 2023. The physician diagnosed "concern with working memory or other executive functioning deficits" and "central auditory processing disorder."

On February 27, 2023, the complainants sent an email to the building principal writing:

> *"…to be clear on her needs, [the student] needs an IEP evaluation…Again, we acknowledge that a 504 may be adequate after all the data is available, but given [the student's] diagnosis…we are still of the opinion that [the student] legally needs a formal IEP evaluation, ideally before the end of the school year."*

The building level general education intervention team met on March 1, 2023 to review the student's progress under general education interventions. The complainants had been invited to participate in the intervention team meeting, but they were not available on the date the meeting was scheduled.

The building principal sent the complainants an email on March 1, 2023 writing:

> *"I am sorry to have missed you during today's scheduled meeting…if you would like to come in and discuss other possible options [in light of the district's refusal to conduct an initial special education evaluation], I will do what I can to accommodate your schedule."*

The student was first seen by a private neuropsychologist on March 27, 2023. The neuropsychologist completed an evaluation of the student and diagnosed her with ADHD and a reading disorder. The neuropsychologist rejected the previous diagnosis of ASD but in a summative report recommended that she be provided services through an Individualized Education Plan (IEP) and stated:

> *"[The student] qualifies [for special education services] based on her history of in utero exposure and its effect upon neurocognitive development which likely greatly contributed to her diagnosis of ADHD, combined presentation. Given the deficits seen in the present evaluation, accommodations will likely be necessary to assist him (sic) academically. However, [the student's] educational committee, of which her caregivers are members, is the ultimate authority regarding eligibility. As such it is recommended that the results of the present evaluation be shared with her school so further discussion regarding eligibility of services is possible."*

Issue

In their complaint, the complainants raise the following issue:

> The district has failed in its Child Find obligation because it has refused to develop an IEP for the student.

Complainants' Position

The complainants assert that the district failed to timely evaluate the student and provide appropriate special education services even after being told by a neuropsychiatrist and other outside professionals that the student would need an IEP. The complainants state that the student failed most of her spelling tests and was typically last among her peers to complete an assignment in the classroom. The complainants contend that the district delayed the assessment of the student in order to first complete general education interventions.

District's Position

It is the position of the district that the student was appropriately evaluated during the 2022-23 school year and, upon completion of that initial evaluation, was determined not to need special education services. The district asserts that it has proposed to administer another evaluation of the student in view of the student's progress during the 2023-24 school year, and the complainants have given consent for that evaluation.

Applicable Statutes and Regulations

At K.A.R. 91-40-51, Kansas regulations state that, when filing a formal complaint, the complainant must allege that a violation state of federal special education laws or regulations has occurred during the 12-month period preceding the date the complaint is received and filed with the commissioner of education.

This complaint was received on May 14, 2024. While information related to the complainants' assertion that the district did not timely and appropriately respond to their February 2023 request for a special education evaluation of the student is included in the background section of this report, no determination regarding this alleged violation was made by this investigator because the circumstances surrounding that allegation fell outside the 12-month window of this complaint.

At K.A.R. 91-40-7, Kansas regulations state that districts must adopt and implement policies and procedures to identify, locate, and evaluate all children with exceptionalities residing it their jurisdiction. Parents or other legally appointed educational decision makers may refer a student for an initial evaluation. A district must respond to that request 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. The district may refuse to conduct the initial evaluation; under that circumstance, the requesting party must be provided with prior written notice of the district's refusal.

Under Kansas and federal regulations, as part of an initial evaluation, the district first meets to review existing data to determine whether it is appropriate to conduct an evaluation (34 C.F.R. 300.305(a)). As stated in Appeal of Formal Complaint, FC12437-003; USD N. 437 (Auburn Washburn Public Schools) 123 LRP 19114, "*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)).”

If the district decides to move ahead with an initial evaluation in response to a request from an appropriate party, the written consent of the educational decision-maker must first be obtained (K.S.A. 72-3430b)(2); 34 C.F.R. 300.304(a)).

Once consent has been obtained, a team is formed who will have the responsibility of carrying out the evaluation process. The members of the evaluation team are the same as those who would serve on the student's IEP team should the child be found eligible. Parents or other educational decision-makers are included in the evaluation team.

An initial evaluation is generally to be completed within a 60-school-day timeline from the date the written consent for the evaluation is obtained from the educational decision-maker unless special circumstances apply (K.A.R. 91-40-8(f)).

Eligibility decisions are made by a team of qualified professionals and the educational decision-makers for the student who has been evaluated (K.A.R. 91-40-10(a)(1)). At the time the evaluation is completed and information is compiled, a team meeting should be convened in order to make the determination regarding eligibility for special education services. In order to determine that a student is eligible for special education services, the team must ensure that he/she meets the definition of one of the categories of exceptionality, and that, as a result of that exceptionality, needs special education and related services (K.A.R. 91-40-1(k), (w)). If the student meets the definition of an exceptionality category but does not need special education and related services, the child will not be determined to be eligible.

Special education means specially designed instruction (K.A.R. 91-40-1(kkk)), adapting the content, methodology or delivery of instruction to address the unique needs of a student that result from his/her exceptionality in order to ensure that the student has access to the general education curriculum in order to meet the educational standards that apply to all children (K.A.R. 91-40-1(lll)). This implies that in order to have a need for special education, the student has specific needs that are so unique as to require specially designed instruction in order to access the general education curriculum. If the student only needs accommodations or modifications that do not require specially designed instruction, the student's needs may be met through a Section 504 Accommodation Plan or other means instead of an IEP.

If the educational decision-maker presents written or in-person information from an outside source (i.e., a medical doctor) stating the need for an IEP, the district is obligated to consider that information when determining the student's eligibility. However, the district is not required to implement the recommendations of an outside source.

The eligibility team should try to reach consensus about the eligibility decision. Parents who disagree with the conclusions of the evaluation team may, but are not required to, submit a

separate statement. However, if the team cannot reach agreement, the final decision rests with the person who serves as the LEA representative at the eligibility determination meeting.

If the district determines that the student is not eligible for special education services, parents must be provided prior written notice informing them of the decision (K.S.A. 72-3430(b)(2)(b)).

Investigative Findings

On March 28, 2023, in what the complainants describe as "a spirit of collaboration," the district provided the complainants with prior written notice of a proposed initial special education evaluation and requested the complainants' consent. The complainants provided written consent for the evaluation on that same date.

On May 23, 2023, thirty-nine school days after the complainants gave written consent, the results of the district's evaluation were reviewed in a team meeting which was attended by the complainants and the neuropsychologist who had conducted the then recent evaluation of the student. Because of the student's ADHD diagnosis, the team considered the student's eligibility for special education services under the category of "Other Health Impairment" which is defined under K.A.R. 91-40-1(uu) as:

> *"…having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment and that meets the following criteria: (1) is due to chronic or acute health problems, including asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and (2) adversely affects a child's educational performance."*

According to the Eligibility Determination form completed on May 23, 2023, the team considered the student's grades, work samples, medical reports, individual achievement test results, school records, psychological evaluations, classroom observations, results of individual intelligence testing, reports by the complainants, and a report from the classroom teacher and determined that the student was not eligible for special education services as a child with a disability under the category of Other Health Impairment. While the team acknowledged that the student's "strength, vitality, or alertness [was/were] significantly different from peers" and her educational performance was negatively impacted, the student did not at that time demonstrate a need for "special education (specially designed instruction) and related services."

The complainants were, on May 23, 2023, provided with prior written notice of the district's determination that the student had "an exceptionality but does not need specially designed instruction, and therefore is not eligible for special education."

According to the prior written notice form, "*the team discussed moving forward with a 504 evaluation by the end of August 2023*." It was noted that the student "*benefits from*

accommodations in the general education classroom" and "the general education classroom is her least restrictive environment at this time."

The complainants enrolled the student in private tutoring and private Occupational Therapy during the summer of 2023. The complainants acknowledge that standardized testing reflected *"a bit of a rally in fall of 2023."*

On August 29, 2023, the district completed a 504 evaluation, determined the student to be Section 504 eligible, and developed a 504 Plan which was then implemented during the 2023-24 school year. That plan included a number of accommodations including the following:

- Model and encourage use of visual, organizational, and technological tools (highlighting, sticky notes, talk-to-text);
- frequent checks for understanding with the teacher and/or student repeating directions;
- provision of a copy of teacher or peer notes or permission to take a photo on her iPad;
- reduction or chunking of work as needed to allow time to process or show knowledge;
- preferential seating near a peer model or near the teacher during whole group instruction and work time;
- permission for breaks for self-regulation in or out of the classroom (sensory room, counseling office, therapy dog);
- provision of a separate location for district or state tests when appropriate;
- communication with the complainants when the student showed changes in self-regulation;
- allowing the use of noise reducing headphones and a privacy screen to aid in focus;
- allowing extra time to complete assigned work and tests within the day, week, or chapter unit; and
- use of a home/school planner to record assignments or tasks.

The Elementary Progress Report for the student shows that for the first three quarters of the 2023-24 school year the student demonstrated B level (very good or 80-89%) performance in writing and math. Reading performance fell at the C level (satisfactory or 70-79%) for the first quarter and at B level for quarters 2 and 3. The student's speaking and listening skills were at B level for the first quarter and A level for quarters 2 and 3. The student performed at A level (excellent or 90-100%) for quarters 1-3 in science and quarter 1 and 2 in social studies with B level performance in social studies for the third quarter. The student exceeded expectations (E) for quarters 1-3 in physical education, music, and visual arts. The grade report showed that progress was needed in the area of spelling during quarters 1 and 3; her performance fell at B level for quarter 2. The student showed strengths in all areas of learning and work habits (attentive, cooperative, organized, productive, respectful, and responsible) over quarters 1-3. The student's classroom teacher repeatedly commented on the student's strong effort to complete her school work.

Over the period of March 1 through March 8, 2024, the complainants exchanged emails with the student's classroom teacher. In an email dated March 8, 2024, the complainants wrote:

> *"We want her to have enough support during the day to accomplish a more typical amount of work, which again would be in the realm of an IEP. At this point we think it would make sense to schedule a meeting and chat more about revising her 504 or moving forward with an IEP. Happy to sign a consent ASAP if that will be needed to move forward. We know we met last spring to discuss these concerns and did an evaluation. The concerns that were stated at that time with [the student's] educational performance are now happening with her decrease in ELA scores as well as needing additional individualized support and instruction. We would like to discuss what options there are for [the student] to get the additional help she needs. Do we need to schedule a meeting or formally request another evaluation? Also, apologies if all of this seems sudden. As we implied at conferences, [the student's] foster case has gone off the rails, so we had to hire an attorney, spend an absurd amount of money, and get DCF involved to keep her from getting moved out of our home, and that nearly happened a few times. So now that that threat is less imminent, we have slightly more margin to try and address her schooling."*

On March 8, 2024, the building counselor sent an email to the complainants, their advocate, and district staff including the building principal, the student's classroom teacher, and a special services coordinator. The counselor stated that the student had expressed to her that she was "stressed" about school work. The counselor wrote that "we will look things over and one of us will reach out to you about scheduling a team meeting after Spring Break."

A meeting was held on April 11, 2024 to discuss the complainants' continued concerns with the student's reading fluency and comprehension as well as the impact of executive functioning deficits. According to the complainants, the classroom teacher reported that the student was taking longer to complete her assignments and was "one of the last students to finish her state assessments," noting that "it doesn't seem to bother" her. The district offered to grade the student on five of ten spelling words, but the complainants state that they were not "interested in lowering the bar, but rather giving her the support and additional exposure she needs to produce her best work." The team decided to meet again in a few weeks after Spring district assessment results were available.

The student's fourth quarter grades were as follows:

- Reading – B
- Writing – B
- Spelling – C
- Speaking and Listening – A
- Math – B
- Science – A
- Social Studies – A

- Physical Education – E
- Music – E
- Visual Art – E

The student continued to display strength in all areas of learning and work habits.

While the student had demonstrated gains on district aReading testing over the first few months of the 2023-24 school year, performance began to evidence a downward trend the second semester. CBM reading measures remained relatively flat throughout the school year. However, the student's scores have trended downward from her return to the district in the fall of 2022.

On May 2, 2024, the complainants sent an email to a special services coordinator for the district stating:

> *"If [the student's school] plans on denying the request for an IEP, then we would request a separate/private meeting with you and [the parent advocate] to review data and discuss how [the student] does not meet eligibility criteria."*

The coordinator responded via email on May 3, 2024 writing:

> *"…I just had the chance to catch up on emails from today and see that the [school] team is looking to provide you with the consent document to start an evaluation for SPED eligibility. The team would need to conduct this evaluation to determine eligibility and, if eligible, would then develop an IEP for [the student] with you. Please let me know if you have any other questions."*

The complainants wrote back to the coordinator on May 5, 2024, stating:

> *"Thank you so much for your response. We understand that there is a procedure we need to follow according to IDEA, however we believe we already have all the data necessary to warrant an evaluation determination. Can you please help us understand what testing is going to inform us beyond the testing completed last May and the data collected throughout this year from assessments such as Fast Bridge [a district assessment tool]?*
>
> *The concern last May was that there was progress being made according to the assessment data and we could not implement an IEP if the MTSS and 504 supports were allowing [the student] to make progress. The data from this year has shown that with those supports in place, she has been declining in percentile and she is showing minimal (at best) growth in all academic areas. Her historically higher scores show she is capable of higher achievement. She also continues to have significant issues with executive functioning skills.*
>
> *We are extremely concerned that this has been drawn out for almost two years and we still have a little girl who is not making progress in educational performance. We spent the entire last year implementing a 504 and MTSS supports that have proven to be inadequate.*
>
> *We are concerned that this is a denial of FAPE and we would appreciate the team and [the district] to take the urgency of these concerns seriously."*

On May 6, 2024, the coordinator responded:

> *"I understand your frustration with our educational process. I'd be glad to answer any questions for you. I can see from your perspective that conducting an evaluation seems like an inefficiency. Please know that it is vital to conduct the evaluation to determine eligibility. Even more importantly, if she is eligible, the evaluation data is the foundation upon which her Individualized Education Plan would be built."*

On May 8, 2024, the complainants spoke by telephone conference call with a special services coordinator for the district. The complainants' advocate also participated in the call.

A meeting was held on May 13, 2024. At that time, the district proposed an evaluation of the student and presented the complainants with prior written notice of a proposed evaluation, requesting the complainants' consent. The complainants provided consent for the evaluation on May 13, 2024 and filed this complaint the following day.

Summary and Conclusions

The initial evaluation completed by the district during the 2022-23 school year was conducted appropriately. The district timely responded to the complainants' request for evaluation following the student's evaluation by an outside neuropsychologist in March 2023, requested and obtained the complainants' consent for the evaluation, and completed the initial evaluation within the 60-school-day timeframe.

All data, including input provided by the complainants and the neuropsychologist and others, was considered by the evaluation team. While the neuropsychologist who participated in the evaluation team meeting and other outside evaluators have expressed their opinions that the student could benefit from additional supports, special education statutes and regulations only require a district to consider such recommendations. The Individuals with Disabilities Education Act (IDEA) does not require the district to implement those recommendations. Rather, IDEA is clear that decisions are to be made by the team, not a single voice on that team. Child Find was not violated simply because the student was found ineligible or because an evaluation team did not follow a physician's recommendations.

No evidence was presented to show that the district delayed the student's initial evaluation during the 2022-23 school year in order to first implement general education interventions. These interventions were implemented early in the school year well before the complainants had requested an evaluation of the student. The student's response to those interventions ultimately provided data that was used in making decisions about the student's need for specially designed instruction, but the implementation of general education interventions did not cause a delay in the assessment of the student.

Decisions regarding a student's eligibility to receive special education services must be made based on current data collected through the district's evaluation. In May of 2023, the district

agreed that the student demonstrated a categorical disability, one of the two prongs required for the student to be considered eligible to receive special education services. However, despite that disability, the student was at the time of the evaluation able – with the provision of commonly provided general education accommodations – to access and progress in the general education curriculum. Special education – specially designed instruction – had not been required in order for the student to make progress, and, therefore, the district could not deem the student eligible for special education services. The district properly provided the complainants with prior written notice of the decision not to provide those services.

At the beginning of the 2023-24 school year, the district conducted a Section 504 evaluation and subsequently developed a 504 Accommodation Plan for the student. The student continued to be provided with a number of general education accommodations throughout the school year.

While the student's district assessment scores have declined relative to her overall performance level at the time she returned to the district in 2022, a determination of need for specially designed instruction cannot be made based on these test scores alone. If it is ultimately determined that the student is eligible for and needs special education services, the IEP describing those services must be based on current data, not data collected through the evaluation conducted during the 2022-23 school year. The district properly proposed an evaluation of the student once the student's Spring district assessment scores were available. The complainants have given written consent for the proposed evaluation.

A violation of special education statutes and regulations ***is not established*** on the issues presented in this complaint.

Corrective Action

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

Investigator



Diana Durkin
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).

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 MAY 22, 2024

DATE OF REPORT JUNE 24, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of --------, by his mother, --------. In the remainder of the report, -------- will be referred to as "the student." -------- will be referred to as "the mother", "the parent", or "the complainant".

The complaint is against USD #413, Chanute Public Schools. In the remainder of the report, USD #413 will be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date on which it was filed. A complaint is considered filed on the date on which it was received by KSDE. In this case, the KSDE initially received the complaint on May 22, 2024, and the 30-day timeline ends on June 21, 2024. The timeline was extended to June 24, 2024, to include additional issues that emerged through the natural course of the investigation.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Crista Grimwood, reviewed all evidence and documentation, which was provided by both the district and the complainant. The following documentation and information were used in consideration of the issue:

1. The parent's original Formal Complaint and allegations.
2. The District's written response to the allegations.
3. The parent interview, conducted on 5/28/2024.
4. The District interview with Mrs. Wolken, (Elementary Assistant Principal), conducted on 6/5/2024.
5. The student's IEP, dated 12/11/2023.
6. A PWN requesting consent to evaluate dated and signed 9/28/2023.
7. The Evaluation/Eligibility Team Report dated 12/11/2023.
8. A Notice of Special Education Meeting (NOM) dated 11/27/2023 for a meeting held 12/11/2023.
9. An NOM acknowledgment, signed on 12/11/2023.

10. A PWN for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated 12/11/2023, finding the student eligible.
11. The Functional Behavior Assessment dated 12/07/2023.
12. The Positive Behavior Intervention Plan dated 12/07/2023 and consented to on 12/11/2023.
13. Email communication between Mrs. Wolken, Ms. Wire (Principal), and the parent dated March 1, 2023 – March 19, 2023, addressing the parent's concern that the student was not receiving services as required in the IEP.
14. Email communication between Mrs. Wolken, Ms. Wire, Ms. Pena (Special Education ED Teacher), and Ms. Mewhinney (3rd grade General Education Teacher) addressing a schedule change for the student and an elopement incident, dated March 6, 2024 – March 8, 2024.
15. Email communication between Ms. Wire and the parent addressing a parent request for Jen Gonzalez's (Special Education Resource Teacher) employment schedule and days absent, dated February 29, 2024.
16. Email communication between the parent, Ms. Wire, Ms. Mewhinney, Ms. Gonzalez, and Mrs. Wolken addressing parent concerns about PE field day and farm day, dated May 21, 2024.
17. Email communication between the parent and Ms. Sessums (School Psychologist) addressing the parent's desire to revoke consent for services.
18. Hand-written notice from the parent, revoking consent for services, dated 5/22/2024.
19. PWN revoking consent for services, dated and signed by the parent on 5/22/2024.
20. List of district staff and roles.
21. Amended, "updated" Progress Report, dated 6/10/2024, where the district corrects a failure to provide progress monitoring on goals for the 5/17/2024 progress monitoring period.

Background Information

The student is currently a fourth-grade student. The student was a third-grade student, attending Chanute Elementary School, during the period of this investigation. The student was identified as a student with an exceptionality, specifically under the classification of Emotional Disability with a secondary classification of Learning Disability. The student also has a current diagnosis of Oppositional Defiant Disorder.

Eligibility was determined on 12/11/2023, and an IEP was developed that same day. The parent provided consent to special education and related services on 12/11/2023. The parent revoked consent for services on 5/22/2024. The parent was an employee, at Chanute Elementary School, during the time of this investigation.

Issues

In the original complaint, the complainant alleged that USD #413 failed to provide the least restrictive environment for the student, as required by the student's IEP. In interviews with the complainant, the complainant expressed additional allegations. The following issue was investigated:

1. ISSUE ONE: Whether USD #413, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP to the maximum extent possible, the student is to be educated and participate with other non-identified peers in general education classes and in extracurricular and other nonacademic activities (K.S.A. 72-3429(c)(5)).

In other words, the parents single allegation is that the school failed to implement the child's IEP with regard to the extent to which the child would be educated with non-disabled children.

The parent alleged other possible violations that were not investigated as they are not subject to the Individuals with Disabilities Education Act (IDEA), and therefore the Kansas State Department of Education does not possess jurisdiction to investigate these claims. The issues include allegations of bullying and retaliation.

Issue One

Whether USD #413, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP to the maximum extent possible, the student is to be educated and participate with other non-identified peers in general education classes and in extracurricular and other nonacademic activities (K.S.A. 72-3429(c)(5)).

Applicable Law

First, it should be clarified that special education statutes and regulations do not require children with disabilities to be educated with children who are non-disabled, to the maximum extent possible. Instead, federal and state statutes and regulations require districts, to the maximum extent appropriate, to educate children with disabilities with children who are not disabled, and to provide special classes, separate schooling or for the removal of children with disabilities from the regular education environment only when the nature or severity of the disability of the child is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily. (34 C.F.R. 300.114(a)(2); K.S.A. 72-3420(a)). OSEP guidance suggests that a "regular educational environment", as referenced in 34 C.F.R. 300.114(a), includes regular classrooms and other school settings, like the cafeteria and recess, where children without disabilities participate (71 Fed. Reg. 46,585 (2006). Kansas regulation defines the "Least Restrictive Environment" to mean "the educational placement in which, to

the maximum extent appropriate, children with disabilities, including children in institutions or other care facilities, are educated with children who are not disabled, with this placement meeting the requirements of K.S.A. 72-976, and amendments thereto, and the following criteria: (1) Determined at least annually; (2) based upon the student's individualized education program; and (3) provided as close as possible to the child's home. (K.A.R. 91-40-1(ll)).

The process for determining the least restrictive environment for each child must be individualized, with decisions made by the child's IEP team, including the parent. (34 C.F.R. 300.116). Each child's IEP must include a "statement of special education and related services and supplementary aids, based on peer-reviewed research to the extent practicable, and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child... (B) to be involved in and make progress in the general education curriculum... and to participate in extracurricular and nonacademic activities; and (C) to be educated and participate with other exceptional and nonexceptional children in the activities described in this paragraph" (K.S.A. 72-3429(c)(4)). To that end, a student's IEP must include "an explanation of the extent, if any, to which the child will not participate with nonexceptional children in the regular class and in the activities described in provision (4)". (K.S.A. 72-3429(c)(5)).

Findings

The parent alleges there were two incidents in which the student was not included with non-identified peers. The parent shared with the investigator that the student was intentionally excluded from general education peers on two different occasions, 5/14/24 and 5/21/24. These were both field trips for all students, specifically "Farm Day" and "PE Day", respectively. The parent is concerned the student is only being grouped with "behavior students" for these activities.

It is the position of the district that the student was permitted to participate with non-identified peers to the extent appropriate on PE Day and Farm Day. On PE Day, the district asserts, "[A]ll students were group (Sic) with chaperones, and [the student] was placed with the staff member who knew his behavior plan the best to ensure his safety. He was still provided the opportunity to participate with his non-disabled peers and also provided choices as the events of the day progressed to ensure his continued participation. He chose to stay with special education staff when given the choice." The district claims the student did participate in Field Day as required in the student's IEP. The district admits the student was placed in a small group with only other special education students, but that the small group did participate in activities, such as tug of war, lunch, and an obstacle course with general education peers.

The district summarizes; "It is the districts (Sic) position that the IEP was followed and that [the student] was provided the opportunity to be educated and participated with his non-disabled peers in general education classes AND extracurricular and other nonacademic activities."

An e-mail dated May 21, 2024, between various district employees and the parent discusses the two events in question. The parent begins by expressing concerns that the student was removed from general education peers on both Farm Day and PE Day. As the parent states, the student should be with "HIS CLASS" … not room 408" … "[T]hat is not his class, it's an alternative room for him to go for breaks and lunch." The parent claims she has repeatedly requested the student be separated from another student because the two students do not get along.

Ms. Wire, the elementary principal, responds, "[B]oth are in the same class as well as the same program. I know that their schedules are different to some extent. But I am not sure exactly what you are expecting out of this." About PE Day, she continues, "I am not aware of [the student] not being with his class today? (Sic) Mrs. Wolken witnessed him do multiple activities with his class."

Special Education ED Teacher, Ms. Pena, responded, "Last week at farm week, we were handed a list and they had groups on them. My Group (408) had my 3rd grade kiddos only, including [the student]. So, there were only 3 kids in my group." She continues, "Today [PE day] I didn't get handed a paper with groups but got told to form our own group again and go with our 408 kids. Our kids including [the student] did join his gen ed class for tug a war (Sic) and lunch time. The rest of the time we were in our own group."

General education teacher, Ms. Mewhinney confirms Ms. Wire and Ms. Pena's recollection of Farm Day. "On farm day our third graders are divided into 12 groups… [The student] was placed in Trinity's group for coverage and had an awesome day. We did join back up as a whole class for lunch and…classroom activities when we returned."

Ms. Mewhinney and Special Education teacher, Ms. Gonzalez provided further insight about PE Day.

Ms. Mewhinney states, "…[the student] joined us for our third station of the day. [The student] did tug of war and relay races with us before lunch. He joined us for lunch and would have continued the day with us." Ms. Gonzalez indicated that [the student] elected to stay with his small group at PE Day and Farm Day when he was asked if he wanted to join his general education class but did meet up with peers for tug of war, an obstacle course, and lunch.

Also, during Farm Day, the student began to fight with another student in his small group (the same student the mother had requested the student be separated from) and was returned to the ED room at the school. According to the district, "On the farm day, [the student] exhibited behavior that posed a risk to himself and others, therefore he was taken back to the school to the ED classroom". The record shows the student exhibited verbal aggression during the altercation.

The parent is also concerned about the student's transportation, claiming the student is forced to use an alternative mode of transportation for extracurricular activities and is not allowed to join his peers on the regular school bus.

During an interview, Mrs. Wolken, shared the student expressed fear of riding on the large school bus and displayed behaviors indicative of those listed within his BIP regarding changes in routine and transitions. As a result, arrangements were made for the student to ride on a smaller van and be in a smaller group with an adult who is versed in his specific behavior support needs.

In an e-mail, dated May 21, 2024, Ms. Gonzalez states, "I have asked [the student] about riding the bus and going with his peers and he gets upset and says he does not like riding the bus. For this reason, he got lumped into our group. All the rest of the 3rd grade formed groups as they got off the bus and immediately started spreading out to different stations. We did the same."

The student's initial evaluation report, dated 12/11/2013, indicates the student was referred for an evaluation due to behavior concerns. Observations of the student include the student taunting other students, name-calling, targeting other students, and intentionally bumping into other students. The report states that due to the student's behavior in the general education classroom, the student was removed from the classroom and sent to the self-contained ED room for the remainder of the day. Upon arrival in the ED room, the student declared, "I get to stay in here for the rest of the day."

Included in the student's evaluation report is a treatment plan from Southeast Kansas Mental Health Center, dated 09/08/2023, which diagnosed the student with Oppositional Defiant Disorder. Goals in the student's treatment plan include reducing agitation, learning to cooperate, and controlling defiance. Services recommended are individual therapy and case management. Other current diagnoses include Generalized Anxiety Disorder, Disruptive Mood Dysregulation Disorder, and Major Depressive Disorder. The student is currently taking medications including Risperidone, Sertraline, and a generic form of Abilify.

In the evaluation report, school personnel rated the student's behaviors as Extremely Elevated for Behavioral Control, Problem Solving, and Emotional Control indexes. This indicates that in a school setting, the student has extreme difficulty maintaining self-control and has difficulty regulating impulsive behaviors.

On Clinical Scales, school personnel and the parent, rate the student as either Clinically Significant or At-Risk in the areas of Aggression, Conduct Problems, and Depression, indicating the student engages in rule-breaking behaviors such as cheating, deception, and or/stealing and that the student is withdrawn, pessimistic, and/or sad. The student also rated as At-Risk in the area of Attention Problems, and Clinically Significant symptomology of Hyperactivity and Anxiety, indicating the student engages in a high number of behaviors that are adversely

affecting other children in the classroom. The student's teachers report the student frequently displays behaviors stemming from worry, nervousness, and/or fear.

The report shows the student's academic performance as "minimal to low" and states it may take the student hours to complete one task. The student's FastBridge assessments, for reading and math, show the student was in the 7th %tile for aReading in the fall of 2022 and 8th %tile in the fall of 2023. aMath scores place the student in the 31st %tile in the fall of 2022 and 31st %tile in the fall of 2023.

The report concludes the student is eligible for special education and related services with a primary exceptionality of Emotional Disability and a secondary exceptionality of Specific Learning Disability, as defined under K.A.R.91-40-1(v) and K.A.R.91-40-1(mmm), respectively.

The student's IEP contains four goals. Goal one is a communication goal, related to speech sound production, and monitored through therapy data, progress monitoring, and observation. The student has made progress, either surpassing or making significant gains in all areas monitored. Goal two is a social-emotional goal, related to non-compliance. The goal states, "For the duration of the IEP, [the student] will decrease non-compliant behaviors to 5 or less a week for 8 out of 9 weeks", monitored through a behavior chart. The student's baseline is an average of 58 non-compliant behaviors in a week. Progress monitoring shows the student did not make progress for the reporting period ending 5/16/2024. For that period, the report shows the student's behaviors at 11, 2, 13, 11, 6, 22, 3, 5, 3, and 9 for each week in the 10-week observation period. However, progress had been made in previous reporting periods. Goal three is a reading goal, working on CCVC/CVCC words and silent E, monitored by teacher observation and data. Progress monitoring shows the student is making some progress in the area of reading. Goal four is also a reading goal, related to the student being able to read 50 WRCM with 80% accuracy in 2 out of 3 trials monitored by teacher observation and data. The student is currently able to read 24 WRCM with 84% accuracy.

The student's IEP lists direct specialized instruction for 30 minutes, 5x a week in the resource room; direct speech services for 15 minutes, 2x a week in the general education classroom or the resource room; 20 minutes of direct social work services, 1x a week in resource room; lunch for 30 minutes, 5x a week in the ED room; and 40 minutes, 5x a week in the ED room for recess and breaks. Accommodations include scheduled breaks, daily during class time, for 5-15 minutes in the general education or ED classroom, and a separate, quiet, or individual area for the duration of an assignment or assessment in either the general education or special education classroom.

The student does not require any supplementary aids or services and does not have transportation listed in the IEP.

The student's IEP contains a section titled, Participation with non-Disabled Peers, under which three categories are defined, and each includes a guiding statement as to what the description

of each category should include. The three categories are 1) general education classes and curriculum, 2) the opportunity to participate in all non-academic and extracurricular activities such as clubs, sports, etc., and 3) the opportunity to participate in field trips, assemblies, special events, etc. While all three categories offer a similar guiding statement, category three offers this specific prompt:

> *Describe the extent to which the student will have the opportunity to participate in field trips, assemblies, special events, etc., to the same extent as their non-identified peers:*

In response, the student's IEP states, "[The student] will have the opportunity to participate in field trips, assemblies, special events, etc. to the same extent as their non-identified peers."

The student's evaluation also includes a Functional Behavior Assessment (FBA). The FBA lists five target behaviors: non-compliance, elopement, suicidal ideation, property destruction, and verbal aggression. The FBA examined the student's daily schedule, noting when, and during what activities, the student would most likely exhibit "problem behaviors". Those times and activities included: *break, recess, snack,* between 9:50-10:30 am in the ED room, *whole group reading* from 10:50-11:10 am in the general education classroom, whole group math from 1:20-1:40 pm in the general education classroom, and *MTSS* from 2:00-2:30 pm in the general education classroom. Times and activities with a low likelihood of "problem behaviors" include breakfast/soft start in the ED room, lunch/independent work in the ED room, speech services, break with Mr. Travis, math journal/break with Mr. Travis, recess with the general education class, and 3rd grade reading resource.

The FBA concludes "[W]hen a peer [the student] dislikes is around, [the student] exhibits verbal aggression in order to obtain negative peer attention…"[W]hen [the student is in a whole group learning situation, [the student] may exhibit property destruction in order to obtain negative peer attention"…"[W]hen a non-preferred task is presented, [the student] engages in non-compliance to avoid the task being presented"…"[W]hen presented with a non-preferred activity, [the student may elope and/or engage in verbal aggression to avoid and gain control of the situation." The FBA results indicate that a Behavior Intervention Plan (BIP) is needed as part of the student's IEP.

The student's BIP targets the five behaviors of concern noted in the FBA, non-compliance, elopement, suicidal ideation, property destruction, and verbal aggression. These behaviors are described as follows:

> *Non-compliance: Any response that does not match the delivered instruction within 30 seconds from the time the instruction was delivered, allowing for one additional verbal prompt at the end of the 30 seconds.*
>
> *Elopement: Any (Sic) [the student] leaves the classroom without explicit permission to do so.*
>
> *Suicidal Ideation: Any time [the student] makes statements indicating that he wants his life to end. [The student] may say things like "I'm going to kill myself" or "I want to die."*

> ***Property Destruction:*** *Acting upon property with the intent to (or succeeding in) destroying it. This behavior is not directed toward another person. [The student] may flip chairs, slam objects, push desks, etc.*
>
> ***Verbal Aggression****: Any language (verbal or nonverbal directed at someone in a threatening or harmful manner. This can include obscene gestures and profanity. [The student] may tell others things like "I'm going to punch you", or "I'm going to kill you."*

To counter targeted behaviors, the BIP outlines, when, and how, replacement behaviors will be encouraged, preventative strategies used, interventions used, and consequences applied.

Replacement behavior involves identifying when the student needs a break and ensuring the student appropriately utilizes that time to regulate and prepare for upcoming activities. According to the BIP, should the student opt for a break; the student will remain in the break setting for the duration of the activity he is opting out of. Staff will work with the student to identify feelings leading to the request for a break.

Preventative strategies include avoiding power struggles, providing clear directions, frequent breaks, predictable routines/schedules, and private redirection. The student will use a red "X" icon to indicate when he needs a break from an activity.

Interventions include the use of visuals, offering breaks, and giving physical space. If the student does use his red "X" icon, indicating the need for a break, the student should go to the Turn Around Room within the self-contained ED classroom for a "quiet break" for the duration of the activity the student is opting out of. Staff may also give the student tally marks for work completion which the student may trade for prizes.

Consequences for exhibited target behaviors include sharing with the student's parent how the student's day went, restitution owed, note or call home, and loss of privilege(s). The BIP specifies, "Should [the student] engage in behaviors that pose a risk to others, as evidenced by evacuation of the classroom, [the student] shall remain in the ED setting for the remainder of the day"…"[The student] should be expected to restore the environment to its original condition following any episode of property destruction." The consequences section of the BIP also details that when [the student] makes it through a scheduled general education time without maladaptive behaviors, the student should gain access to a preferred activity for 5 minutes and be praised for his success.

Analysis

An analysis of the student's least restrictive environment requires a two-part inquiry. First, the investigator must review the student's IEP to determine what, if any, restrictions exist on the student's opportunity to participate in extracurricular activities with non-identified peers. The second is whether the level of required opportunity to participate was followed by the district on PE Day and Farm Day.

The student's IEP details how the student ***will*** participate in extracurricular activities, specifically, "[the student] will have the opportunity to participate in field trips, assemblies, special events, etc. to the same extent as their non-identified peers." This statement is based on a prompt on the IEP form itself, requesting the practitioner "Describe the extent to which the student will have the opportunity to participate in field trips, assemblies, special events, etc. to the same extent as their non-identified peers:" While this prompt elicits a statement of the expectation for *all students*, general education, and those receiving special education and related services, it does not naturally invite a statement of how this particular student will *not* participate, as required by law.

Under K.S.A. 72-3429(c)(5), a district is required to include, in a student's IEP, "an explanation of the extent, if any, that the student will *not* participate…". Here, the student's IEP accurately states what all students are to receive; that is, the opportunity to participate in extracurricular activities. Given that students receiving specially designed instruction are general education students first, the opportunity to participate in extracurricular activities automatically applies. To create an individualized plan, the district is required to provide a statement that describes when this automatic opportunity to participate would **not** apply.

While the distinction may seem small, the fact that a student *will* participate in extracurricular activities is implied under IDEA, but to what extent the student will *not* participate, provides districts the ability to create an individualized plan for each student based on their unique needs.

The student's IEP fails to explain to what extent the student will not participate with non-identified peers. Therefore, the student has no restriction on participation in extracurricular activities and must have the same opportunity to participate, and in the same manner, as non-identified peers.

Next, the investigator must review the events that occurred on both PE Day and Farm Day, and the student's opportunity to participate in each event.

On both days in question, the district admits the student was not provided the opportunity to be in a group with non-identified peers. Ms. Pena confirms the student was intentionally placed with her and only other identified peers. In interviews with Mrs. Wolken, she states the student was purposefully placed with an adult who understood his needs and his behavior plan. She notes the student did participate in larger groups, with non-identified peers, for various events on both days. A record of each day's events shows all third-grade students were divided into small groups and those groups participated individually with each other and in larger all-student group activities, such as tug of war. However, participation in a large group activity does not absolve the district from the obligation to provide the student access to non-identified peers, without restrictions, for the entire extracurricular activity, as is required by the student's IEP. To accomplish this, the district should have allowed the student to participate in small groups with non-identified peers and in larger group activities with non-identified peers.

The student's BIP mentions "triggers" for the student, namely, "the presence of peers [the student] dislikes, activities [the student] does not want to participate in, whole group instruction." These triggers, identified through the FBA, are improved through the use of replacement behaviors, preventative strategies, intervention strategies, and consequences.

It appears the district may have attempted to reduce the student's triggers by creating small groups, allowing the student to choose lunch companions, considering the student's fear of riding the large bus, and placing the student with an adult who understood his Behavior Intervention Plan. However, not all these allowances follow the student's BIP.

The BIP permits the student to "opt-out" of non-preferred activities and take a break until the non-preferred activity is done. Records indicate the student was permitted to opt-out of eating lunch with the larger group, and of riding the large school bus. On a regular education day, the student would be required to utilize a red "X" icon to indicate his need for such breaks or opt-out choice. There is nothing in the record to indicate the student used the icon or requested a break. However, given the day's events were extracurricular activities, away from the typical school setting, some modifications to how the student requested his break are likely reasonable. Therefore, a violation of special education law, specifically, a failure to provide the student with the least restrictive environment, as related to the student eating lunch with the special education teacher, Ms. Gonzales, and choosing to ride in the van instead of the large bus, is not found, as the school was following the student's BIP.

The district further attempted to remove triggers for the student, by placing the student in small groups. However, the group the student was placed in not only failed to include any non-identified peers, but it also included a student with whom the student in this report has a known conflict, and one the parent specifically requested be separated from the student. This same student was included in the small group for both events and as a result, an altercation between the two students occurred on Farm Day which sent both back to the school and the ED room for the remainder of the day. When the parent confronted the Principal, Ms. Wire, about including this student and the student in this report in the same group, Ms. Wire stated the students were in the same class, the same program, and had similar schedules, implying that it would be impossible to avoid such interactions. This may be true to some extent on regular education days, but the district might have had more flexibility on field trips since the student's typical schedule would not be followed. Even if that were not the case, attempting to avoid known triggers does not relieve the district's obligation to allow the student to participate fully with non-identified peers in extracurricular activities as required by the student's IEP.

The record does reflect the student exhibited verbal aggression on Farm Day when engaging in a fight with another student, however, the BIP does not address this behavior through separation of non-identified peers. According to the BIP, school staff must offer breaks, provide clear directions, use visual cues, give the student physical space, offer private redirection,

model positive behavior, or, as a consequence, remove a privilege from the student. The BIP fails, however, to specify what that loss of privilege is, or when or how it will be utilized.

It is the district's position that the removal of the student, following the fight on Farm Day, which did include verbal aggression, was implementing the student's IEP/BIP. Since extracurricular activities, such as field trips are often considered a privilege, the student's removal from Farm Day is likely following the student's BIP. Even if it was not following the BIP, the Kansas Special Education Process Handbook states that students receiving specially designed instruction are subject to discipline in a similar manner as non-identified students so long as IDEA disciplinary protections are applied. (pg. 191-193; 34 C.F.R.300.530(d)(3); K.S.A. 72-6115(a)). Since the student engaged in a physical and verbal altercation with another student, the district may discipline the student, as it would any other student, in a similar situation. Therefore, a violation of special education laws, specifically, a violation of the student's least restrictive environment, is not found regarding the removal of the student during Farm Day due to a fight with another student.

However, based on the language in the student's IEP, the student should have been permitted to participate in PE Day and Farm Day with non-identified peers to the same extent, and in the same manner as non-identified peers. Instead, the record shows the student was intentionally separated from non-identified peers for some, if not most, of both days in question. The school chose to make changes to the student's day, seemingly based on staff availability and convenience, rather than based on the student's behavior since the student was separated from non-identified peers at the start of each day – indicating that the separation from non-identified peers did not result from misbehavior during the trips. Further, the record fails to show any instance, during either day, in which the student appropriately requested a break (as permitted by the student's BIP), other than possibly at lunch or on the bus.

Therefore, the district did violate state and federal laws by failing to implement the student's IEP to the maximum extent possible, particularly that the student must be educated and participate with other non-identified peers in general education classes and extracurricular and other nonacademic activities to the same extent as non-identified peers.

