Special Education Formal Complaint Decisions 2024-2025

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, 25FC001 signifies a Formal Complaint filed in the 2025 state fiscal year (July 1, 2024 to June 30, 2025). The case citation of 25FC002 signifies the decision of the state appeal committee for case number 25FC002. All files are PDF.

25FC001		25FC029		25FC057	Appeal Review
25FC002		25FC030		25FC058	
25FC003		25FC031		25FC059	
25FC004		25FC032		25FC060	Appeal Review
25FC005		25FC033	Appeal Review	25FC061	Appeal Review
25FC006	Appeal Review	25FC034		25FC062	Appeal Review
25FC007		25FC035	Appeal Review	25FC063	
25FC008		25FC036		25FC064	
25FC009	Appeal Review	25FC037		25FC065	Appeal Review
25FC010	Appeal Review	25FC038		25FC066	
25FC011	Appeal Review	25FC039	Appeal Review	25FC067	Appeal Review
25FC012		25FC040	Appeal Review	25FC068	Appeal Review
25FC013		25FC041		25FC069	
25FC014	Appeal Review	25FC042		25FC070	Appeal Review
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25FC016		25FC044	Appeal Review	25FC072	
25FC017		25FC045		25FC073	
25FC018		25FC046		25FC074	Appeal Review
25FC019	Appeal Review	25FC047		25FC075	
25FC020		25FC048		25FC076	
25FC021	Appeal Review	25FC049		25FC077	
25FC022		25FC050		25FC078	
25FC023		25FC051		25FC079	
25FC024		25FC052		25FC080	
25FC025		25FC053		25FC081	
25FC026	Appeal Review	25FC054	Appeal Review	25FC082	
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KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #260, DERBY PUBLIC SCHOOLS
ON JULY 2, 2024

DATE OF REPORT: JULY 25, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #260 (Derby 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." --------- family friend will be referred to as the "family friend".

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 student attends Park Hill Elementary School which will be referred to as the "elementary school" in the remainder of the report. Dawn Gresham is the Director of Special Services in USD #260 and will be referred to as the "Director of Special Services". Katie May is the Assistant Director of Special Services in USD #260 and will be referred to as the "Assistant Director of Special Services". Skye Mosley is the Social Worker in USD #260 and will be referred to as the "Social Worker". Jennifer Bazzelle was the Structured Learning Teacher at Park Hill Elementary and will be referred to as the "Special Education Teacher". Shayleigh Allison is the School Psychologist and will be referred to as the "School Psychologist". Leanne Bath is the Occupational Therapist (OT) and will be referred to as the "OT". Kendra Trimmell is the paraprofessional and will be referred to as the "paraprofessional".

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 July 2, 2024.

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 July 9, 10, 11, 16, 17, 18, 19, 20 and 22, by phone and email to clarify evidence and documentation. The following documentation and information were used in consideration of the issues:

1. Board of Education Emergency Safety Interventions Policy last reviewed September 10, 2018
2. District's Level 2 Special Education Paraprofessional Job Description dated July 2019
3. District Paraprofessional Duties handout revised June 12, 2023

4. Daily behavior sheets from August 2023 to May 2023, Missing October 2023 and the first half of November 2023
5. Summary of behavior data beginning August 2023
6. Occupational Therapy Service Logs for August, September, October, November 2023 and March, April and May 2024. Missing December 2023, January and February 2024
7. Student class schedule dated August 4, 2023
8. Student attendance record from August 31, 2023 to May 10, 2024
9. Progress report for academic goals including July and October 2023 progress notes
10. Annual Individualized Education Program (IEP) including the Behavior Intervention Plan (BIP) dated October 23, 2023
11. Prior Written Notice (PWN) for the annual IEP dated October 23, 2023
12. Progress report for academic goals including January, March and May 2024 progress notes
13. Email from classroom teacher to mother dated March 6, 2024 at 8:03 p.m.
14. IEP with amendment dated April 3, 2024
15. Emergency Safety Record (ESI) dated April 4, 2024
16. Email of behavior incidents from Classroom Teacher to mother dated April 8, 2024 at 9:05 a.m.
17. IEP Amendment dated April 22, 2024
18. IEP amendment dealing with Extended School Year (ESY) dated April 23, 2024
19. PWN for IEP amendment dated April 23, 2024
20. Discharge paperwork from emergency placement at mental health hospital dated May 7, 2024
21. Sucide Prevention/Emergency Protocol for the student dated May 7, 2024
22. Discharge plan from emergency placement facility dated May 9, 2024
23. Signed PWN dated May 17, 2024 as a result of May 14, 2024 meeting
24. Signed PWNE for reevaluation dated May 21, 2024
25. Email exchange between mother and Assistant Director of Special Services also including Director of Special Services, Social Worker, Principal Classroom Teacher and family friend on May 21, 2024, at 11:45 a.m. and 8:05 p.m.
26. Email exchange between Assistant Director of Special Services and Director of Special Services dated May 21, 2024 at 12:10 p.m. and 12:16 p.m.
27. Email from Principal to School Psychologist, Director of Special Services and Assistant Director of Special Services dated May 21, 2024 at 12:53 p.m.
28. Email from Director of Special Services to mom and the principal on May 22, 2024 at 1:07 p.m.
29. Email reply from mom to Director of Special Services on May 23, 2024 at 9:50 p.m.
30. Email from Director of Special Services to mom and Assistant Director of