Conclusion

Based on the foregoing, a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to implement the student's IEP to the maximum extent appropriate so that the student is educated and participates with other non-identified peers in general education classes and in extracurricular and other nonacademic activities i*s substantiated.*

Summary of Conclusions/Corrective Action

ISSUE ONE: Whether USD #413, violated state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to implement the student's IEP so that, to the maximum extent appropriate, the student is educated and participates with other non-identified peers in general education classes and in extracurricular and other nonacademic activities is substantiated.

1. CORRECTIVE ACTION:
    a. Within 20 calendar days of this report, USD #413 will submit a written statement to KSDE Special Education and Title Services (SETs) that it will comply with:
        i. Federal and state legal requirements at 34 C.F.R. 300.114(a)(2) and K.S.A. 72-3420(a), which required the district to ensure that to the maximum extent appropriate, students are educated with children who are non-disabled and only removed from the regular educational environment if the nature or severity of a student's disability is such the education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily;
        ii. ii. Federal and state legal requirements at 34 C.F.R. 300.320(a)(5) and K.S.A .72-3429(c)(5), which requires the district to ensure that the written description in the child's IEP explains the extent, if any, to which the child will not participate with non-disabled children in the regular class and in extracurriculars.
    b. Within 60 calendar days of the date of this report, the district must draft a written procedure by which school leadership will be responsible for tracking when a child with an IEP does not receive time in regular education classes and extracurricular activities, as the student's IEP requires (other than for removals due to disciplinary actions that are in compliance with state and federal special education law) and, if this happens for a time specified within the procedure, school leadership must contact Cooperative leadership to create a plan to ensure time in regular education classes and extracurricular activities is provided as required. The district must submit this draft written procedure to SETS for its review and approval.
    c. Once SETS approves of the written procedure, the district must implement this written procedure by communicating it to all relevant staff and providing staff with any templates for tracking that the procedure would require within 5 school days and sending to SETS the district communication, including templates for tracking the procedure within the same amount of time.

Investigator

Complaint Investigator:
Dr. Crista Grimwood

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).

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 #458
ON MAY 21, 2024

DATE OF REPORT JUNE 28, 2024

On May 21, 2024, --------- (hereafter "the mother," "the complainant," or "the parent") filed a formal complaint with the Kansas State Department of Education ("KSDE") alleging that USD 458 Public Schools ("USD 458," "the school," or "the respondent(s)") is not meeting their obligations under the federal Individuals with Disabilities Education Act in providing special education services to her child, --------- ("the child"). Brian Dempsey served as investigator for the complaint.

Investigation of Complaint

K.A.R. § 91-40-5(c)(5) requires that the complaint investigation include, ". . . [a] discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded." A telephone interview with the mother was conducted by investigator Brian Dempsey on Wednesday, May 29, 2024. The mother permitted KSDE legal intern Jennifer Halbhuber to observe this interview. During this conversation, the mother provided additional information, verified her claims, and added specificity to her allegations. She did not contest how the investigator framed the issues. Kansas regulations require that a complaint, ". . . allege a violation that occurred not more than one year before the date the complaint is received . . ." K.A.R. § 91-40-51(b)(1). Owing to this limitation, the investigator clarified to the mother that KSDE may only make findings on issues within the previous 365 days leading up to the complaint's filing: May 21, 2023. The mother verbalized understanding of this limitation.

A Zoom interview was conducted with Jennifer Martin, Director of Special Education (hereafter "the SPED director") for the Tonganoxie / USD 458 Special Education Cooperative (hereafter "the Cooperative"), on June 5, 2024. This interview was led by investigator Brian Dempsey and observed by KSDE legal intern Jennifer Halbhuber. During this conversation, the SPED director provided additional information and clarified some historical data. The investigator explained that KSDE may only make findings on issues within the past 365 days leading up to the complaint's filing, but may request earlier documentation to provide context to the issues. The SPED director verbalized understanding. The SPED director promptly provided the investigator with requested materials and answers to queries. She followed up with relevant personnel to seek clarity when necessary and provided additional documentation via email.

The following documents were provided by the parties and reviewed by KSDE during its investigation. As the parents share an email address, no effort was made to distinguish which parent received the information (primarily emails), but most submissions indicate the mother as the primary recipient. Because some documents were reproduced in multiple places, efforts were made to preserve a record of each location the data appeared in. As USD 458 submitted two rounds of materials chronicled by letter, the first round is indicated with a (1), and the second round is indicated by a (2); e.g., "Document X(2)" would be Document X from USD 458's second round of submissions. It should be noted that, though email chains appear only as a single entry, if the email is listed, the entire submission was considered, including earlier interactions in the chain. Documents dated before May 21, 2023, were considered only for their relevancy toward the child's provision of FAPE on and after May 21, 2023.

Emails

Date: January 2, 2023
From: Bailey Edgar
To: Parents
Subject: FINALIZED: [Child's First Name] NOM.pdf
Attached: NOM.pdf

Date: January 13, 2023
From: Bailey Edgar
To: Parents
Subject: Re: Additional OT Information

Date: January 13, 2023
From: Mother
To: Donna Foy
Subject: [Child's Name]
Attached: [Child's Name].pdf

Date: January 13, 2023
From: Dawnyale Jones
To: Parents
Subject: 'DS

Date: January 13, 2023
From: Donna Foy
To: Parents
Subject: Independent Educational Evaluation
Attached: Criteria for Independent Educational Evaluations Revised (1)(1)(1).pdf;
Kansas Special Education Process Handbook.pdf AKA: Document N(1) AKA2: Document N(2)

Date: January 19, 2023
From: Bailey Edgar
To: Parents
Subject: [Child's Name] IEP Paperwork from 12/13 & 1/12
Attached: [Child's Name] PWN from 12.13.22 Meeting.pdf;
{Child's Name] PWN from 1.12.23 Meeting.pdf;
[Child's Name] Evaluation Summary Report 12.13.22.pdf;
[Child's Name] IEP Documents.pdf AKA: Document W(2)

Date: January 19, 2023
From: Bailey Edgar
To: Parents
Subject: ACTION NEEDED: [Child's Name] Evaluation Summary Report 12.13.22.pdf

Date: January 20, 2023
From: Bailey Edgar
To: Parents
Subject: 'REMINDER: ACTION NEEDED:
[Child's Name] Evaluation Summary Report 12.13.22.pdf

Date: January 23, 2023
From: Bailey Edgar
To: Parents
Subject: 'REMINDER: ACTION NEEDED: [Child's Name] Evaluation Summary Report 12.13.22.pdf

Date: January 26, 2023
From: Michelle Garcia
To: Amy Garver
Subject: Re: Draft Report + Parent Rights

Date: January 27, 2023
From: Michelle Garcia
To: Parents
Subject: Daily Agenda

Date: January 27, 2023
From: Michelle Garcia
To: Parents
Subject: Draft Amendment IEP
Attached: [Child's Name]_Review_IEP_01_27_2023.pdf

Date: January 30, 2023
From: Donna Foy
To: Parents
Subject: Re: Independent Educational Evaluation

Attached: [Child's Initials] ST services dates 2022_2023.pdf;
[Child's Initials] Log (screen, assessment).pdf

Date: January 30, 2023
From: Bailey Edgar
To: Parents
Subject: 'REMINDER: ACTION NEEDED: [Child's Name] Evaluation Summary Report 12.13.22.pdf

Date: January 31, 2023
From: Dawnyale Jones
To: Parents
Subject: Re: Health

Date: January 31, 2023
From: Scott Hornbaker
To: Parents
Subject: Re: Typing Program in 6th Grade Computers Class

Date: February 1, 2023
From: Michelle Garcia
To: Parents
Subject: [Child's First Name]'s Writing Samples
Attached: Screen Shot 2023-02-01 at 3.42.30 PM.png; Screen Shot 2023-02-01 at 3.44.32 PM.png

Date: May 26, 2023
From: brightsped
To: Parents
Subject: 4th Q IEP Progress report.
Attached: J5FZHML1285.u306.pdf

Date: August 31, 2023
From: Peter Lelich
To: Parents
Subject: Meeting Agenda
Attached: Agenda 9-1-23.pdf

Date: September 7, 2023
From: Heidi Hill
To: Parents
Subject: Amended Draft IEP
Attached: [CHILD'S INITIALS] Amended Draft IEP.pdf

Date: September 25, 2023
From: Heidi Hill
To: Parents
Subject: Re: DRAFT AMENDED IEP #2

Date: October 25, 2023
From: Heidi Hill
To: Parents
Subject: Re: Notice of Meeting

Date: October 26, 2023
From: Peter Lelich
To: Parents
Subject: PWN/Services
Attached: G3KZKyX963.u384.pdf

Date: October 31, 2023
From: Heidi Hill
To: Parents
Subject: Draft IEP
Attached: [CHILD'S INITIALS] DRAFT 11_2003.pdf

Date: December 12, 2023
From: Dawnyale Jones
To: Parents
Subject: Re: IEP Minutes
Attached: [Child's Name] 9_1_2023.pdf;
[Child's Name] 11_3_2023.pdf

Date: December 14, 2023
From: Heidi Hill
To: Annette Gleason
Subject: Fwd: Electronic Communication

Date: December 14, 2023
From: Heidi Hill
To: Parents
Subject: Re: Electronic Communication

Date: March 23, 2024
From: Heidi Hill
To: Parents
Subject: 3rd Quarter Progress Report
Attached: LSDWPHj66e.u171.pdf

Date: March 28, 2024
From: Jackie Crisp
To: Jennifer Martin
Subject: Re: records

Date: March 29, 2024
From: Heidi Hill
To: Parents
Subject: Re: [Child's First Name]
Attached: [CHILD'S INITIALS] IEP and Signed signature bundle 2023.pdf

Date: March 29, 2024
From: Jackie Crisp
To: Parents
Subject: Re: records request
Attached: D.S 2022 eval.pdf; D.S. 2021-22.pdf; D.S 2023.pdf; D.S. 2020.pdf

Date: May 23, 2024
From: Heidi Hill
To: Parents
Subject: 4th Quarter Progress Report
Attached: U5FWXwP19cb.u171.pdf

Date: May 29, 2024
From: Tyler Bacon
To: Parents

Subject: Re: Records Request
Attached: Google Drive link (empty files)

Date: May 29, 2024
From: Parents
To: Investigator
Subject: FW: Meeting Agenda
Attached: Agenda 9-1-23.pdf

Date: May 29, 2024
From: Parents
To: Investigator
Subject: FW: PWN/Services
Attached: G3KZKyX963.u384.pdf

Date: May 29, 2024
From: Parents
To: Investigator
Subject: FW: Docusign
Attached: Screenshot_29-5- 2024_10594_dochub.com .jpeg;
Notice of Meeting.pdf _ DocHub.pdf;
[CHILD'S INITIALS]. Evaluation Summary.pdf;
Screenshot_29-5- 2024_105948_dochub.com.jpeg

Date: May 29, 2024
From: Parents
To: Investigator
Subject: FW: [Child's First Name]
Attached: [CHILD'S INITIALS] DOCHUB SCREENSHOT 32924.png;
[CHILD'S INITIALS] IEP and Signed signature bundle 2023.pdf

Date: May 29, 2024
From: Parents
To: Investigator
Subject: FW: Notice of Meeting
Attached: [CHILD'S INITIALS] NOM 2023.pdf

Notices, Evaluations & IEPs

Date: October 23, 2019
Document: PWN
AKA: [CHILD'S INITIALS]. 2020.pdf

Date: December 28, 2019
Document: NOM
AKA: [CHILD'S INITIALS]. 2020.pdf

Date: January 27, 2020
Document: NOM
AKA: [CHILD'S INITIALS]. 2020.pdf

Date: February 20, 2020
Document: PWN
AKA: [CHILD'S INITIALS]. 2020.pdf

Date: August 14, 2022
Document: NOM
AKA: [CHILD'S INITIALS]. 2021-22.pdf
AKA2: Document A(1)
AKA3: Document A(2)

Date: August 15, 2022
Document: PWN
AKA: [CHILD'S INITIALS]. 2021-22.pdf
AKA2: Document B(1)
AKA3: Document B(2)

Date: August 15, 2022
Document: Excusal
AKA: [CHILD'S INITIALS]. 2021-22.pdf

Date: September 16, 2022
Document: PWN AKA: Document C(1)
AKA2: Document C(2)

Date: October 28, 2022
Document: NOM
AKA: Document D(1)
AKA2: Document D(2)

Date: November 8, 2022
Document: PWN
AKA: Document E(1)
AKA2: Document E(2)

Date: November 22, 2022
Document: NOM
AKA: [Child's Name] IEP Documents.pdf
AKA2: [CHILD'S INITIALS] 2023.pdf
AKA3: Document F(1)
AKA4: Document F(2)
AKA5: Document Z(2)

Date: December 13, 2022
Document: IEP Amendment Proposal
AKA: [Child's Name] IEP Documents.pdf

Date: December 13, 2022
Document: IEP Amendment Between Annual IEP Meetings
AKA: [Child's Initials] 2023.pdf

Date: December 13, 2022
Document: PWN
AKA: [Child's Name] PWN from 12.13..22 Meeting.pdf
AKA2: [Child's Initials] 2023.pdf
AKA3: Document H(1)
AKA4: Document D2(2)

Date: January 2, 2023
Document: NOM
AKA: [Child's First Name] NOM.pdf

AKA2: [Child's Name] IEP Documents.pdf
AKA3: [Child's Initials] 2023.pdf
AKA4: Document G(1)
AKA5: Document G(2)

Date: January 12, 2023
Document: PWN
AKA: [Child's Name] PWN from 1.12.23 Meeting.pdf
AKA2: [Child's Initials] 2023.pdf AKA3:
Document H(1)
AKA4: Document H(2)

Date: August 22, 2023
Document: NOM AKA: Notice of Meeting.pdf _
DocHub.pdf

Date: October 24, 2023
Document: NOM
AKA: Attached to "FWD: Electronic Communication"
AKA2: [Child's Initials] NOM 2023.pdf
AKA3: Document I(1)
AKA4: Document I(2)

Date: October 26, 2023
Document: PWN
AKA: G3KZKyX963.u384.pdf

Date: November 3, 2023
Document: PWN
AKA: Attached to "FWD: Electronic Communication"
AKA2: Document J(1)
AKA3: Document J(2)

Date: February 20, 2020
Document: Evaluation/Eligibility Report
AKA: D.S. 2020.pdf

Date: February 20, 2020
Document: Annual IEP AKA: D.S. 2020.pdf

Date: August 15, 2022
Document: Interim IEP
AKA: D.S. 2021-22.pdf
AKA2: Document U

Date: November 8, 2022
Document: Annual IEP AKA:
Document X(2)

Date: December 13, 2022
Document: Evaluation/Eligibility Report
AKA: [Child's Name] Evaluation Summary Report
12.13.22.pdf

AKA2: D.S 2023.pdf
AKA3: [CHILD'S INITIALS]. Evaluation Summary.pdf
AKA4: Document M(1)
AKA5: Document M(2)

Date: December 13, 2022
Document: Amended IEP AKA: D.S 2023.pdf
AKA2: Document K(1)
AKA3: Document K(2)
AKA4: Document Z(2)

Date: December 15, 2022
Document: Evaluation Report
AKA: D.S 2022 eval.pdf

Date: January 27, 2023
Document: Draft IEP
AKA: [Child's Name] Review_IEP_01_27_2023 .pdf

Date: September 7, 2023
Document: Draft IEP
AKA: [CHILD'S INITIALS] Amended Draft IEP.pdf

Date: October 31, 2023
Document: Draft IEP
AKA: [CHILD'S INITIALS] DRAFT 11_2003.pdf

Date: March 29, 2024
Document: Annual IEP (11-03-23)
AKA: [CHILD'S INITIALS] IEP and Signed signature bundle
2023.pdf
AKA2: Document A2(2)

Date: May 29, 2024
Document: Docusign Screenshot
AKA: Screenshot_29-5- 2024_10594_dochub.com .jpeg

Date: May 29, 2024
Document: Docusign Screenshot
AKA: [CHILD'S INITIALS] DOCHUB SCREENSHOT
32924.png

Date: May 29, 2024
Document: Docusign Screenshot (2nd)
AKA: [CHILD'S INITIALS] DOCHUB SCREENSHOT
32924.png

Date: June 3, 2024
Document: Attendance Detail Report 08/16/2022-
05/24/2024
AKA: Document B2(2)

Other

Date: November 17, 2016
Document: Psychoeducational Report
AKA: Document C2(2)

Date: 2019-2020
Document: Progress Report
AKA: [CHILD'S INITIALS]. 2020.pdf

Date: November 1, 2019
Document: Electronic Communication

AKA: [CHILD'S INITIALS]. 2020.pdf

Date: February 20, 2020
Document: Electronic Communication
AKA: [CHILD'S INITIALS]. 2020.pdf

Date: February 20, 2020
Document: Meeting Notes
AKA: [CHILD'S INITIALS]. 2020.pdf

Date: February 20, 2020
Document: Individualized Nursing Care Plan
AKA: [CHILD'S INITIALS]. 2020.pdf

Date: February 28, 2020
Document: Assistive Technology Access Help Form
AKA: [CHILD'S INITIALS]. 2020.pdf

Date: 2022-2023
Document: Progress Report
AKA: Document L(1)
AKA2: Document L(2)

Date: August 15, 2022
Document: Electronic Communication
AKA [Child's Initials]. 2021-22.pdf

Date: August 15, 2022
Document: Medicaid Consent
AKA: [CHILD'S INITIALS]. 2021-22.pdf
AKA2: Document C(2)
AKA3: Document U(2)

Date: August 15, 2022
Document: Meeting Notes
AKA[Child's Initials] 2021-22.pdf
AKA2: Document P(1)
AKA3: Document P(2)

Date: September 16, 2022
Document: Medicaid Consent
AKA: Document C(1)

Date: November 8, 2022
Document: Meeting Notes
AKA: Document O(1)
AKA2: Document O(2)

Date: November 8, 2022
Document: Medicaid Consent
AKA: Document U(2)

Date: November 10, 2022
Document: Electronic Communication
AKA: Document E(1)
AKA2: Document E(2)

Date: December 13 2022
Document: Meeting Notes
AKA: [Child's Name] IEP Documents.pdf
AKA2: D.S 2023.pdf
AKA3: Document Q(1)
AKA4: Document Q(2)

Date: December 13, 2022
Document: Electronic Communication
AKA: D.S 2023.pdf
AKA2: Document Z(2)

Date: 2023-2024
Document: Progress Report
AKA: Document L(1)
AKA2: Document L(2)

Date: January 12, 2023
Document: Meeting Notes
AKA: [Child's Name] IEP Documents.pdf
AKA2: D.S 2023.pdf
AKA3: Document R(1)
AKA4: Document R(2)

Date: January 13, 2023
Document: Letter to Donna Foy
AKA: [Child's Name].pdf

Date: January 30, 2023
Document: [Child's Name] Service Dates for 2022/2023
AKA: [CHILD'S INITIALS] ST services dates 2022_2023.pdf

Date: January 30, 2023 Document: Untitled Table
AKA: [CHILD'S INITIALS] Log (screen, assessment).pdf

Date: February 1, 2023
Document: Screenshot
AKA: Screen Shot 2023-02-01 at 3.42.30PM.png

Date: February 1, 2023 Document: Screenshot
AKA: Screen Shot 2023-02-01 at 3.44.32PM.png

Date: May 26, 2023
Document: Progress Report (2022-2023)
AKA: J5FZHML1285.u306.pdf

Date: August 31, 2023
Document: Meeting Agenda
AKA: Agenda 9-1-23.pdf

Date: September 1, 2023
Document: Meeting Notes
AKA: [Child's Name] 9_1_2023.pdf
AKA2: Document S(1) AKA3: Document S(2)

Date: October 31, 2023
Document: Progress Report (11/2022 –11/2023)
AKA: Attached to "FWD: Electronic Communication"

Date: November 3, 2023
Document: Medicaid Consent
AKA: Attached to "FWD: Electronic Communication"
AKA2: Document A2(2)

Date: November 3, 2023
Document: Electronic Communication

Consent
AKA: Attached to "FWD: Electronic Communication"

Date: November 3, 2023
Document: Meeting Notes
AKA: Attached to "FWD: Electronic Communication"
AKA2: [Child's Name] 11_3_2023.pdf AKA3: Document T(1)
AKA4: Document T(2)

Date: March 23, 2024
Document: 3rd Quarter Progress Report
AKA: LSDWPHj66e.u171.pdf

Date: May 23, 2024
Document: 4th Quarter Progress Report
AKA: U5FWXwP19cb.u171.pdf

Date: May 29, 2024
Document: AccountStatus Sheet
AKA: Recovered from "re: Records Request"
Google Drive link

Background Information

The child is described as a charming, independent 13-year-old boy who will be going into the eighth grade in the Fall. (Annual IEP, Nov. 3, 2023.) He has received speech therapy services and occupational therapy services through the medical model since the age of two. (Psychoeducational Report, Nov. 17, 2016, at 2.) By age six, the child was diagnosed with multiple food allergies, Apraxia of Speech, and Sensory Integration Disorder. (*Id.*) He was issued a Certificate of Incapacity by the state of Indiana. (*Id.* at 3.) Around kindergarten, the child's style of motor activity was described as, ". . . similar to other boys his age." (*Id.*) Primary concerns were then described as "academic" in nature. (*Id.*)

In the state of Indiana, the child received special education services since (at least) November of 2017 under the eligibility categories of a Specific Learning Disorder, Language Impairment, and Speech Impairment. (Evaluation/Eligibility Report, Feb. 20, 2020.) In first grade, February of 2018, he moved to Kansas and began attending Basehor Elementary School. (*Id.*) The child commenced third grade at Linwood Elementary School in August of 2019. (*Id.*)

By February 2020 of his fourth-grade year, asthma, eczema, and a history of hospitalizations were added to the child's record, and Linwood Elementary School placed him under an Individualized Nursing Care Plan. (Individualized Nursing Care Plan, Feb. 20, 2020.) An eligibility reevaluation was conducted on February 20, 2020. (Evaluation/Eligibility Report, Feb. 20, 2020.) At that time, no fine or gross motor concerns were yet reported in the IEP by either the parents or his providers. (*Id.*) The child was qualified for special education services under the primary eligibility category of a Specific Learning Disability in reading fluency and comprehension, and the secondary eligibility category of Speech and Language Disabilities. (*Id.*) He was qualified with eligibility for Extended School Year (ESY) services to retain his curriculum over the summer break. (*Id.* at 6.)

Eight days later, on February 28, 2020, Special Education Consultant Jamelle Zablow- Moloney submitted an "Assistive Technology Access Help Form" on behalf of the child which indicated fine motor skills as an area of concern. (Assistive Technology Access Help Form, Feb. 20, 2020.) Shortly after these events, owing to the COVID-19 pandemic and the child's history of asthma, the parents elected to remove the child from the general education setting and, instead,

temporarily homeschool the child and provide for services therein. (Interview with Parent, May 29, 2024.)

August 15, 2022: Interim IEP Meeting

In August of 2022, the child reentered USD 458 as a sixth grader. (Interim IEP, Aug. 15, 2022.) An IEP meeting was conducted on August 15, 2022 to set up the Interim IEP while the team gathered more data. (Meeting Notes, Aug. 15, 2022.) In her complaint, the mother alleged she did not receive a Notice of Meeting for this meeting. (Complaint, at 2.) The record reflects that a Notice of Meeting was generated on August 14, 2022 and provided to the parent on the same day of the meeting, August 15, 2022. (Prior Written Notice, Aug. 14, 2022.) The parent signed the document and checked the box "yes" to waive her 10-day notification entitlement. (*Id.* at 2.)

This meeting was attended by the mother, Michelle Garcia (SPED Instructor), Dawnyale Jones (Speech and Language Pathologist), and Jana Bremenkamp (Psychologist). (Interim IEP, Aug. 15, 2022, at 2.) There is a valid Notice of Excusal on the record for Amy Garver, LEA Representative (Principal). (Notice of Excusal, Aug. 15, 2022.) However, the child's General Curriculum Instructor was not present at this meeting. (Interim IEP, Aug. 15, 2022, at 2.) There is no corresponding notification on the record excusing a General Curriculum Instructor. (Interim IEP, Aug. 15, 2022, at 2.)

During this meeting, the parent(s) advised the team that the child would be attending outpatient speech and occupational therapy services every Tuesday at 8:30 a.m., during which time he would miss class. (Meeting Notes. Aug. 15, 2022.) Otherwise, no occupational therapy concerns were attributed to either party within the meeting notes at this time. (*Id.*)

A letter written by the mother on January 13, 2023, however, contradicts the meeting notes' accounting of the conversation. (Letter from Parent, Jan. 13, 2023.) *"I raised concerns about [the child's] motor planning at school since having him home from 2020-2022, we noticed the number of external aids (visual, tactile and auditory) he was requiring in order to complete his assignments. This took place at the initial, meeting when we implemented the old IEP from Linwood Elementary Schoo*l." (Letter from Parent, Jan. 13, 2023, at 2.)

Regardless, the accounts do agree that, during this meeting, the parent was advised the child's three-year evaluation was coming up, she would need to sign consent to reevaluate, and that document would be forthcoming "at a later date." (*Id.*; Meeting Notes, Aug. 15, 2022, at ¶ 2.) Under the Interim IEP, the child was to receive 20 minutes three times a week of direct speech and language services outside the classroom and 86 minutes five times a week of direct services inside the general curriculum classroom. (Interim IEP, Aug. 15, 2022, at 8.)

During this meeting, it was noted that the child did not like being pulled from class to attend services, and follow-up would be conducted with the school nurse and the child's parents to better gauge the child's health needs. (Meeting Notes, Aug. 15, 2022.) The IEP produced by this meeting addressed speech, language, reading, written expression, and health exceptionalities.

(Interim IEP, Aug. 15, 2022 at 3.) It indicates the child requires both text to speech and speech to text technology to read and write. (*Id.* at 6.) The child was marked eligible for ESY services and state assessment accommodations, then placed back under an Individual Nursing Care Plan. (*Id.* at 6-7, 10.)

Between Meetings

In her letter, the next event the mother describes is that, prior to receiving the promised consent form, her child was allegedly pulled from a general education class without her foreknowledge or consent by Megan Nolla to conduct a Decoste Writing Protocol assessment. (Letter from Parent, Jan. 13, 2023, at 2.) In an email to the parent, Donna Foy clarified that on September 9, 2022, the child was given a screener in the general education setting, and on October 5, 2022, the child was given the Decoste Writing Protocol outside of the general education setting. (Email to parent, Subject: Re: Independent Educational Evaluation, Jan. 30, 2023.) The parent's letter describes alerting the school to her upset and being provided with a "retroactive consent form." (Letter from Parent, Jan. 13, 2023, at 3..) Jana Bremenkamp provided Prior Written Notice to conduct a reevaluation on Friday, September 16,, 2022 via Dochub, which was signed the same day. (Prior Written Notice, Sept. 16, 2022.) The reevaluation sought to gather new and existing data in the areas of Health/Motor Ability (Fine Motor), Academic Performance (Reading and Written Expression), Communicative Status (Articulation and Language), and Assistive Technology. (*Id.* at 2.)

November 8, 2022: Annual IEP Meeting

A Notice of Meeting was generated by Michelle Garcia on October 28, 2022, and delivered by email alerting the parents to an upcoming November 8, 2022 IEP meeting. (Notice of Meeting, Oct. 28, 2022.) Topics to be discussed at this meeting included eligibility, possible changes, and the child's annual review. (Notice of Meeting, Oct. 28, 2022.) Concerningly, the Meeting Notes indicate parental confusion regarding the purpose of the meeting; the emailed document is hand-signed by both parents on November 10, 2022 (alongside other procedural documents also signed on that day); and, despite the 11-day lead time, the parents checked the box to waive their 10-day notification entitlement. (*Id.* at 2; Meeting Notes, Nov. 8, 2022.) However, that both parents were able to attend this in-person meeting and prepare hardcopies of printouts and outside evaluations clearly demonstrates that some form of meaningful advance notification was provided. (Meeting Notes, Nov. 8, 2022.) The parent's complaint indicates she received this notification. (Complaint, at 2.)

In attendance of this meeting were both parents, Dawnyale Jones (Speech Language Pathologist), Becky Kazmaier (Regular Curriculum: 7th grade ELA and LEA Representative), Michelle Garcia (SPED teacher and Evaluation Interpreter), and Jaclyn Naster (Regular Curriculum: 6th grade ELA). (Annual IEP, Nov. 8, 2022, at 2; Email from SPED Director: Re: 24FC458-004 Follow-up Questions, June 14, 2024.) During this meeting, the mother shared her

belief that the child had Global Apraxia. (*Id.*) At this time, the child had not yet been diagnosed with this motor disability; he would receive an official medical diagnosis of Developmental Coordination Disorder (A.K.A. "Global Apraxia") on November 29, 2022 by Dr. Chad Sharky at Virtue Medical in Lee's Summit, Missouri. (Evaluation/Eligibility Report, Dec. 13, 2022.)

During the meeting, the mother shared printouts about Global Apraxia with the team and offered suggestions for accommodations she felt were important to his education. (Meeting Notes, Nov. 8, 2022.) The mother brought occupational therapy evaluations conducted on the child by an outside agency she worked for. (*Id.*) However, she would not furnish copies and would not permit these evaluations to be shared with an absent provider: Megan Nolla, practicing Occupational Therapist for the Cooperative. (*Id.*) Instead, the mother expressed she wanted to see what data the school would come up with. (*Id.*; Interview with Parent, May 29, 2024.)

This statement did not yet yield either an evaluation of motor skills or a Prior Written Notice refusing to evaluate, though again, consent to evaluate fine motor skills had already been obtained two months prior. (Annual IEP, Nov. 8, 2022.) Prior Written Notice was provided, however, to permit current services (described as 86 minutes/5x/weekly direct in class and 20 minutes/2x/weekly direct out of class) to remain in place while awaiting reevaluation results. (Prior Written Notice, Nov. 8, 2022, at 2.) That Notice incorrectly checked the box indicating the changes to be made were non-material, not requiring a parental signature. (*Id.* at 2.) It, too, was hand-signed on November 10, 2022. (*Id.* at 3.) This Prior Written Notice, however, also incorrectly describes the services put in place and dropped by the team. (*Id.*; Annual IEP, Nov. 8, 2022.)

Based on the information provided by the parent during this meeting, the team decided to add an executive functioning goal to the child's IEP. (Meeting Notes, Nov. 8, 2022.) Because the child was already missing so much general education time, the team decided to decrease his speech therapy services from three times a week to twice a week. (*Id.*) The parent requested additional accommodations she felt were important: Extended time to complete assignments missed owing to outside services; extended processing time; read aloud for advance level texts; and a separate setting to complete assessments. (*Id.*) All four of these proposals were accepted. (Annual IEP, Nov. 8, 2022.) Math skills were not mentioned in the meeting notes. (Meeting Notes, Nov. 8, 2022.)

As mentioned, the IEP produced by this meeting made several changes to the child's curriculum that were not indicated in the Prior Written Notice issued on that date, not mentioned in the Meeting Notes, and not justified with attached data. (Meeting Notes, Nov. 8, 2022; Annual IEP, Nov. 8, 2022 [Document X].) For example, though the information contained within the "Health" section is virtually identical to the August 15, 2022 IEP and there were no health providers invited to or in attendance of the November 8, 2022 meeting, the new IEP drops the child from his Individual Nursing Care Plan without an explanation. (Cf. Interim IEP,

Aug. 15, 2022, at 5-6, with Annual IEP, Nov. 8, 2022 at 5-6.) Similarly, the child is marked as ineligible for Extended School Year services under the November 8, 2022 IEP without an explanation or record indicating its discussion. (Cf. Interim IEP, Aug. 15, 2022, at 6, with Annual IEP, Nov. 8, 2022, at 6; Meeting Notes, Nov. 8, 2022.) Though, as mentioned earlier, the Prior Written Notice was signed, that the meeting notes make no mention of these changes and the Notice document did not indicate these changes makes it unclear whether that consent was informed as to these specific changes in placement. (Prior Written Notice, Nov. 8, 2022.) However, the parent has not vocalized any concern to KSDE regarding these specific placement decisions. (Interview with Parent, May 29, 2024; Complaint.)

The IEP produced by this meeting indicates the parent's concerns are with, ". . . executive functioning, coordination with visual/motor, fine motor, and concerns with global apraxia that impact his everyday functional and academic skills in the general education setting." (Annual IEP, Nov. 8, 2022, at 3.) It checked the boxes to address speech, language, reading, math (new), written expression, and health exceptionalities. (*Id.*) Both fine motor and gross motor skills are left unchecked. (*Id.*)

Twenty minutes of direct service time was added to the IEP to incorporate the addition of math to be served from December 13, 2022 until November 7, 2023. (*Id.* at 9.) Contrary to the signed Prior Written Notice provided on this same date, this addition brought the child's promised services to 106 minutes five days a week of direct services in the general curriculum classroom and 20 minutes twice a week of direct Speech and Language services outside of the general curriculum classroom. (*Id.*) The team decided to reconvene for the December evaluation/eligibility meeting to make further placement decisions. (Meeting Notes, Nov. 8, 2022.)

December 13, 2022: Amendment Proposal Meeting

After waiting a short interval to accrue data, a Notice of Meeting was generated on November 22, 2022, to invite the parents to an upcoming eligibility/amendment meeting on December 13, 2022. (Notice of Meeting, Nov. 22, 2022.) The notification was delivered by Bailey Edgar via email and signed by the mother that same day. (*Id.* at 2.) As mentioned earlier, just prior to this meeting, November 29, 2022, the child received a diagnosis of Developmental Coordination Disorder from Dr. Chad Sharky at Virtue Medical in Lee's Summit, Missouri. (Evaluation/Eligibility Report, Dec. 13, 2022, at 1.) An Evaluation/Eligibility Report was completed and the meeting conducted on December 13, 2022. (*Id.*) In attendance was the mother, Morgan Panovich (Regular Curriculum), Michelle Garcia (SPED Instructor), Bailey Edgar (Evaluation Interpreter), Scott Hornbaker (LEA Representative), Dawnyale Jones (Speech Language Pathologist), and Megan Nolla (Occupational Therapist). (*Id.* at 11.)

The Evaluation/Eligibility Report generated by this meeting reviewed both new and old data taken from research-based interventions, current assessments, parent reports, classroom

observations, and provider observations. (Evaluation/Eligibility Report, Dec. 13, 2022, at 1.) At this meeting, the mother shared a copy of Virtue Medical's diagnosis of Developmental Coordination Disorder. (Meeting Notes, Dec. 13, 2022.) Again, though she brought a copy of the outside evaluations (a Beery VMI and a BOT-2) conducted on her child, she would not allow the team to use these evaluations as the basis for making any decision regarding her child's placement. (*Id.*) The child's diagnosis of Developmental Coordination Disorder was added to his record. (Evaluation/Eligibility Report, Dec. 13, 2022, at 1.)

In the area of Health/Physical/Motor/Sensory, the child was evaluated using teacher interview, parent interview, student interview, observations, informal penmanship probes, a record review, and the Decoste Writing Protocol. (*Id.* at 2-3.) Data collected revealed the child was often falling behind in class owing, in part, to his motor disability's impact on his ability to produce writing. (*Id.* at 2.) The report describes the Decoste Writing Protocol as a, "*. . . formative assessment tool used to identify factors that affect an individual student's ability to produce writing . . . to make more informed decisions about instructional strategies and the appropriate use of technology to meet classroom demands. Using the Decoste Writing Protocol, a student's performance is compared across conditions, not to other students.*" (*Id.* at 2.)

The child's category of eligibility remained set to a Specific Learning Disability under the qualifying categories of Basic Reading Skills, Math Calculation, and Written Expression. (*Id.* at 8.) He also met criteria for the secondary eligibility category of a Speech or Language Disability. (*Id.*) The box disqualifying "visual, hearing, or motor impairments" is checked "no." (*Id.*)

Data collected indicated that the child qualified for occupational therapy services, so the team commenced discussion what those would look like. (Meeting Notes, Dec. 13, 2022.) The school proposed 15 minutes of indirect consult occupational therapy services once a month. (Prior Written Notice, Dec. 13, 2022.) Forming the basis for this proposal were the Kaufman Tests of Educational Achievement (3rd) (which were a part of his reevaluation In Academics), progress monitoring, classroom assessments, grades, attendance, state assessments, and district assessments. (*Id.* at 3.)

The mother indicated she thought the proffered service model was inappropriate. (Meeting Notes, Dec. 13, 2022.) She expressed her belief that consult-based services should be provided as supplementary services to a direct delivery model, not as standalone services. (*Id.*) The mother requested 20 minutes of direct occupational therapy services one time a week. (*Id.*; Letter from Parent, Jan. 13, 2023.) USD 458's Occupational Therapist, Megan Nolla, explained she felt the consult model was most appropriate because of the child's embarrassment at being pulled out of class and her belief that the child needs to work on problem solving skills, which are better addressed through the consult model. (Meeting Notes, Dec. 13, 2022, at 2.) Additionally, the team had already just added more time away from the general education setting for math support, and the team felt that the harm which would come

from the child missing anymore class outweighed the risk of not providing direct occupational therapy services. (Prior Written Notice, Dec. 13, 2022, at 3.)

The mother disagreed with this plan of action, and this notice was left unsigned. (*Id.*; Dochub Screenshot.) The school additionally provided an IEP Amendment consent form alongside the Prior Written Notice, which was similarly returned unsigned. (*Id.*; IEP Amendment Proposal, Dec. 13, 2022.) The Evaluation Summary Report was sent through Dochub by Bailey Edgar, which was viewed by the mother but never signed. (Dochub Screenshot; Email to Parent: Dochub Reminder, Jan. 23, 2023.)

Despite this, the IEP was amended by this meeting. (Dec. 13, 2022.) Direct services were dropped from 106 minutes / 5x a week back down to 86 minutes / 5x a week, a nonmaterial change in services of 19%. (Amended IEP, Dec. 13, 2022.) This amendment does not appear to have been intentional on behalf of USD 458. (See Email from Michelle Garcia: Re: Draft Report + Parent Rights, Jan. 26, 2023, "Do I need to email the complete IEP or are you doing that? Just want to make sure mom has her copy," and Email from Michelle Garcia: Draft Amendment IEP, Jan. 27, 2023, "*I wanted to make sure you have the draft amendment IEP. I guess it's not a real IEP until the PWN is signed. I just want you to know that he will be getting assistance in math and we will be monitoring his math goal.")* Rather, it seems that USD 458 mistakenly thought they had proposed 20 additional minutes of math services during the December 13, 2022, eligibility/amendment meeting as opposed to the November 8, 2022 annual meeting. (Cf. Prior Written Notice, Nov. 8, 2022, with Prior Written Notice, Dec. 13, 2022.) Neither party caught this error at this time. (See, generally, emails exchanged by parties in 2023, making no mention; Prior Written Notice, Dec. 13, 2022.) In 2022, the child's attendance report indicates this child experienced 23.66 excused absences, 1.86 unexcused absences, and 16 tardy periods. (Attendance Detail Report, June 3, 2024.)

Spring 2023

At some undocumented point between August 15, 2022, and January 4, 2023, the parent reportedly shared the results of her child's outside occupational therapy assessments with a provider, Michelle Garcia, with instructions to not share the information with the Cooperative's Occupational Therapist, Megan Nolla. (Email from Bailey Edgar: Re: Additional OT Information, Jan. 4, 2023.) Michelle Garcia, unsure what her professional obligations were as sole custodian of a student's protected information, sought guidance from the district regarding how to handle the situation. (Interview with SPED Director, June 5, 2024.) She was advised that any information given to her as a representative of the district must become a part of the child's educational record. (*Id.*) Thus, the files were added to the child's record, and the parent was alerted by email on January 4, 2023 what had transpired. (Email from Bailey Edgar: Re: Additional OT Information, Jan. 4, 2023.) The parent was reportedly upset by this. (Interview with SPED Director, June 5, 2024.) These outside occupational therapy evaluations were not provided to KSDE by either party to this action.

January 12, 2023: Parental Concerns Meeting

On January 2, 2023, a Notice of Meeting was generated by Bailey Edgar and delivered to the parents via Dochub alerting them to an upcoming IEP meeting on January 12, 2023. (Notice of Meeting, Jan. 2, 2023; Email to parents: FINALIZED: [Child's First Name] NOM.pdf, Jan. 2, 2023.) This notification was signed the same day it was generated. (Email to parents: FINALIZED: [Child's First Name] NOM.pdf, Jan. 2, 2023.) This parent-requested meeting was held to, "*continue OT eligibility discussion*." (Notice of Meeting, Jan. 2, 2023.) Though an Occupational Therapist did not appear on the list of invitees described by the Notice, an Occupational Therapist (Megan Nolla) did attend the meeting and contribute input. (Meeting Notes, Jan. 12, 2023; Letter from Parent, Jan. 13, 2023, at 2.)

During this meeting, the parent accused the OT of utilizing a screener without her permission, and again expressed that she felt her child's needs could only be effectively served through a direct service delivery model of occupational therapy. (*Id.*) Megan Nolla reiterated that the child should not miss out on more core classes, was self-conscious about being pulled out or utilizing push-in services, and the consult model offered the most opportunities to meet the child's need for repetition. (*Id.*) The parent reiterated her request for 20 minutes / 1x a week of direct occupational services, requested an Independent Educational Evaluation, and reported that she would not accept anything less than direct services and would contact an attorney if necessary. (*Id.*)

At this meeting, the school's Psychologist reportedly asked, "*. . . why we wouldn't train someone to give [the child] those services throughout the week[?]"* (*Id.* at 2.) Further, in her January 13 letter, the parent alleged Megan Nolla (Occupational Therapist) said, "*We only do consult-based services for middle school*." (Letter from parent, Jan. 13, 2023.) These statements, though facially concerning, do not appear to be an accurate reflection of the Cooperative's practice. According to SPED Director Jennifer Martin, there are current students within the district who receive a direct service delivery model of occupational therapy services under their IEPs. (Interview with SPED Director, June 5, 2024.)

A Prior Written Notice refusing to initiate direct delivery occupational therapy services in the SPED setting was generated by this meeting and emailed to the parents. (Prior Written Notice, Jan. 12, 2023.) Though the document indicates it was emailed to the parents by Bailey Edgar on January 12, 2023, a January 13, 2023 email from Bailey Edgar clarifies that the team is finalizing the Prior Written Notice and would have it to the parents by Tuesday, January 17th. (Email from Bailey Edgar: Re: Additional OT Information, Jan. 13, 2023.) The Notice was delivered to the parents on January 19, 2023 from Bailey Edgar by email. (Email from Bailey Edgar: [Child's Name] IEP Paperwork from 12/13 & 1/12, Jan. 19, 2023.) This Notice, which did not require a parental signature, was not signed by the parents. (Prior Written Notice, Jan. 12, 2023.) The parent indicated she was happy with all proposed amendments from the December 13, 2022 meeting except the indirect occupational therapy consult proposal. (Email to Bailey Edgar: Re:

Additional OT Information, Jan.12, 2023.) Nothing changed as a result of this meeting as the parent did not consent to the proposals indicated on the Prior Written Notice. (Prior Written Notice, Jan. 12, 2023; Annual IEP, Nov. 3, 2023, at 1, amended date.)

IEE Request – End of Spring 2023 Semester

At the January 12, 2023 meeting and by email immediately following, the parent requested an Independent Educational Evaluation. (Email to Bailey Edgar: Re: Additional OT Information, Jan. 12, 2023.) Bailey Edgar forwarded this request by email to Donna Foy on January 13, 2023, and Donna Foy reached out to the parent with instructions how to obtain an Independent Educational Evaluation. (Email to parent: Re: Independent Educational Evaluation, Jan. 13, 2023.) Reminders that this information had been sent were provided by Donna Foy via email on January 19th or January 30th, 2023. (Email from Donna Foy: Re: Independent Educational Evaluation, Jan. 19, 2023 & Jan. 30, 2023.) As of this investigation's initiation, the parent has not yet sought the Independent Educational Evaluation she requested. (Interview with SPED Director, June 5, 2024.)

An email from Bailey Edgar to the parents on January 19, 2023 attached four documents, duplicating those requiring signature through a Dochub request. (Email from Bailey Edgar, [Child's Name] IEP Paperwork from 12/13 & 1/12, Jan. 19, 2024.) Included amongst these were a Prior Written Notice and the Evaluation Report, both stemming from the December 13, 2022 meeting. (*Id.*) Neither of these documents were returned with a signature, nor were reminder emails responded to. (Prior Written Notice, Dec. 13, 2022; Evaluation/Eligibility Report, Dec. 13, 2022; Dochub Screenshot.)

On May 26, 2023, the child's fourth quarter progress report was delivered to the parents via email. (Email from brightsped: 4th Q IEP Progress Report, May 26, 2023.)

September 1, 2023: Parental Concerns Meeting

On August 22, 2023, a Notice of Meeting was generated by Peter Lelich on August 22, 2023 reminding the parents of a requested meeting upcoming on September 1, 2023. (Dochub Screenshot.) The parents finalized the signature request on August 22, 2023. (*Id.*) The Notice invited an Occupational Therapist to attend. (Notice of Meeting, Aug. 22, 2023.) This document was not provided by the school, as the SPED Director was under the mistaken impression that a Notice of Meeting had not been issued. (Interview with SPED Director, June 5, 2024.)

At this meeting, the parent again brought the outside medical evaluations conducted on the child, but reiterated that, ". . . *she did not want the testing used from the medical setting. [She] stated the school may not use those scores*." (Meeting Notes, Sept. 1, 2023.) The parent advised attendees she would still be pulling the child from class to receive outside therapy, but would attempt to do so during an elective class. (*Id.*) Later in the meeting, however, the parent indicated the child will miss two hours of class to attend outside therapies and expressed a demand that he will, "need to be excused from all the hours." (*Id.* at 2.)

While the provider present that day remains unnamed within the record, during this meeting, the Cooperative's Occupational Therapist advised the mother that the testing her child received, a Beery VMI and a BOT-2, could not be redone because, according to the testing protocols, you cannot repeat these tests in under a calendar year and expect accurate results. (*Id.*) The parent requested the Cooperative's Occupational Therapist to break test protocol and conduct the evaluation now since it was almost a year, but this proposal was declined. (*Id.*) The SPED Administrator, in attendance, asked the team whether they thought further evaluation was necessary, but the team indicated they thought the evaluations they had performed in December 2022 were adequate. (*Id.*) The parent again insisted on 20 minutes of direct occupational services provided one time a week and indicated that she, "will not budge." (*Id.*) She expressed skepticism that providers would show up for consult services if they were not required to log those services. (*Id.*)

The team proposed five minutes / once weekly indirect consultation occupational therapy services (slightly increased from their first proposal back in December 2022 which was 15 minutes / once monthly) based on the parent's concerns that the child required frequent repetition. (*Id.* at 2.) They also proposed Cloze notes, a break card, access to sensory items, a large visual timer for the break room, co-taught math class, reducing written tasks, and removing speech to text (due to poor function with this individual child) to replace it with word prediction. (*Id.*)

Though the document was not provided by the parties or signed by the parents, a Prior Written Notice was issued by Peter Lelich through Dochub on September 6, 2023. (Dochub Screenshot.) This Prior Written Notice purportedly covered all proposals save for the refusal of the parent's request for direct OT service delivery. (Email from Peter Lelich: PWN/Services, Oct. 26, 2023.) It is unclear whether this means the Prior Written Notice included the school's refusal to perform additional evaluations on motor skills before trying their proffered service delivery model. (*Id.*)

On September 7, 2023, Heidi Hill sent a first draft of the IEP to the parents. (Email from Heidi Hill: Amended Draft IEP, Sept. 7, 2023.) After a phone call to consult with the mother, Heidi Hill issued the parents a second draft on September 10, 2023. (Email from Heidi Hill: DRAFT AMENDED IEP #2, Sept. 10, 2023.) On September 17, 2023, Heidi Hill reached back out to the parent to discuss what she thought of the second draft. (Email from Heidi Hill: DRAFT AMENDED IEP #2, Sept. 17, 2023.) In an email, the parent explained she thought the IEP looked great except for a bit of confusion on 5 minutes v. 15 of indirect OT. (Email from parent: DRAFT AMENDED IEP #2, Sept. 25, 2023.) At this point in time, it appeared to be the parent's intention to accept the IEP. (*Id.*) However, the parent then advised Heidi Hill that she would not sign the Prior Written Notice because the notice had been issued after the meeting, not before. (*Id.*) Thus, no changes occurred as a result of the September 1, 2023 meeting. (*Id.*)

In that email chain, the mother also expressed that she was "rattled" by the "deceptive" disclosure email she had received which purportedly did not accurately depict who would be in attendance. (*Id.*) Unfortunately, the Meeting Notes do not document attendance from this meeting, and no "disclosure email" was provided for the investigator's review. (Meeting Notes, Sept. 1, 2023.) The Notice of Meeting invited the parents, a General Curriculum Instructor, a SPED Instructor, a school representative, a person capable of interpreting evaluation results, an Occupational Therapist, and a Speech Pathologist, with "others" left blank (meaning no others invited). (Notice of Meeting, Aug. 22, 2023.) An email from the mother sent to Heidi Hill said of the event, "*The disclosure email was a bit deceptive as to who would be included and unfortunately I am not easily rattled. Again, nothing to do with you all directly working with him (BLMS or Dawnyale who is amazing) just related services*." (Email from parent: Re: DRAFT AMENDED IEP #2, Sept. 25, 2023.) An unspecified "SPED Administrator" was present, but that person was likely fulfilling the role of the school representative. (Meeting Notes, Sept. 1, 2023.) No other unfamiliar roles/persons appear in the Meeting Notes, though they could well have been present. (*Id.*)

On Wednesday, October 25, 2023, the mother emailed her child's Special Education Instructor, Heidi Hill. (Email from parent: Re: Notice of Meeting, Oct. 25. 2023.) "*Here is the signed PWN. Thank you so much for reaching out yesterday and working so diligently to find solutions to really help [the child] in being successful. We REALLY appreciate it and cannot tell you how much it means to us. After speaking with [the child], it definitely is important to him to have a sense of autonomy and independence with producing his work. . .*" (*Id.*)

The school was unable to locate a record of having provided the parent with a progress report in October of 2023. (Email from Jennifer Martin: [Child's Name] re: 24FC458-004, June 5, 2024.) On October 26, 2023, 56 days after the meeting, Peter Lelich emailed the parent, clarifying that his earlier September 6, 2023 Prior Written Notice did not address the parent's request for direct OT services, and issuing her a secondary Prior Written Notice refusing that service. (Email from Peter Lelich: PWN/Services, Oct. 26, 2023.) The language in this Prior Written Notice was similar to the January 12, 2023 notice refusing the same. (Cf. Prior Written Notice, Jan. 12, 2023, with Prior Written Notice, Oct. 26, 2023.)

November 3, 2023: Annual IEP Meeting

On October 24, 2023, Heidi Hill sent a Notice of Meeting ". . . *includ[ing] everyone I could think of that could possibly be there. . .*" to the parents alerting them to a November 3, 2023 meeting, which was returned signed by the parent on October 25, 2023. (Email from Heidi Hill: Re: Notice of Meeting, Oct. 24, 2023.) In preparation for this meeting, Heidi Hill prepared a third draft IEP which was presented for the parents' review on October 31, 2023. (Email from Heidi Hill: Draft IEP, Oct. 31, 2023.)

The team that day included Dawnyale Jones (Speech Language Pathologist), Heidi Hill (SPED Instructor), Becky Kazmaier (Gen. Ed. Instructor), Peter Lelich (School Psychologist), Scott Hornbaker (Assistant Principal), and Michael Isaacsen (District). At this meeting, the school proposed 43 minutes 5x/week of math services. (Meeting Notes, Nov. 3, 2023.) The Prior Written Notice generated by this meeting added those 43 minutes to his "then current" 86 minutes, resulting in a proposal of 129 minutes per day / 5x / week of special education support in Reading, Math, and English. (Prior Written Notice, Nov. 3, 2023.) The school also proposed 86 minutes / 5x / week of special education support in Science and Social Studies, maintaining his current 20 minutes / 2x / week of Speech and Language Pathology Services, and the accommodations from the last meeting. (*Id.* at 2.) These accommodations were word prediction, Cloze notes, a break card, access to sensory items, a typing program to replace his English bell work, a visual timer for the calming room, and grading only what the child completes. (*Id.*) The team proposed changing the child's reduction of written assignments accommodation to one which allowed him extended time, but the parent disagreed, so the extended time stayed in. (Meeting Notes, Nov. 3, 2024.)

The child's (current) IEP was completed on November 3, 2023. (Annual IEP, Nov. 3, 2023.) Prior Written Notice was hand-signed the same day consenting to the proposals. (Prior Written Notice, Nov. 3, 2023.) This notification mentions that indirect occupational therapy services were again declined at this meeting. (*Id.* at 3.) The data used to describe the basis for these proposals included, "[the] Previous IEP, Observation, Record Review, Parent/Teacher Input, Previous Evaluation, [and] progress monitoring data." (*Id.* at 3.)

On January 2, 2024, the child's parents were provided with their child's second quarter progress report via the brightsped email account. (Email from Jennifer Martin: [Child's Name] re: 24FC458-004, June 5, 2024.) A third quarter progress report was delivered to the parents via email on March 23, 2024 through the brightsped email account. (Email from brightsped: 3rd Quarter Progress Report, March 23, 2024.) The fourth quarter progress report was delivered on May 26, 2024. (Email from Jennifer Martin: [Child's Name] re: 24FC458-004, June 5, 2024.)

In 2023, this child experienced 35.44 excused absences, 5.78 unexcused absences, and 45 tardy periods. (Attendance Detail Report, June 3, 2024.) In the time surrounding this complaint's initiation, the child has consecutive unexcused absences on May 17, May 21, May 22, and May 23, 2024. (*Id.*) The child's Math teacher, Science teacher, Social Studies teacher, English teacher, and Personal Finance teacher have all each individually reported that the child's absences are interfering with his ability to succeed in the general education curriculum. (Annual IEP, Nov. 3, 2023, at 5.) The only provider who reports that the child is doing well, ironically, is his Physical Education teacher. (*Id.*)

Multiple meeting notes indicate, and the parent's January 13th letter reiterates, that the child is experiencing ". . . *anxiety secondary to not being able to perform on the same level of his same-*

aged, typically developing peers." Letter from parent, Jan. 13, 2023, at 3. To cope with anxiety, the child receives an additional accommodation to utilize a break card with a large visual timer. (Meeting Notes, Nov. 3, 2023; Annual IEP, Nov. 3, 2023, at 15.) He is given longer breaks when he is crying. (*Id.*; *Id.*) In an attempt to mitigate the child's excessive absences, he has been granted additional accommodations to allow him extended time on assignments missed for appointments, the reduction of graded material (though this accommodation also relates to his challenges in producing output), and most recently, extended time on all assignments. (*Id.*; *Id.*)

In a June 17, 2024, email to the SPED Director, the mother clarified her position regarding screeners versus evaluations. "*An appropriate assessment for [this child] is a Standardized assessment. The following are some of the most common standardized assessments utilized in the school setting by Occupational Therapists; BOT-2 (Bruiniks- Oseretsky Test of Motor Proficiency, Second Edition) scores are standardized and based upon the child's age; Beery VMI (Beery-Buktenica Developmental Test of Visual- Motor Integration, Sixth Edition) scores are standardized; WRAVMA (Wide Range Assessment of Visual Motor Abilities)- this assessment has not been utilized for Daniel. The assessment focuses on visual spatial, fine motor skills, and visual-motor integration. This is also a standardized assessment. As stated in numerous IEP meetings, team meetings, etc. [The child] was only given the DeCoste Protocol which is NOT an assessment, it is an informal tool that can look at a child's writing and typing capabilities with informal results related to speed, spelling and other mechanics of writing. It is not a formal objective assessment for capturing baseline objective data*." (Email from parent, Re: Request Clarification, June 17, 2024.)

In her written complaint, the mother submitted three issues for KSDE's investigation. (Complaint, May 23, 2024.) Some allegations specific to the complaint (e.g., not receiving a 2022 Notice of Meeting) were ineligible for investigation as they were outside of the one-year statutory timeframe prescribed by K.A.R. § 91-40-51(b)(1).

Some allegations specific to the complaint (e.g., the team's alleged treatment of the mother as a practicing Occupational Therapist) were ineligible for investigation under this complaint process as they do not represent an allegation that the district violated state or federal special education legal requirements under K.A.R. § 91-40-51(a), and thus fall outside of KSDE's purview. While this complaint investigation cannot resolve allegations of harassment or retaliation against a parent, the investigation can and must determine whether any of these underlying concerns impacted this child's entitlement to a free appropriate public education (FAPE). K.S.A. § 72-3410(a)(2); K.A.R. § 91-40-2; K.A.R. § 91-40-51.

Issue One

Did USD 458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), fail to issue timely Prior Written

Notices, Notices of Meetings, Notices of Excusal, and Progress Reports regarding this child?

Applicable Law

To allow parents and guardians an opportunity to meaningfully participate in their exceptional child's IEP development, both federal and Kansas regulations require schools to follow procedural safeguards at particular junctures in the IEP process. See 34 C.F.R. § 300.321(a-e); K.A.R. § 91-40-17. One of these junctures is whenever an IEP meeting is forthcoming. The required Notice of Meeting for a Part B IEP team meeting in the state of Kansas must include the purpose, time, and location of the meeting, the titles and/or positions of attendees, and a minimum 10 day advance written notification unless the parent opts to waive that particular state-granted entitlement. K.A.R. § 91-40-17(2); 34 C.F.R. § 300.322(a)(1).

When an IEP team meets, both federal and state statutes identify and describe the particular team members who must be present. See 34 C.F.R. § 300.321; K.S.A. § 72- 3404(u). Required team members include a school representative knowledgeable about the general curriculum and the school's resources ((u)(4)), an individual able to interpret evaluation results ((u)(5)), the parents of the child ((u)(1)), at least one special education teacher or provider of the child((u)(3)), and, "at least one regular education teacher of the child if the child is, or may be, participating in the regular education environment." K.S.A. § 72-3404(u)(2). The child's regular education teacher must assist in determining appropriate behavioral interventions and strategies, supplementary aids and services, and program modifications or support for personnel that will be provided to assist the child. K.A.R. § 91-40-17(h).

Optionally, both the school and the parent(s) may, in their individual discretion, invite any individual with knowledge or special expertise about a child to the child's IEP team meeting. K.A.R. § 91-40-17(j). In such a circumstance, it is within the sole purview of the individual extending the invitation to determine whether the invited person has knowledge or special expertise. *Id.* "Therefore, the other party may not bring into question the expertise of an individual invited to be a member of the IEP team and may not exclude another team member's expert based on the amount or quality of their expertise." *Kansas Special Education Process Handbook*, at 64, referencing 34 C.F.R. § 300.321(c); K.A.R. § 91-40-17(j).

Every educational agency is responsible for ensuring that the IEP is in effect prior to providing special education and related services to an exceptional child. K.A.R. § 91-40- 16(b)(1). The school must ensure that those services for which written consent was granted are implemented within 10 school days of the parent's signature. (b)(2). The child's teachers must be informed regarding the specific accommodations, modifications, and supports to be provided in accordance with the child's IEP. (b)(5)(B). All amendments to a child's IEP must be made by the IEP team, which includes the parent as a member. K.S.A. § 72-3429(b)(1). Any

amendments must be dated and signed by both the parent and the agency representative in order to be valid. (b)(4)(B).

Additionally, when applicable, parents and guardians of exceptional children are entitled to Prior Written Notice under both federal and state regulations. See 34 C.F.R. § 300.503; K.S.A. § 72-3430. Prior Written Notice must be provided to parents and guardians of exceptional children in a reasonable amount of time (in Kansas, typically ~15 days barring extenuating circumstances) prior to initiating or changing the identification, evaluation, educational placement, or the provision of FAPE to an exceptional child. See KSDE Memo: "Reasonable Time," at https://www.ksde.org/Default.aspx?tabid=614; K.S.A. § 72-3430(b)(2). Note from the chart on the following page that Prior Written Notice is mandated before making any change, but that Notice need only be consented by the parents or guardians if the change being made is material or substantial (25%). K.S.A. § 72-3430. K.S.A. § 72- 3432(a-g) delineates the required contents of the notice including a description of the action proposed or rejected, an explanation why the agency is making the choice it is, a description of considered and rejected options, a description of materials used to form the basis of the action or inaction, a statement of other relevant factors in making the decision, a statement of parent rights, and referrals for parents seeking assistance understanding those rights.

The following chart has been reproduced from Chapter One, page 10 of KSDE's *Kansas Special Education Process Handbook* (referencing K.S.A. § 72-3430 and 34 C.F.R. § 300.503) to better illustrate Kansas's requirements for parental notification and consent under the IDEA:

Requirements for Parental Notice and Consent (K.S.A. 72-3430; 34 C.F.R. 300.503) Proposed Action by the School	Prior Written Notice (PWN)(300.503) or Notification	Requires Parental Consent
Initiate evaluation	PWN	Yes
Refuse to initiate initial evaluation or reevaluation	PWN	No
Identification and Eligibility Determinations	PWN	No
Initial provision of IEP services (placement)	PWN	Yes
Reevaluation of a student	PWN	Yes
Substantial change in placement (more than 25% of student's day)	PWN	Yes
Change in placement that is 25% or less of the student's day	PWN	No
Material change in services (25% or more of any one service), includes accommodations listed on the IEP	PWN	Yes
Change in instructional methodology specified in IEP	PWN	No
Change in service that is less than 25% of the service being changed	PWN	No
Add a new service or delete one completely	PWN	Yes
Evaluation reevaluation or initiate services for children parentally placed in private schools	PWN	Yes
Notification of the IEP meeting	Notification	No
Invite an outside agency to the IEP for secondary transition	Notification	Yes
Use of Medicaid	Notification (annually)	Yes (once)

Parental consent is required before making a material change in services to, or a substantial change in the placement of, an exceptional child. K.A.R. § 91-40-27(a)(3). In Kansas, a "material change in services" means an increase or decrease of 25% or more in 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.S.A. § 72- 3430. K.A.R. § 91-40-19, defining IEP Liability, notes, "(a) 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. (b) An agency, teacher, or related services provider that complies with subsection (a) of this regulation shall not be held liable or accountable if a child does not achieve the growth projected in the goals and objectives stated in the child's IEP." K.A.R. § 91-40-19(a) & (b). Furthermore, "*[a]n agency shall not be in violation of its obligations for identification, evaluation, or reevaluation if the agency declines to pursue an evaluation or reevaluation because a parent has failed to provide consent for the proposed action*." K.A.R. § 91-40-27(f)(3).

A required member of the IEP Team (such as a General Education Instructor) may be excused with parental consent if (1) the parent consents to the excusal in writing and (2) the missing IEP team member submits written input into the development of the IEP to both the parents and the team prior to the meeting's occurrence. 34 C.F.R. § 300.321(e); K.S.A. § 72-3429(b)(2-3).

Parental consent before action is not required in at least two circumstances: (1) When reviewing existing data as part of an evaluation, reevaluation, or functional behavioral assessment; or (2) when administering a test or other evaluation (not requiring consent) that is administered to all children. 34 C.F.R. § 300.300(d); K.A.R. § 91-40-27(e).

An "evaluation" is a multisource, multidisciplinary examination conducted in accordance with the provisions of K.S.A. § 72-3428. K.S.A. § 72-3404(v). "Evaluation" is not, and can never be, a single measure or assessment. K.S.A. § 74-3428(b)(2). Rather, evaluation data includes many potential sources such as general education interventions, record reviews, interviews, observations, and any other tests or "assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided. . ." See *Kansas Special Education Process Handbook* at 46; K.S.A. § 77-3428(c)(3). There is no requirement in the state of Kansas that formal evaluation must include only those diagnostic assessments utilized within the medical model. See K.S.A. § 77-3428. A screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not, by itself, an evaluation under Kansas regulations. K.S.A. § 72-3428(4). Prior Written Notice is required prior to conducting an evaluation on an exceptional child, not a screener. K.S.A. § 72-3430(b)(2)(B).

Agencies are responsible for ensuring that any assessment selected is (a) administered in a nondiscriminatory fashion, (b) administered in the student's native language, (c) valid and reliable for the specific purpose for which it is used, (d) administered by trained personnel, and

(e) administered according to the instructions provided by the testing instrument. K.S.A. § 72-3428(c)(1). The child must be assessed in all areas of suspected exceptionality, and assessment tools must provide relevant information that assists in determining the child's educational needs. (c)(2 &3). While parents have the right to request a specific assessment and have that request considered, it is up to the school team to determine what assessments are to be conducted as part of the evaluation. *Kansas Special Education Process Handbook*, at 59, ¶ 19. Should the parent disagree with the results, the parent has a right to request an Independent Educational Evaluation for the team's consideration. *Id.* at 59, ¶ 20; K.A.R. § 91-40-12.

The IEP of every exceptional child in the state of Kansas 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 will be provided. . . "* K.S.A. § 72-3429(c)(3).

Analysis

The following table tracks the history of procedural notifications issued and meetings conducted by USD 458 relating to this child:

Meeting Date	Notice of Meeting	Prior Written Notice	Excusal Form	Notes
August 15, 2022	Yes (Aug. 14, 2022) (10 day waived)	Yes (Aug. 15 2022)	Yes, but needed 2 (Aug. 15, 2022) (Gen Ed Ins. not excused)	Interim IEP (moving in) PWN: Sub. Change in Placement (comparable services).
November 8, 2022	Yes (Oct. 28, 2022.)	Yes, but defective (Sept. 16, 2022) (Nov. 8, 2022)	No (N/A)	Sept. 16 PWN: Consent to (Re)evaluate "Health/Motor Ability – Fine Motor (OT)" + Academics, Communication, and AT. -Nov. 8 PWN: Proposes 86m/5x/week direct special education and 20m/2x/week/direct speech pathology services. Does not indicate ESY and Nursing Plan to be dropped. Checked "parental consent not required." School actually offered, and parent accepted, 106 minutes—not 86.

Meeting Date	Notice of Meeting	Prior Written Notice	Excusal Form	Notes
December 13, 2022	Yes (Nov. 22, 2022)	Yes, but defective (Dec. 13, 2022)	No (N/A)	PWN proposes 106m/5d/Gen, 20m/2d/SPED, and OT consult 15m/1 q month. Parent does not consent. IEP amended to 86m/5x/Gen, 20m/2x/SPED
January 12, 2023	Yes, but defective (Jan. 2, 2023)	Yes (Jan. 12, 2023)	No (N/A)	Jan. 2 NOM: OT "not invited," but present according to meeting notes. Jan. 12 PWN: Refuses to initiate direct OT services in SPED setting.
September 1, 2023	Yes (Aug. 22, 2022.)	Yes, but untimely (Sept. 6, 2023.) (Oct. 26, 2023.)	No (N/A; Becky Kazmaier)	Sept. 6 PWN: Accommodations. Record is inconclusive as to whether it contained refusal to evaluate; it needed to. Oct. 26 PWN: Untimely refusal of direct OT.
November 3, 2023	Yes (Oct. 24, 2023)	Yes (Nov. 3, 2023)	No (N/A)	Nov. 3 PWN: Proposes 129m/5d/Gen, 20m/2d/SPED, 86m/5d/Gen. Notes indirect OT was declined. Parent accepts.

In her written complaint, the mother alleged that she did not receive a Notice of Meeting for the August 15, 2022 Interim IEP meeting. This allegation is outside of the statutory timeline prescribed by K.A.R. §91-40-51(b)(1). However, as any procedural violations must be considered inside the FAPE analysis (Issue Three), this report will still make observations of those sitting outside of the statutory period to provide context.

The notification generated on August 14, 2022 indicates the meeting's purpose, time, and location in manner reasonably calculated to allow for the parents' meaningful participation as required by K.A.R. § 91-40-17(2). It was signed by the mother on August 15, 2022, with the box checked to waive the parent's entitlement to a 10-day advance notification. Thus, the parents received the required Notice of Meeting for the August 15, 2022 meeting because they voluntarily elected to waive their right to a 10- day Prior Written Notice. If a parent is unhappy with the amount of advance notification being given before an IEP meeting, they are entitled to adjourn the meeting and request it be rescheduled until such time as the school may satisfy their procedural obligations. *See* K.A.R. § 91-40-17(a)(1), *requiring that the meeting be scheduled at a mutually agreed-upon time and place*.

This meeting did contain one procedural error: A required team member was not present and was not validly excused with a corresponding Notice of Excusal. While Amy Garver, LEA

Representative, was excused from the meeting with a valid, signed Notice of Excusal, no such notice exists in the record to excuse the absence of an unlisted General Curriculum Instructor. Both federal and state regulations demand that a General Curriculum Instructor attend the IEP meeting if the child is, or may, participate in the general education environment. K.S.A. § 72-3404(u)(2). Further, when a General Curriculum Instructor is to be absent from a planned meeting, the missing IEP team member must submit written input into the development of the IEP before the excusal is valid. K.S.A. 72-3429(b). Regardless, again, this procedural observation is outside of the statutory timeline prescribed by K.A.R. §91-40-51(b)(1).

In her complaint, the mother alleged that she did not receive Prior Written Notices as required under Kansas regulations and the IDEA. Prior Written Notice must be provided to notify parents of any change in the identification, evaluation, placement, or provision of FAPE to an exceptional child within a reasonable amount of time, usually around 15 days. K.S.A. § 72-3430(2). The notice must include (but is not limited to) a description of what the agency intends to do or not do, an explanation of why they're making that choice, a description of materials they used to form the basis of that conclusion, and a statement of any other relevant considerations. K.S.A. § 72-3432.

Though both instances occurred outside of the statutory timeline, this investigation was able to uncover two defective Prior Written Notices to credit the mother's allegation:

1. The November 8, 2022 Prior Written Notice did not notify the parents that the child would be dropped from Extended School Year and his Individualized Nursing Plan. Without Prior Written Notification, there is no evidence in the record that either of these 100% drops in service were discussed or meaningfully consented to. That claim is bolstered by the Notice incorrectly marking the changes to be made as non-material, denying the parent the opportunity to assist in making a material placement determination. This was a material change in services that required signed Prior Written Notice. K.S.A. § 72-3430; K.A.R. § 91-40-27(a).
2. The December 13, 2022 Prior Written Notice "proposed" 106 minutes / 5x / weekly of direct special education services. When this proposal went unaccepted, the Team inadvertently "reverted back to" 86 minutes, not 106 minutes. Thus, the Prior Written Notice did not properly notify the parents that the child's services were being reduced. The meeting notes reflect that the day's discussion predominantly focused on the dispute about occupational therapy provision. Perhaps owing to that preoccupation, neither party noticed the error. However, this 19% drop in services required only that Prior Written Notice be issued. It did not require parental consent as it was under Kansas's 25% threshold of materiality. K.S.A. § 72-3430.

Also outside of the statutory timeline, when the team "reverted" to 86 minutes of direct special education services after the December 13, 2022 Prior Written Notice went unsigned, they did not check to see that the correct IEP was in place before provisioning special education services as indicated by K.A.R. § 91-40-16(b)(1). The team did not ensure they were providing

services in accordance with the child's IEP as required by K.A.R. 91-40-19(a) & (b). Instead, they inadvertently amended the IEP without consent, running afoul of K.S.A. § 72-3429(b)(1) and (b)(3)(B). This 19% change in services did not require parental consent, but it did require Prior Written Notice and substantiation. K.S.A. § 72-3430; K.S.A. § 72-3432.

Additionally, there was one final procedural defect outside of our timeline in the Notice of Meeting provided for the January 12, 2023 meeting: An Occupational Therapist is not listed on the invitation, yet an Occupational Therapist, Megan Nolla, attended the meeting. In a meeting discussing occupational therapy eligibility it was very appropriate for the school to invite this provider. However, this omission from the Notice may have acted to the detriment of the quality of the team's working relationship as the parent had already demonstrated considerable distrust of that particular provider, such that having them show up "unexpectedly" might have been upsetting.

In her complaint and through communication with the school, the parent expressed her belief that only "standardized assessments" are appropriate assessments for her child. She suggested a BOT-2, a Beery VMI, or a WRAVMA. In the state of Kansas, educational agencies are responsible for having trained professionals adhere to each test's prescribed testing protocols to administer valid and reliable assessments for specific, appropriate purposes in all areas of suspected exceptionality. K.S.A. § 72- 3428(c). Educational agencies are not, however, required to utilize any particular methodology of assessment beyond those excerpted here. As Megan Nolla indicated during the January 2023 meeting, it would be against regulations for USD 458 to conduct a Beery VMI or a BOT-2 earlier than one year after these assessments were previously conducted as that decision runs afoul of the tests' protocols. K.S.A. § 72-3428(c)(1). On this record, though the mother has voiced concerns over how the child was assessed and the type of services being offered, she has never before specifically requested the WRAVMA assessment which she mentioned in her June 17, 2024 email.

The school's selection of a Decoste Writing Protocol was reasonable given the mother's reported concerns, progress reporting, and the provider notes, all of which indicated the child's fine motor skills – particularly his handwriting and typing – may be impacting his ability to access the curriculum by slowing him down too much to keep up. The Decoste Writing Protocol looks for functional barriers to these skills and helps the IEP team identify ways to modify the child's curriculum based upon these challenges. The selected assessment was reasonably and individually calculated to provide relevant information regarding the child's exceptionality. K.S.A. § 72-3428(c). While more information was potentially available to the IEP Team (in the form of the results of the Beery VMI and the BOT-2 reportedly conducted at the parent's clinic in 2022), the school was explicitly instructed during the January 12, 2023 meeting that these tests results were not to be shared with the whole team (particularly Megan Nolla, Occupational Therapist, though she had seem them by this point) or relied upon in developing the IEP. Though parental consent is always voluntary, parental refusal does not obligate the IEP

Team to conduct further testing without a team consensus that more data is needed. K.A.R. § 91-40-27(f)(3).

During the statutory period of this complaint indicated by K.A.R. 91-40-51(b)(1), the school provided all Notices of Excusal and Notices of Meeting in an appropriate timeframe. It provided one defective Prior Written Notice on October 26, 2023, 56 days after a meeting had occurred. Though all other progress reports were provided, there is no record of the school providing the parent with a quarterly progress report in October 2023.

Conclusion

In her complaint, the parent alleged USD 458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to issue timely Prior Written Notices, Notices of Meetings, Notices of Excusal, and Progress Reports pertaining to this child. During the statutory period of this complaint indicated by K.A.R. 91-40-51(b)(1), the school provided all Notices of Excusal and Notices of Meeting in an appropriate timeframe.

However, after the team met on September 1, 2023, the school did not issue timely Prior Written Notice refusing the parent's request for direct Occupational Therapy services. Prior Written Notice must be provided to parents and guardians of exceptional children in a reasonable amount of time upon a school's refusal to initiate or change the identification, evaluation, or educational placement of their child. K.S.A. § 72-3430(b)(2).

Furthermore, USD 458 did not provide the parent with a progress report in October of 2023. IEP's must contain accurate descriptions of when periodic reports on the progress the child is making toward their annual goals will be provided. K.S.A. § 72- 3429(c)(3).

Based on the foregoing, this investigation concludes that USD 458 *violated its obligation* to (1) provide timely Prior Written Notice within a reasonable amount of time as required by K.S.A. § 72-3430(b)(2), and (2) ensure the parents were provided timely progress reporting as required by K.S.A. § 72-3429(c)(3).

Issue Two

Did USD 458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), fail to allow this child's parents a meaningful opportunity to participate in the IEP development process?

Applicable Law

In the state of Kansas and under federal regulations, parents are required members of the IEP team. K.S.A. § 72-3404(u)(1). Parents have the right to, "be members of any group that makes decisions on the educational placement of their child." K.S.A. § 72- 3430(b)(7); see also 34 C.F.R. § 300.501(c)(1). Kansas educational institutions are responsible for ensuring that one or both parents of the exceptional child are present at every IEP meeting and afforded an opportunity

to meaningfully participate. K.A.R. § 91-40-17(a). "*If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with 34 C.F.R. § 300.328 (related to alternative means of meeting participation)*." 34 C.F.R. 300.322 (c).

Districts must afford parents a meaningful opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to the child. K.A.R. § 91-40-17, 21 & 24; 34 CFR § 300.501(b). "Participation must be more than mere form; it must be meaningful." *Deal v. Hamilton Board of Ed*., 42 IDELR 109 (6th Cir. 2004). Documented consideration of parental concerns, answering questions, discussing the continuum of placement options, and considering parental suggestions are all ways in which courts have allowed for districts to show parents enjoyed meaningfully participation. *Id.*; *Board of Ed. Of Waterford-Halfmoon Union Free Sch. Dist*., 20 IDELR 1092 (SEA NY 1994).

As a general principle, parents do not have veto power over the IEP, and there is no "majority vote" inside of IEP meetings. *N.T., et al. v. Garden Grove United Sch. Dis*t., 67 IDELR 229 (C.D. Cal. 2016); *Letter to Richards*, 55 IDELR 107 (OSEP 2010). IEP team decisions must be made by a *group* of persons, including the child's parent or parents and other persons who are knowledgeable about the child. K.A.R. § 91-40-21(c)(1)(A).

According to the *Kansas Special Education Process Handbook*, IEP teams should always attempt to reach a consensus. *Kansas Special Education Process Handbook*, at 59, ¶ 15. When parents disagree with the team, the final decision rests with the LEA Representative attending the meeting. *Id.* In such a case, parents are still entitled to Prior Written Notice within a reasonable timeframe. K.S.A. § 72-3430; 34 C.F.R. § 300.503(a).

Schools do not violate parents' rights when they effect communication plans to manage parental input that has become hostile, derogatory, or intimidating. *L.F. v. Lake Washington Sch. Dist*. #414, 947 F.3d 621 (9th Cir. 2020). When a parent advised a school guidance counselor that he had, "*serious concerns [regarding her] impartiality and competence" and asked that she, "take that into consideration as [you] decide on who should be appropriately involved*," the tone and excessiveness of the parent's communication over the course of a few weeks was enough for the 9th Circuit to hold that the school did not violate the parents' First Amendment rights by limiting the parent's communication to one biweekly meeting set with two District Administrators. *Id.*

Analysis

The record reveals strong evidence of considerable and meaningful parental participation in this child's IEP development process.

A meeting was held on January 12, 2023 at the parent's request. This meeting was held to address the parent's concerns relating to occupational therapy service provision. During this meeting, the parent accused the Cooperative's Occupational Therapist, Megan Nolla, of

running a screener without her permission. The mother reportedly told the team that she would not accept anything less than direct (OT) services and would sue if necessary. *See, generally*, K.A.R. § 91-40-21(c)(1)(A). As in *Waterford- Halfmoon* (SEA NY 1994), the meeting notes indicate that Megan Nolla responded to these concerns by explaining the continuum of placement options available and why she, in her professional judgment, felt that indirect consult services were the most appropriate placement option for this child. The parent requested an Independent Educational Evaluation at this meeting. She did not pursue the matter thereafter, though her upset over the situation remained as evidenced by later exchanges and this complaint.

The mother sent a letter to Donna Foy on January 13, 2023, which also supports a showing of meaningful parental participation. In the first paragraph of her letter, the mother describes Occupational Therapist Megan Nolla and SPED Director Jennifer Martin as "manipulative" and "disrespectful." She accuses Megan Nolla of having, ". . . [a] lack of professionalism, [a] lack of knowledge, and decreased competency." See, generally, L.F. v. Lake Washington (9th Cir. 2020). The mother expressed her trepidation that Megan Nolla was incapable of providing support to children with complex diagnoses. She accused Megan Nolla of ". . . avoiding accountability requirements. . ." and accused the provider of contacting her child's private Occupational Therapist (who had been brought to some meetings as an invited participant with firsthand knowledge) without consent. The mother called Megan Nolla's justification for the proffered occupational therapy service delivery model "laughable," explained that she was not pleased with Megan Nolla delivering services, and advised Donna Foy she felt skeptical of the provider's "clinical reasoning skills." To address this, the mother reportedly invited the provider to come shadow her at the clinic she was employed by, but rescinded the invitation shortly thereafter, accusing the provider of only wanting to learn more about shared patients. The parent accused Megan Nolla of ". . . not want[ing] to do the work required . . ." and expressed her belief that the provider did not care. The mother reiterated her stance that her child requires, ". . .intense repetitions for his brain to build new neuropathways," then reiterated her request for "the bare minimum," which she described as 20 minutes a week of direct occupational therapy services within the special education setting. She closed this letter advising Donna Foy that she would be meeting with a state Senator to explore the issue before threatening to file a formal complaint.

Within the procedural timeline, another parent-requested meeting was held on September 1, 2023. K.A.R. § 91-40-17, 21 & 24. Though the team discussion began with the child's MAP scores, it seemingly quickly turned back into the same disagreement from January. During this meeting, the parent requested the Beery VMI and BOT-2 which she had previously had conducted on the child at her clinic in October of 2022. The Cooperative's Occupational Therapist indicated she could not conduct these particular assessments as it would violate testing protocols. During this meeting, though the parent brought a copy of the evaluations with her for the third time, she reiterated that the outside testing conducted on her child

within the medical setting could not be used to develop her child's IEP ". . . because you have to do your own." When the SPED Director queried the team whether they felt additional evaluations were necessary. the parent interjected her belief that the IDEA indicates the team may not use outside influences.

At that meeting, the parent advised the team that her child would be missing two hours of school to attend occupational therapy services and he would "need" to be excused from all those hours. The parent stated she wanted that excusal put into his IEP. See, generally*, Garden Grove* (C.D. Cal. 2016); *Letter to Richards* (OSEP 2010). The parent asked for a log documenting her child's provision of services, as she did not trust providers to show up when they were supposed to. The mother accused the Cooperative's Occupational Therapist of not being familiar with her child. During this meeting, both the mother and father contributed to the team's discussion, reporting that they thought high frequency repetition was necessary and the child needed work on his handwriting skills. K.S.A. § 72-3430(b)(7). The team incorporated the mother's suggestions for a break card and answered questions about study guides and the continuum of potential occupational therapy placements, though the parents ultimately did not sign the Prior Written Notice associated with this meeting. See K.S.A. § 72-3430.

On Wednesday, October 25, 2023, the mother emailed her child's Special Education Instructor, Heidi Hill, with an expression of gratitude. "*Thank you so much for reaching out yesterday and working so diligently to find solutions to really help [the child] in being successful. We REALLY appreciate it and cannot tell you how much it means to us.*" This email further demonstrates parental participation in meaningful, and not just mere, form. See, generally, *Deal*, 42 IDELR 109 (6th Cir. 2004).

Parent provided documentation indicates this parent has participated in over 30 email chains with various school providers since August of 2022, each containing their own uncounted individual emails within the chain. Phone calls were answered quickly enough that, when one was missed on January 19, 2023, the parent accused Donna Foy in an email of "screening" her calls. Donna Foy responded to this email within two hours of its receipt. When the parent requested an Independent Educational Evaluation, she was advised how to obtain one at no cost by Donna Foy within 24 hours, though she not yet chosen to obtain one (as is her discretion). As the situation deteriorated, the school requested the parent participate in mediation offered through KSDE on January 26, 2023, but received no response. Multiple draft IEPs (at least three) were prepared in anticipation of meetings by Heidi Hill, with each draft changing due to parental input. The meeting notes from November 2022 and November 2023 both indicate the incorporation of parental input, including suggestions for particular accommodations which ended up in the final IEP documents. The parents have had a meaningful opportunity to participate in the IEP development process as required under K.A.R. § 91-40-17, 21 & 24 and 34 C.F.R. § 300.501(b).

Conclusion

In her complaint, the parent alleged that USD 458 was not allowing her an opportunity for meaningful participation in the IEP development process. The record reflects that the school has conducted two parent-requested meetings, incorporated the parents' suggestions into both final IEP's and drafts, and responded substantively to questions and concerns. The parent has been afforded all opportunities to participate required by K.A.R. § 91-40-17, 21 & 24. Based on the foregoing, this investigation concludes that USD 458 *did not violate its obligation* to ensure the parents had an opportunity for meaningful participation in the IEP development process.

Issue Three

Did USD 458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), fail to provide a free appropriate public education (FAPE) to this child? See K.S.A. § 72-3410(a)(2); K.A.R. § 91-40-2; 34 C.F.R. § 300.101; Board of Ed. Of Hendrick Hudson Central Sch. Dist. v. Rowley, 458 U.S. 176 (1982); Endrew F. v. Douglas Co. Sch. Dist., 580 U.S. 386 (2017).

Applicable Law

Under the Individuals with Disabilities Education Act, a free appropriate public education (hereafter "FAPE") must be made available to all children with an exceptionality residing in the state of Kansas between the ages of three and 21. K.A.R. § 91-40-2; 34 C.F.R. § 300.101. In the state of Kansas, "FAPE" means the special education and related services which are provided at public expense and under public supervision, meet the standards of the state board, include an appropriate education, and are provided in conformity with the child's Individual Education Program (IEP). K.A.R. § 91-40-1(z)(1-4); -1(gg)(1-7). Kansas law requires each local board of education to, ". . . *provide a free appropriate public education for exceptional children enrolled in the school district* . . ." K.S.A. § 72-3410(a)(2). Exceptional children must be educated in the least restrictive environment, which requires that children be, "educated in regular classrooms to the maximum extent appropriate." *L.B. ex rel. K.B. v. Nebo Sch. Dist*., 379 F.3d 966, 976 (10th Cir. 2004) citing 20 U.S.C. § 1412(a)(5)(A).

A "special education" is defined as no cost, specially designed instruction tailored to meet the individual needs of a disabled child. 34 C.F.R. § 300.39; K.S.A. § 72-3404(i). In the state of Kansas, a special education may require related services such as home instruction, physical education instruction, paraeducator support, occupational or physical therapies, interpreter services, speech-language pathology services, travel training, and/or vocational education when any such service is necessary for an exceptional child to access the general education curriculum. K.A.R. § 91-40-1(kkk)(1-5); 20 U.S.C. § 1401(26)..

"Specially designed instruction" is the delivery mechanism for a special education. It demands adapting the learning material to address the unique needs of the individual child which result from the child's exceptionality and ensuring the child is given access to the general education

curriculum so that they have an opportunity to meet the educational standards of their district. K.A.R. § 91-40-1(lll)(1-2). A school district satisfies its obligation to provide a FAPE to a disabled child "*by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction*." *Jefferson Cty. Sch. Dist. R-1 v. Elizabeth E.,* 798 F. Supp. 2d 1177, 1180 (D. Colo. 2011) quoting *Board of Ed. Of Hendrick Hudson Central Sch. Dist. v. Rowley*, 102 S. Ct. 3034, 553 IDELR 656 (U.S. 1982). "*The IEP is a written statement that sets forth the child's present performance level, goals and objectives, specific services that will enable the child to meet those goals, and evaluation criteria and procedures to determine whether the child has met the goals*." *Ass'n for Cmty. Living in Colo. v. Romer*, 992 F.2d 1040, 1043 (10th Cir. 1993); see also 20 U.S.C. § 1414(d)(1)(A).

Since 1982, the *Rowley* Standard has been employed to assess a school's provision of FAPE to an exceptional student utilizing a two-prong test: (1) Was this IEP developed in adequate compliance with the procedural obligations imposed under the IDEA? (2) Is this IEP reasonably calculated to enable the student to derive some educational benefit? *Board of Ed. Of Hendrick Hudson Central Sch. Dist. v. Rowley*, 102 S. Ct. 3034, 553 IDELR 656 (U.S. 1982). At that time, the *Rowley* Court refused to adopt any one test to determine the adequacy of the educational benefits conferred by the IEP. *Id.*

When the first prong of the *Rowley* Standard reveals procedural violations, the FAPE analysis is not complete. A procedural violation (or violations) may only rise to the level of a substantive deprivation of FAPE (prong (2) of *Rowley*) when at least one of three things is also true: (a) The procedural violation(s) impeded the child's right to a FAPE; (b) the procedural violation(s) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to their exceptional child; or (c) the procedural violation(s) caused the deprivation of educational benefit. K.S.A. § 72-3416(g)(2)(A-C); 34 C.F.R. § 300.513(a)(2).

Speaking to K.S.A. § 72-3416(g)(2)(A), school districts incur liability when their actions rise to ". . . a *material* failure to implement an IEP. . ." (emphasis added) *Beer v. USD 512 Shawnee Mission*, No. 21-2365-DDC-TJJ, 2023 U.S. Dist. LEXIS 45822, at *79 (D. Kan. Mar. 17, 2023). The 4th, 5th, 8th, 9th, and 11th U.S. Circuit Courts of Appeal have each, too, held that only a *material* procedural implementation failure will qualify as a denial of FAPE. For example, in a 2019 11th Circuit case, the parent of an Autistic child could not show the district denied her child FAPE by failing to provide every service and support required under his IEP. *L.J. v. Sch. Bd. of Broward Cnty., Fla*., 74 IDELR 185 (11th Cir. 2019). The L.J. Court found that, though an implementation failure had occurred, that failure was not a material change in services. *Id.* Other metrics that courts have used to determine whether IEP implementation failures constitute denials of FAPE are evidence of progress (See *A.P. v. Woodstock Bd. of Ed*., 55 IDELR 61 (2d. Cir. 2010, unpublished), short v. long duration failures (See *Turner v. D.C.*, 61 IDELR 125 (D.D.C. 2013), and

the district's efforts to ensure the child is using the supports indicated in their IEP (See *Carr v. New Glarus Sch. Dist.,* 73 IDELR 36 (W.D. Wis. 2018).

Regarding K.S.A. § 72-3416(g)(2)(C), "educational benefit" can be difficult to quantify. This report will follow the analysis used in *Endrew F.*, a Supreme Court case which laid out the groundwork for us to determine whether an IEP was reasonably calculated to provide not just some educational benefit, but to provide appropriate progress in light of a student's unique circumstances. *Endrew F.,* 137 S. Ct. 988, 69 IDELR 174 (U.S. 2017). *Endrew F*. will show us how to analyze whether sufficient educational benefit existed to determine that the student received a FAPE. If it did, we must then determine whether any alleged procedural violations denied the child that benefit.

To begin, we must ground our analysis in the definition of "special education": "*. . . specially designed instruction provided at no cost to parents to meet the unique needs of an exceptional child*." K.S.A. § 72-3404(i). To understand the "unique needs" of the child, we must consider the student's present levels of academic achievement and functional performance and how the student's exceptionality impacts their access to and progress within the general education curriculum. K.S.A. § 72-3429(c)(1). Kansas State Department of Education (KSDE) guidance on present levels of academic achievement and functional performance defines functional performance as, "*the ability to apply academic skills in a variety of ways and in a variety of settings. Functional performance is also observed in how the student engages in the routine activities of everyday life, including communication, mobility, behavior skills, social skills, and daily living skills.*" See KSDE Guidance: PLAAFPs, at https://www.ksde.org/Portals/0/SES/KIAS/PLAAFP.pdf.

Next, we look to the child's measurable annual goals to determine whether those goals align with the child's present levels and impact and access to the general curriculum. K.S.A. § 72-3429(c)(2). Next, we consider whether the child's services are aligned with their needs and whether it is designed to enable the student to make progress toward their goals and in the general curriculum. K.S.A. § 72-3429(c)(4). This is the analysis the Court lays out in *Endrew F.*, allowing us to determine whether the IEP is "reasonably calculated" to provide appropriate educational benefit in light of a student's cirumstances. *Endrew F.*, 137 S. Ct. 988, 69 IDELR 174 (U.S. 2017). The key factor in determining FAPE is determining whether the data on the student's progress, is "appropriate in light of the child's circumstances." *Id.*

In its discussion in *Endrew F.*, the Supreme Court clarified that the "appropriate progress" standard is more than a *de minimis* standard. *Endrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988, 69 IDELR 174 (U.S. 2017). "*To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances*." *Id.* at 999. Thus, an IEP that is perfectly adequate for one child may not come even close to approximating the need of another. "The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." *Id.* at 1000.

When a child is not fully integrated in general curriculum setting and not able to achieve on grade level, their IEP does not need to aim for grade-level advancement. "*. ..[B]ut his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade-to-grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.*" *Id.* "[A]ny review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal." *Id.* at 999. *". . . [C]ourts have warned against engaging in a retrospective analysis of academic achievement in determining the appropriateness of an IEP because unfortunately, it cannot always be reasonably expected that progress will occur in such a lock-step manner when a child is suffering from a learning disability*." (internal quotations omitted) *J.T. v. Denv. Pub. Sch.,* Civil Action No. 21-cv- 01227-NYW-STV, 2023 U.S. Dist. LEXIS 15310, at *23 (D. Colo. Jan. 30, 2023) quoting *K.D. by & through Dunn v. Downingtown Area Sch. Dist.*, 904 F.3d 248 (3d Cir. 2018).

A school is not in violation of its obligations for identification, evaluation, or reevaluation if the school declines to pursue an evaluation or reevaluation because a parent has failed to provide consent for the proposed action. K.A.R. § 91-40-27(f)(3). A school shall not be required to obtain parental consent for a reevaluation or a proposed change in services or placement of the child if the school has made attempts, as described in K.A.R. § 91-40-17(e)(2), to obtain consent, but the parent(s) have not responded. *Id.* at (g). However, it is important to clarify that a parent disagreeing or rejecting an evaluation's findings is not the same thing as failing to give consent for special education services. *Beer v. USD 512 Shawnee Mission*, No. 21-2365- DDC-TJJ, 2023 U.S. Dist. LEXIS 45822, at *48 (D. Kan. Mar. 17, 2023). Further, the school is not required to classify or reclassify an exceptional child into the child's category of exceptionality provided that the child is (1) still regarded as a child with an exceptionality and (2) still receives FAPE. K.A.R. § 91-40-10(g).

Analysis

Beginning under the *Rowley* Standard, we first take note that the parent has made no specific allegations relating to *Rowley's* second prong, substantive violations, nor did this investigation unearth any. Thus, this analysis will focus on *Rowley's* first prong. We must first analyze whether the November 2023 IEP was developed in adequate compliance with the procedural obligations imposed under the IDEA. *Rowley*, 102 S. Ct. 3034 (U.S. 1982). From the Background and the discussion within Issue One, we know that, while a single procedural violation exists within our statutory timeline, several more occurred just outside of it which may have impacted the child's ability to receive a FAPE. Thus, we must move to the three-prong test provided by K.S.A. § 72- 3416(g)(2)(A-C) (and duplicated within 34 C.F.R. § 300.513(a)(2)) to determine if any of the following are true:

1. Did the procedural violation(s) significantly impede the parent's opportunity to meaningfully participate in the decision-making process regarding the provision of FAPE to their exceptional child?
2. Did the procedural violation(s) impede the child's right to FAPE?
3. Did the procedural violation(s) cause the deprivation of educational benefit?

As may already be evident, the first prong listed here, K.S.A. § 72-3416(g)(2)(B), is a rephrasing of Issue Two, but with the added qualifier of being a "significant" impediment. Through its investigation, KSDE has already determined within Issue Two of this report that the parents were not denied meaningful participation. With that so held, the first prong of § K.S.A. § 72-3416(g)(2)(A-C) can be disposed of.

The second prong, asking whether these procedural violations impeded the child's entitlement to a FAPE, does not come with such easy answers. Instead, we must analyze each and every procedural violation (alleged and confirmed) both inside and outside our statutory timeframe to determine whether any of them, or perhaps all of them cumulatively, impeded the child's right to FAPE.

Progress Reports

In her written complaint, the parent alleged that she was not receiving progress reports as indicated on the child's IEP. K.S.A. § 72-3429(c)(3). Indeed, no party to this action could show that a progress report was provided to the parents in October of 2023, crediting the parent's allegation.

However, nothing in this record substantiates an allegation that the parent not receiving this report materially impeded the child from exercising his right to a FAPE. While a progress report was not provided in October 2023, the child's progress was discussed during IEP team meetings on September 1, 2023 and November 3, 2023. The meeting notes from each reflect the incorporation of parental input and responsiveness to questions. The record indicates the mother was exchanging other emails with the IEP team on August 31, September 7, September 10, September 25, October 25, October 26, and October 31, 2023, crediting meaningful participation in the development process despite the procedural defect. KSDE is satisfied that the absence of an October 2023 progress report did not impede this child's rightful entitlement to a FAPE.

Notices of Excusal

In her written complaint, the parent alleged that she was not receiving proper parental notifications required under the IDEA from her child's school. Though not specifically alleged within her complaint (and sitting outside of our statutory timeline), this investigation uncovered one meeting, held on August 15, 2022, wherein a required participant was not present or excused. K.S.A. § 72-3404(u)(2). While Amy Garver, LEA Representative, was validly excused

through a signed Notice of Excusal on the meeting date, no such form exists to excuse the absence of a General Curriculum Instructor.

However, nothing in this record substantiates an allegation that the parent not excusing this required participant materially impeded the child from exercising his right to a FAPE. The August 15, 2022 meeting was a "move-in" meeting wherein the team set up the child's Interim IEP. Due to the circumstances, no IEP services or accommodations were modified on this date. The child's "old" IEP was temporarily accepted while the team worked to gather more data. Because no changes were made, it would be unreasonable to presume that the outcome of this meeting would have been materially different had a General Curriculum Instructor been present and contributing input.

Notices of Meeting

In her written complaint, the parent alleged that she was not receiving timely Notices of Meeting at least 10 days before IEP meetings were held. K.A.R. § 91-40-17(2). She specifically alleged that she had not received a Notice of Meeting for the August 15, 2022 meeting. As detailed in Issue One, this allegation ended up unfounded. Though not specifically alleged (and sitting outside of our statutory timeline), this investigation uncovered one additional Notice of Meeting, generated on January 2, 2023, containing a minor procedural defect. The Notice of Meeting generated by Peter Lelich does not "invite" an Occupational Therapist, yet an Occupational Therapist was in attendance.

Though perhaps atypically problematic given the parent's contentious relationship with that particular provider, there is nothing in this record to substantiate an allegation that this provider's presence materially impeded the child from exercising his right to a FAPE. Because the January 12, 2023 meeting was a parent-requested meeting held over concerns relating to occupational therapy provision, it would have been inappropriate to leave such a service provider "out" owing simply to a defective notice. The parent came in ready to discuss occupational therapy concerns, including bringing copies of outside evaluations. At this meeting, the school proposed occupational therapy consult services. No changes were made from this meeting, as the parent refused to sign the Prior Written Notice.

As all parties came to the meeting aware of the topic to be discussed, it is reasonable to conclude that the parties were aware such a discussion would likely include an Occupational Therapist. Crediting this interpretation further, the parent has not expressed any concern within her complaint over the presence of an Occupational Therapist at the January 12, 2023 meeting. KSDE is satisfied that this minorly defective notification did not materially impede the child's entitlement to a FAPE.

Prior Written Notices

In her written complaint, the parent alleged that she was not receiving required Prior Written Notices prior to the school altering the identification, placement, evaluation, or provision of

FAPE to her child. K.S.A. § 72-3430. The parent did not specifically allege any particular violation; instead, her complaint articulates a generalized belief that she knows some are missing. To her credit, this investigation uncovered two instances (containing five total defects) wherein no notice at all or seriously defective notice was provided. While none of these instances occurred within the statutory timeframe, this analysis will still scrutinize their subsequent impact on the child's right to FAPE.

Though sitting outside the procedural timeline, the Prior Written Notice generated for the November 8, 2022 meeting was seriously defective. To begin, this notification describes the change in services as non-material, not requiring parental signature. The school describes their proposals and refusals of service by saying, "The team discussed [the child's] present levels and decided that his current services have been successful in his progress. Therefore, he will receive the following services from 11-8-2022 to 11- 9-23; [the child] will receive special education services in the general education classroom for 86 minutes 5 days a week for English and Reading. [The child] will receive speech and language services in a special education setting for 20 minutes 2 days a week." The explanation provided states, "The action of continuing with the same services was proposed because at this point he has been successful in his classes." When explaining their rationale for rejecting other options, the school explained, "All other options were considered, but rejected at this time. He is undergoing a reevaluation so when that is complete then other options may be considered."

Yet, as discussed, services changed as a result of this meeting that are not indicated or justified within the signed PWN. While adding math services was a 19%, non-material addition (though it still required proper Prior Written Notice under K.S.A. § 72-3430), dropping Extended School Year and the Individual Nursing Plan were both material changes in service (100% drops) that required parental consent for removal expressed through signed, proper Prior Written Notice. K.S.A. § 72-3430 & 3432; K.A.R. § 91-40-27(a). A silent Prior Written Notice issued on the same date is not enough to substantiate that this occurred. K.S.A. § 752-3432(a-g).

The record is unclear as to whether these particular procedural violations impeded the child's ability to access FAPE. It is not even clear that the child ever utilized either of these services (ESY or Nursing Plan) before they were dropped. Regarding the provision of services, it could be argued that the parent only "signed" to keep getting the exact same services; thus, only those services indicated on the Prior Written Notice are valid. Under that framework, all changes made to the IEP on this date were invalid, even accommodations, a position it appears neither party would agree with. Likewise, it could be argued that only those services explicitly mentioned within the meeting notes or the Prior Written Notice are valid. In such a case, while the new accommodations would hold, all three major service changes (ESY, Nursing Plan, and math addition) are still improper, leading to the same result. If math services were not "supposed to" change that day, then the December 2022 amendment was harmless procedural error correcting the November 2022 clerical error. If math services were "supposed

to" change that day, that credits an argument that dropping ESY and the Individual Nursing Plan were consented choices evidenced by bad paperwork. The parent has made no mention of these changes in services though it is clear from her complaint's notation of a missed checkbox that she scrutinizes her child's IEPs to ensure accuracy. If the parents had not anticipated their child being home this summer instead of receiving Extended School Year services, it seems probable that that information would have entered their complaint. Yet it is equally conceivable that the parents did not "catch" these alterations simply by virtue of the nature in which they are presented (single checkboxes, as they tend to appear statewide) and unfamiliarity with how ESY provision "works." The promised dates of service beginning on December 13, 2022 only add a layer of further ambiguity, as that fact, taken in conjunction with the parent's silence to the issue, suggests it's even possible that no party to this action has provided a wholly accurate version of the November 8, 2022 IEP as it appeared on that date. Though not required by statute, obtaining signatures within the IEP document itself could have wholly disposed of this issue.

In sum, it is unclear at this point in the timeline whether the unconsented material drop-in services stemming from the November 8, 2022 meeting had an actual impact on the child's provision of FAPE. For now, that is the furthest this analysis will go in forming a conclusion on substantive degree of this error, but this will be expanded upon after a discussion of the December meeting.

On December 13, 2022, Prior Written Notice was issued covering the evaluation/amendment meeting proposals. The notice presented to the parent described the services proposed from December 13, 2022 until November 7, 2023 as, "[the child] will receive special education services in the general education classroom for 106 minutes per day 5 days a week for math, English, and reading. [The child] will receive special education services in the special education classroom for 20 minutes per day 2 days a week for speech and language services. Occupational Therapy consult/indirect services for 15 minutes 1 time per month." This Prior Written Notice and all associated documentation was returned unsigned by the parent.

The procedural issue stemming from the December 13, 2022 meeting is that, without signed consent, services should not have changed. K.A.R. § 91-40-19. Yet the record reflects that, as a result of this meeting, services "reverted back" to 86 minutes of direct special education support, not 106 minutes. While this reintroduces all the questions posited for the November 8, 2022 meeting, this 19% change in services is not quite as problematic as the material November drops. K.S.A. § 72-3432. The meeting notes and Prior Written Notice indicate the provisioning of math services was discussed during this meeting. The meeting notes say, "Doing an amendment to add math." (emphasis added). A January 13, 2023 email from Bailey Edgar to the parent indicates, ". . . [there] will be another Prior Written Notice that addresses the addition of the math services that we will need your consent on. . . " These records reflect, at the very least, a team that thought they were adding math services that day, not in

November. No rebuttal to this understanding is reflected in the meeting notes or in later communications, including the parent's January 13, 2023 letter. When draft IEPs were prepared in October of 2023, the parent did not vocalize any concern regarding the provision of math services, the dropping of ESY, or the dropping of the Individual Healthcare Plan.

These facts tend to bolster a conclusion that, though there are serious procedural defects within the Prior Written Notices associated with the November 8, 2022 and December 13, 2022 meetings, it is unlikely that those defects were in the arena of actually impacting the child's provision of FAPE so much as they were serious clerical errors that reverberate throughout the parties' submissions. While they certainly could have impacted FAPE, there is nothing in the record to credit an allegation that they actually did. This investigation has not received any documentation indicating that the child's unaddressed healthcare needs were disrupting his right to receive FAPE. The investigator has also not received any documentation crediting an allegation that the parent anticipated Extended School Year services, objected to their removal, or that the child could not make adequate progress without such services. To conclude that these deficits impacted the child's right to receive FAPE would be to presume a necessary educational benefit flowing from these services that just has not been established on this record.

The investigator did not receive a copy of the Prior Written Notice issued by Peter Lelich on September 6, 2023. According to Peter Lelich's October email, this notice purportedly covered "all considerations" from the team meeting except the refusal of direct occupational therapy services within the special education setting. It is unclear whether this document contained a refusal to *evaluate*. Though at least two Prior Written Notices exist in the record showing a refusal to provide direct occupational therapy within the SPED setting, it is unclear whether the parent's request for evaluation was met with a Prior Written Notice denying her. If it was not, it should have been. K.S.A. 72-3430; 34 C.F.R. 300.503. Furthermore, the Prior Written Notice issued on October 26, 2023 was not timely according to Kansas guidance defining a "reasonable time" under K.S.A. § 72-3430(b)(2). *See* KSDE Memo: "Reasonable Time," at https://www.ksde.org/Default.aspx?tabid=614.

However, there is no evidence within the record that would credit an allegation that the deficiencies contained within this notice impacted FAPE. To the issue regarding a refusal to evaluate, the school has refused this evaluation because they already evaluated the child in December of 2022, but the parent did not agree with the evaluation results or consent to the initiation of services. A school is not in violation of its obligations for identification, evaluation, or reevaluation if the school declines to pursue an evaluation or reevaluation because a parent has failed to provide consent for the proposed action. K.A.R. § 91-40-27(f)(3). Procedurally, it is improper to refuse a parent's request to evaluate without generating a Prior Written Notice for the parents' review. K.S.A. § 72-3430(2). Furthermore, the parent has obtained outside evaluations for this child that she is unwilling to allow the school to use in forming the basis for

her child's placement decisions. If the school denied the child an evaluation, even inappropriately (though this denial itself was not unlawful; see the *Kansas Special Education Process Handbook*, 59, at Question 19), the parent has always retained the option of submitting her child's outside evaluation results for the team's consideration when making placement determinations. If a parent disagrees with the results of an evaluation or feels a school is not adequately identifying all areas of need, they are entitled to request an Independent Educational Evaluation under K.A.R. § 91-40-12 for the team's consideration. Finally, though the Prior Written Notice issued on October 26, 2023 by Peter Lelich was not issued in a reasonable time, the information contained therein is identical to the information provided in the Prior Written Notice issued on January 12, 2023. The record reflects that the parents were not waiting on this Notice before taking any particular action or even expecting it to show up when it did. That its absence had so little impact on the ultimate course of events reflects that this procedural violation did not impact the child's right to FAPE.

With prongs one and two disposed of, this analysis must now answer the question, "Did these procedural violations result in a deprivation of educational benefit?" This is where we will begin our Endrew F. analysis, allowing us to determine whether this IEP was reasonably calculated to provide this child with appropriate progress in light the child's circumstances. If it was, we must then determine whether the procedural defects outlined in Issue One rose to such a level as to deprive this child of those benefits.

First, we must consider the student's present levels of academic achievement and functional performance and how the student's exceptionality impacts their access to and progress within the general education curriculum. K.S.A. § 72-3429(c)(1). To facilitate this analysis, the relevant portions of the child's 2023 IEP have been excerpted below:

Present Levels of Academic Achievement and Functional Performance

- When given 5th grade level reading probes, 85% accurate.
- When given 6th grade level reading probes, 60% accurate.
    - Missed fact v. opinion and prediction.
- When given writing prompt, correctly capitalizes 69%; comma usage 50%; grammatical accuracy 68%; conclusory punctuation 55%.
    - Run-on sentences lowered score.
    - Student refuses speech to text function on his computer, even in private setting.
- Able to use a variety of conjunctions.
- Requires structured practice and repetition.
- Sentences have subject and predicate, but not much description.
- Most writing assignments take extended time because processing speed and need for technology/scribe.
- Kansas State Assessments:
    - ELA: 274 (Level 1)
    - MAP Reading: 213 (47%), up from 205 (26%) previous semester
- When given 4h grade level math probe, 90% accurate.
- When given 5th grade level math probe, 83% accurate.
- When given 6th grade level math probe, 56% accurate.

- Most frequently missed problems: Fractions, converting fractions.
- Kaufman (3rd Ed.): Math composite standard score:75 (5%) (Below Average).
- Kansas State Assessments:
    - MATH: 271 (Level 1)
    - MAP Math: 198 (10%), down from 201 (10%) previous semester.
    - Produces multisyllabic words with 67% accuracy.
- Great progress on vocalic /r/ and differentiating productions of ar/or.
- Tries to substitute big vocabulary words for easier to pronounce words, making him more difficult to understand.
- Benefits from breaking down the syllables and putting them back together.
- Benefits from repetitive practice.
- Benefits from tactile/visual cues for sounds in error; e.g., /th/.
- Errors are inconsistent, typical of DDX; needs to employ strategies when stuck.
- MAP Language Usage: 190 (6%).
- Science teacher reports student uses accommodations; student does not check email or work at home during absences, causing him to fall behind.
- Math teacher reports student usually refuses accommodations; student does not typically need extended time on assignments unless absent.
- PE teacher reports student is doing fine; no concerns.
- Social Studies teacher reports student's accommodations are working fine; student is struggling to catch up from many absences.
- English teacher reports student usually refuses accommodations except read aloud and extended time; student is having a difficult time getting caught up from absences.
- Personal Finance teacher reports even with reduced assignments, student is struggling to understand material for quizzes due to absences.
- Hearing: Pass
- Vision: Pass

Impact of the Exceptionality on Child's Participation in Gen. Ed. Curriculum

- Exceptionality in the area of reading and writing affects his access to and progress in the general education curriculum.
- Child has slow processing rate, so he needs instructions broken down into smaller parts, extended time and separate setting for tests, read aloud for above level texts, and graphic organizers for complex assignments.
- Exceptionality in the area of math affects his access to and progress in the general education curriculum.
- Child requires additional examples and for multi-step problems to be broken into smaller steps.
- Exceptionality in the area of speech ("diagnosis of Apraxia of speech") affects his memory and discrimination of sounds.
- These skills are needed for reading and spelling development.
- These skills affect the child's ability to clearly express himself and participate in expressive language development.
- The child has diminished listening comprehension, which impacts his ability to correctly answer comprehension and sequencing questions.

Measurable Annual Goals (Academic and Functional)

- #2.1: By 11/2//24, when given 7th grade level reading probe, 80% accurate on 4/5 data days.

- #4.1: By 11/2/24, when given writing prompt or editing assignment, child will proof and edit his own work for capitalization, punctuation, grammar, and sentence sense with 80% accuracy in each category on 4/5 data days.
- #3.1: By 11/2/24, when given 7th grade level math probe, 70% accurate on 4/5 data days.
- #1.1: By 11/2/24 child will produce multisyllabic words during structured speaking opportunities with 80% accuracy on 2/3 data days.

Special Education and Related Services

- Special Education Services (Science and Social Studies)
- Setting: Direct, inside G.E. class
    - Provider: Heidi Hill
    - Duration: 86 min.
    - Frequency: 5 days / q week.
- Modification: The child will have access to a writing checklist to self-edit.
- Modification: The child will have assessments read aloud.
- Modification: The child will have the opportunity to complete a graphic organizer for writing assignments.
- Modification: The child will take tests in a separate location.
- Modification: The child will utilize an agenda tool to prioritize assignments.
- Modification: The child will be provided with guided notes either prewritten or cloze form.
- Modification: The child will be provided with typing programs to practice keyboarding.
- Special Education Services (Reading, English, and Math)
    - Setting; Direct, inside G.E. class
    - Provider: Heidi Hill
    - Duration: 129 min.
    - Frequency: 5 days / q week.
- Modification: The child will show work on one math problem of each type but does not need to show subsequent provided he demonstrates knowledge.
- Modification: The child will be given a study guide or study resources prior to tests.
- Special Education Services
    - Setting: Direct, outside G.E. class
    - Provider: Dawnyale Jones
    - Duration: 20 min.
    - Frequency: 2 days'/q week.
- Modification: The child will have access to a technology device to make use of text to speech.
- Modification: The child will have premium Google text/write /word prediction installed on his computer for text to speech/
- Modification: When asked a question in class, allow the child 5 seconds delay to process before anticipating an answer.
- Modification: The child will be given a break card that he may utilize if he needs a break to calm down.
- Modification: The child will have a large visual timer to gauge his time in the calming room.
- Modification: The child will be given extended time on all assignments.
- Modification: Reduce the child's assignments by 50%. Grade portion turned in.
- Modification: The child will receive extended time on assignments missed while he attends weekly outside services two days past the original due date."

Progress Toward Goals and in General Education. Curriculum

- #2.1:
    - 2nd: 61%

    - 3rd: 68%
    - 4th: 81%
- #4.1:
    - 2nd: Report 1: Capitalizes 95%; Punctuation 92%; Grammar 77%; Proper Nouns 89% Report 2: Capitalization 74%; Commas 61%; Grammar 77%; Ending Punctuation 68%.
    - 3rd: Report 1: Capitalizes 96%; Punctuation 92%; Grammar 79%; Proper Nouns 89%. Report 2: Capitalization 77%; Commas 63%; Grammar 77%; Ending Punctuation 74%.
    - 4th: Report 1: Capitalizes 94%; Punctuation: 88%; Grammar: 80%; Proper Nouns: 88% Report 2: Capitalization 77%; Commas 66%; Grammar 78%; Ending Punctuation 75%.
- #3.1:
    - 2nd: Not measured. (Tested 6th grade level.)
    - 3rd: Not measured. (Tested 6th grade level.)
    - 4th: 71%
    - Classwork: 82% Average (= 77% average score for #3.1.)
- #1.1:
    - 2nd: 72%
    - 3rd: 78%
    - 4th: 71%"

From the child's Present Levels, we can see that the data gathered reflects the child facing challenges with reading comprehension, writing with proper grammar and syntax, math skills, and the production of some vocal sounds. He has a slower processing speed (and thus needs access to "technology/scribe") when utilizing writing skills. Regarding speech, he benefits from repetitive practice and breaking down words then putting them back together. He benefits from tacticle/visual cues.

The difficult portion of this analysis arises here, at Present Levels. The proverbial elephant in the room is missing from the baseline data: Motor skills. Nothing in that list addresses the child's physical ability to produce handwriting, for example. Upon review of the handwriting samples provided from the Decoste Writing Profile, this is troubling. His dictation and fast copies are illegible. His handwriting grows larger and spacing grows farther apart as he writes. Even his September 9th informal screening sample – the most legible of the three samples received – flags a possible endurance issue as the child's legibility regresses sentence-by-sentence. The IEP's Present Levels should indicate how the child's disability affects his involvement and progress in all aspects of the general education curriculum. K.S.A. § 72-3429(c)(1)(A).

This omission from the baseline data was procedurally problematic. According to the *Kansas Special Education Process Handbook*, baseline data is such data that is ". . . *derived from locally developed or adopted assessments that align with the general education curriculum*." *Kansas Special Education Process Handbook*, at 74, ¶ 3. The information gathered by Megan Nolla in conducting the Decoste Writing Profile was useful baseline data for the IEP team to work from in addressing the child's fine motor needs. Schools must ensure the IEP team revises the IEP, as appropriate, to address the results of a reevaluation. K.S.A. § 72-3429(f)(2)(B).

However, this procedural concern does not give rise to a FAPE violation. The parent's January 13, 2023 letter states that the parent did not agree with the use of the Decoste Writing Profile because, *"This screener was not appropriate to utilize given this child's academic performance, as well as his current diagnoses.*" Moreover, the parent did not consent to the school's evaluation results or the proffered occupational therapy services that came, in part, as a result of the Decoste. Informed parental consent must be obtained prior to the initial provision of special education or related services. K.A.R. § 91-40-27(a)(2). A school is not in violation of its obligations for identification, evaluation, or reevaluation if the school declines to pursue an evaluation or reevaluation because a parent has failed to provide consent for the proposed action. K.A.R. § 91-40-27(f)(3). The baseline data relating to motor skills should have been incorporated into the IEP document. However, absent parental consent, this error is rendered harmless as no material change could be made to the child's curriculum relating to the provision of occupational therapy services.

The impacts of the child's exceptionality are listed as he requires text to speech support, instructions to be broken down into smaller parts, extended time on assignments, a separate setting for tests, read aloud for above level texts, and graphic organizers for complex assignments. He needs additional examples and multi-step directions in math. His "diagnosis of apraxia of speech" affects his memory and discrimination of sounds, which are needed for reading and spelling development and expressive language development. He also has diminished listening comprehension which impacts his ability to correctly answer comprehension questions.

This section shares the same deficit as the Present Levels: We are missing data about whether/how this child's fine motor skills impact his ability to access the general education curriculum. Though the box is checked on the IEP indicating that anything not discussed is within normal parameters, we know from the four-page analysis in the area of Health/Physical/Motor/Sensory conducted during his December 13, 2022 reevaluation meeting that impacts do exist. For example, the child struggles to open his locker owing to his fine motor skills. "*He at times has difficulty unlocking his locker with the twist knob and would benefit from a keyed lock to keep his locker secure and accessible to him*." The meeting notes from December 13, 2022 indicate the child's handwriting speed is a functional barrier to his access. However, once again, absent parental consent to initiate services, this report reaches the same conclusion.

Next, we look to the child's measurable annual goals to determine whether those goals align with the child's present levels and impact and access to the general curriculum. K.S.A. § 72-3429(c)(2). The child has four goals: First, he's striving for 80% accuracy on 7th grade reading probes by November 2, 2024. Second, he's striving for 80% accuracy when self-editing his own writing assignments for grammar and syntax by November 2, 2024. Third, the child aims to

achieve 70% accuracy on a 7th grade math probe by November 2, 2024. Finally, the child aims to achieve 80% accuracy producing monosyllabic words by November 2, 2024.

These goals fall neatly in line with the information contained within the child's baseline performance and the impacts of his exceptionality. The child's difficulties in reading comprehension are met with an appropriate goal in the area of reading comprehension at age level, upon which the child is reportedly making progress as indicated in his progress notes. The child's struggle to writing with proper grammar and syntax is met with a goal which utilizes self-editing at grade level, which fosters the child's natural sense of independence and problem-solving. Here, too, the child is making documented progress. The child's difficulties in math are being met with a goal to make reasonable progress at a grade-level assessment. Finally, his struggle to produce monosyllabic sounds is met with a goal to increase his accuracy in structured production settings. While the child appears to struggle with this goal, goals are not guarantees. *K.D.,* 904 F.3d 248 (3d Cir. 2018). The IEP need only be reasonably calculated, not ideal. *Endrew F.*, 580 U.S. 386 (2017).

Similarly, with parental consent, a goal addressing the child's fine motor skills would have been appropriate. However, here again, when a parent refuses to consent to the provision of services, the school shall not be considered to be in violation of the requirement to provide a free appropriate public education to the child. K.A.R. § 72- 3428(g)(2)(B). IEP goals must meet each of the child's educational needs that result from the child's disability. K.S.A. § 72-3429. That cannot, however, be read to require a school to develop goals in areas of exceptionality wherein the parent has not consented to the provision of services.

Next, we consider whether the child's services are aligned with their needs and whether it is designed to enable the student to make progress toward their goals and in the general curriculum. K.S.A. § 72-3429(c)(4). The current IEP offers 86 minutes of direct special education services within the general education setting five times a week to support the child in Social Studies and Science. These services support the child by helping him "keep up" or "catch up" when his exceptionality causes the child to lag behind peers. This may include prompting task initiation, assisting with note-taking, ensuring accurate reading comprehension, and aiding the child in producing handwriting. It added 129 minutes of direct special education support in the general education setting five times a week to support the child in Reading, English, and Math. This service addresses three primary areas of need indicated within the IEP. It offers 20 minutes of direct special education support in the special education setting twice a week to provide the child with Speech Language services. This service addresses the child's goal to produce multisyllabic words with 80% accuracy. No area of documented need wherein consent was obtained is left unaddressed by the services and accommodations provided within the IEP. The November 2023 IEP reflects consideration of the child's current performance levels and adjustment of services based upon that reflection.

Finally, we consider the key factor in determining FAPE, data on the student's progress, to determine whether that progress is appropriate in light of the child's circumstances. This will tell us whether there was an educational benefit to be deprived of under K.S.A.§ 72-3416(g)(2)(C).

First, we should begin with a review of the child's circumstances. This child has several exceptionalities including a motor disability (Global Apraxia, *see* DSM–5, 5th Edition, American Psychiatric Association, 2013.), Speech Apraxia, Sensory Integration Disorder, and multiple food allergies. He was issued a Certificate of Incapacity by the state of Indiana. According to his 2016 Psychoeducational Report, at that point in his life, the child scored "Well Below Average" in reading skills, "Below Average" in written expression, and "Average" in mathematics. He was described as typically developing and was manifesting behavioral concerns (trouble focusing, kicking, eloping, and hiding) at that point in his life which are no longer present. At this time, the child's processing speed tested as "Average." The testing observations within the report reflect a child who became avoidant or withdrawn when he was not confident in his ability to perform a task. His providers then were concerned about the child's response to academic tasks which required "sustained mental effort."

Recently, in Fall 2023, this child scored 213 on the MAP Reading Assessment, placing him in the 47th percentile. This score suggests the child's reading accommodations and services likely provide him educational benefit. He scored 190 on the MAP Language Usage Assessment, putting him in the 6th percentile. While this score could indicate a lack of educational benefit, it may just reflect the regular challenges a child with apraxia faces in producing speech. He scored 198 on the MAP Math Assessment, placing him in the 10th percentile. This last score was down from his Spring 2022 score of 201, which had placed him in the 11th percentile. As math services are new after the reevaluation and were recently increased, it appears that, at least in the area of math skills, the school is appropriately modifying the IEP to adjust for the child's performance.

Today, the child is described as "very likable" with a "quick smile" and an "easy personality" according to his most recent IEP. Some providers mention a processing delay, though it is unclear whether this information is being garnered from personal observation or some empirical source. The observations within the meeting notes and the IEP reflect a child who still becomes avoidant or withdrawn when he is not confident in his ability to perform a task. They also take note that this child is highly independent and does not like asking for help.

The primary concern of the child's providers has shifted considerably, however, from those behavioral concerns previously noted in 2016. Within the November 3, 2023 IEP, the child's Math teacher, Science teacher, Social Studies teacher, English teacher, and Personal Finance teacher have all each individually reported that the child's absences are interfering with his ability to succeed in the general education curriculum. His Science teacher reported that the child is not checking emails or completing work at home after his absences, causing him to fall

behind. The child's Math teacher reported that he can usually complete assignments without needing an accommodation for extra time, but needs extended time for work occurring during his absences. The Social Studies teacher reported that they are struggling to help the child catch up from absences. His English teacher reported that, even with her class's policy for allowing students to turn in missing assignments past their due date, they were struggling to keep him caught up from all the absences, particularly because he was missing more than one class. The child's Personal Finance teacher expressed that they had cut out all of the material from the curriculum that they could, but the child was still struggling to complete enough material to prepare for a quiz. These provider notes reflect a child whose circumstances are becoming untenable for him to continue to make adequate progress.

Multiple meeting notes indicate, and the parent's January 13th letter reiterates, that the child is experiencing ". . . *anxiety secondary to not being able to perform on the same level of his same-aged, typically developing peers*." In an attempt to mitigate the child's excessive absences, he has been granted additional accommodations to allow him extended time on assignments missed for appointments, the reduction of graded material (though this accommodation also relates to his challenges in producing output), and most recently, extended time on all assignments.

Despite all of this, the child appears to be making adequate progress on most of his documented goals. For example, he met his 2022 goal of producing a syntactically accurate sentence when given a visual and a conjunction with 80% accuracy. In 2022, the child's baseline on a 4th grade math curriculum assessment was a 63%. He met his goal of achieving an 80%, so this was replaced with a new goal to achieve 70% on a seventh-grade math curriculum assessment by November 2, 2024, which was also met with a 71% in 4th Quarter. Some goals he struggles with, as is the case for his goal in producing multisyllabic words, but given the nature of his exceptionality, it is reasonable that such a goal wasn't met within a year. All things considered, in light of his circumstances, this child is making impressive progress. These observations of growth and development are strong indicators that the child's IEP was reasonably calculated to provide him with educational benefit. Endrew F., 580 U.S. 386 (2017).

While neither party to this action submitted a record of the child's grades, it is concerning to the Department that this child's need for services virtually doubled within the course of a single academic year. Even taking into consideration the positive data produced by his progress reports, that this child now requires two more hours of service five days a week indicates that something within this child's circumstances and/or IEP may not be adequately addressing his underlying needs. The provider reporting contained within the November 3, 2023 IEP and the Attendance Detail Report (reflecting 45 absences in the 2023-2024 school year) both reflect a child whose greatest obstacle to obtaining an appropriate education is how often he is absent. Thus, KSDE is satisfied that the school did not deprive the child of educational benefit through its procedural errors to such a degree as to rise to a FAPE violation.

Without consent to initiate occupational therapy services, there can be no deprivation of a merely prospective educational benefit.

Conclusion

In her complaint, the parent alleged that USD 458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a free appropriate public education (FAPE) to her child as required under K.S.A. § 72-3410(a)(2), K.A.R. § 91-40-2, and 34 C.F.R. § 300.101. Though the record is littered with procedural defects, none rise to such a level as to credibly support a finding that USD 458 denied the child FAPE under K.S.A. § 72-3416(g)(2)(A-C). The only two that could have (surrounding the November and December 2022 meetings) are not concerns indicated within the parents' complaint, nor does the record reflect a material impact. Similarly, the Endrew F. analysis indicates the IEP, though deficient, is only deficient in those areas in which the parent has not consented to initiate services or agreed with the evaluation results. Where parents refuse consent, schools will not be held liable for a FAPE violation for refusing to continue evaluating or developing the IEP within the non-consented area. See, generally, K.A.R. § 72-3428(g)(2)(B). Based on the foregoing, this investigation concludes that USD 458 *did not violate its obligation* to provide the child with a Free Appropriate Public Education.

Summary of Conclusions and Corrective Action

Issue One

USD 458 violated K.S.A. § 72-3430(b)(2) and K.S.A. § 72-3429(c)(3) based on the findings of fact listed above. Corrective action is required, as follows:

1. Within 10 calendar days of the date of this report, USD 458 must submit a written statement to KSDE Special Education and Title Services (SETS) that it will comply with:
    a. State legal requirements at K.S.A. § 72-3430(b)(2), which require the District to provide timely Prior Written Notice within a reasonable amount of time.
        i. Due Date: July 5, 2024.
    b. State legal requirements at K.S.A. § 72-3429(c)(3), which requires that parents are provided with the timely progress reporting indicated within their child's IEP.
        i. Due Date: July 5, 2024.
2. By November 1, 2024, USD 458 shall provide training to Basehor-Linwood Middle School staff and providers regarding their procedural obligations under the IDEA. This training must cover (1) when a Prior Written Notice is indicated, with emphasis on requests to evaluate, (2) what information a Prior Written Notice must contain, (3) the procedural timeframe for issuing timely Prior Written Notice, and (4) the procedural timeframe for timely progress reporting. This training must be given to all general and special education teachers, providers, and administrators who shall work within the building in the 2024- 2025 school year. USD 458 will provide a copy of the training

agenda, dates of training, and verification of individual attendance to SETS according to the schedule below. This training may be provided to individuals as part of coaching or supervisory meetings.

a. Due Date for training agenda: July 15, 2024.
b. Due Date for dates of training (schedule): August 18, 2024.
c. Due date for verification of attendance: November 1, 2024.

Issue Two

This investigation found no violations; thereby, no corrective action is necessary.

Issue Three

This investigation found no violations; thereby, no corrective action is necessary.

Investigator

Brian Dempsey

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).

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 #500
ON MARCH 19, 2024

DATE OF REPORT MAY 3, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of twelve students by ----------, Social Worker in USD #500. In the remainder of the report ---------- will be referred to as "the complainant". The twelve students will be referred to collectively as "the Students" and individually as noted in the chart below:

Name	Date of Birth	Referred to as
(Redacted)	(Redacted)	Student 1
(Redacted)	(Redacted)	Student 2
(Redacted)	(Redacted)	Student 3
(Redacted)	(Redacted)	Student 4
(Redacted)	(Redacted)	Student 5
(Redacted)	(Redacted)	Student 6
(Redacted)	(Redacted)	Student 7
(Redacted)	(Redacted)	Student 8
(Redacted)	(Redacted)	Student 9
(Redacted)	(Redacted)	Student 10
(Redacted)	(Redacted)	Student 11
(Redacted)	(Redacted)	Student 12

It is noted that the complainant is not the parent/legal guardian of any of these students nor a district employee serving as an IEP team member for any of these students. Consent to release personally identifiable information to the complainant was not provided by the parent/legal guardian of any of the students. As such, the complainant is being provided with a redacted copy of the final investigation report.

The complaint is against USD #500 (Kansas City Kansas Public Schools). In the remainder of the report, this public agency may also be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on March 19, 2024 and the 30-day timeline was extended to allow for a systemic investigation.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation, which was provided by both the district and the complainant. The following documentation and information were used in consideration of the issue:

1. Evaluation/Eligibility Report for Student 2 dated November 4, 2022
2. Prior Written Notice (PWN) for initial evaluation of Student 2 dated February 21, 2023 and signed by the parent on February 28, 2023
3. Individualized Education Program (IEP) for Student 5 dated February 24, 2023
4. IEP for Student 10 dated April 11, 2023
5. IEP for Student 3 dated October 4, 2023
6. Email from EverDriven staff to Angela Spann, Special Education Coordinator, dated October 12, 2023
7. IEP for Student 9 dated October 18, 2023
8. IEP for Student 2 dated October 25, 2023
9. IEP for Student 8 dated December 1, 2023
10. EverDriven Transportation Request for Student 6 dated December 4, 2023
11. IEP for Student 1 dated December 13, 2023
12. PWN for a material change of services and substantial change of placement for Student 8 dated January 19, 2024 and signed by the parent on January 26, 2024
13. IEP for Student 5 dated February 9, 2024
14. Copy of the 2023-24 Special Education Case Manager Handbook
15. The Paraprofessional Handbook for the Wyandotte County Special Education Cooperative in USD #500
16. The Kansas Special Education Process Handbook
17. The 2023-24 Kansas Special Education Reimbursement Guide: State Categorical Aid
18. The 2023-24 Attendance Reports for Students 1, 6, and 10
19. Response to Intervention Logs for Students 2, 3, and 5 during the 2023-24 school year
20. The 2023-24 Parent Contact Log for Student 6
21. Frequency Data Sheets for Student 2 and Student 3 during 2023-24 school year
22. Email chain titled Re: Behavior Assessment/Bethel dated February 20 and February 28, 2024 written by Dr. Heather Hamlit, Principal at Bethel Early Childhood Center, to a variety of USD #500 staff
23. Formal Complaint Request Form signed by the complainant on March 19, 2024
24. Interview with the complainant on March 29, 2024
25. Interview with Dr. JaKyta Lawrie, Executive Director of Special Education on March 29, 2024

26. Emails from the complainant to the investigator dated April 8, 2024 at 10:14 AM; April 9, 2024 at 6:05 AM, at 6:13 AM, at 9:11 AM, and 9:17 AM; April 11, 2024 at 4:10 PM; April 17, 2024 at 12:11 PM and 2:15 PM; and April 18, 2024 at 8:21 AM.
27. Response to the Allegations dated April 10, 2024 written by Dr. Lawrie
28. Email from Angela Spann, Special Education Coordinator, to the investigator dated April 26, 2024 at 4:34 PM regarding special education teacher assignments for the identified students
29. Email from Miguel Martin, Director of Transportation, to Dr. Lawrie dated May 1, 2024 at 9:13 AM
30. Emails from Dr. Lawrie to the investigator dated May 1, 2024 at 1:17 PM, 2:02 PM, 2:11 PM, and 2:15 PM
31. Job posting for "Elementary / Early Childhood Paraprofessional" on the USD #500 website
32. USD #500 Human Resources Data for Quita Scales and Deborah Byers, the paraprofessionals assigned to work in the early childhood special education classroom

Background Information

The twelve students are all enrolled in USD #500 and identified as eligible for special education and related services. These services are being provided through the district's early childhood special education (ECSE) program during the 2023-24 school year. The district acknowledged that these students have attended ECSE classes in two different school buildings during the school year due to staffing issues. The students attended the Earl Watson Early Childhood Center between August 17 and December 8, 2023 and the Bethel Early Childhood Center beginning December 11, 2023 through the current date.

Issues Investigated

Based on the written complaint, three issues were identified and investigated.

Issue One

USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEPs of twelve identified students, specifically by not providing the required special education services from a special education teacher during the 2023-24 school year.

Applicable Law

Federal regulation implementing the IDEA at 34 C.F.R. 300.156 require each state education agency (SEA) to establish and maintain qualifications to ensure that personnel necessary to provide special education and related services in accordance with the IEP are appropriately and adequately prepared and trained.

The Kansas Department of Education (KSDE) details personnel qualifications in the 2023-24 Special Education Reimbursement Guide: State Categorical Aid. Per the Special Teacher Reimbursement Licensing Requirements chart in Appendix B, an early childhood special education teacher must hold a Kansas Teaching Certificate with an endorsement for Early Childhood Unified or Early Childhood Handicapped in order to be appropriately certificated.

The Kansas Special Education Process Handbook states that local education agencies (LEAs) may set the standards for employment as a paraprofessional. The Kansas Special Education Process Handbook also states, "Paraeducators (paras) cannot be given responsibility for designing or be the primary person in charge of delivering classroom content."

According to the Paraprofessional Job description in 2023-24 Paraprofessional Handbook, USD #500 requires job related experience, targeted professional development, and 60 college hours or an Associate's degree. However, the job posting for the position of "Elementary/Early Childhood Paraprofessional" on the USD #500 website lists the required credentials as:

Have a high school diploma or a GED certificate AND

- Complete 48 hours at an institution of higher education OR
- Obtain an associate's (or higher) degree OR
- Pass a state approved assessment. Approved assessments include: Workkeys, ParaPro or Para Educator.

The 2023-24 Special Education Reimbursement Guide: State Categorical Aid requires paraprofessionals with three years of experience to receive 10 hours of professional development each school year. It also includes the following list of prohibited activities for paraeducators:

- *Responsible for selecting or administering formal diagnostic or psychological instruments or for interpreting the results of those instruments;*
- *Responsible for selecting, programming, or prescribing educational activities or materials for the students without the supervision and guidance of the special teacher;*
- *Solely responsible for preparing lesson plans or initiating original concept instruction;*
- *Assigned to implement the IEP for students with exceptionalities without direct supervision and involvement from the professional;*
- *Employed in lieu of certified or licensed special education personnel. Staff claimed as paraeducators but employed as professionals to avoid licensing issues will not be reimbursed;*
- *Used as substitute teachers, unless paraeducators possess the appropriate Kansas license;*
- *Performing nursing procedures or administering medications without appropriate supervision/training from an approved health care professional.*

Analysis: Findings of Fact

The following chart summarizes the requirements of the IEPs of the twelve identified students during the 2023-24 school year:

Student	Date(s) of IEPs	Amount of special education instruction required
Student 1	12/13/23	795 minutes per week (mpw)
Student 2	10/25/23	780 mpw
Student 3	10/4/23	Special Education Services: 120 mpw of "*special education services provided by paraprofessional*" 660 mpw of "*special education support with paraprofessionals*" Support for School Personnel: 5 minutes of teacher consultation related to feeding once every 18th week 5 minutes of teacher consultation related to sensory once every 12th week
Student 4	1/17/23 1/29/24	760 mpw 485 mpw
Student 5	2/24/23 2/9/24	780 mpw 810 mpw
Student 6	5/22/23	640 mpw
Student 7	11/16/23	780 mpw
Student 8	12/1/23 1/26/24	386 minutes per day at "Kansas School for the Deaf" Parent written consent for PWN for a material change in services and a substantial change of placement
Student 9	11/18/23	840 mpw
Student 10	4/11/23	790 mpw
Student 11	12/8/23	120 mpw
Student 12	10/11/23	795 mpw

The complainant alleges that the classroom paraprofessionals have been providing the primary instruction to students during the current school year. USD #500 staff acknowledge that, because of staff shortages, multiple teachers have been assigned to the classrooms for these twelve students; however, the paraprofessionals have remained consistent throughout the school year. USD #500 staff also acknowledge that the paraprofessionals have provided instruction and support to students but maintain this acceptable under Kansas rules and regulations.

According to the Quarterly Staff Assignment Summary provided by USD #500, the following chart documents staff assignments for the classroom where the 12 students were assigned during the 2023-24 school year:

Quarter	Special Education Staff	SPED Paraprofessional
First Quarter August 17 – October 12	SPED teacher Jennifer Simmons August 17 – September 11 Virtual IEP case manager Patricia Jerald September 11 – October 12 Building Substitute Teacher Michael Mitchell September 11 – October 12	Debbie Byers August 17 – October 12 Quita Scales August 17 – October 12
Second Quarter October 16 – December 15	Virtual IEP case manager Patricia Jerald October 16 – December 15 Building Substitute Teacher Michael Mitchell October 16 – December 8	Debbie Byers October 16 – December 8 Quita Scales October 16 – December 15
Third Quarter January 4 – March 7	SPED Teacher Erin Cerny January 4 – January 17 SPED Instructional Coach Vanessa Vample January 26 – March 7	Quita Scales January 4 – March 7 Substitute Para Phasinee Brown January 17 – March 7
Fourth Quarter March 18 – May 24	SPED Teacher Kathryn Brooks March 18 - present	Quita Scales March 18 - present Substitute Para Phasinee Brown March 18 - present

Three persons were hired as the ECSE special education teacher for the classroom where the 12 students were assigned. Erin Cerny, and Kathryn Brooks both hold Kansas teaching certificates with Early Childhood Handicapped endorsements. Jennifer Simmons does hold a Kansas teaching certificate but with endorsements for adaptive special education K-6, elementary K-9, and English for speakers of other languages.

Three additional currently employed USD #500 staff were assigned to support and supervise the paraprofessionals in the classroom where the 12 students were assigned. Patricia Jerald works as a special education case manager and holds a Kansas teaching certificate with an endorsement for high incidence special education K-12. Vanessa Vample works as special education instructional coach and holds a Kansas teacher certificate with an endorsement for adaptive special education K-12. Michael Mitchell holds a substitute teaching certificate and works as the building substitute teacher at Bethel.

There have been three special education paraprofessionals assigned to work with these 12 students. Quita Scales has been employed as a paraprofessional in the district since the 2016-

17 school year and holds an Associate's Degree. Deborah Byers has been employed as a paraprofessional in USD #500 since the 1999-2000 school year and she has passed the ParaPro Exam. The Professional Development Logs for both of these employees show at least 10 hours of inservice training during the 2023-24 school year. Phasinee Brown holds a substitute teacher certificate.

Conclusion

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) require USD #500 to ensure that the special education and related services are made available to the child in accordance with the child's IEP. In this case, all 12 students had IEPs that required some amount of specialized instruction during the 2023-24 school year.

Like many other districts, USD #500 is experiencing an on-going shortage of qualified special education teachers during the 2023-24 school year. At various time during the school year, two teachers with appropriate ECSE certification were employed to provide the required special education services to the 12 identified students.

However, there were multiple other periods of time when USD #500 either had an ECSE teacher without the appropriate teaching certification or was using current staff with other job duties familiar with special education to fulfill the responsibilities of the special education teacher including direct instruction, instructional planning, and supervision of paraprofessional staff. Despite these efforts, State regulations are clear that the assigned special education teacher must have both the credentials required as well as the time to complete the job duties of the position.

In this case, the lack of services was caused by the absence of an appropriately certificated special education teacher, not the absence of the student. While the district has made ongoing efforts to hire an appropriately certificated ECSE teacher there has been periods of time during the first, second and third quarters where the 12 students were not provided with special education services by an appropriately certificated special education teacher as required by Kansas rules and regulations.

In addition, the IEP for Student 3 specifically states that a paraprofessional is responsible for the provision of the required 120 minutes of specialized instruction with a total of only ten minutes of support from a special education teacher [five minutes every 12th week and five minutes every 18th week]. It is unreasonable to expect ten minutes every three to four months would allow the special education teacher enough time to provide ongoing direct instruction to the student as well as ample supervision for the paraprofessional to be in compliance with the Kansas state requirements.

Additionally, Student 8 began attending school in USD #500 approximately three months ago but the most current IEP for Student 8 is dated December 1, 2023 and requires 386 minutes per day of specialized instruction at the Kansas School for the Deaf despite a PWN signed by

the parent on January 26, 2024 changing the student's placement to the Bethel Early Childhood Center and significantly reducing the amount of special education and related services provided to the student.

Based on the foregoing, ***it is substantiated t***hat USD #500 failed to implement the IEPs of the 12 identified students specifically regarding the provision of specialized instruction from an appropriately certificated special education teacher during the 2023-24 school year.

The Office of Special Education Programs (OSEP) in the Department of Education issued policy guidance on March 8, 2007 in Letter to Clark stating that local educational agencies (LEAs) are required to ensure that all children with disabilities receive a free appropriate public education (FAPE) consistent with their individualized education programs (IEP). General practice is that services missed because of student absences are not made up because the district was ready, willing, and able to have provided the required special education and related services while services missed because of the absence of a provider are made up or provided by a qualified substitute.

OSEP further encouraged agencies to consider the impact of the absence of a child or provider on the child's progress toward meeting annual goals. OSEP stated that determination of whether an interruption in services constitutes a denial of FAPE must be made on a case-by-case basis.

No findings related to the denial of FAPE for these 12 students can be made at this time because current data is not yet available regarding the long-term impact of the interruption of the specialized instruction being provided by an appropriately certificated ECSE special education teacher caused the staff shortage.

Issue Two

USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide transportation for twelve identified students to access their special education services during the 2023-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) require school districts to ensure that the special education and related services are made available to the child in accordance with the child's IEP.

Federal regulations at 34 C.F.R. 300.320(a)(4) requires school districts to include a description of the related services required to allow the student to advance appropriately toward attaining the annual goals on the IEP; to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be

educated and participate with other children with and without disabilities in the least restrictive environment.

Federal regulations at 34 C.F.R. 300.34 includes transportation as a related service if that transportation is required to assist a child with a disability to benefit from their special education services as described in the child's IEP.

Analysis: Findings of Fact

The complainant and the district agreed that only three students were alleged to not have received transportation as a related service during the 2023-24 school year: Student 1, Student 6, and Student 10. For this reason, the other nine students will not be addressed in this investigation.

The most current IEP for Student 1 is dated December 23, 2023. Documentation shows the parent attended this IEP team meeting in person. Transportation is listed as a related service that is required to be provided to this student. Attendance records show the student has missed a total of 9 school days since this IEP was implemented.

Dr. Lawrie reported that due to district delays in transportation at the beginning of the school year, the parents of Student 1 were offered contracted transportation services through EverDriven. However, the parent initially accepted these services but did not like the fact that the student had to wait on the bus for approximately 10 -15 minutes before a teacher got him off the bus. The parent then chose to transport the student themselves during the remainder of the 2023-24 school year.

The most current IEP for Student 6 is dated May 22, 2023. Documentation shows the parent attended this IEP team meeting in person. Transportation is listed as a related service that is required to be provided to this student. Attendance records show the student has missed a total of 24 school days during the 2023-24 school year.

Dr. Lawrie reported that due to district delays in transportation at the beginning of the school year, the parents of Student 6 were offered contracted transportation services through EverDriven and the parent accepted these services. Records from EverDriven show the parent requested the transportation be placed on hold on September 26, 2023 while waiting for a new chair for transportation and that transportation services were reestablished on December 4, 2023.

Dr. Lawrie reported that once transportation was started, the student did not regularly ride the bus because the parent did not always have the student ready for school during the scheduled pickup window in the morning. The Parent Contact Log shows the parent was most recently called on February 13, 2024 regarding transportation plans.

The most current IEP for Student 10 is dated April 11, 2023. Documentation shows the mother attended this IEP team meeting in person. Transportation is listed as a related service

that is required to be provided to this student. Attendance records show the student has missed a total of 6 school days during the 2023-24 school year.

Dr. Lawrie reported that due to district delays in transportation at the beginning of the school year, the parents of Student 10 were also offered contracted transportation services through EverDriven. Documentation found the student is being transported regularly from and to her babysitter during the 2023-24 school year.

Conclusion

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) require USD #500 to ensure that the special education and related services are made available to the child in accordance with the child's IEP. In this case, Students 1, 6, and 10 had IEPs in place that required transportation as a related service during the 2023-24 school year. Interviews and documentation found USD #500 did offer the parents of these three students with contracted transportation at district expense. The parents of Students 1 was not pleased with the contracted transportation through EverDriven and chose to provide their own transportation. The parent of Student 6 accepted the contracted transportation but did not consistently access this service due to waiting for a new equipment during first semester and not always having the student available each morning to receive the agreed upon contracted transportation during second semester. The parent of Student 10 accepted the contracted transportation and has regularly accessed this related service during the 2023-24 school year.

Based on the foregoing, evidence supports a finding that the district made transportation as a related service available to Students 1, 6 and 10 during the 2023-24 school year.

Issue Three

USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to conduct functional behavior assessments (FBAs) and to develop behavior intervention plans (BIPs)for the twelve identified students during the 2023-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.304(c)(4) require that a child is assessed in all areas related to a suspected disability including, if appropriate, social and emotional status. Federal regulations at 34 C.F.R. 300.503 require school districts to provide parents with appropriate prior written notice and obtain written consent when prior to conducting an evaluation under the IDEA. Federal regulations at 34 C.F.R. 300.303 require reevaluations to be conducted at least once every three years but prohibits reevaluations from occurring more than once per year unless the parent and the LEA agree to conduct such a reevaluation.

Federal regulations at 34 C.F.R. 300. 300.324(a)(2)(i) require a child's IEP team to consider the use of positive behavioral interventions and support, and other strategies to address the behavior of a child whose behavior impedes the child's learning or the learning of others.

The IDEA only includes the term "functional behavioral assessment (FBA)" in terms of disciplinary procedures. Federal regulations at 34 C.F.R. 300.530(3) requires an FBA if the IEP determines that a behavior resulting in disciplinary change of placement is a manifestation of the child's disability. In that situation, the FBA is used to develop IEP goals to address those behaviors and, if a behavior intervention plan (BIP) is developed, then that BIP becomes a part of the child's IEP and the district is responsible for its implementation.

Analysis: Findings of Fact

The complainant and the district agreed that only three identified students were alleged to not have FBAs and BIPS during the 2023-24 school year: Student 2, Student 3, and Student 5. For this reason, the other nine students will not be addressed in this investigation.

Student 2 was initially found eligible as a young child with a developmental delay on November 4, 2022. The complainant provided documentation that the parent of Student 2 provided consent for the student to be assessed in the area of social/emotional/behavioral on February 28, 2023. However, the district was unable to confirm that this reevaluation was ever conducted.

Dr. Lawrie reported that Josh Blake, School Psychologist, must have mistakenly completed the PWN and was not a member of the student's IEP team. However, documentation shows Mr. Blake attended the initial special education eligibility determination meeting on November 4, 2022 and conducted the classroom observation of the student used to determine eligibility.

The most current IEP for Student 2 is dated October 25, 2023. Documentation shows the parent attended this IEP team meeting in person. Kendall Lusk, a member of the Behavior Team, was also in attendance at this IEP team meeting. The IEP team determined that the student's behavior does not impede his learning and the learning of others and that a BIP was not required. It is noted that there are IEP goals addressing the behavioral concerns identified in the Present Level of Functional and Academic Performance. There are no disciplinary incidents reported on the 2023-24 Discipline Report for Student 2.

The most current IEP for Student 3 is dated October 4, 2023. Documentation shows the parent attended this IEP team meeting in person. The IEP team determined that the student's behavior does impede his learning and the learning of others but that a BIP is not required. It is noted that there are IEP goals addressing the behavioral concerns identified in the Present Level of Functional and Academic Performance. There are no disciplinary incidents reported on the 2023-24 Discipline Report for Student 3.

Student 5 had two IEPs in effect during the 2023-24 school year. The first IEP is dated February 24, 2023 and the second IEP is dated February 9, 2024. Documentation shows the parent attended both IEP team meetings in person. Josh Blake, School Psychologist, attended the February 4, 2023 IEP team but did not attend the IEP team meeting held on February 9, 2024. Both IEPs document that the IEP team determined that the student's behavior does impede his learning and the learning of others but that a BIP is not required. It is noted that there are IEP goals addressing the behavioral concerns identified in the Present Level of Functional and Academic Performance. There are no disciplinary incidents reported on the 2023-24 Discipline Report for Student 2.

Conclusion

Federal regulations at 34 C.F.R. 300. 304(c)(4) require that a child is assessed in all areas related to a suspected disability including, if appropriate, social and emotional status. Federal regulations at 34 C.F.R. 300.503 require school districts to provide parents with appropriate prior written notice and obtain written consent when prior to conducting an evaluation under the IDEA. Federal regulations at 34 C.F.R. 300.303 require reevaluations to be conducted at least once every three years but prohibits reevaluations from occurring more than once per year unless the parent and the LEA agree to conduct such a reevaluation.

In this case, the parent of Student 2 provided written consent on February 28, 2023 for the student to be assessed in the area of social/emotional/behavioral and USD #500 was unable to provide any documentation that this reevaluation had been completed.

Based on the foregoing, the district is found out of compliance for not conducting this reevaluation as proposed and agreed to by the parent.

Federal regulations at 34 C.F.R. 300.300.324(a)(2)(i) require a child's IEP team to consider the use of positive behavioral interventions and support, and other strategies to address the behavior of a child whose behavior impedes the child's learning or the learning of others. In this case, the IEP team for Student 2 determined that child's behavior did not impede his learning or the learning others while the IEP teams for Students 3 and 5 did determine that those children's behavior did impede their learning or the learning of others. However, all three IEP teams determined that a BIP was not required as each of the IEPs addressed behavioral concerns through IEP goals.

In addition, there is no documentation to suggest that any of these three students received a disciplinary change of placement that was determined to be a manifestation of their disability which required an FBA be conducted during the 2023-24 school year under federal regulations at 34 C.F.R. 300.503(c)(4).

Based on the foregoing, the district ***was in compliance*** with federal regulations related to FBAs and BIPs for Students 2, 3, and 5 during the 2023-24 school year.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of federal regulations at 34 C.F.R. 300. 300.323(c)(2) is substantiated because the district failed to provide the required special education services by an appropriately certificated special education teacher to the 12 identified students during the 2023-24 school year. Corrective action is required as follows:
    a. CORRECTIVE ACTION:
        i. USD #500 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will ensure that the special education and related services are made available to the students at the Bethel Early Childhood Center in accordance with each child's IEP.
            1. No later than July 1, 2024
        i. USD #500 shall reconvene the IEP team of Student 3 and will develop an IEP that provides for specialized instruction from a special education teacher instead of a paraprofessional. USD #500 shall provide SETS with a copy of this IEP no later than 20 days from the date of the IEP team meeting.
            1. No later than September 30, 2024
        ii. USD #500 shall create an IEP document that reflects the PWN consented to by the parents of Student 8 on January 26, 2024. USD #500 shall provide both the parents and SETS with a copy of this IEP
            1. No later than July 1, 2024
        iii. USD #500 shall collect data to determine if or to what extent the failure to provide the required specialized instruction from a special education teacher impacted each the 12 student's progress towards meeting their individualized IEP goals. USD #500 shall provide IEP goal progress reports to the parents of all 12 students for each of their goals requiring specialized instruction from a special education teacher at the end of the first quarter of the 204-25 school year in order to determine if the absence of an appropriately certificated special education teacher impacted the provision of FAPE to each of these students during the 2023-24 school year. If a student is not making progress towards one of these IEP goals, USD #500 shall reconvene that student's IEP team in order to review and revise, if appropriate, the IEP in order to provide FAPE to the student.
            1. No later than December 31, 2024
        iv. USD #500 shall review policies and procedures and develop a written plan of action to address future staff shortages. This plan must include parent notification.
            1. No later than August 1, 2024

2. ISSUE TWO: A violation of federal regulations at 34 C.F.R. 300.320(a)(4) and 34 C.F.R. 300. 300.323(c)(2) is not substantiated because the district did make transportation as a related service available to Students 1, 6 and 10 during the 2023-24 school year. As such no corrective action is required.
3. ISSUE THREE: A violation of federal regulations at 34 C.F.R. 300.300.324(a)(2)(i) is not substantiated as the IEP teams for Students 2,3, and 5 all determined that BIPs were not required to address behavioral concerns noted in the IEPs. In addition, there is no documentation to suggest that USD #500 was required to conduct an FBA under federal regulations at 34 C.F.R. 300.503(c)(4) due to disciplinary change of placements resulting from behavior determined to be a manifestation of the child's disability.

   However, documentation shows that USD #500 proposed to conduct a reevaluation of Student 2 in the area of social/emotional/behavioral on February 21, 2023 and the parent gave consent for such a reevaluation to be completed on February 28, 2023. However, there is no documentation to show this reevaluation was ever completed nor considered by the IEP team in developing an IEP to provide a free appropriate public education (FAPE) to Student 2. Based on the foregoing, a violation of federal regulations at 34 C.F.R. 300.303 is substantiated. Corrective action is required as follows:

   b. CORRECTIVE ACTION:
      i. USD #500 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will ensure that reevaluations will be conducted as agreed to by the parents and LEA representatives.
         1. No later than July 1, 2024
      ii. USD #500 shall reconvene the student's IEP team, including the parent, and conduct a review of existing data to determine if a reevaluation of the student is required to gather additional data to assist the IEP team in developing an appropriate IEP that provides a free appropriate public education to Student 2. USD #500 shall provide the parent with appropriate PWN of the decision and implement that decision in a timely manner. USD #500 will provide SETS with a copy of the PWN and documentation that the decision was implemented in a timely manner.
         1. No later than September 30, 2024

Investigator

Nancy Thomas

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).

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 JUNE 4, 2024

DATE OF REPORT JULY 2, 2024

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

The Complaint is against USD # 259 Public Schools. In the remainder of the report,the "School" and "District" shall refer to USD #259.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint. A complaint is considered to be filed on the date it is delivered to both the KSDE and the school district. In this case, the KSDE initially received the complaint on June 4, 2024, and the 30-day timeline ended on July 5, 2024.

Investigation of Complaint

Tania Tong, the Complaint Investigator, asked the Parent written questions on June 25, 2024, and received a written response from the Parent on the same day. The District's Special Education Director was interviewed on June 27, 2024.

The Complaint Investigator also received emails from the Parent and the District between June 4, 2024 and June 27, 2024.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the Parent 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:

Provided to the Parent by the District as part of the March 18, 2024 records request:

1. Elementary Progress Report, 2022-2023
2. Elementary Progress Report, 2023-2024
3. Lawrence Elementary School Profile, 2023-2024
4. Notice of Meeting, 02/27/24
5. Individualized Education Program, 03/18/24
6. IEP Progress Report - Annual Goal, 03/08/24
7. Multidisciplinary Team Report (MTR), 03/21/23

8. Evaluation Sheets, 04/08-04/30/24
9. Evaluation Reports, various dates 2024
10. Family Educational Rights and Privacy Act (FERPA) Request, 03/15/24
11. Notice of Meeting, 03/02/23
12. IEP, 03/21/23
13. Immunization History, 03/19/24
14. Push In Session Notes, 04/23/24
15. Push In Session Notes, 04/18/24
16. Push In Session Notes, 04/11/24
17. Push In Session Notes, 04/09/24
18. Push In Session Notes, 04/04/24
19. Push In Session Notes, 03/28/24
20. Push In Session Notes, 03/21/24
21. Evaluation Sheets, 03/20-04/04/24

From the District:

1. Student Records and Your Rights, 01/2023
2. IEP, 03/18/24
3. IEP & 504 Team Meeting Notes
4. IEP, 03/18/24 [provided]
5. Prior Written Notice, 03/18/24
6. Family Educational Rights and Privacy Act (FERPA) Request, 03/15/24 [provided]
7. P5501 Privacy of Student Records Board Policy, 01/21
8. Wichita Public Schools Administrative Guidelines: FERPA, 04/20
9. Email, re: [Student], 04/19/24
10. Email, re: FERPA Request, 05/01-05/03/24
11. Email, re: Speech Docs, 05/06/24
12. Email, re: [Student] FERPA, 06/11/24

Background Information

This investigation involved a preschool-aged student enrolled at Lawerence Elementary in USD #259.

The March 2014 revision of District Board Policy P5501 Privacy of Student Records described that the District had established procedures to control the release of student information to individuals and organizations both inside and outside the school system. These procedures complied with the Family Educational Rights and Privacy Act (FERPA) and related regulations. (D29)

The District Administrative Guidelines for FERPA described the definitions and procedures for the District's implementation of related guidelines. (D30-D49) The Family Educational Rights and Privacy Act (FERPA) from the District described "THE RIGHT TO INSPECT AND REVIEW THE STUDENT'S EDUCATION RECORDS WITHIN 45 DAYS OF THE DAY THE DISTRICT RECEIVES A REQUEST FOR ACCESS. Parents or eligible students should submit to the school principal a written request that identifies the record(s) they wish to inspect. The principal will make arrangements for access and notify the parent or eligible students of the time and place where the records may be inspected." (D4)

Issue One

Whether USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the Parent with speech logs from August to December 2023 within the allowable 45 calendar days when the Parent made a FERPA request on March 18, 2024 for "all speech records for 2023-2024 school year."

Positions of the Parties

The Parent alleged that the District did not provide the speech logs/data for the Student from August 2023 through December 2023.[1]

The District's position is that the District "is not in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) by failing to provide the Parent with speech logs from August to December 2023 within the allowable 45 calendar days when the Parent made a FERPA request on March 18, 2024 for "all speech records for 2023-2024 school year."

The District believed that they had fulfilled their obligations under FERPA by providing the requested educational records, including speech records, to the parents by May 1st. They assert that the raw data from speech sessions were incorporated into the IEP progress reports, which were then made available to the parents through various channels, including ParentVue. The District maintains that the IEP progress reports are the official educational records in this case and that any raw data not included in these reports are not considered educational records under FERPA. The District is willing to provide any additional educational records if the parents can specifically identify them but believes that they have already provided all relevant records.[2]

[1] Issues Letter, June 6, 2024
[2] USD 259 Response to 24FC259-004

Findings of the Investigation

The following findings are based on a review of documentation from both parties, a written response from the Parent, and an interview with the District.

1. On March 15, 2024, the Parent sent a request for records to the District, "seeking access to all academic records pertaining to [the Student], including but not limited to service delivery data, occupational therapy records, speech therapy records, and any other relevant services related to [their] education. Specifically, we request access to both hard data and raw data associated with these services in accordance with FERPA. This includes assessments, progress reports, individualized education program (IEP) Documentation, and any other pertinent information that contributes to our child's educational experience and progress." The District noted receipt of the request on March 18, 2024. (D28)
2. An IEP dated March 18, 2024, identified the student as a three-year-old eligible for special education with a Developmental Delay. The reevaluation will be due on March 20, 2026. The IEP indicated the following:
    a. The Student's communication and social skills delays impacted the Student's learning. The Student's communication needs were addressed by Speech-language services that "will be provided directly, and communication needs will be monitored and addressed by the [Speech Language Pathologist] (SLP) and/or classroom staff. … Progress on speech-language goals will be measured by classroom teacher observation and/or SLP data/observation."
    b. The Student had preschool functional, social, and speech goals.
    c. "Speech[-]language services will be provided directly for a total of 45 minutes per week. They will typically be provided without non-exceptional peers for a total of 15 minutes every week and with non-exceptional peers for a total of 30 minutes every week."
    d. Parent Rights were provided at the IEP meeting. (D7-D22)
3. A Prior Written Notice for the IEP meeting was hand-delivered on March 18, 2024. (D23)
4. On April 19, 2024, the Parent emailed the Principal inquiring about their FERPA records request. The Principal responded the same day and shared, "Since this request and the IEE request came at the same time, I was advised to involve our district legal department." The Principal indicated they shared the request with that department and that they would reach out to the Parent. (D52)
5. The timeline for communication and release of records included:
    a. On May 1, 2024, the Associate General Counsel sent the Parent a password-protected link to "the documents associated with your FERPA request" that would expire on June 1, 2024. The password was sent in a separate email. (D53-D54) That same day, the Associate General Counsel responded and indicated that they added additional records to the link. (D55)

b. On May 2, 2024, the Parent emailed and indicated they did not see the "speech records from before March 30th." (D56)

c. On May 3, 2024, the Associate General Counsel indicated they would see if they "can track those down." (D61) That same day, the Parent emailed the District and reminded them that the original date of the FERPA request was March 18, 2024. (D58)

d. On May 6, 2024, the Parent emailed the District, "Just checking in to see how the speech documents for the FERPA request were going since they were due in the 45-day period which was MAY 2." The Associate General Counsel emailed the Parent the same day and wrote, "… the last set of notes were uploaded. The file is called "[XX] Notes.pdf." (D63)

e. On June 10, 2024, the Parent requested another link to the Student's documents. On June 11, 2024, the Associate General Counsel resent the link and indicated that the same password applied. (D64)

6. The District provided the following documents to the Parent as part of the records request made by the Parent on March 18, 2024:

   a. Notice of Meeting, 3/2/23 (PP42-PP43);
   b. Multidisciplinary Team Report (MTR), 3/21/23 (PP27-PP35)
   c. IEP, 3/21/23 (PP44-PP60);
   d. Elementary Progress Report, 4th quarter, 2022-2023 (PP1);
   e. Elementary Progress Report, 1st-3rd quarter, 2023-2024 (PP3-PP4);
   f. Synergy Student Profile, 2023-2024 (PP8)
   g. Notice of Meeting, 2/27/24 (PP9-PP10)
   h. IEP Progress Report, 3/8/24 (PP25-PP26)
   i. IEP, 3/18/24 (PP11-PP24)
   j. Parent FERPA Request, 3/15/24, received on 3/18/24 (PP41);
   k. Immunization history, 3/19/24 (PP61);
   l. Student raw speech data from the following dates:
      i. 3/20/24, 3/21/24, 3/28/24 (PP72-PP76)
      ii. 4/4/24, 4/9/24, 4/11/24, 4/18/24, 4/23/24 (PP63-PP70)
      iii. 4/8/24, 4/9/24, 4/10/24, 4/16/24, 4/17/24, 4/18/24, 4/22/24 (PP36)
      iv. 4/23/24, 4/30/24 (PP37)
   m. Student speech notes and service calendar from the following dates:
      i. 1/23/24, 1/29/24, 1/30/24, 2/1/24, 2/5/24, 2/6/24, 2/12/24, 2/20/24, 2/22/24, 2/26/24, 2/27/24, 2/29/24, 3/4/24. (PP38-PP40)

7. In a written response to the Complaint Investigator dated June 25, 2024, the Parent indicated they were informed of the Student's speech progress: "… [the Student] speech progress was reported to us at [their] conferences when we met with the teacher and SLP in person. On my end I was never as concerned about any specific

updates or progress, I asked when I felt needed and was never met with any pushback." (Email from Parent to Complaint Investigator, June 25, 2024)

8. During interviews with the Complaint on June 27, 2024, the District's Special Education Director indicated that "once [staff] have used those data in whatever format," the raw data is not required to be maintained by staff. "The raw data [from August- December 2023] were used for the progress reports for the IEP for both [the] first and second quarters. And once those data were used in the aggregate form to answer those questions on the IEP progress reports for the speech-related goals that they were destroyed in some way." (Special Education Director Interview, June 27, 2024)

Applicable Regulations and Conclusions

This complaint investigation may only address alleged violations of Part B of the Individuals with Disabilities Education Act or violations of Kansas Special Education statutes and regulations. Although the FERPA regulations are not subject to this complaint process, they are similar to Special Education regulations that are subject to this complaint. For that reason, interpretations of FERPA regulations by courts usually also apply to Special Education records. According to the pertinent federal and state special education regulations, 34 C.F.R. 300.613(a) and K.A.R. 91-40-25 (a), parents of exceptional children have the right to inspect and review their child's education records maintained by the school district. The school must comply with the parent's request for records without unnecessary delay and no later than 45 days after the request is made. Additionally, parents have the right to participate in meetings regarding their child's identification, evaluation, educational placement, and provision of a Free Appropriate Public Education (FAPE).

During interviews, the District indicated that raw data is not maintained once the information has been included in the appropriate documentation, such as IEPs or IEP progress reports. The District provided the Parent with all of the information that was available and retained in the Student's educational record at the time the request for records was made. The following chart indicates that the District provided the Parent with the educational records that were available at the time the Parent made the request on March 18, 2028.

Documents Requested by the Parent	Provided by District
All academic records	Elementary progress reports
Service delivery data	Speech service calendar 1/23-3/4/24
Occupational therapy records	N/A; not a related service on the current IEP
Speech therapy records	Speech notes 1/23-3/4/24
Other relevant records (assessments, progress reports, individualized education program (IEP) Documentation)	IEP progress reports, MDT report, IEP 3/21/23 and 3/18/24,
Hard/Raw data associated with Speech	Raw speech data, 3/20/24-4/30/24
Hard/Raw data associated with OT	N/A; not a related service on the current IEP

The Supreme Court has interpreted "maintained" as "to keep in existence or continuance; preserve; retain" and reasoned that "[t]he word 'maintain' suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database." The District did not "maintain" the requested data in the manner required to qualify as an educational record. The practice of not maintaining raw data once progress reports are created demonstrates that the District practice is not "to keep in existence or continuance; preserve; retain" this data.[3]

Based on the foregoing, according to IDEA and Kansas special education regulations 34 C.F.R. 300.613(a) and K.A.R. 91-40-25 (a), ***it is not substantiated*** that the district failed to provide the Parent with educational records in the District's possession.

[3] Owasso Indep. Sch. Dist. No I-011 v. Falvo, 534 U.S. 426, 432033 (2002)

Investigator

Tania Tong, Licensed 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).

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)

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #512
ON JUNE 14, 2024

DATE OF REPORT JULY 15, 2024

This report is in response to a complaint --------- filed with our office, on behalf of their daughter, ---------. For the remainder of this report --------- will be referred to as "the student." --------- will be referred to as "the father," ---------

will be referred to as "the mother," and the two will be referred to collectively as "the parents."

Investigation of Complaint

K.A.R. § 91-40-5(c)(5) requires that the complaint investigation include "[a] discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded." Laura Jurgensen, complaint investigator, held this discussion with the parents via Zoom on July 8, gathering additional information and verifying the specific allegations to be investigated. Laura Jurgensen provided the specific allegations to be investigated to the parents in emails on July 3 and 8. The parents did not dispute how the complaint investigator framed the issues to be investigated. The parents also provided documentation for the complaint investigator to consider as part of the investigation and the parents and investigator exchanged multiple emails. The district special education director and the investigator had a call on July 8 and the district provided the investigator with a response to the issues the investigator identified, as well as all documentation and data the investigator requested.

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

- District's Response to the Complaint, Jul. 10, 2024.
- District Photos of Visuals Staff Use with this Student, July 10, 2024.
- Screenshots of Parents' Skyward Account, Jul. 9, 2024. (The investigator determined this was not relevant to the complaint investigation as the district's method of providing progress reports is via email or hardcopy.)
- Parents' Complaint, June 13, 2024. (KSDE's receipt occurred upon opening the complaint on June 14, 2024.)
- Email Exchange Between Special Education Director Email and Parents Regarding Progress Reports, Jun. 12–14, 2024.
- Complaint Investigation Report, May 31, 2024.
- Email from Resource Teacher to Parents with Quarter 4 Progress Report, May 30, 2024.

- District Log of Student's Special Education Services, Feb. 22–May 29, 2024.
- 2023–24 IEP Progress and Related Rubrics for Student's Sister, May 28, 2024. (The investigator determined this was not relevant to the complaint investigation as this complaint did not concern the student's sister.)
- Email from Parents to School Staff Voicing Concern with May 22 Recess Incident, May 25, 2024.
- Audio Recording of Google Assistant Recording Incoming Phone Call to Parents from School Staff About Student, May 22, 2024.
- Time Stamp of Video from Mother's Phone, May 22, 2024.
- Email from Parents to School Staff Requesting School Call Parents during Student Crisis, May 20, 2024.
- Prior Written Notice for IEP Amendment with Parents Written Comments, Dated Mar. 4, 2024, and Signed Mar. 16, 2024.
- Student's IEP, Mar. 4, 2024.
- IEP Team Meeting Recording, March 4, 2024.
- District's Schedule and Log of Student's Special Education Services for Speech Goal, Aug. 15, 2023–Feb. 22, 2024.
- Notice of Mar. 4, 2024, IEP Team Meeting, Feb. 21, 2024.
- Email Exchange Between Parents to School Social Worker Regarding Day and Time of Social Work Services and Outside Services, Dec. 12, 2023–Jan.18, 2024.
- Email from Speech and Language Pathologist to Parents with Quarter 2 Progress Report, Jan. 4, 2024.
- Email from Speech and Language Pathologist to Parents with Quarter 1 Progress Report, Oct. 17, 2023.
- 5 SEL Activities for the Home, undated. (The investigator determined this was not relevant to the complaint investigation.)

Kansas regulations require that a complaint "allege a violation that occurred not more than one year before the date the complaint is received ....." K.A.R. § 91-40-51(b)(1). Therefore, this complaint investigator did not consider any information either party submitted dated prior to June 14, 2023.

The parents also provided a great deal of information that was not pertinent to the issues investigated in this complaint. The investigator only lists above the information directly related to the issues within this complaint and used in this investigation.

Background Information

This complaint is focused on a first grader reported to be "a bright, kind student" who "enjoys helping other students and teachers." (Student's IEP, Mar. 4, 2024.) The student's Other Health Impairment identification "requires specially designed individualized instruction to acquire,

maintain and generalize social/emotional/behavioral skills across settings." (Student's IEP, Mar. 4, 2024.) During a previous complaint investigation involving this student, this investigator reviewed documentation that showed the student was initially identified with a speech or language impairment and after the student's November 30, 2023, reevaluation the district proposed a change in identification and to change the student's speech services to indirect services, based on the reevaluation data. (Complaint Investigation Report, May 31, 2024.) On February 22, the parents consented to the change in the student's identification to Other Health Impairment and established two IEP goals, one focused on social engagement and the other focused on behavior, on which the student would receive specially designed instruction for 30 minutes per day five days per week, and on March 4 the student's IEP Team made further updates to the student's IEP. (Complaint Investigation Report, May 31, 2024; Student's IEP, Mar. 4, 2024.)

Issues

In the written complaint, the parents allege three issues upon which this investigation will focus:

> Issue One: Did USD 512 provide periodic reports on the progress the student was making toward meeting the annual goals, as indicated in the student's IEP, during the 2023–24 school year? 34 C.F.R. § 300.320(a)(3)(ii); K.S.A. § 72-3429(c)(3).
>
> Issue Two: Did USD 512 ensure that all special education services were available to the student, during the 2023–24 school year? 34 C.F.R. § 300.323(c)(2); K.S.A. § 72- 3429(a)(1).
>
> Issue Three: Did USD 512 provide the student with the supplementary aids and services (accommodations) listed in her IEP during a May 22, 2024, incident, including ensuring that the district staff involved in the May 22, 2024, incident were informed of the student's accommodations? 34 C.F.R. §§ 300.320(a)(4), 300.323(d)(2); K.S.A. § 72-3429(c)(4); K.A.R. § 91-40-16(b)(5).

The parents presented a fourth issue that the investigator determined was foundational to the analysis of Issue Two of the previous complaint. (Parents' Complaint, June 14, 2024.) Issue Two of the previous complaint was whether USD 512 provided the student with a free appropriate public education (FAPE), including ensuring that the IEP Team considered whether the student's behavior interfered with her learning or that of others and, if so, considered the use of positive behavioral interventions and supports, and other strategies, to address that behavior. (Complaint Investigation Report, May 31, 2024.) That investigation carefully considered all elements necessary to analyze whether the district provided the student with FAPE, including analyzing the student's IEP description of how the student's progress toward meeting the annual goals will be measured and comparing that description to the student's progress reports. (Complaint Investigation Report, May 31, 2024.) In this complaint, the parents alleged that USD 512 had not ensured that the student's IEP included a description of how the

student's progress toward meeting the annual goals will be measured. (Parents' Complaint, June 14, 2024.) Because this investigator relied upon the student's IEP description of how the student's progress toward meeting the annual goals will be measured in analyzing a previous complaint issue, the previous investigation shows that the required description is present in the student's March 4, 2024, IEP. (Complaint Investigation Report, May 31, 2024.) This investigator determined that this issue would not be further investigated in this complaint.

Issue One

Providing Progress Reports: Did USD 512 provide periodic reports on the progress the student was making toward meeting the annual goals, as indicated in the student's IEP, during the 2023–24 school year? 34 C.F.R. § 300.320(a)(3)(ii); K.S.A. § 72-3429(c)(3).

Applicable Law

Special education law requires each child's IEP to include "[a] description of . . . [w]hen 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" (34 C.F.R. § 300.320(a)(3)(ii).)

Analysis: Findings of Fact

The parents state in their complaint that they did not receive the February 21, March 20 progress reports for the student, and were not aware they existed, until they received the student's May 30, 2024, progress report. (Parents' Complaint, June 14, 2024.) In the initial discussion with the complaint investigator the parents stated that they did not receive any progress reports during the 2023–24 school year until the May 30, 2024, progress report. The parents expressed in the initial discussion that they were worried that school staff were putting the progress reports in the district's student information system and that the parents' account was not properly configured to see the progress reports because the parents could not find them. The parents provided an email exchange between them and the district special education director where they asked for assistance in finding the progress reports in the student information system. (Email Exchange Between Special Education Director Email and Parents Regarding Progress Reports, Jun. 12–14, 2024.) The district special education director responded that district staff provide progress reports through email or by sending a hard copy, not by providing the progress reports in the student information system. (Email Exchange Between Special Education Director Email and Parents Regarding Progress Reports, Jun. 12–14, 2024.)

The student's IEP states, "[p]rogress on goals will be reported quarterly." (Student's IEP, Mar. 4, 2024.) The student's IEP does not state a method of delivery and the regulations implementing IDEA leave this open, either for an IEP Team to determine a particular method is necessary or

leaving it to the district as it is the district's responsibility to ensure delivering progress reports occur. With this student, district staff followed the method that the special education director articulated in the email exchange with the parent, providing progress reports by email for Quarters 1, 2, and 4. (Email Exchange Between Special Education Director Email and Parents Regarding Progress Reports, Jun. 12–14, 2024; Email from Speech and Language Pathologist to Parents with Quarter 1 Progress Report, Oct. 17, 2023; Email from Speech and Language Pathologist to Parents with Quarter 2 Progress Report, Jan. 4, 2024; Email from Resource Teacher to Parents with Quarter 4 Progress Report, May 30, 2024.) The district provided the emails it sent to the parents in these three quarters and the investigator was able to review the sender (district staff), the recipient (the two email addresses this complaint investigator used to communicate with the parents), the date, and the attachment names. (Email from Speech and Language Pathologist to Parents with Quarter 1 Progress Report, Oct. 17, 2023; Email from Speech and Language Pathologist to Parents with Quarter 2 Progress Report, Jan. 4, 2024; Email from Resource Teacher to Parents with Quarter 4 Progress Report, May 30, 2024.) The Quarter 2 email string includes responses from the parents on January 7 and 23, 2024. (Email from Speech and Language Pathologist to Parents with Quarter 2 Progress Report, Jan. 4, 2024.)

On the Quarter 3 Progress Report, the district did not provide documentation that staff emailed the student's progress report to the parent. (District's Response to the Complaint, Jul. 10, 2024.) The district maintains that it provided the parents with the Quarter 3 progress report at the March 4, 2024, IEP Team meeting. (District's Response to the Complaint, Jul. 10, 2024.) The progress report for Quarter 3 is dated March 20, 2024. The district indicates the difference in date is simply that the progress reports for Quarter 3 are due on March 20, not that the information was compiled on March 20. (Special Education Director Email to Complaint Investigator, July 11, 2024.) The parents provided the investigator with an audio recording of the March 4, 2024, IEP Team meeting and the investigator listened to the recording to see if district staff indicated they were providing the parents with the Quarter 3 progress report. (IEP Team Meeting Recording, March 4, 2024.) District staff specifically reference that they provided the parents with a copy of the Notice of Meeting and Prior Written Notice for amendments to the student's IEP, but do not specifically reference the Quarter 3 progress report at any time during the meeting recording. (IEP Team Meeting Recording, March 4, 2024.)

The Notice of Meeting for the March 4, 2024, IEP Team meeting indicates the purpose of the meeting is to discuss possible changes in the student's IEP, which makes sense as the IEP Team was in the midst of multiple times working toward consensus based on the student's most recent reevaluation. (Notice of Mar. 4, 2024, IEP Team Meeting, Feb. 21, 2024; Complaint Investigation Report, May 31, 2024.) The Notice of Meeting does not mention that the district would provide the parents with the student's Quarter 3 progress at the March 4 IEP Team meeting. Attached to the student's March 4 IEP is a document titled, "IEP Attendance and

Acknowledgement" which includes a section for the district to list the documents it provided to the parents. This section states that the district provided to the parents, "Parental Rights in Special Education" and "IEP." Here is another place the district could have stated that it provided the parents with the Quarter 3 progress report, but it is not listed. The Prior Written Notice regarding the proposed amendments upon which the IEP Team reached consensus at the March 4 IEP Team meeting could also have indicated that the district provided the parents with the Quarter 3 progress report, but a statement like this is also not included on that document. (Prior Written Notice for IEP Amendment with Parents Written Comments, Dated Mar. 4, 2024, and Signed Mar. 16, 2024.)

Conclusion

A district must document items for which it is responsible. The district did this with the student's Quarter 1, 2, and 4 progress reports. However, the district did not meet this obligation with the student's Quarter 3 progress report. As the student's IEP did not specify the method of delivery, the district could have emailed the progress report to the parents, as it did the other three quarters, or documented that it provided the progress report to the parents at the March 4 IEP Team meeting. Because the district did not document whether it provided the student's Quarter 3 progress report, this investigation concludes that USD 512 *violated its obligations* under 34 C.F.R. § 300.320(a)(3)(ii); K.S.A. § 72-3429(c)(3). USD 512 has since provided parents with the student's Quarter 3 progress report as it was included on the student's Quarter 4 progress report that the district provided to the parents on May 30. (Email from Resource Teacher to Parents with Quarter 4 Progress Report, May 30, 2024.)

Issue Two:

Providing Special Education Services: Did USD 512 ensure that all special education services were available to the student, during the 2023–24 school year? 34 C.F.R. § 300.323(c)(2); K.S.A. § 72-3429(a)(1).

Applicable Law

Special education laws indicates that, "[a]s 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).)

Analysis: Findings of Fact

The student's IEP indicates that the district will provide 30 minutes of specially designed instruction five times per week. (Student's IEP, Mar. 4, 2024.) The parents' complaint indicates that the student informed them that she was not meeting regularly with the special education teacher to receive specially designed instruction. (Parents' Complaint, June 14, 2024.) In the initial discussion with the complaint investigator, the parents stated that they were worried that the district had scheduled the student's specially designed instruction for first thing in the

school day. The parents reported, both in the initial discussion with the investigator and in emails to school staff, that it was frequently difficult to get the student to school on time due to the impact of the student's disability and that the student had regular appointments outside of school that occurred in the morning. (Email Exchange Between Parents to School Social Worker Regarding Day and Time of Social Work Services and Outside Services, Dec. 12, 2023–Jan.18, 2024.) The email exchange referenced was mostly about support the student participated in that was outside of the student's IEP, but the student's general education teacher, school psychologist, and special education teacher were copied on some or all of the email string, so they would have had access to the parent's concern about services being scheduled first thing in the school day.

The district provided the complaint investigator with the schedule and log of the student's special education services for the student's speech goal, from August 15, 2023, the first day of the 2023–24 school year, through February 22, 2024, the date the parents consented to changing the student's IEP goals and services. (District's Schedule and Log of Student's Special Education Services for Speech Goal, Aug. 15, 2023–Feb. 22, 2024; District Calendar, 2023–24 School Year, https://brookwood.smsd.org/about/calendar?cal_date=2023-08-01; Complaint Investigation Report, May 31, 2024.) The district also provided the complaint investigator with its log of the student's special education services from February 22, 2024, through the end of the school year. (District Log of Student's Special Education Services, Feb. 22–May 29, 2024.)

The district's log showed that the parents consented to the change in special education services on February 22, a Thursday, and began implementing the change in services the following Monday, February 26. (District Log of Student's Special Education Services, Feb. 22–May 29, 2024.) The district's log is detailed, providing the focus of the student's specially designed instruction, data from the general to the special education teacher or that the special education teacher observed, changes in the student's schedule or routine, and notes on when the student was out of the classroom. (District Log of Student's Special Education Services, Feb. 22–May 29, 2024; Special Education Director Email to Complaint Investigator, July 11, 2024.) The district scheduled the student's 30 minutes of specially designed instruction to occur from 8:15–8:45 a.m. (Special Education Director Email to Complaint Investigator, July 11, 2024.) However, because school staff were aware of the student's regular tardies and absences due to outside appointments, the district scheduled a second opportunity from 10:00–10:30 a.m. to ensure that specially designed instruction occurred each school day the student was present. (Special Education Director Email to Complaint Investigator, July 11, 2024.) The special education director indicated during the investigation that if the student was absent for both designated windows, due to tardiness and/or an appointment, then school staff made up the specially designed instruction at an alternate time of day. (Special Education Director Email to Complaint Investigator, July 12, 2024.) The special education services log show that the district provided specially designed instruction each school day the student was present, except that the district is missing records in its log for May 10, 28, and 29. (District Log of Student's Special

Education Services, Feb. 22–May 29, 2024.) The district also does not have a record of services on May 23, but the log indicates it was Field Day. (District Log of Student's Special Education Services, Feb. 22–May 29, 2024.)

The parents disputed the accuracy of the district's recording the student absent on April 4, but the district was able to provide information from its attendance system corroborating the recorded absence in the service log. (Email Exchange Between Complaint Investigator and Parents, July 12, 2024; Email Exchange Between Complaint Investigator and Special Education Director, July 12, 2024.) The district's attendance system showed that the student's general education teacher reported the student absent at 8:19 a.m., which was edited at 8:40 a.m. to tardy, edited again at 9:40 a.m. for a doctor's appointment, and edited again at 12:32 p.m. to indicate an absence at the parent's request. (Email Exchange Between Complaint Investigator and Special Education Director, July 12, 2024.) The parents maintain that the district mistakenly attributed an absence to the student that should have been attributed to her sister but were unable to provide documentation to support this. (Emails from Parents to Complaint Investigator, July 12, 2024.)

The district reports that the student received special education services on the three days that the log does not contain information and the provider just mistakenly did not record the provision of services. (Email Exchange Between Complaint Investigator and Special Education Director, July 12, 2024.) The district requires staff to make up any missed services when a student is tardy or has an appointment. (Email Exchange Between Complaint Investigator and Special Education Director, July 12, 2024.) The district provides staff with latitude in how to record that services were provided and maintains that it monitors whether services are actually provided through requesting staff schedules, calendars, data collection sheets, teacher notes, and/or provider communication; accountability of the team working with the student; and regularly checking student progress and then acting if the student is not making anticipated progress. (Email Exchange Between Complaint Investigator and Special Education Director, July 12, 2024.)

Conclusion

The investigator determines that because the district's special education log is sufficiently detailed and can be independently corroborated by another source of information that the special education log is reliable. The district has several mechanisms in place that would alert school and district leadership if a student was missing the special education services the student's IEP required. Despite the three days for which the district's records were missing information, the previous complaint investigation involving this student concluded that the district provided the student with educational benefit. Based on the foregoing, this investigation concludes that USD 512 ***did not violate its obligation*** to ensure that 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).)

Issue Three

Providing Accommodations during May 22 Incident: Did USD 512 provide the student with the supplementary aids and services (accommodations) listed in her IEP during a May 22, 2024, incident, including ensuring that the district staff involved in the May 22, 2024, incident were informed of the student's accommodations? 34 C.F.R. §§ 300.320(a)(4), 300.323(d)(2); K.S.A. § 72- 3429(c)(4); K.A.R. § 91-40-16(b)(5).

Applicable Law

Special education law requires that each child with an IEP be provided with the accommodations that will be provided to the child, "[t]o advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum . . . and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other exceptional and nonexceptional children in the activities described in this paragraph " (K.S.A. § 72-3429(c)(4).) Additionally, district must ensure that each "teacher and provider [who is responsible for IEP implementation] is informed of [t]hat individual's specific responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." (K.A.R. § 91-40-16(b)(5).)

Analysis: Findings of Fact

The parents' complaint states that on "May 22, 2024, [the student] became dysregulated while on the playground during second recess" and that the staff involved did not provide the student with the accommodations in her IEP. (Parents' Complaint, June 14, 2024.) The parents wondered whether district staff present did not provide the student with her accommodations as they were not "her normal support personnel" and had not been informed of their obligations to implement the student's accommodations. (Parents' Complaint, June 14, 2024; Parents' Initial Discussion with Complaint Investigator, July 8, 2024.)

On May 20, the father emailed school staff in anticipation of the regular building support staff being out of the building for the remainder of the school year and another staff member stepping in. (Email from Parents to School Staff Requesting School Call Parents during Student Crisis, May 20, 2024.) The father asked if the student had any issues or struggles to call the parents so they could come to the school and support her. (Email from Parents to School Staff Requesting School Call Parents during Student Crisis, May 20, 2024.) The father also reminded school staff of specific accommodations that the student's IEP required school staff to use proactively to prevent issues or struggles. (Email from Parents to School Staff Requesting School Call Parents during Student Crisis, May 20, 2024.)

During the investigation, the parents shared the May 22 incident from their perspective and their concerns that the student's accommodations were not implemented as required through an email the father sent to school and district staff on May 25, the initial discussion with the

investigator, and multiple emails to the investigator. (Email from Parents to School Staff Voicing Concern with May 22 Recess Incident, May 25, 2024; Email Exchange Between Parents and Complaint Investigator, July 8–11, 2024.) The parents stated that school staff called them to let them know that the student "had become so emotionally distraught that she would not leave the playground." (Email from Parents to School Staff Voicing Concern with May 22 Recess Incident, May 25, 2024.) The father stated that school staff called him at 2:16 p.m., did not reach him, and then called the mother at 2:20 p.m. (Email from Parents to School Staff Voicing Concern with May 22 Recess Incident, May 25, 2024.) The parents indicated they arrived at the school together at about 2:30 p.m. (Email from Parents to Complaint Investigator, July 11, 2024.) The parents said that school staff in the front office told them that they were not permitted to enter the building, but that either staff would bring the student to the office or staff would come escort them to the playground. (Email from Parents to School Staff Voicing Concern with May 22 Recess Incident, May 25, 2024.) At 2:35 p.m. when neither of those things had occurred, the mother entered the building and made her way to the playground. (Email from Parents to School Staff Voicing Concern with May 22 Recess Incident, May 25, 2024.) The mother indicated that when she arrived on the playground the building support person and principal were with the student "intermittently bent over, crouched down, standing up and talking to her. No visual aids or calming support tools were provided." (Email from Mother to Complaint Investigator, July 12, 2024.) The mother approached the student, the student voluntarily left the playground with the mother, and the parents took the student home for the day. (Email from Mother to Complaint Investigator, July 12, 2024.)

The student's IEP contains several accommodations where the frequency of the accommodation indicates it would be used when the student appears dysregulated, or in a situation such as the one the parent describes (e.g., when student begins to appear dysregulated):

- "Use of sensory tools to support emotion regulation (Most frequently used: Lotion; Mini sponge on face; noise canceling headphones; small fidget items)";
- "Calming space available with access to sensory tools";
- "Adult modeling for use of calming strategies"; and
- "Provide [the student] with a visual cue to communicate her emotions or to request a break when she is unable to verbalize." (Student's IEP, Mar. 4, 2024.)

The district's response indicates the student's dysregulation began in the classroom, before recess, which then implicated an accommodation for the student to be used before a transition, "[p]rovide reminders/priming ahead of transitions (both verbal & visual) between activities (approximately 5 minutes)." (District's Response to the Complaint, Jul. 10, 2024; Student's IEP, Mar. 4, 2024.) The district's response included photos of the visuals school staff used with the student. (District's Response to the Complaint, Jul. 10, 2024.)

The district's response indicates that at approximately 2:05 p.m. it was time for the student's class to get ready to go to their 2:15 p.m. recess. (District's Response to the Complaint, Jul. 10, 2024; Email from Special Education Director to Complaint Investigator, Jul. 12, 2024.) The student had been working on an art project and did not respond to the general education teacher's verbal and visual support preceding the transition to recess. (District's Response to the Complaint, Jul. 10, 2024.) When it was time for the student's class to go to recess the student became visibly upset, throwing classroom items. (District's Response to the Complaint, Jul. 10, 2024.) The building support person came to the classroom to assist, and the student's class left for recess. (District's Response to the Complaint, Jul. 10, 2024.) The building support person provided the student with access to a calming space and the student selected a place near the cubbies in the classroom. (District's Response to the Complaint, Jul. 10, 2024.) The building support person provided the student with her choice of preferred sensory tools and the student selected bubbles. (District's Response to the Complaint, Jul. 10, 2024.)

While the student used the bubbles, the building support person provided a reminder that the student would go to recess in three minutes and set a visual timer. (District's Response to the Complaint, Jul. 10, 2024.) When the visual timer ended, the student brought her art project and she and the building support person walked to recess. (District's Response to the Complaint, Jul. 10, 2024.) On the walk to recess, the building support person provided a reminder of how much time remained for recess and that she would go to specials with her class after recess. (District's Response to the Complaint, Jul. 10, 2024.) When the student went to enter the playground, she remembered that she wanted a stapler for her art project. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.) The building support person problem solved with the student about how it may be unsafe for the student to take a stapler to the playground and the student agreed, asking for tape from the building support person's desk. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.) This required a longer walk to recess, taking about five minutes after the student and building support person left the classroom. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.)

It was during the time the building support person was working to bring the student to recess that district staff stated the school nurse called the parents, per their request in their May 20 email. (Email from Special Education Director to Complaint Investigator, Jul. 12, 2024.) The district reported that this is not the type of incident that rises to a level of a concern that would typically lead staff to call a parent, but because the parent had specifically requested a phone call, the school staff called the parents. (Email from Special Education Director to Complaint Investigator, Jul. 12, 2024.) The parents maintained that the school nurse called them when the student refused to come in from recess. (Email from Mother to Complaint Investigator, July 12, 2024.)

At recess the student asked to sit on the "buddy" bench to work on her art project. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.) The building support person connected with the building substitute supervising recess and both staff provided the student with a reminder of the remaining time for recess and of the upcoming transition to specials. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.) The student gave a "thumbs up" to both staff members and the building support person went back inside. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.) The district reported that at 2:25–2:30 p.m., when the student's class transitioned from recess to specials, the student became upset when asked to move back into the building for specials and began screaming and took off her shoes and socks and threw them. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.) The building substitute called the building support staff back to the playground. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.)

The district reports that the building substitute and building support person used the copy of visuals kept in a box on the playground to help cue the student to communicate her emotions. (Email Exchange Between Special Education Director and Complaint Investigator, Jul. 11–12, 2024.) Both staff report that the student was able to communicate her emotions and both staff report that they modeled the use of calming strategies. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.) The building substitute and building support staff gave the student a choice as to where she wanted to be, and the student remained on the playground. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.) The building substitute and building support staff reported that the student had access to sensory tools, that were kept in a box on the playground with the visuals. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.) The district reports that the principal was on the playground to support the building substitute and building support person, but all three staff members present indicated that only the building substitute and building support person engaged with the student and provided her accommodations. (Email from Special Education Director to Complaint Investigator, Jul. 12, 2024.) The district reports that within five minutes of the building support person returning to the playground, the mother entered the playground and the student left with her. (Email from Special Education Director to Complaint Investigator, Jul. 12, 2024.) The parents took the student home at approximately 2:45 p.m. (District's Response to the Complaint, Jul. 10, 2024.)

The district reports that the building support staff and building substitute who engaged with the student during this incident and provided accommodations received training on their specific responsibilities for implementing the student's accommodations after the student's IEP Team amended her IEP on March 4. (Email from Special Education Director to Complaint Investigator, Jul. 12, 2024.)

Conclusion

On May 22, from the time the student was asked to transition to afternoon recess to the time the parents took her home, there were several circumstances that required school staff to provide the student with certain accommodations listed in her IEP. Prior to recess, the student was provided with a verbal and visual reminder ahead of the transition. Once the student became dysregulated, she was provided with a calming space and sensory tools in the classroom and a second verbal and visual reminder that the student would soon join her class at recess. Once the student arrived on the playground, school staff provided a verbal and visual reminder of the upcoming end of recess and transition to specials. When the student's class transitioned to specials and the student again became dysregulated, staff report that the student was able to verbalize her emotions and the staff interacting with the student modeled calming strategies, allowed her to be in the space of her choosing, and sensory tools were available on the playground. The district provided information on how it ensured relevant staff were informed of their obligations to provide the student with accommodations and this investigation shows the accommodations were provided.

The timeline the parents presented and the timeline the district presented does not completely align, but the district's full explanation of the event beginning in the classroom and continuing onto the playground, when coupled with the student's class schedule is clear and coherent.

Based on the foregoing, this investigation concludes that USD 512 *did not violate its obligation* to provide the student with her accommodations and informed the staff supporting the student of their specific responsibilities related to implementing the student's IEP.

Summary of Conclusions and Corrective Action

Issue One

The district violated 34 C.F.R. § 300.320(a)(3)(ii) and K.S.A. § 72-3429(c)(3), based on the findings of fact listed above. Corrective action is required, as follows:

1. Within 10 calendar days of the date of this report, USD 512 must submit a written statement to KSDE Special Education and Title Services (SETS) that it will comply with federal and state legal requirements at 34 C.F.R. § 300.320(a)(3)(ii) and K.S.A. § 72-3429(c)(3) which require the district to provide periodic reports on the progress students with IEPS are making toward meeting the annual goals, as indicated in the student's IEP.
2. Within fourteen calendar days of the date of this report, USD 512 must create a procedure or revise an existing procedure to ensure that all students with IEPs receive progress reports as stated in their IEPs and that the district stores documentation that this occurred. Within fourteen calendar days, USD 512 must send the draft procedure to SETS for its review. After receiving SETS' feedback, USD 512 must implement the new

or revised procedure and communicate the procedure to all staff responsible for its implementation.

3. By the first day of USD 512's 2024–25 school year, USD 512 must submit to SETS the communication it provided to staff responsible for implementing the procedure.
4. Due Dates:
    a. July 25, 2024: 1;
    b. July 29, 2024: 2; and
    c. August 13, 2024: 3.

Issue Two

This investigation found no violations and there is no corrective action.

Issue Three

This investigation found no violations and there is no corrective action.

Investigator

Laura N. Jurgensen
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).

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. 512, Shawnee Mission Public Schools

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on June 14, 2024, by --------, on behalf of their child, --------. 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 parent's allegations, was issued on July 15, 2024. That Complaint Report concluded that there was a violation of special education statutes and regulations on Issue 1 and there was not a violation on Issues 2 and 3.

Thereafter, the parent filed an appeal of the Complaint Report with regard to Issues 2 and 3. 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.

Issue

There are two issues on appeal, Issue 2 and Issue 3:

Issue TWO

Did USD 512 ensure that all special education services were available to the student, during the 2023–24 school year? 34 C.F.R. § 300.323(c)(2); K.S.A. § 72- 3429(a)(1).

In their appeal of this issue, the parents state their opinion that the "District Log of Student's Special Education Services" does not corroborate that the student was receiving services, and "does not appear to provide any record of special education services beyond a rough outline of topics in Column A."

While the appeal committee agrees that the districts log does not specify that the student received the services in his IEP, it does confirm the dates on which the district worked with, and tracked the student's rate of success in the areas of: (1) following teachers directions; and (2) using coping skills tools and strategies to regulate emotions. On page 3 of the report, the investigator stated, "on February 22 the parents consented to the change in the students identification to Other Health Impairment and to establish two IEP goals, one focused on social engagement and the other focused on behavior, on which the student will receive specially designed instruction for 30 minutes per day five days per week…". The Appeal Committee reviewed the student's IEP and verified that the student's goals do focus on social engagement and behavior, and that these are the very areas addressed in the special education log. The log tracks social engagement by tracking "coping skills, tools, and strategies to regulate emotions," and tracks behavior by tracking the extent to which the student follows "all teachers' directions.

The complaint report found that the district maintained a flexible schedule "to ensure that specially designed instruction occurred each school day the student was present and kept a "detailed" log of when services were provided, missing only May 10, 28 and 29. (p. 8). The report concluded that the district's special education log is sufficiently detailed and that the special education log is reliable. Despite the three days for which the district's records were missing information, the investigator noted that the previous complaint investigation involving this student concluded that the district provided the student with educational benefit.

The Appeal Committee agrees with the investigator. The log has four columns. The first column lists the individual dates that school was in session and the student attended school (41). Except for two days, when there was a guest teacher, and three days for which there are no entries, column two of the log specifies the percentage of times the student followed all teachers directions and column three specifies the percentage of times the student used coping skills, tools, or strategies to regulate emotions. Column 4 is titled "Notes" and mostly notes the student's arrival times.

Column two shows that the student followed directions at least 90% of the time for 30 of the 41 days recorded and Column three shows the student used coping skills, tools or strategies at least 90% of the time for 29 of the 41 days recorded. While these percentages do not meet the

student's goals, the Appeal Committee finds that this log provides sufficient evidence that the student was receiving the services specified in her IEP. Thus, the Appeal Committiee sustains the decision of the complaint investigator on this issue.

In their appeal, the parents also state that the 10:00 to 10:30 alternate time was determined without their input and never communicated to them. The parents also allege that the "district altered the schedule for the students SEL learning time on multiple occasions but never communicated these changes to the parents."

Scheduling IEP services is an administrative function. While it may be ideal for school districts to notify parents of when special education services will be provided during the school day, it is not required by law. This is particularly the case, when school administrators set alternative times for services. Therefore, even if the parents allegations with regard to scheduling services is correct, there is no violation of special education law or regulations.

Issue 3

Did USD 512 provide the student with the supplementary aids and services (accommodations) listed in her IEP during a May 22, 2024, incident, including insuring that the district staff involved in the May 22, 2024, incident were informed of the student's accommodations? 34 C.F.R. §§ 300.320(a)(4), 300.323(d)(2); K.S.A. § 72- 3429(c)(4); K.A.R. § 91-40-16(b)(5).

The incident that took place on May 22, 2024 was described as "dysregulation." That is, the student was not following instructions in the classroom and later outside on the playground. At issue is whether the district provided the student with sensory tools during the incident.

In their appeal on this issue, the parents point out that the timeline of events

provided to the investigator by the school district does not match the district's daily 1st grade schedule. For that reason, and because the parents did not observe any visual aids or calming support tools, the parent's appeal asserts that the investigator's conclusion on this issue is based on inaccurate data. However, the issue in this complaint is not when the incident happened. Even if the timeline of events provided by the district is incorrect that does not demonstrate that the district's description of what happened is incorrect, except for the timeline.

Moreover, it is not particularly unusual for a 1st grade classroom teacher to alter the schedule from day-to-day. In her decision, on page 14, the investigator acknowledges that, "The timeline the parents presented and the timeline that district presented does not completely align, but the districts full explanation of the event beginning in the classroom and continuing on to the playground, when coupled with the students class schedule is clear and coherent."

Page 12 of the report says that while in the building, the student was provided with access to a "calming space" and selected "bubbles" as a sensory tool. The student regained composure and

was able to walk out to the playground, but once at the playground she became upset again. Pages 13 and 14 of the report says, that the building substitute and building support person used the copy of visuals kept in a box on the playground to help cue the student to communicate her emotions. In an email addressed to the Appeal Committee, dated July 31, 2024, the district's director of special education stated that the visuals and sensory items are maintained in a box and that, in the complaint interviews, staff members indicated that these boxes are with staff while they are at recess. The director added that there are other boxes filled with comparable materials in various locations of the building that staff can use when the need arises.

In a complaint where there is a dispute regarding the facts of a particular incident, as there is here, the investigator sometimes must make credibility judgements based on a variety of factors. In this case, the investigator relied more heavily on the statements of school staff members. The Appeal Committee finds that the most credible information provided to the investigator was provided by school personnel because they were present and personally observing during the time period that this incident took place. The parents question the accuracy of the report of these school personnel, but the parents provide no credible evidence that the information provided by school staff, regarding the use of visuals and sensory items during the incident on May 22, 2024, is inaccurate.

As indicated above in the section of this report titled "Preliminary Matters,", the Appeal Committee does not conduct a separate investigation. The Appeal Committee's function is to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report. On this issue, the Appeal Committee finds there is sufficient evidence to support the findings and conclusions in the Complaint Report, and sustains the conclusion of the investigator.

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 13th day of August, 2024.

Appeal Committee

Crista Grimwood

Brian Dempsey

Mark Ward

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #373
ON MAY 16, 2024

DATE OF REPORT JULY 15, 2024

This report was in response to a complaint filed with the Kansas State Department of Education on behalf of ---------- by ----------, a former student speech/language therapist. In the rest of the report ---------- will be referred to as "the complainant" while ---------- is referred to as the "student." ---------- is the student's mother and will be referred to as "parent" in this report.

The complainant is not a parent/legal guardian of the student nor a district employee who serves as the IEP team member of the student in the 2023 24 school year. The written permission to release personally identifiable information to the complainant was not given by the student's parents. As a result, the complainant will not provide a copy of the report. The complainant will be notified only that the investigation has been completed and the report has been delivered to the parent and the school district.

The complaint is against USD #373 (Newton Public Schools). The district is contracting with the Harvey County Special Education Cooperative to provide special education services to students enrolled in the district. In the rest of the report, both of these responsible public agencies can be referred to as "the district," "the local education agency (LEA)", or "the school."

The Kansas State Department of Education (KSDE) allows a 60-day timeline to investigate a complaint from the date it was filed. A complaint is considered filed on the date on which it was received by KSDE. In this case, KSDE first received the complaint on May 16, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all the documentation provided by the district. The complainant was made unable to provide any written documents and reported that he had no direct knowledge of the alleged non-compliance because he was not employed by the district during the school year 2023 24 and did not work or had the opportunity to observe the student.

Reagan Seidl, Director of Special Education for USD #373 and Heather Christner, Special Education Teacher student during the 2023 24 school year were interviewed as part of this investigation on July 8, 2024. Additionally, Ocean Gomez-Poston, former Special Education Paraprofessional in the student classroom during the 2022-23 school year and current Special

Education Teacher of a classroom adjacent to the student's classroom during the 2023-24 school year, was interviewed on July 9, 2024.

It should be noted that the parent's first language is not English and all parental correspondence is given in Filipino. While the parent did not provide any documentation to be considered during the investigation, he requested an interview and denied the use of an interpreter during the interview held on July 9, 2024. The parents did ask that all correspondence regarding the investigation be given in both English and Filipino.

The following written documentation was used in considering the issue:

1. Individualized Education Program (IEP) and Behavior Intervention Plan (BIP) for students dated October 11, 2022
2. Evaluation Report/Reassessment dated May 8, 2023
3. Timeline of Emergency Safety Interventions used on student during school year 2023-24 and attached ESI documentation dated January 17, March 1, April 8, April 24, May 8, May 14, and May 15, 2024
4. Timeline of Board Certified Behavior Analyst supervision and attached administrative records during the 2023 24 school year dated between August 24, 2023 to May 16, 2024
5. Timeline of Staffing and IEP Team Meetings held about the student in the school year 2023-24
6. Notes on the Intervention Review Meeting dated September 27, 2023
7. Crisis Plan dated September 28, 2023
8. IEP and BIP dated October 2, 2023
9. IEP Team Meeting Notes dated October 2, 2023
10. Behavioral Assessment Steps Starting October 2, 2023
11. Intervention Review Meeting Notes dated November 14, 2023
12. Behavioral Assessment Report (FBA) dated January 3, 2024
13. IEP Team Staffing Notes dated January 25, 2024
14. IEP Team Meeting Minutes dated January 29, 2024
15. IEP Team Meeting Notes dated January 31, 2024
16. IEP Team Meeting Minutes dated February 5, 2024
17. FBA Review dated March 5, 2024
18. USD #373 Response to Allegation dated July 9, 2024 written by Ms. Seidl
19. GAAF School Board Policy: Emergency Safety Interventions

Background Information

The student is a 13-year-old young man who enrolled in seventh grade at USD #373 during the 2023 24 school year and placed in a self contained seventh to twelfth grade special

Education classroom for 100% of the school day. The most recent student reevaluation was conducted on May 15, 2023 and noted that the student was nonverbal and had significant delays in the areas of cognitive, adaptive behavior, communication, academic, and social/emotional behavior. Reevaluation documents that the student is continuously eligible for special education and related services under the exceptional category of Autism. The district has announced that the first

He enrolled in USD #373 in first grade when he moved to the United States from the Philippines.

Issues Investigated

Based on the written complaint, an issue was identified and investigated.

Issue One

USD #373, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the behavioral implementation plan (BIP) resulting in separation/restraint incidents during 2023 24 year of study.

Applicable Law

Federal regulations in 34 C.F.R. 300.324(a)(2)(i) require that the IEP team consider using positive behavioral interventions and support, and other strategies, to address any behavioral barriers to the child's learning or the learning of others. This may include IEP objectives, special education services, and/or a behavioral intervention plan (BIP).

Federal regulations in 34 C.F.R. 300.323(c)(2) require school districts to ensure special education and related services are made available to the child in accordance with the child's IEP.

Federal regulations in 34 C.F.R. 300.324(b)(1) require school districts to review and revise the IEP, as appropriate, at least annually to determine whether annual goals for the student are being achieved; to consider the results of any re-examination or any information provided by the parent; and to meet the expected needs of the child or other things.

Kansas is asking every local school board to adopt a policy to address the use of emergency safety interventions (ESIs) such as seclusion or child restraint in crisis situations. USD #373 Reviewed, modified, and adopted School Board Policy GAAF: Emergency Safety Interventions (ESI) on July 24, 2023.

The IDEA does not address the use of ESI and therefore does not confer jurisdiction to investigate the use of ESI. There is a grievance process for allegations relating to ESI, located at K.A.R. 91-42-3. That regulation requires each school district to develop and implement policies regarding the use of ESIs, including a procedure for parents to file a complaint with the local

school board. Accordingly, any parent who wishes to file a complaint regarding the use of ESIs must have access to the local school board's policies.

Therefore, only the implementation of the IEP and BIP will be investigated in situations resulting in the use of ESI for students in the 2023 24 school year, as well as whether the district reviewed and modified the student's IEP in light of the increase in behaviors resulting in ESI during the 2023-24 school year as these issues are included in the IDEA.

Analysis: Findings of Fact

The complainant reported that he was told by an employee of USD #373 that his former student's IEP was not being enforced which resulted in many instances where the use of ESI including both isolation and restraint became necessary during the 2023 24 years of study. The complainant admitted that he had no direct knowledge in relation to the implementation of the student's IEP and that he did not participate in any IEP meetings for the student in the 2023 24 school year. The complainant requested an interview with the current employee of #373 and provided his name and contact information.

Ocean Gomez-Poston reported that she worked as a paraprofessional in the student's special education classroom for the first quarter of the 2022-23 school year and then worked as a long-term special education substitute teacher in another classroom adjacent to the student's classroom for the rest of 2022-23 and the entire 2023-24 school year. Ms Gomez-Poston admitted she was not a member of the student's IEP team and was not responsible for implementing the student's IEP or BIP during the 2023-24 school year. She did state that she knew of the student crisis intervention plan that shared all school staff working in the special education classroom pod inside the school building as a safety precaution.

Ms Gomez-Poston reported her concerns about the implementation of the student's IEP were based on informal observations by the student on the special education pod in the building. He suggested that the student's classroom was not structured and that the student did not appear to be able to see their classroom. He said the student's inappropriate behavior has intensified and become more frequent as the 2023-24 school year progresses. He was particularly concerned that the student would be hidden in a separate room for most of the school day, more often as school went on.

Ms Gomez-Poston also reported that USD #373 did not continue her work for the 2024-25 school year and she believes this is because she has made numerous reports to school administrators about continuing concern with her school co-workers of the 2023-24 school year but has not shared any specifics due to confidentiality. Ms. Poston-Gomez was advised that this employment issue would not be investigated because it also does not fall within the IDEA's jurisdiction. He was given contact information for the Office of Civil Rights, which does have jurisdiction to investigate complaints of retaliation.

The documentation showed that the student had two IEPs valid during the 2023 24 school years. The first was built on October 11, 2022 and the second was built on October 2, 2023. Both IEPs include a BIP with a Crisis Plan which is to be implemented when the student begins to demonstrate elopement behavior.

Heather Christner reported that she is working on getting her certification as an applied behavioral analyst and is supervised by Pam Sharping, BCBA to conduct a functional behavioral assessment and develop a BIP for the learner. The documentation shows that Ms. Christner was supervised and given feedback a total of 25 times in the 2023-24 school year.

District documentation showed that there were no incidents involving ESI during the first semester. The ESI incident occurred in both January and March. There were two incidents involving ESI use in April and three incidents of ESI in May.

Documentation showed that ESI was used on learners on a total of seven different occasions during the 2023-24 school year. In six of the incidents, antecedent/behavior/consequences (ABC) data charts showed ESI was used when the student became upset and acted aggressive by throwing a chair, attempting to throw a basket with objects on it towards his peers, flipping a table, and becoming physically aggressive towards himself and staff members. None of these incidents involve eloping, the target behavior in the student's BIP.

There is only one instance of an ESI being used in an elopement incident. This happened on April 8, 2024 while the student was being dropped off by the parent in the school building. According to the ESI report, the student immediately eloped upon arrival at school and attempted to leave the school grounds when students and teachers arrived at the building at 8:00 AM. Due to the timing and location of the eloping behavior, a safety issue for the learner is necessary to use ESI. Ms Christner reported that two #373 staff members and the mother participated in the capture of the student that morning and it was safe to return her to the school building. Ms Christner noted that the two staff members misused Crisis Prevention and Intervention (CPI) strategies and that these two staff members were reported to the administration.

The documentation also shows that the school team held a total of six staffings to review data for students during the 2023-24 school year and conducted an FBA as student behaviors began to increase. The student IEP team met a total of five times during the school year with the attending parent to discuss review of the student's IEP and BIP and to update strategies based on BIP data.

The parent reported that he did not believe USD #373 failed to implement student IEPs and BIPs during the 2023-24 school year. The parent said he was pleased with his participation in the IEP team process and believed that the school staff appreciated his input as a team member. The parent expressed awareness that there are situations involving student safety

and others that may require the use of isolation and/or restraint to keep everyone safe. He was pleased that staff were trained to intervene appropriately with the student.

Conclusion

Federal regulations in 34 C.F.R. 300.324(a)(2) require that the IEP team consider using positive behavioral interventions and support, and other strategies, to address any behavioral barriers to the child's learning or the learning of others. This may include IEP objectives, special education services, and/or a behavioral intervention plan (BIP). In this case, interviews and documentation show that the student has two IEPs in effect during the 2023-24 school year and that both include a BIP and a crisis plan. Based on the above, there is evidence to support a finding that USD #373 considers the use of positive behavioral interventions and support and other strategies to address the target student elopement behavior when developing the student's IEP in the 2023 24 school year.

Federal regulations in 34 C.F.R. 300.323(c)(2) require school districts to ensure that special education and related services are made available to the child pursuant to the child's IEP. In this case, the allegation is that the student's special education teacher failed to implement the student's BIP which resulted in improper use of ESI methods. However, documentation shows that six out of seven instances of ESI use are not the result of targeted behavior of elopement of BIP. Only one instance of ESI was found to have occurred due to the student's elopement. This elopement occurred upon arrival at the school building and ESI was used in that case to keep the student safe instead of implementing BIP. Based on the above, there is clear support for a finding that ESI use during the 2023 24 school year is not the result of a failure to implement the student's IEP.

Federal regulations in 34 C.F.R. 300.324(b)(1) require school districts to review and revise the IEP, as appropriate, at least annually to determine whether annual goals for students are achieved; to consider the results of any re-examination or any information provided by the parent; and to meet the expected needs of the child or other things. In this case, the student's annual IEP was reviewed and revised on October 2, 2023 within 365 days of the previous IEP dated October 11, 2022. Furthermore, documentation shows the IEP team, including the parent, met a total of five times during the 2023-24 school year to discuss data related to the student's FBA, BIP, and ESI situations. Based on the above, there is evidence to support that USD #373 reviewed and revised the student's IEP, as appropriate, during the 2023-24 school year.

The allegation that the district failed to implement the student IEP, specifically the behavior intervention plan (BIP), *is not substantiated*.

Investigator

Nancy Thomas
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).

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 #500 KANSAS CITY KANSAS PUBLIC SCHOOLS
ON JUNE 14, 2024

DATE OF REPORT JULY 15, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of --------- by his mother, ---------. In the remainder of the report, --------- will be referred to as "the student." --------- will be referred to as "the parent," the complainant" or "the mother".

The complaint is against USD #500 In the remainder of the report, USD #500 will be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on June 14, 2024 and the 30-day timeline ends on July 15, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Gwen Beegle, reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The following documentation and information were used in consideration of the issue(s). Interviews with the parent were held on June 18 and July 11, 2024. Interviews with the following staff were held as follows: Dana Nelson and Bridget King on July 8, 2024, and Krista Knight on July 10, 2024. Cassie Sandowsky, private BCBA, was interviewed on July 9, 2024.

The parent provided:

1. Three undated movies of the student provided by the parent
2. Autism Spectrum Disorder Evaluation dated June 24, 2021 by Autism, Behavior and Psychological Services
3. Emergency Safety Intervention documentation form dated August 23, 2023
4. I Ready Personalized Instruction Summary in Reading with entries dated 10/16/23 through 02/08/24
5. Wyandotte County Developmental Disabilities Organization Letter from Rhonda Cruz dated October 18, 2023
6. Email from Travis Morlang (Special Educator-Greenbush Academy Coordinator) to the parent dated February 10, 2024 at 8:23 a.m.

7. Draft IEP for the student dated February 10, 2024
8. Text exchange between the parent and Lori Cooper (Principal, ME Pearson Elementary) beginning February 19, 2024 at 10:35 a.m. and ending on March 17, 2024 at 3:44 p.m.
9. Text exchange between the parent and Jennifer Stephens (School Psychologist) beginning February 23, 2024 at 8:31 a.m. and ending April 1 at 10:49 a.m.
10. Text exchange between the parent and Tracy Martin beginning February 23 at 10:35 and ending February 28 at 10:23 a.m.
11. Text exchange between the parent and Tracy Martin beginning February 29 at 10:04 and ending March 1, 2024 at 9:37 a.m.
12. Text exchange between the parent and Tracy Martin beginning March 6 at 10:39 a.m. and ending March 7 at 10:29 a.m.
13. Email from the parent to Dr. Jakyta Lawrie (Wyandotte Comprehensive Special Education Cooperative Executive Director) dated March 14, 2024 at 9:16 a.m.
14. Email from the parent to Dana Nelson (Wyandotte Comprehensive Special Education Cooperative Assistant Director) dated March 14, 2024 at 9:17 a.m.
15. Email from the parent to Krista Knight (Wyandotte Comprehensive Special Education Cooperative Coordinator) dated March 19, 2024 at 10:35 a.m.
16. Personal Notes of March 29, 2024 IEP Meeting by Cassie Sandowsky (BCBA)
17. Report entitled "Recommended Supports, Strategies and Modifications for [the Student]" dated April 1, 2024 by Cassie Sandowsky * also submitted by district
18. IEP amendment dated April 24, 2024
19. Text exchange between the parent and Jennifer Stephens beginning on May 8, 2024 at 1:11 p.m. and ending on May 11, 2024 at 10:59 a.m.
20. Text exchange between the parent and Lori Cooper beginning May 7 at 10:40 and ending on May 10 at 11:25 a.m.
21. IXL Questions Log dated May 13, 2024
22. Greenbush Virtual Academy Spring 2024 Grade Report
23. Email from Cassi Sandowsky (Sandowsky Autism Services) to the parent dated April 18, 2024 at 9:53 a.m., subsequently forwarded by the parent to Jennifer Stephens on May 1, 2024 at 9:53 a.m.
24. Email from the parent to Jennifer Stephens, Lori Cooper and Krista Knight dated May 16, 2024 at 11:56 a.m.
25. Email from Alicia Baranczuk (Greenbush Academy Teacher) to the parent dated May 21, 2024 at 9:09 a.m. and subsequently forwarded by the parent to Frieda Tresvan (Parent Advocate) at 11:13 a.m. and Frieda Trevsan's reply at 11:43 a.m.
26. Email from Travis Morlang to the parent dated May 21, 2024 at 1:31 p.m.

27. Email from the parent to Krista Knight dated May 30, 2024 at 12:11 p.m. and Krista Knight's reply to the parent, Dana Nelson, Lori Cooper and Frieda Tresvan dated May 30, 2024 at 2:45 p.m.
28. Email from Frieda Trevsan to Brenda Tantow (Special Education Coordinator) dated May 31, 2024 at 11:26 a.m. Brenda Tantow's reply dated June 3, 2024 at 3:51 p.m., the parent's reply to Brenda Tantow at 7:24 p.m., and Brenda Tantow's reply to the parent at 7:46 p.m. of the same day
29. Email from parent to Krista Knight, Dana Nelson, Lori Cooper, Cassie Sandowsky and Frieda Trevsan dated May 31, 2024 at 12:52 p.m.
30. Email from parent to Krista Knight, Dana Nelson, Lori Cooper, and Frieda Tresvan dated June 12, 2024 at 8:00 a.m. with attached videos
31. Email from Krista Knight to the parent, Dana Nelson, Lori Cooper, Frieda Tresvan and Jakyta Lawrie dated June 12, 2024 at 11:54 a.m.

Documents from District

32. Notice of meeting portion, signed by parent on February 1, 2023
33. Portion of Prior Written Notice (PWN) signed by parent giving consent dated February 17, 2023
34. IEP dated February 17, 2023
35. IEP meeting notes dated February 17, 2023
36. Student attendance, 2023-24
37. Contact log for the student, 2023-24
38. General education contact log for the student, 2023-24
39. Principal Request for Virtual Learning dated October 9, 2023
40. Progress Notes on February 17, 2023 IEP goals
41. Notice of Meeting dated February 6, 2024 for a meeting on February 13, 2024 signed by the parent on February 6, 2024 and waiving right to 10-day notice
42. IEP Meeting Notes and Summary dated February 6, 2024 and February 13, 2024
43. Prior Written Notice - Evaluation dated February 9, 2023 and signed by the parent giving consent on February 13, 2023
44. Prior Written Notice dated February 13, 2024 for additions or changes to special education service signed by the parent giving consent on the same date
45. Student IEP dated February 13, 2024
46. Email from Bridge King to Travis Morlang dated March 21, 2024 at 1:44 p.m. and the reply at 3:37 p.m., forwarded to Krista Knight at 4:05 p.m.
47. IEP Meeting notes dated March 29, 2024
48. IEP Meeting notes dated May 22, 2024
49. The student's evaluation report dated May 22, 2024

50. Prior Written Notice - Evaluation dated May 21, 2024, provided to the parent via email on May 30, 2024 and unsigned by parent
51. The district's response to the allegations dated July 1, 2024, including timeline of events

Background Information

The student is a nine year old child who was identified for special education services as a child with developmental disabilities when he was three years old. The student has been medically diagnosed with autism, and he qualifies for speech language services. His IEP dated February 17, 2023 required full time special education in special education settings with regular education physical education and speech language therapy 20 minutes 3 times a week. The IEP noted that the student was generally happy to attend school, needed continual adult proximity and guidance due to distractibility and movement, and had social emotional needs: "He will protest loudly when he is upset. He struggles to control his emotions during the school day and benefits from working in a one-on-one or small group environment."

He has always attended school in #USD 500, and in August, 2023 the student began refusing to enter the school building, affecting his attendance. Upon receipt of a truancy letter and in consultation with the school principal in late September, the parent requested a change to his school of residence and virtual schooling in October, 2023. The parent accessed community behavioral and autism services to address the student's refusal to attend school or board the school bus beginning in October, 2023.

Issues Investigated

1. ISSUE ONE: The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to plan and conduct a comprehensive evaluation within timelines, specifically completing the triennial evaluation on time. (p. 6)
2. ISSUE TWO: The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to conduct a comprehensive evaluation using a variety of tools and strategies, and by conducting an evaluation sufficiently comprehensive to identify all the special education and related services needs of the child (p. 8)
3. ISSUE THREE: The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to call an IEP meeting to address the student's behavioral needs and lack of progress (p.13)
4. ISSUE FOUR: The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide prior notice and obtain parental consent before a substantial change in placement and material change in services. (p. 17)

5. ISSUE FIVE: The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop an appropriate IEP to meet the student's needs (p. 20)
6. ISSUE SIX: The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP to provide needed services (p. 25)
7. ISSUE SEVEN: The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide highly qualified staff to implement the student's IEP (p. 27)

Issue One

The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to plan and conduct a comprehensive evaluation within timelines, specifically completing the triennial evaluation on time.

Applicable Law

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 and ends with the implementation of services.

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. Parental consent is required prior to conducting any reevaluation, except that consent need not be obtained if the agency can demonstrate that it took reasonable measures to obtain such consent and the parents failed to respond (K.S.A. 72-3428(j)).

Analysis: Findings of Fact

The parent alleged that the student's reevaluation, which was due December, 2023, was not completed on time. The parent alleged that she offered to have the district come to her home to complete the evaluation because the child was refusing to attend school in person.

The district responded that the student's triennial was due 12/16/2023 and that the parent did not respond to two attempts to acquire consent for the reevaluation dated 10/13/13 and 12/8/23. The district stated that the parent provided consent on February 13, 2024 in response to a third request, after the triennial date had passed.

The district stated, "The student is considered DD and requires an evaluation by 10 years old. The LEA acknowledges that after we did not receive consent back from the parent after the first two attempts, we should have followed our internal processes and sent a letter home to the parent explaining that her non-response would be considered consent and we should

have moved forward with the evaluation. However, with the student attending virtually and not getting a response from the parent, the school psych decided to continue the attempts with hopes the parent would respond and unfortunately that consent was not granted by the parent until February 13, 2024."

The district responded that "Training will be provided to the psychological services team at the start of the school year, reviewing our internal process for addressing triennials that are due and what to do when parents are not responsive to the request."

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #500.

The district and the parent agree that the triennial evaluation was not completed on time.

The PWNE provided by the district was dated October 13, 2023; December 8, 2023; and February 9, 2024. The district reported and documentation showed that the parent provided consent for the evaluation on February 13, 2024 and that the draft evaluation report was completed by the district on May 22, 2024 when an evaluation team meeting was held.

Conclusion

Based on the foregoing, *it is substantiated* that USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to plan and conduct a comprehensive evaluation within timelines, specifically completing the triennial evaluation on time.

Issue Two

The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to conduct a comprehensive evaluation using a variety of tools and strategies, and by conducting an evaluation sufficiently comprehensive to identify all the special education and related services needs of the child

Applicable Law

According to 34 C.F.R. 300.303(b)(2) and K.S.A. 72-3428(h)(2)(B) and (i), 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) 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. To accomplish the reevaluation, the IEP team and other qualified professionals are to review

existing evaluation data, including evaluations and information provided by the parents, current classroom-based assessments and observations, and teacher and related service provider observations (K.S.A.72-3428(i)(1)) and (2) on the basis of that review and input from the parents, identify what additional data if any are needed.

Federal statutes and regulations at 34 CFR 300.304(c)(4) requires that the child be assessed in all areas related to the suspected disability, and 34 CFR 300.304(c)(6) and (7) require that the evaluation be sufficiently comprehensive to identify all the child's special education and related services needs and that tools and strategies provide relevant information to directly assist in determining the educational needs of the child are used. 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 services 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.

Analysis: Findings of Fact

The parent alleged that the evaluation was not a complete and comprehensive evaluation of the student's needs and disability. The parent alleged that one home visit was held in which the evaluator observed the child playing a computer game and with other objects. The parent alleged that she had provided information to the district from the ABA specialist that she contacted when the student began refusing to attend school.

The district responded that "the LEA provided the parent with PWN on 2/9/24, that outlined the areas that would be evaluated and the parent consented to those areas on 2/13/24. The evaluation was completed based on what was consented for on the PWN. The parent was provided a copy of the evaluation draft prior to the meeting and once the team met to review the evaluation the parent was not happy with the evaluation results and requested for more different types of assessments for different reasons. Parent did not sign the evaluation that was completed, which we understand she was not required to, but we did issue another PWN with the additional assessments in which the team outlines specifically what those would be and why. (PT, OT, FBA, Standardized Academic, Assistive Technology) on 5/21/24 in which the parent chose not to provide consent for the new PWN in which she requested. The LEA believes they conducted a comprehensive evaluation to determine the needs of the students and once the parent voiced she wanted more assessments, we provided another PWN to do more assessments. Parent refused to sign the PWN."

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 #500.

The district provided prior written notice for evaluation (PWNE), signed by the parent consenting to the evaluation dated February 13, 2024. The PWNE stated that the following areas would be evaluated with both new and existing data: health- motor ability, vision, hearing, social emotional skills - behavioral status, general intelligence, academic performance, and other "observations, interviews." Communication would be assessed on existing data only.

IEP meeting notes dated February 13, 2024 stated that the reevaluation, specifically the disability change to autism, was discussed at the IEP meeting.

The parent provided a report dated April 1, 2024 entitled "Recommended Supports, Strategies and Recommendations for [the Student]" authored by the privately contracted Board Certified Behavior Analyst (BCBA). The parent and the BCBA reported that this information was shared with the district on March 29, 2024 at an IEP meeting and documents showed that the district had a copy of the report dated April 1, 2024.

According to the reevaluation report dated May 22, 2024, the purpose of the evaluation was twofold, to determine continued eligibility as required each three years and, because the student was turning nine years old, to determine an alternate qualifying disability category to the current one of developmental disability, which may only be used to age ten. The reevaluation report found that the student's primary disability was autism and his secondary disability was speech language disorder, resulting in his need for special education and related services. Evaluation conference participants listed were the parent, general education teacher, special education teacher, two speech language pathologists, principal, special education coordinator, special education director, and school psychologist.

The evaluation dated May 22, 2024 stated that the following sources of data were used in the report: record review for health-physical-motor-sensory; record review, observation, interview and tests for social emotional; record review and tests for cognitive; record review, observation and tests for academic; observations in the community (his home); and review of existing data for communication. The two tests given and used for the report were the Developmental Profile 4 (DP-4) (a rating scale that assesses a student's developmental skills in a variety of domains, completed by the mother) and Autism Spectrum Rating Scale (ASRS) stating that its purpose was "to quantify observations of a child that are associated with Autism Spectrum Disorder. Used in combination with other information, results from the ASRS can help determine the likelihood that a child has symptoms associated with Autism Spectrum Disorder." The mother filled out the parent ASRS rating scale.

No new data were collected for the health, physical, motor, sensory portion of the evaluation. New data were collected for the speech language evaluation. Sources for the speech language portion of the reevaluation were parent checklist and intake form, and Clinical Evaluation of Language Fundamentals-5: Pragmatic Profile (noted as "pending" with parent but without a teacher's participation), direct observation data from the student's participation in online

therapy sessions; additionally, it recommended a full assistive technology reevaluation to determine if his current device met his needs.

In the report, although the February 13, 2023 IEP student performance report was quoted, no academic or classroom direct observation data were included from the student's in person classroom attendance or virtual special education sessions. When asked in interviews, district administrators could not affirm that virtual school observations were a source for the report. Additionally, no information from the parent provided BCBA report dated April 1, 2024 was referenced, nor was the report noted as a data source. The reevaluation stated that the student had a diagnosis of autism, with no further citation of the parent provided medical reports given.

The district reported that the school psychologist sent a draft of the report prior to the scheduled evaluation-IEP team meeting on May 22, 2024. The district reported that the parent, unsatisfied with the draft reevaluation report, requested additional data in the student's evaluation. In response, the school psychologist offered to conduct additional testing prior to the scheduled meeting and the parent did not confirm the testing date proposed, according to the district. The district reported that, on May 22, 2024 at the IEP meeting, the parent stated that she did not want to confirm the student's eligibility due to the incomplete evaluation report.

In response to the parent's request for additional evaluation data (IEP meeting notes dated May 22, 2024; interview with the special education coordinator), the district provided a PWNE dated May 30, 2024 which stated that the purpose of the data collection was to determine continued eligibility, present levels of academic achievement and related developmental needs, continued need for special education, additional additions or modifications to the special education and related services needed to enable the student to meet IEP goals and participate and make progress in general education curriculum. In this PWNE, the district proposed specific assessments, for occupational and physical therapy, functional behavior assessment, assistive technology, standardized academic achievement assessments and data collection on the student's school entry at the beginning of the 2024-25 school year. "An extension of the consent, dated 2/13/24 is proposed in order to collect additional data as requested by the team in order to have a more comprehensive reevaluation. Additional data will include: motor assessments (physical and occupational therapy evaluations), functional behavior assessment, and achievement assessments." The PWN also stated "To conclude the re-evaluation with the current data collected (and not seek an extension) was considered, but rejected, as [the mother] has requested the additional data and after review, the IEP team concurs that additional data in the areas outlined above are required in order to complete a comprehensive reevaluation."

The district and the parent agree that the parent refused consent on this PWNE dated May 30, 2024. Emails between the parent and district personnel surrounding this PWNE described it

as a PWN for an extension for the evaluation. The parent stated, in an email dated June 5, 2024, that she had provided consent in February and the district had consent to conduct the relevant assessments for a comprehensive assessment as of that time and that she disagreed with an extension. When asked in an interview, the parent had an additional concern of how the additional assessments were to be conducted.

Conclusion

In this case, the re-evaluation was delayed (Issue One). At the time the student was assessed, he was a virtual student with a markedly altered school attendance environment and format. The February 17, 2024 IEP was cited in the evaluation report, with no additional academic testing, (virtual) classroom observations or documented virtual school special education provider information, as required by K.S.A. 72-3428 (i) in a re-evaluation. The information provided by the parent, specifically the April 1, 2024 BCBA report, was not cited as a source for the evaluation. It is noted that the speech-language portion of the report included performance data from recent therapy sessions.

The draft evaluation report was reviewed on May 22, 2024 by the IEP and evaluation team. The evaluation was not accepted as complete by the IEP team as stated in the subsequent PWN provide by the district to collect additional data requested by the parent and on the student's entry into the school building at the start of the 2024-25 school year. The PWNE was not signed by the parent giving permission to collect the additional data, and at this point, the evaluation remains incomplete and without data determined necessary by the district and the parent in order to complete the student's eligibility determination and to develop the student's IEP.

It is found that the district did not complete a reevaluation sufficiently comprehensive to identify the student's special education and related service needs and to provide adequate information for the IEP. It is noted that the district offered to conduct the additional testing when the IEP team determined additional testing was needed at the evaluation team conference.

Based on the foregoing, it is substantiated that USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to conduct a comprehensive evaluation using a variety of tools and strategies, and by conducting an evaluation sufficiently comprehensive to identify all the special education and related services needs of the child.

Issue Three

The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to call an IEP meeting to address the student's behavioral needs and lack of progress

Applicable Law

Federal regulations at 34 C.F.R. 300.324(b) and state regulations at K.S.A.72-3429(f) 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.

Federal regulations, at 300.324(a)(2)(i), require IEP teams to consider the use of positive behavioral intervention and support, 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 support 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.

Analysis: Findings of Fact

The parent alleged that when the child started to refuse to attend school, the district did not hold an IEP meeting; rather, the district sent a truancy letter to the parent. The parent alleged that she went to the school to object to the truancy letter and to tell the district why the child was not attending school. The parent alleged that, because she feared the district's pursuit of truancy allegations, she asked that the student be considered a virtual student. The parent alleged that the district did not call an IEP meeting despite being informed of the child's behavior of refusing to get on the bus or out of the car when the parent drove him to school.

The district responded that: "The students' school of attendance was West Park, in the autism program. The student attended school the first week and did not come to school after that. According to attendance records, the parent was calling the student in sick and there were a few times the student was marked unexcused. The school followed their attendance process and reported the student truant. The teacher and school was communicating with the parent and was trying to offer support and at times the parent was responsive and not responsive. The student had an active IEP that was not due until 2/26/24, and it was held 2/13/24. It was not a situation where the student was attending every day and had behaviors and not making progress on goals, the student was not attending school and then the parent elected for the student to go to the district virtual school."

The findings of Issue One and Issue 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 #500.

The student's IEP dated February 17, 2023 stated that the student had needs in the following areas: speech, language, reading, math, social emotional-behavior with no needs in functional skills. Special considerations included the need for assistive technology and behavioral needs for a visual schedule, for reminding to follow schedule and directions, and to develop a token system. The IEP goals were (1) to read pre-primer words, (2) add and subtract math facts, (3) communicate with intent, (4) answer questions and learn words, and (5) follow two step directions. The student was placed full time in special education with participation in regular physical education. The following services were included the following special education services in special education settings: science-social studies (30 minutes, 4 days a week), specials (50 minutes, 4 days a week, and 25 minutes 1 day a week), early math (75 minutes, 4 days a week), early reading (90 minutes, 4 days a week), speech-language services (20 minutes, 3 days a week), early reading sight words (60 minutes, 1 day a week), and special transportation. The IEP required staff training via consultation in PECS, first then boards and visual prompts. The student qualified for ESY. Accommodations listed were: access to AAC, adaptive seating, adult proximity and support, accept and prompt to expand answers, multisensory learning of vocabulary, extended time for written responses, frequent breaks, fidget seating, wait time, multiple assessment accommodations, visuals to enhance explanations, simple directions, special transportation, positive reinforcers, visual supports, and visuals such as first then boards, schedules and visual timers.

Progress reports for the first two quarters after the February 17, 2023 IEP were put in place showed adequate progress toward the IEP goals.

The parent and the district agree that the student was absent from school beginning on or about August 23, 2023. The parent provided a Emergency Safety Intervention Document form dated August 23, 2023 from a parking lot incident when the child refused to come into the building and ran away back to the parent at school drop-off.

Special and general education contact logs provided by the district showed the following interactions with school personnel. The parent contacted the school on September 9, 2023 regarding the difficulty getting the student to school. A special education coordinator contacted the parent September 11, 2023 with information. The special education teacher contacted the parent regarding strategies to assist the parent to get the child to school on the following dates: September 19, September 20, September 22, and September 25, 2023. A home visit by the special education teacher was scheduled for September 27, 2023. The parent reported that the home visit was useful and she wanted them to continue.

The parent received a truancy letter and visited the school September 25, 2023, and the principal developed an attendance plan with the parent that included having additional staff to assist in getting the student into the school on September 29, 2023. The principal and parent, on October 5, 2023, arranged a meeting for the following Monday, October 9, 2023 to discuss the attendance plan. On October 9, 2023, the special education coordinator arranged to meet

the parent the following day at the transfer of attendance school to determine if the child would enter that school building.

The principal requested virtual learning on October 9, 2023, giving emotional safety and unique circumstances as the rationale. The request stated: "The student has been extremely combative when attempting to get him to school. Mom has tried multiple avenues to get him here but he is non-verbal and he is refusing to even get in the car to come to school at this point. She would like to try virtual school to get him at least a little bit of educational contact." The request was signed by the parent.

The parent did not request an IEP meeting, according to the district.

According to the parent and the BCBA, the parent contacted the community agency in October, 2023 to initiate services that were privately funded by the parent's insurance company. The insurance company approved a behavior support plan that would get the child into the school building. According to the parent and the BCBA, the plan was successful and the parent and the BCBA shared responsibility for transporting the child to school and by Thanksgiving, the student was walking into the building and participating in activities. According to the BCBA, it was clear the district wasn't ready for him but individual substitute teachers provided worksheets and materials for the BCBA to use while at the school. By February, 2024 at the time of the IEP meeting, the student had gradually increased his time in the classroom to 60-90 minutes.

According to interviews with the district, the student was considered to be a virtual student as of the October, 2023 principal request for virtual learning signed by the parent.

Conclusion

In this case, the parent did not request an IEP meeting, but instead requested and was granted virtual schooling due to the inability to get the child to school. The district reported that the child was making progress in his placement prior to the unilateral action by the parent and evidence showed that the district was making attempts to assist the parent and the student to attend school during the first month of the student's emergent school refusal. The district is not required to have an IEP meeting in this case, as the request for virtual schooling is considered a unilateral parental action rather than an action taken by an IEP team.

Based on the foregoing, ***it is not substantiated*** that USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to call an IEP meeting to address the student's behavioral needs and lack of progress.

Issue Four

The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide prior notice and

obtain parental consent before a substantial change in placement and material change in services.

Applicable Law

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.

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.

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.

Analysis: Findings of Fact

The parent alleged that the district did not provide prior written notice or the opportunity for her to give consent when changing the student's IEP to make him a virtual student, despite the changes in services and placement associated with virtual schooling.

The district responded that, "the LEA had a current IEP in the beginning of the 23-24 school year and the placement was outside regular classrooms more than 60% of the time. That IEP was maintained until the parent elected to enroll the student in virtual school, with the understanding that once the student returns to brick and mortar, those services would remain in place." Further the district responded that the parent provided consent to the February 17, 2023 IEP services and the IEP team met again at the time of the annual IEP February 13, 2024 to reflect what the parent agreed to with the LEA for the student while attending virtual school. "The LEA denies failing to provide prior notice and obtain parental consent before a substantial change in placement and material change in services."

The findings of Issue One, Issue Two, and Issue 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 #500.

The district and the parent agree that parental consent was given for the IEP services dated February 17, 2023. The district and the parent agree that virtual schooling was initiated following the principal's request signed by the parent on October 9, 2024. The district and the parent agree that if the child had attended brick and mortar schooling, the February 17, 2023 IEP was the IEP in place until the February 13, 2024 IEP was written. The district and the parent agree that no PWN was given when the student began virtual schooling.

Conclusion

In this case, the parent acted unilaterally by placing the student in virtual schooling; the district did not change its offer of FAPE and the February 17, 2023 IEP remained the IEP of record. Therefore, a substantial change of placement and material change of services did not occur, and parental consent under K.A.R. 91-40-27(a)(3) was not required. However, the district was obligated to provide prior written notice to the parent when the parent took the unilateral action of virtual school placement without an IEP meeting. Had the district taken such action, the parent would have been fully informed that the district's current offer of FAPE differed from special education offered by the virtual school and therefore had the opportunity to consider the implications of virtual school placement as opposed to requesting an IEP meeting to revise the student's IEP (Issue Three).

Based on the foregoing, ***it is substantiated*** that USD#500 failed to provide prior notice at the initiation of the virtual schooling, and ***it is not substantiated*** that USD#500 failed to obtain parental consent before a substantial change in placement and material change in services.

Issue Five

The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop an appropriate IEP to meet the student's needs

Applicable Law

The development of the IEP begins with the evaluation. Federal statutes and regulations at 34 CFR 300.304(c)(4) requires that the child be assessed in all areas related to the suspected disability, and 34 CFR 300.304(c)(6) and (7) require that the evaluation be sufficiently comprehensive to identify all the child's special education and related services needs and that tools and strategies provide relevant information to directly assist in determining the educational needs of the child are used.

Federal statutes and regulations at 34 CFR 300.324(a) require that in developing the child's IEP, the IEP team shall consider the following: the strengths of the child, the concerns of the parents, the results of the child's evaluation, the academic and functional needs of the child, the use of positive behavior interventions and supports if the child's behavior impedes learning, the need for braille or the impact of limited English proficiency, the child's

communication needs, and the need for assistive technology. Federal regulations at 34 CFR 300.327 and state regulations at K.S.A. 91-40-25(a)(1) and (2) require that the district allow the parents to participate in any meeting with respect to the identification, evaluation, or educational placement of the child, and that the agency take steps to ensure that the parents are present and afford the opportunity to participate in each meeting concerning their child

Analysis: Findings of Fact

The parent alleged that the IEP failed to address the student's needs as a student with autism who was refusing to attend school. The parent alleged that she had to go to an outside agency to find someone "who would help me." The parent alleged that the district's proposals did not address the student's core problem of school refusal despite being informed of it many times, including when the virtual schooling was initiated, in communication with the district, and at IEP meetings.

The district responded that "Based on the student attending school, brick and mortar and when the parent elected to send student virtual, the IEP team developed an IEP appropriate to meet the needs of the student and the parent was able to meaningfully participate in those meetings."

The findings of Issue One, Issue Two, Issue Three and Issue Four are incorporated herein by reference. The following findings are based upon a review of documentation and interviews with the parent and staff in USD #500.

According to the parent and the BCBA provider, the student was entering the school building and participating in activities in the classroom by Thanksgiving.

The student's annual IEP dated February 13, 2024 stated that the student was "enrolled in Greenbush Virtual Academy which is a parentally placed option. He receives special education services virtually through Kansas City Kansas Public Schools.

[The student] is also currently attending in person at his assigned elementary school part time to work on transitioning to in person learning full time. He has been spending about an hour each day in the school building."

The February 13, 2024 IEP goals (in brief) included (1) read 100 pre-primer words, (2) add and subtract single and double digit numbers, (3) initiate communication or respond with intention, (4) answer WH/How questions, and (5) participate in activity using a First/Then visual or verbal prompt. The IEP included these services: transportation when the student returns to full time in school attendance, speech-language services (20 minutes, 3 times a week), and special education for reading and math (20 minutes, 2 times a week). Accommodations were similar to those provided by the previous IEP, with the additions of: (a) "Adapt and modify weight of course components and/or course tests. While in Greenbush Virtual Academy course load is reduced by 25%, (b) Adapt teaching materials to correspond to student skill level while

attending Greenbush Virtual Academy. [Student] is working 2 grade levels below current grade level curriculum." The IEP stated that the student is eligible for Extended School year. The IEP did not include a behavior goal or a behavior intervention plan.

Following the February 13, 2024 IEP meeting, according to the district administrator interviews, the district administrations became aware that the BCBA private service provider was supporting the student in the school building, and that the February 13, 2024 IEP did not provide for in school services at the same time as it recorded the student's partial day school attendance. The school principal, in a text exchange beginning February 19, 2024, informed the parent that the BCBA private service provider could no longer be with the child in the building. According to the district response and interview, the special education coordinator contacted the IEP team on March 14, 2024 stating a meeting was needed to discuss the student's services because the BCBA could not be in the building and the IEP did not reflect any in-class services. The parent reported and provided an email documenting that she alerted the special education coordinator that the removal of the BCBA services resulted in the student again refusing to enter the school building.

The parent requested an IEP meeting in a text to the principal dated March 15, 2024 and an IEP meeting was held on March 29, 2024. The parent texted that the accommodations and strategies shared with the team at the February 13, 2024 IEP team meeting should now be included in the IEP, given that the BCBA support was no longer in place. According to the district and the parent, at the March 29, 2024 meeting, the BCBA recommended strategies were discussed and the written report dated April 1, 2024 was subsequently shared with the district.

An IEP amendment meeting was scheduled and held on April 24, 2024. The IEP amendment stated, "It is proposed that [the student] receive special education services at ME Pearson for the minutes listed below. [The student] will continue to receive special education services through the Greenbush virtual academy while he works towards attending a full day at ME Pearson." New services listed were special education in a special education setting for the following: 320 minutes 3 days weekly, 340 minutes 1 day weekly, 245 minutes 1 day weekly and 25 minutes 1 day weekly, with special education in a general education setting 50 minutes 4 days weekly. In addition, speech language 20 minutes 3 days a week, virtual speech language 20 minutes 3 days a week and virtual special education 20 minutes 2 days a week and special education transportation were included.

The associated PWN dated April 24, 2024 stated that: "increasing [the student] to a full day attendance at ME Pearson, implementing accommodations and modifications to his day, and receiving special education ESY services were proposed so [the student] could continue to make educational progress." This PWN dated April 24, 2024 was unsigned by the parent and the district and the parent agreed that the parent did not consent to the proposed changes. When asked in an interview, the parent indicated that the proposed modifications lacked the

clarity and specific successful strategies as provided by the BCBA along with a concern about how the one to one support would be provided.

An IEP amendment dated May 28, 2024 signed by the parent on May 30, 2024 giving consent describes the student's ESY services (in person) and the accommodations and modifications to include on the student's IEP.

A PWN dated May 28, 2024 provided by the district stated that the district was proposing ESY services and listed accommodations "for the purpose of accessing his special education evaluation and the educational environment to assist in data collecting to ensure the team is able to determine the appropriate eligibility, program placement, services, and supports needed to access, benefit, and participate in the educational program." Other factors related to the proposal were "concerns with attendance directly connected to the suspected need for identification and specially designed instruction." ESY services proposed were: 3 days of special education services in the special education setting for 180 minutes daily; 1 day of special education services in the special education setting for 165 minutes; 1 day of speech language services in the special education setting for 15 minutes; 4 days of special education transportation services for 20 minutes daily with a monitor.

Accommodations proposed were: "Access to a break card; Access to fidgets; Alternate seating (i.e., wiggle cushion, etc); Course load reduced by 25% while in GVA; Adapt teaching materials to skill level while in GVA; Adult proximity; Alternate tasks between preferred and non-preferred; Concrete reinforcement to include non-contingent reinforcement; Increased wait time up to ten minutes; Individualized daily schedule / mini schedule of 3-4 tasks/activities; Modified curriculum within STEPS program; Movement/Leisure breaks embedded within schedule and when requested; Multimodal communication support- access to AAC (e.g., picture icons, sentence strips, iPad, etc) for communication; Multi-modal instruction based on the structured teaching model to include group activities, direct instruction, independent work, self-directed choice, iPad/technology; Offer choices as appropriate; Provide and model opportunities for turn-taking; Review of daily schedule; Review of reminders and expectations / boundaries; Use of first then verbiage and visuals; Matrix of Adult Support for duration of school day." The PWN noted that it was emailed to the parent on May 29, 2024 and the parent signed giving consent on May 30, 2024.

The parent and the district agree that the transportation service Everdriven provided by the district has been successful at getting the student to attend the ESY program.

Conclusion

In this case, the parent alleged that the district's proposals did not address the effects of the student's disability, in particular the issues surrounding his school refusal. As noted in Issue One the district failed to conduct the triennial evaluation, due in December 2023, on time, and in Issue Two, the district failed to conduct a comprehensive evaluation needed to identify all

the special education and related services needed. The district asserts correctly that the parent unilaterally placed the child in the virtual school in October 2023, and the subsequent series of meetings (February 13, March 29, and April 24, 2024 IEP meetings) indicate that the IEP team addressed the proposed brick and mortar school program as the student's intended special education program and placement. However, the lack of a timely, complete, comprehensive evaluation (due December 16, 2023) addressing the student's problems associated with school attendance and the failure to have an IEP meeting associated with a complete evaluation impeded the proper development of an IEP at the point the student was entering the school with BCBA support. When the BCBA support was precluded by school personnel, the problem behavior reemerged, prior to the district's later attempts to amend the February 13, 2024 virtual IEP to articulate needed school based IEP services.

Based on the foregoing, ***it is substantiated*** that USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop an appropriate IEP to meet the student's needs.

Issue Six

The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP to provide needed services

Applicable Law

Federal/State statutes and regulations at 34 CFR 300.39 defines special education as specially designed instruction at no cost to the parent to meet the unique needs of a child with a disability. Further 34 CFR 300.320(a)(4) requires that the IEP include "a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child: (i) To advance appropriately toward attaining the annual goals; (ii) To be involved in and make progress in the general education curriculum. . . and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and nondisabled children. "

Federal regulations 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.

Analysis: Findings of Fact

The parent alleged that the district was not providing IEP services during the period of time that the student was in the virtual school. The parent alleged that despite the partial success of the ABA treatment being provided by the in-home provider the school prevented the

provider from entering the building and that as a result of the district not providing the same or similar services, the student stopped attending school following the removal of the ABA treatment in March, 2024.

The district responded that "Based on the student attending school, brick and mortar and when the parent elected to send student virtual, the IEP team developed an IEP appropriate to meet the needs of the student and the parent was able to meaningfully participate in those meetings. When the parent was experiencing problems at home getting the student to school, the school provided contact and resources for the parent and followed the district attendance procedures.

The findings of Issue One, Issue Two, Issue Three, Issue Four and Issue Five are incorporated herein by reference. The following findings are based upon a review of documentation and interviews with the parent and staff in USD #500.

As stated in Issue Five, the student's annual IEP dated February 13, 2024 stated that the student was "enrolled in Greenbush Virtual Academy which is a parentally placed option. He receives special education services virtually through Kansas City Kansas Public Schools. [The student] is also currently attending in person at his assigned elementary school part time to work on transitioning to in person learning full time. He has been spending about an hour each day in the school building."

The district reported in its response and in interviews that the virtual school services including virtual speech language services were in place by November 1, 2023 and continued through the end of the school year. An email dated March 21, 2024 gives a teacher's report on participation; progress reports show adequate progress on IEP goals for the fourth quarter and assessment reports provided by the parent show participation. ESY services were provided in person, and included transportation by the district (Everdriven). The parent reported successful use of the district provided transportation.

The IEP dated February 17, 2023 required staff support as "Teacher consultation (Training for staff on consistent use of PECS book, First/Then boards and other visual prompts)" to occur one time every four weeks. No data were provided to document that the staff at the student's first school had this training prior to the beginning of the school year. The special education contact log showed that the special education teacher used a visual morning routine chart with the parent and child prior to the September 27, 2023 home visit.

Conclusion

A lack of clarity for the school staff, outside agency and the parent surrounded this student's educational and behavioral program. However, only two IEPs were in place during this period, the February 17, 2023 IEP that was implemented prior to the virtual schooling request and the February 13, IEP that provided for virtual school with eligibility for ESY. The parent signed a PWN for in person ESY services, which the student attended. On the secondary matter of the

staff support - teacher consultation for PECs book, first-then board and visual prompts in place when the student attended in person school, evidence was incomplete.

Based on the foregoing, ***it is not substantiated*** that USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP to provide needed services.

Issue Seven

The USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide highly qualified staff to implement the student's IEP

Applicable Law

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) require 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.

Analysis: Findings of Fact

The parent alleged that the district did not provide adequately trained staff to implement the student's IEP. The district responded: "All district staff that would have been the student's teacher in brick and mortar and virtually held appropriate credentials. The student started off at West Park, then the parent moved which changed the home school location to ME Pearson and then the student was attending Greenbush Virtual."

The district reported and record review through the KSDE Kansas Educator License Lookup confirmed that the teachers for the student listed had current Kansas Educator Licenses, as follows (teacher's initials only)

Teacher	Endorsement(s)
West Park STEPS Teacher - A.G.	- LAL High Incidence Special Education Prek-12
GVA SPED Case Manager/Teacher - T.M.	- Elementary K-9 - English for Speakers of Other Languages PreK-12 - Intellectual Disability K-9

Teacher	Endorsement(s)
M E Pearson STEPS Teacher - D.S.	- Elementary Education K-6 - High Incidence Special Education K-6
M E Pearson STEPS Teacher - J.E.	- Severely Multiply Handicapped K-12

The speech language pathologist listed on the student's virtual IEP and evaluation had current speech language Speech Language Pathology Licenses, confirmed through the KDHE Health Occupations Credentialing Verification of Licenses website.

Conclusion

Based on the foregoing, ***it is not substantiated*** that USD #500 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide highly qualified staff to implement the student's IEP.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. 300.303(b)(2) and K.S.A. 72-3428(h)(2)(B) was found, based on the failure to complete the triennial evaluation when due. Corrective action is required (as follows):
   a. CORRECTIVE ACTION:
      i. By August 13, 2024, USD #500 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal and state regulations at 34 C.F.R. 300.303(b)(2) and K.S.A. 72-3428(h)(2)(B) which require that the district conduct reevaluations within three years.
      ii. By September 3, 2024, USD #500 shall review and improve, if needed, its policies and procedures on ensuring timely reevaluations with attention to tracking students with disabilities in virtual as well as traditional school programs and disseminate key points to relevant district staff, such as special education coordinators and school psychologists. The district shall provide a copy of the policies and procedures to KSDE, along with a copy of the review, any improvements, key points disseminated and list of persons to whom the information was provided.
      iii. Date due: August 13, 2024 and September 3, 2024
2. ISSUE TWO: A violation of 34 C.F.R. 300.304(c)(6) and (7) and K.S.A. 72-3428 (i) was found based on the evidence listed above. Corrective action is required (as follows):
   a. CORRECTIVE ACTION:
      i. By August 13, 2024, USD #500 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal and state regulations at 34 C.F.R. 300.304(c)(6) and (7) and K.S.A. 72-3428 (i) which require that the district conduct evaluations sufficiently

comprehensive to identify all the child's special education and related services needs and that tools and strategies provide relevant information to directly assist in determining the educational needs of the child are used.

ii. By September 3, 2024 and prior to the beginning of the 2024-25 school year, the district shall schedule an evaluation team meeting with the parent to conclude the student's triennial evaluation. Using evaluation needs previously determined by the evaluation team, the district shall include any additional information gathered during the student's ESY program, information provided by the parent, and new or existing testing. The district shall provide PWNE to the parent specifying the new testing and the parent shall have 7 days to give or withhold consent, at which point the district can either schedule the new testing or complete the evaluation with the data available to the IEP team at that time. This corrective action does not preclude additional evaluations, such as the full assistive technology evaluation recommended by the May 22, 2024 evaluation report or an FBA conducted at the school of residence referenced in the May 21, 2024 PWNE being conducted following the beginning of the school year, if appropriate. The district shall provide documentation of the completed evaluation, PWNE, and IEP-Evaluation team meeting to SETS as evidence of its completion by September 1, 2024.

iii. Date due: August 13, 2024 and September 3, 2024

3. ISSUE THREE: A violation of 34 CFR § 300.503(a)(2) and K.S.A 72-3430(b)(2) was not found, based on the placement of the child by the parent in virtual school. Corrective action is not required.
4. ISSUE FOUR: A violation of 4 CFR § 300.503(a)(2) and K.S.A 72-3430(b)(2) was found based on the district's failure to provide PWN when the student was placed in virtual school by the parent. Corrective action is required (as follows):
   a. CORRECTIVE ACTION:
      i. By August 13, 2024, USD #500 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal and state regulations at 4 CFR § 300.503(a)(2) and K.S.A 72-3430(b)(2) which require that PWN is given to parents upon certain proposed special education action.
      ii. By August 13, 2024 the district shall provide PWN to the parent regarding the current offer of FAPE to the student, which clearly specifies the student's current placement and services. The district shall discuss with the parent, in concert with corrective action 2(a)(ii) or 5(a)(ii), the possible placements of the child to include options that address the child's behavior that affects school attendance, and ensure that the parent knows how to remove the child from virtual schooling, if relevant. The district will submit documentation to SETS of completion by September 3, 2024.
      iii. Date due: August 13, 2024 and September 3, 2024

5. ISSUE FIVE: A violation of 34 CFR 300.324(a) was found, based on the facts listed above. Corrective action is required (as follows):
    a. CORRECTIVE ACTION:
        i. By August 13, 2024, USD #500 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations at 34 CFR 300.324(a) which require various factors be considered when developing the IEP, including the child's evaluation and the concerns of the parent.
        ii. By September 3, 2024 and before the beginning of the 2024-25 school year, the district will conduct an IEP team meeting to develop the IEP, including direct discussion of the factors listed in 34 CFR 300.324(a) and their implications for the child's IEP goals, special education and related services, and placement. The district will submit documentation to SETS of completion by September 3, 2024.
        iii. Date due: August 13, 2024 and September 3, 2024
6. ISSUE SIX: A violation of 34 CFR 300.320(a)(4) was not found, based on the facts listed above. Corrective action is not required (as follows):
7. ISSUE SEVEN: A violation of 34 C.F.R. 300.156(c) was not found, based on [facts]. Corrective action is not required (as follows):

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).

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 BLUE VALLEY SCHOOLS
ON JUNE 25, 2024

DATE OF REPORT JULY 23, 2024

On June 25, 2024, -------- (hereafter referred to as: "the mother,)" and -------- (hereafter referred to as: "the father), filed a formal complaint with the Kansas State Department of Education (KSDE) alleging that USD 229 Blue Valley Schools (hereafter referred to as "the district), is not meeting its obligations under the Individuals with Disabilities Education Act to provide special education services to their child, -------- (hereafter referred to as "the child"). When referring to both the mother and the father, they will be referred to as "the parents". Mark Ward served as investigator for the complaint.

* The complaint was delivered to the KSDE on June 24, 2024 at 5:16 pm, after the office closed for the day. Accordingly, the filing date is June 25, 2024.

Investigation of Complaint

The following materials and correspondence were provided by the parties and reviewed by KSDE during its investigation.

Provided by the parents:

1. Complaint, dated 6/24/24, received 6/25/24
2. E-Mail correspondence dated 7/1/24, including:
    a. Online registration dated 8/6/23;
    b. E-mail dated 8/11/20;
    c. On-Line registration dated 6/2/21;
    d. Status of registration, dated 6/2/21;
    e. Status of registration dated 6/22/22;
    f. E-mail dated 8/29/23 from Dr. Schmidt re: reevaluation and enrollment;
    g. E-mails dated 9/10/20 – 10/22/20/letter dated 10/14/20; and
    h. Exhibit A: Affidavit of Asst. Dir., dated 1/28/21.
3. E-Mail, dated 7/1/24 with exhibits in district court
4. E-Mail, dated 7/12 & 7/13/24 from parents, answering investigator questions

Provided by the District:

a. Response to Complaint

b. E-mail, dated 8/9/23 from Principal to Parent
c. Email dated 8/29/23 from Assistant. Superintendent to Parent
d. E-mails dated 7/1/24 through 7/12/24 from attorney for district
e. Initial Evaluation Report, dated 5/15/18
f. Student's IEP, dated 4/27/20

Obtained independently

a. Baker v. Watson, U.S. District court decision, dated June 25, 2024

Spoke by phone to Director 7/12/24

Spoke by phone to father on 7/15/24

Background Information

This complaint involves a nine year-old boy who was found to be eligible under the category of Developmental Delay. The student attended a public school at Wolf Springs Elementary School, where he was in pre-school in the spring of 2020. He has not attended a public school since that time and his April 2020 IEP was the student's last IEP as a district student.

In the complaint, the parents state that: "This complaint is not related to the substance of (the student's) IEP." Instead, the parents allege a number of violations that resulted from the same action, namely that the district refused to enroll the student or to keep the student enrolled.

Issue 1

In Issue 1, the complaint lists seven allegations against USD 229. They are:

Issue 1

The district has failed to comply with multiple state special education statutes and regulations by repeatedly refusing to enroll, or to keep the student enrolled in school for the 2023-2024 school year. The complaint includes alleged violations of the following Kansas statutes and regulations, when the district allegedly:

K.A.R. 91-40-21: failed to enroll the student so that he can be "served by the agency."

K.A.R. 91-40-21: refused to enroll the student so that he can be educated in the LRE.

K.A.R. 91-20-27: did not obtain parental consent before making a material change in services or a substantial change in placement.

K.A.R. 91-40-41: did not reimburse parents when the district did not make FAPE available to the student in a timely manner before the private school enrollment.

K.S.A. 72-3410: failed to provide a Free Appropriate Public Education for the student In its district by failing to provide the student, who was enrolled by his parents in a private school, with special education and related services.

K.S.A. 72-3421: refused to enroll the student within the last year.

K.S.A. 72-3433: refused to enroll or keep the student enrolled, which constituted a disciplinary removal without using the required procedures for the suspension or expulsion of a child with a disability.

Preliminary Matters

The district inquired about the application of 34 C.F.R. 300.152(c)(2), which states that if an issue raised in a complaint has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue. The effect of this regulation is to bar complaints that have already been litigated in a due process hearing. The district was referring to due process hearing 23DP229-001, requested by the parents on March 24. 2023. The hearing officer in that hearing dismissed the action without prejudice, concluding that the request for due process was insufficient. The parents appealed that ruling, and on appeal, the review officer upheld the hearing officers decision. Again, the parents appealed. In a Memorandum and Order, dated June 25, 2024 (the same date this complaint was filed) the United States District Court for the District of Kansas, dismissed Count VII, the parent's special education due process hearing appeal.

This investigator will proceed with the complaint as it appears that the decision to grant the motion on Count VII, was not made based on the merits of the case, but on the insufficiency of the original pleading. The original hearing officer dismissed, without prejudice, for lack of sufficiency. Accordingly, the merits of the parents FAPE claims were never considered or resolved in any final decision at any level. Thus, 34 C.F.R. 300.152(c)(2) does not apply because the issue presented in the complaint was "not decided in a due process hearing."

In a second preliminary matter, the parents' complaint referred to HB 2567, now K.S.A. 72-3120(h), requiring school districts to permit specified children in private schools to enroll part-time. This is not a special education statute. Accordingly, the Special Education and Title Services (SETS) team does not have authority to address it in this complaint, and will not do so.

Applicable Law:

A school district's obligation to a child with a disability, who is enrolled by parents in a private school, is somewhat different than its obligation to children who are not enrolled by their parents in a private school. It is very different under federal law. Under federal law these students are not entitled to a free appropriate public education (FAPE), or even to receive an IEP. Instead, these students receive a "services plan." See, 34 C.F.R. 300.137(c). The district's obligation to these students is merely a spending obligation. That is, districts must determine

the percentage of their children with disabilities who are enrolled by their parents in a private school and spend that percentage of their federal IDEA funds on those students. Once that money has been spent, the district's obligation to these students is over (34 C.F.R. 300.133). Public schools which have multiple children with disabilities attending a private school can spend all of their proportionate share of federal dollars on a single student until those funds are exhausted, and then end services to that student, even in the middle of a school year. The federal regulations make it clear that, "No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school." See, 34 C.F.R. 300.137(a).

Kansas law is much more favorable to these children with disabilities who are enrolled by their parents in a private school. Accordingly, state law will be used to determine whether the district complied with its duty to this student.

The primary Kansas regulation related to these children with disabilities who are enrolled in a private school by their parents is K.A.R. 91-40-45(c)(1). That regulation says: "Each board shall develop, review, and revise, as necessary, in accordance with this article, an IEP for the following children: (1) Each private school child whose parent requests special education and related services…"

The primary Kansas statute related to these children is K.S.A. 72-3462. That statute says, in relevant part, "Every school district shall provide special education services for exceptional children who reside in the school district and attend a private, nonprofit elementary or secondary school, whether such school is located within or outside the school district, upon request of a parent or guardian of any such child for the provision of such services." The statute adds that: "Special education services which are provided under this section for exceptional children who attend a private, nonprofit elementary or secondary school which is located in the school district may be provided in the private, nonprofit elementary or secondary school or in the public schools of the school district. The site for the provision of special education services under this section for an exceptional child shall be determined by the school district in consultation with the parent or guardian of the child and with officials of the private, nonprofit elementary or secondary school (emphasis added)."

Another applicable statute is K.S.A. 72-3421(a), which says, "Except as otherwise provided in this section, it shall be the duty of the parent of each exceptional child to require such child to attend school to receive the special education and related services which are indicated on the child's IEP or to provide for such services privately (emphasis added)." Thus, when a parent of a child who is being educated privately, wants special education and related services indicated on the child's IEP, from a public school district, the parent must "require such child to attend school."

Accordingly, the duty to provide special education and related services to a child who is enrolled in a public school by their parents arises when the parents request such services and requires the child to attend school.

Parent's Position

The parents assert that the district has repeatedly refused to enroll or to keep the student enrolled, in school, resulting in a failure to comply with multiple state and federal regulations, including a failure to provide a Free Appropriate Public Education (FAPE), educate the student in the least restrictive environment, to obtain consent for a material change in services and a substantial change in placement. These allegations are based on the parent's assertion that they completed an on-line registration, through a registration process called ParentView, and the district has repeatedly not enrolled, or not kept the student enrolled.

District's Position

The district asserts that while the parent did use the ParentView registration to enroll the student, they did not complete the enrollment process because the parents did not respond to questions seeking clarification from the parents regarding whether they were enrolling the student in the second grade or in the third grade. The district requested this information, in writing, but the parents did not respond. Thereafter the ParentView indicated that the status of the enrollment was incomplete, showing the statement: "School Reviewing."

Findings of Fact

1. The student is, and has been, a resident of the Blue Valley school district for the past year.
2. The student is a child with a disability.
3. For all of the past year, the student was enrolled by his parents in, and attended, a non-accredited private school.
4. The student last attended a district school (pre-school) at Wolf Springs Elementary school in the spring of 2020.
5. Over the past one year, there have been only four documented communications between these parties regarding enrollment for the 2023-2024 school year, they are:
    a. On 8/6/23, The parents accessed the Blue Valley ParentView on-line registration process to enroll the student for the 2023-2024 school year.
    b. On 8/9/23, the Principal of Stillwell Elementary School sent an e-mail to the student's mother, stating "We are in receipt of your registration records to enroll (the student) in the second grade at Stillwell Elementary School this school year. We are glad to have (the student)! We see that you have enrolled (the student) as a second grader. By our calculation, (the student) should be in 3rd grade for the 2023-2024 school year. Can you confirm that you indeed want (the student) to be In the second grade this fall?
    c. On 8/29/23, the Assistant Superintendent of Special Education sent an e-mail addressed to the student's parents, saying:
    I was made aware that you have begun the steps to enroll (the student) at Stilwell Elementary for this school year, 2023-24. If you haven't done so already,

you can complete the enrollment process on the Blue Valley Registration page. We would love to see (the student) at school. I understand (the student) missed the first several days of school, but I hope he will attend school very soon. Blue Valley remains ready, willing, and able to provide the student's special education services.

I am reaching out to request your consent and to encourage you to make (the student) available to the Stillwell Elementary IEP team to evaluate his current special education needs. We have not seen (the student) presented to a Blue Valley school for any services since the spring of 2020. (The student) was due for a triennial re-evaluation in 2021 but you did not sign consent for Blue Valley to complete that evaluation. Completing a re-evaluation is essential to understanding the student's current needs. We will send you a Consent to Evaluate form through DocuSign so we can evaluate (the student) in the upcoming year. I have also attached a copy for your review.

Through your current lawsuit against Blue Valley, I recently saw a copy of records you provided indicating that (the student) was denied admission to private schools because he was behind in reading. While I understand you want (the student's) special education services to be wrapped up in religious education—something Blue Valley cannot legally do—we can address his educational needs in Reading and other areas of need. Some of our other parents have their children attend Blue Valley Schools just for special education services and return to home school or private school for other subjects including religious instruction. If this is something you would consider, the evaluation would provide information to create an updated IEP that would target his current needs and to improve his skills. Even if you do not consent to the evaluation, the district is ready, willing, and able to serve (the student) either part or full time. Regardless of your decisions, if the courts ultimately rule that we must change something, we will of course abide by that decision.

d. On 12/2/23, the parent accessed ParentView with regard to enrollment for the 2023-2024 school year only to find a message stating: "School Reviewing."

6. The parties have been engaged in litigation with each other over special education issues since March 23, 2023, when the parents requested a due process hearing. The due process hearing officer dismissed the hearing, saying: "I am unable to construct a description of the nature of the problem and the facts that form the basis for the Request of Special Education Due Process Hearing, from the 8 pages of the Notice, 120 pages of miscellaneous emails, and 36 pages from the Federal complaint. Thus, I find the Notice of Insufficient Due Process Complaint is meritorious and the Notice of Parents Request for Special Education Due Process Hearing, signed March 23 2023, is dismissed." The hearing officer specified that this ruling was without prejudice, and that it did not rule on any issue other than the sufficiency of the parent's request for a due process hearing. On appeal by the parent, a state review officer affirmed the hearing

officer's decision, on May 1, 2023, and that decision was affirmed by the federal district court on June 25, 2024.

Analysis regarding the district's obligation to provide special education services to this student under State Law

There are three parts to this analysis: (1) did the parents request special education and related services, (2) did the district refuse a request from the parents for special education and related services, and (3) did the parents require the student to attend the public school to receive said services? If the answer to any one of these questions is "no," the district did not have an obligation to provide services to this student.

1. Did the parents request special education and related services?

On 8/6/23, the student's parents "completed" the Blue Valley ParentView on-line registration process to enroll the student for the 2023-2024 school year. On 12/2/ 2024, the parents checked on the status of the enrollment in ParentView and found only a note that said "School Reviewing." There is no credible evidence that the parents took any other action, or made any other inquiry, regarding enrollment of the student in the Blue Valley district. The question to be determined is whether these two actions amounted to a "request" for services sufficient to trigger the district's duties under K.A.R. 91-40-45(c)(1) and K.S.A. 72-5393 to provide services, and, if so, did the district deny that request.

K.A.R. 91-40-45(c)(1) says: "Each board shall develop, review, and revise, as necessary, in accordance with this article, an IEP for the following children: (1) Each private school child whose parent requests special education and related services…"

K.S.A. 72-3462 says: "Every school district shall provide special education services for exceptional children who reside in the school district and attend a private, nonprofit elementary or secondary school, whether such school is located within or outside the school district, upon request of a parent or guardian of any such child for the provision of such services." The statute adds that special education may be provided at the private school or at the public school, and, in consultation with the parents and private school officials, the site for services is determined by the school district.

Neither the applicable statute nor the applicable regulation define the term "request." Accordingly, we use the ordinary meaning of the word "request," which is: "to ask for." (Webster's College Dictionary, Random House 1999). The question, then, is did the parents ask for special education and related services, and, if so, did the district deny this request? Each of these questions presents a "first impression" situation because the investigator could not locate any court cases or authoritative guidance on these matters.

As indicated in the Findings of Fact portion of this complaint report, the only documented communication between the parties was as follows:

On 8/6/23, The parents completed the Blue Valley ParentView on-line registration process to enroll the student for the 2023-2024 school year. Three days later, on 8/9/23, the Principal of Stillwell Elementary School sent an e-mail to the student's mother, stating "We are in receipt of your registration records to enroll (the student) in the second grade at Stillwell Elementary School this school year. We are glad to have (the student)! We see that you have enrolled (the student) as a second grader. By our calculation, (the student) should be in 3rd grade for the 2023-2024 school year. Can you confirm that you indeed want (the student) to be in the second grade this fall?" (Emphasis added). The parents never responded to that communication requesting important information necessary for enrollment in the proper grade level. When the school year began, the student did not come to school. On 8/29/23, the Assistant Superintendent of Special Education sent an e-mail addressed to the student's parents, saying, in part:

> I was made aware that you have begun the steps to enroll (the student) at Stilwell Elementary for this school year, 2023-24. If you haven't done so already, you can complete the enrollment process on the Blue Valley Registration page. We would love to see (the student) at school. I understand (the student) missed the first several days of school, but I hope he will attend school very soon. Blue Valley remains ready, willing, and able to provide the student's special education services.

The 8/29/23 email from the Assistant Superintendent of Special Education specifically tells the parents that they "have begun the steps to enroll (the student)" and instructs the parents how to "complete the enrollment process." The parents did not respond to this correspondence. Then, some three months later, on 12/2/23, the parent accessed ParentView with regard to enrollment for the 2023-2024 school year to find a message stating: "School Reviewing." Even then, the parents did not make any further contact with school officials with regard to the student's enrollment.

In short, the parents attempted to enroll the student using an on-line enrollment process and were promptly sent two messages by high level school officials stating that more information was needed to complete the enrollment. Both of these messages stated that the student could attend school and receive special education services. The parents never responded to this correspondence or took any action over the entire school-year to complete the enrollment process. Thus, this investigator finds that the parents attempt to enroll the student was initiated but not completed, and as a result, the parents did not effectively request special education services.

2. Did the district refuse a request for special education and related services?

As noted above, on August 9, 2023, the Principal of Stillwell Elementary School sent an e-mail to the student's mother, stating "We are in receipt of your registration records to enroll (the student) in the second grade at Stillwell Elementary School this school year. We are glad to have (the student)!" The August 29, 2023 email from the Assistant Superintendent said that

the district has other students who are enrolled in private schools by their parents and attend Blue Valley Schools just for special education services and return to home school or private school for other subjects, and that this student could do the same thing, and "Even if you do not consent to the evaluation, the district is ready, willing, and able to serve (the student) either part or full time."

The correspondence between the parties over the past year is scant. It consists of an attempted on-line enrollment by the parents, two emails by school officials, and a December on-line check of the status of the child's enrollment by the parents. There is no evidence that the district ever communicated a refusal to enroll or refuse to provide services to this student. There is no evidence that the district ever took any action or inaction that would constitute a refusal to enroll or keep the student enrolled, or a refusal to provide services to this student. The evidence indicates the opposite. Both of the district's correspondence with the parents stated that the student was welcome to attend school. The fact that the on-line registration process remained as: "School Reviewing" was because the parents did not respond to the district's requests for more information, and was not due to any refusal to enroll the student or refusal to provide special and related services. Therefore, it is found that the district did not refuse a parental request for special education and related services.

3. did the parents require the student to attend the public school to receive said services?

In the parents complaint, under the heading, "Facts," Fact number 14 says that the district prevented the student from attending school, as required by K.S.A. 72-3421, by either its refusal to enroll the student, or to keep him enrolled.

The parents did not bring the student to school when school opened in August of 2023. Even after several months had passed and the parents checked the status of the students enrollment to find that the enrollment had not been completed (as they had been advised by two earlier written communications), the parents made no further effort to complete enrollment or to bring the student to the public school. Because this investigator finds the district at no time refused to enroll this student, or refused to keep him enrolled, and that the student never came to school, the investigator finds that the parents did not require the student to attend a public school.

Conclusion

There is no documented evidence supporting the parents allegation that during the past year this district ever refused to enroll the student or to keep him enrolled, or refused to provide special education and related services to this student. Rather, the documented evidence supports the finding that the district, at all times stood ready, willing, and able to provide special education services to this student. The documented evidence also shows that the parents: (1) made no effort to complete the students enrollment even after being sent two

written notices indicating that more information was needed to complete the enrollment; (2) made no effort, outside the initial enrollment, to communicate with school officials about enrollment for the entire school-year; and (3) did not bring the student to a public school. Under these facts, it is concluded that all seven of the parents allegations, specified on pages 2 and 3 of this report, all of which were based on the parents assertion that the district refused to enroll the student, or to keep the student enrolled, are not substantiated. *No violation of special education laws and regulations is found with regard to Issue1*.

Issue 2

the Commissioner and the KSDE failed to enforce federal and state special education laws and regulations by not taking action against the school district

Preliminary Matter

In some initial correspondence, the parents inquired whether there may be a potential conflict of interest because this issue alleges that the Commissioner and the KSDE failed to comply with law and that the person appointed to investigate this complaint is employed by a party to the complaint (the Kansas State Department of Education). The investigator responded to this concern, with the following:

> I understand your concern. However, the Department has an obligation to investigate all special education complaints, including complaints against the Department, itself. The Department could contract with an independent agency to conduct investigations that name the Department, but it is not required to do so. There are a number of reasons that states use their own resources to conduct these investigations. That includes the short time-lines (30 days in Kansas) to complete investigations and issue a report and the expertise agency employees have, particularly with regard to the Kansas special education laws and regulations. This is particularly applicable to this complaint because the Kansas law with regard to children with disabilities who are enrolled by their parents in a private school is unique.
>
> The Office of Special Education Programs (OSEP) is the office within the United States Department of Education that develops the federal rules and regulations for Special Education. In a "Questions and Answers" guidance document, titled Dispute Resolution Procedures under Part B of the Individuals with Disabilities Education Act, dated July 23, 2013, OSEP directly addressed this question, saying:
>
> *Question B-12: How does an SEA resolve a complaint against itself?*
>
> *Answer: An SEA must resolve a complaint alleging that it has violated a requirement of Part B or the Part B regulations just as it must resolve any other signed written complaint that meets the requirements in 34 CFR § 300.153. Under 34 CFR § 300.33, the term "public*

agency" includes the SEA. Therefore, an SEA must resolve a complaint alleging that the SEA (a public agency) has violated a requirement of Part B or the Part B regulations.

In resolving a complaint filed against the SEA, an SEA may either appoint its own personnel or may make arrangements with an outside party to resolve the complaint. Regardless of whether the SEA chooses to resolve the complaint on its own or chooses to use an outside party, the SEA must ensure that all of the procedures in 34 CFR §§ 300.151-300.153 are followed. Specifically, an independent on-site investigation must be conducted, if necessary, consistent with 34 CFR § 300.152(a)(1) and the SEA must take appropriate steps to ensure this occurs. Additionally, the SEA must ensure that all relevant information is reviewed and that an independent determination is made as to whether the public agency (in this case the SEA) has violated a requirement of Part B or the Part B regulations with respect to the complaint. 34 CFR § 300.152(a)(4).

The SEA also must ensure that it or an outside party, whichever resolves the complaint, considers all available remedies in the case of a denial of appropriate services consistent with 34 CFR § 300.151(b). Regardless of whether the complaint is resolved by the SEA or by an outside party that the SEA designates to resolve the complaint, the SEA must comply with all corrective actions, including remedies, set out in the final decision. 71 FR 46602 (August 14, 2006).

Thus, OSEP instructs that a state may appoint its own personnel to resolve special education complaints alleging that the State Education Agency has violated a requirement of special education law. Kansas has elected to use its own resources.

In this second issue, the complaint alleges that the Commissioner and the Kansas State Department of Education (KSDE) failed to enforce Kansas Statues: K.S.A. 72-3410 and K.S.A. 72-3424 because they failed to enforce Kansas regulations. The parents allege that both the Commissioner and KSDE had knowledge of the district's actions in dis-enrolling or refusing to enroll the student but failed to give the proper advice or to make recommendations or demands that the district enroll and maintain enrollment of the student.

Applicable Federal Law

Federal regulations at 34 C.F.R. 300.600 requires state education agencies to monitor the implementation of Part B, of the Individuals with Disabilities Act (IDEA) through specified monitoring activities and the exercise of general supervision.

In accordance with this requirement, the KSDE has adopted a state performance plan, using quantifiable indicators to measure performance in priority areas identified in 34 C.F.R. 300.600(d). In accordance with 34 C.F.R. 300.602, KSDE makes an annual report to the United States Department of Education of its performance of the state plan. In addition, KSDE makes informal inquiries when it receives credible information that a Kansas school district is not in compliance with federal or state law regarding special education.

Findings and Analysis

The findings and conclusions in Issue 1 of this report are incorporated herein by reference.

In Issue 1 of this complaint, it is concluded that the district has not failed to comply with the special education legal requirements as they apply to this student. Accordingly, the investigator finds that the Commissioner and the KSDE had no notice of a violation of special education law, nor any duty to intervene in the dispute between the district and these parents, outside of this complaint process.

With regard to the allegation that the Commissioner and the KSDE failed to enforce the special education laws and regulations by not taking action against the school district, the investigator also notes that the United States Circuit Court of Appeals for the 10th Circuit (Kansas is in the 10th Circuit) has cautioned State Education Agencies (SEA) that there are procedural steps the SEA must use before taking action against Local Education Agencies (LEA).

Chavez v. New Mexico Public Education Department, 621 F.3d 1275 (10th Cir. 2010), involved a case of a sixth grade student with autism who was dropped from the rolls of the school after not attending school for several weeks. As here, the parents alleged that the State Education Agency (SEA) was aware that the student was no longer receiving services and that the student's parents were dissatisfied with the district's offer of services, but failed to take action against the school district.

The 10th Circuit Court reversed a lower court ruling in the parents favor, stating: "While we agree that it is apparent that the IDEA centralizes responsibility for assuring that the requirements of the Act are met in the SEA, this is not the end of the story." The court then proceeded to explain that although the SEA is responsible for insuring that all requirements of the act are carried out, it cannot:

> *"simply yank funding from an LEA without further ado. Instead, the SEA is required first to provide notice and a hearing to the LEA before it determines that it is failing to comply with a requirement of the Act. 20 U.S.C. § 1413(d)(1) (providing for notice and a hearing); § 1413(a)(3)."*

The court added:

> *"Given the central focus of the IDEA on the IEP and on the procedural mechanisms for addressing grievances through the IEP team and due process proceedings, it seems inconsistent with the statutory structure to allow the state to run roughshod over these procedures simply because parents contend that an IEP is not providing their child a FAPE."*

In other words, an SEA has an obligation to insure local district compliance with the IDEA, after credible notice that a district is failing to do so, but that obligation is not triggered simply because parents contend that a local district is failing to comply with its duties. The filing of this complaint is one other way a parent can trigger the SEA obligation to monitor school

districts, if the parent 's complaint is substantiated. Had a violation of law been substantiated through a state investigation, KSDE would have ordered the district to correct the non-compliance and monitored the completion of the corrected action.

Conclusion

For the reasons, stated above, it is concluded that ***neither the Commissioner nor the Department are in violation*** of their responsibility to monitor the implementation of Part B, of the Individuals with Disabilities Act (IDEA) through the exercise of general supervision over this school district.

Investigator

Mark Ward
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).

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. 229
Blue Valley Public Schools: 24FC229-011

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on June 25, 2024 by --------, on behalf of her grandchild and adopted son, --------. In the remainder of this decision, -------- 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 allegations, was issued on July 23, 2024. 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. The district did not provide a written response to the appeal, except to note that it stood on its original response to the complaint and opposed the request for a hearing as unnecessary. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

Preliminary Matters

I

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.

II

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.

III

In her appeal, the parent requested a hearing. Although the pertinent regulation, K.A.R. 91-40-51(f), permits a hearing on appeals of special education complaint reports, it does not require a hearing. Special Education and Title Services (SETS) determines whether a hearing is necessary by reviewing the materials it receives from the parties and determining whether it needs a hearing in order to resolve issues on appeal that cannot be reasonably presented in written form. In this appeal, the Appeal Committee reviewed the materials it received and determined that there was no need for further clarification that only a hearing could provide. The parties were notified that the request for a hearing was denied.

IV

On page 2 of the appeal, the parent alleges that the process provided by the investigator was, "Defective, Unfair, and Denied (the parent) Due Process" because the district was provided with the complaint but investigator did not allow the parent to see the district's response to the complaint. The Appeal Committee notes that the law requires that the district receive a copy of the complaint so that it may respond to the complaint, see 34 C.F.R. 300.153(d) and 300.152(a)(3). The law does not require that the state provide the complainant with a copy of the district's response. The United States Department of Education's Office of Special Education Programs, in its comments to the federal special education regulations, has stated that the complaint process is not a hearing, but is an investigative process and does "not require that a state allow parties to review the submissions of the other party or to cross-examine witnesses." (See, Federal Register August 14, 2006, p. 46605). Accordingly, the Appeal Committee finds that the investigator did not have a duty to make the district's response available to the complainant prior to the issuance of the report, and the complainant was not thereby denied due process. This appeal process is the means whereby a party may challenge any findings or conclusions the parties believe are erroneous, for whatever reason.

V

In the appeal, the parent makes frequent reference to a distinction between a school district's obligation to provide a child with a disability with special education services and a district's general education obligation to provide an education to all children who reside in the district (see particularly p. 10 of the parent's appeal). The Appeal Committee understands the distinction but also notes that the Kansas regulations, like federal regulations, limit the special education complaint process to allegations that an educational agency "has violated a state or federal special education law or regulation." Accordingly, this complaint process (including its appeal process) cannot be used to submit a state complaint on any issue outside of the legal requirements of special education. The investigator did not address any general education issue in the report precisely because he did not have jurisdiction to do so. This issue is most pertinent in Issue 2 of this appeal and the Appeal Committee makes its official findings and conclusion in that part of this decision.

Issues on Appeal

There are two issues on appeal:

Issue 1

The district has failed to comply with multiple state special education statutes and regulations by repeatedly refusing to enroll, or to keep the student enrolled in school for the 2023-2024 school year.

The Committee agrees with the investigator. The district did not refuse to enroll the student. The on-line enrollment process did not work as well as it should have, but the parents presented no evidence of any statement (written or oral) of any school personnel saying the district "refused" to enroll the student. The parent recognizes this in her appeal, on page 2, where she says:

No communication from the Stilwell Elementary school gave any notice to (the parent) that "unless you say again the grade you want (the student) in is provided I will not enroll (the student)." No communication from Dr. Schmidt stated "unless you consent to the re-evaluating (the student's) IEP (the student) cannot be enrolled."

On page 7 of the report, the parent similarly recognizes that:

Thompson never stated – in fact Schmidt himself never asserted – that (the student) could not attend school unless the parent said again her second grade designation of the student. Dr. Schmidt never made that statement in any communication and never said it at his deposition.

It is undisputed that the only two written communications between the parents and school personnel after the parents attempted to use the Blue Valley ParentView on-line registration process (on 8/6/23), to enroll the student for the 2023-2024 school year, were both made by school personnel.

On 8/9/23, the Principal of Stillwell Elementary School sent an e-mail to the student's mother, stating, in its entirety,

> *We are in receipt of your registration records to enroll (the student) in the second grade at Stillwell Elementary School this school year. We are glad to have (the student)! We see that you have enrolled (the student) as a second grader. By our calculation, (the student) should be in 3rd grade for the 2023-2024 school year. Can you confirm that you indeed want (the student) to be In the second grade this fall (emphasis added)?*
>
> *On 8/29/23, the Assistant Superintendent of Special Education sent an e-mail addressed to the student's parents, saying, in its entirety:*
>
> *Mr. and Mrs. Baker, I was made aware that you have begun the steps to enroll (the student) at Stilwell Elementary for this school year, 2023-24. If you haven't done so already, you can*

complete the enrollment process on the Blue Valley Registration page. We would love to see (the student) at school. I understand (the student) missed the first several days of school, but I hope he will attend school very soon. Blue Valley remains ready, willing, and able to provide (the student's) special education services.

I am reaching out to request your consent and to encourage you to make (the student) available to the Stillwell Elementary IEP team to evaluate his current special education needs. We have not seen (the student) presented to a Blue Valley school for any services since the spring of 2020. (The student) was due for a triennial re-evaluation in 2021 but you did not sign consent for Blue Valley to complete that evaluation. Completing a re-evaluation is essential to understanding (the student's) current needs. We will send you a Consent to Evaluate form through DocuSign so we can evaluate (the student) in the upcoming year. I have also attached a copy for your review.

Through your current lawsuit against Blue Valley, I recently saw a copy of records you provided indicating that (the student) was denied admission to private schools because he was behind in reading. While I understand you want (the students) special education services to be wrapped up in religious education—something Blue Valley cannot legally do—we can address his educational needs in Reading and other areas of need. Some of our other parents have their children attend Blue Valley Schools just for special education services and return to home school or private school for other subjects including religious instruction. If this is something you would consider, the evaluation would provide information to create an updated IEP that would target his current needs and to improve his skills. Even if you do not consent to the evaluation, the district is ready, willing, and able to serve (the student) either part or full time. Regardless of your decisions, if the courts ultimately rule that we must change something, we will of course abide by that decision (emphasis added).

These two emails are the entire conversation between the parties after the parents attempted to enroll the student on ParentView, the on-line registration process (on 8/6/23). There was no other conversation, at least not presented to the investigator or to this Committee.

The Appeal Committee finds nothing in this conversation that could even remotely be construed to be a district refusal to enroll this student. The Appeal Committee finds the opposite intent in these communications. Both communications affirmatively state that the district stands "ready, willing, and able to provide (the student's) special education services."

There is also nothing in this communication that could even remotely be construed to require the parents to consent to a re-evaluation as a condition of enrollment (as argued repeatedly in the parents appeal). There is also nothing in the complaint report that indicates the investigator made any finding or made any conclusion that could reasonably be construed to support the notion that the district could require the parents to consent to a re-evaluation as a condition of enrollment. Once again, the opposite message was conveyed. In the Assistant Superintendents email, he

states: "Even if you do not consent to the evaluation, the district is ready, willing, and able to serve (the student) either part or full time."

On page 3 of the appeal, the parent states: "ParentVUE stated it was reviewing the enrollment request and nothing in the website communicated that any other information was necessary for blue Valley to conduct that review." While it may be correct that nothing "in the website" communicated that any other information was necessary, that does not negate the reality that the subsequent email communications on August 9, 2023 and August 29, 2023 both communicated that additional information was being requested. By not responding to these requests for more information, it was the parents, not school officials, who were effectively preventing enrollment.

On page 9 of the appeal, the parent states: "parents in Kansas cannot require a student to attend public school when the public school will not enroll the child." The appeal committee agrees with that statement. As the parent further indicated, the parent "can't just show up to Stillwell Elementary school knowing Blue Valley has not enrolled the student." Accordingly, the Appeal Committee will acknowledge that the parent is not in violation of the compulsory school attendance statute [K.S.A. 72-3421(a)]. However, that does not negate the fact that the district at no time expressed any refusal, or even any intent, to refuse, to enroll the student for any reason. The Appeal Committee does not share the parent's view that the delay in enrolling the student through the on-line process constituted a refusal to enroll the student. The evidence simply does not support that conclusion. Instead, the physical evidence supports the district's position that it, at all times throughout the conversation with the parent, conveyed the message that it stood ready willing and able to provide special education and related services to this student, and never conveyed the message that the student could not enroll in the district. The parent may have been frustrated that the initial online enrollment was delayed, but the evidence convinces the Appeal Committee that the district did not refuse to enroll the student and that enrollment could have been completed with only minimal additional effort on the part of the parent (such as, by responding to district inquiries with "yes, enroll the student in the second grade").

The appeal committee *sustains the conclusion of the investigator* that the district did not refuse to enroll the student.

Issue 2:

The Commissioner and the KSDE failed to enforce federal and state special education laws and regulations by not taking action against the school district.

On this issue, on page 14 of the report, the investigator found that: "In Issue 1 of this complaint, it is concluded that the district has not failed to comply with the special education legal requirements as they apply to this student. Accordingly, the investigator finds that the Commissioner and the KSDE had no notice of a violation of special education law, nor any duty to intervene in the dispute between the district and these parents, outside of this complaint process."

On page 10 of her appeal, the complainant argues that the investigator "analyzes the issue under the IDEA which misses the distinction between a general public education and special education," and that the district has other obligations to the student outside of the IDEA. Those obligations include the district's obligation to enroll a resident student, regardless of whether the student has a disability, when the parent makes that request. The Appeal Committee recognizes the distinction, but finds it to be inapplicable to this complaint. Federal regulation at 34 C.F.R. 300.153(b), requires that any person or organization using this complaint process must include a statement that a public agency "has violated a requirement of Part B of the Act or of this Part." Kansas law is similar, but includes the Kansas special education statutes and regulations. In short, the investigation of any issue not related to the IDEA or to the Kansas Special Education for Exceptional Children Act is outside the jurisdiction of a state special education complaint investigator.

On page 11 of the appeal, the parent says the investigator has concluded that the Kansas State Department of Education (KSDE) "has no obligations whatsoever" with regard to the district's compliance with non-special education laws. The Appeal Committee finds no such conclusion in the investigator's report. The investigator limited his investigation to the requirements of special education law. That was the correct procedure for this complaint.

The finding of the investigator on this issue, on page 14 of the report, was:

In Issue 1 of this complaint, it is concluded that the district has not failed to comply with the special education legal requirements as they apply to this student. Accordingly, the investigator finds that *the Commissioner and the KSDE had no notice of a violation of special education law, nor any duty to intervene* in the dispute between the district and these parents, outside of this complaint process.

The Appeal Committee agrees. There can be no failure of a State Education Agency to enforce federal and state special education laws and regulations by not taking action against a school district, when a complaint investigator has determined the district is not in violation of special education laws and regulations.

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 13th day of August, 2024.

Appeal Committee

Crista Grimwood

Brian Dempsey

Jenn Halbhuber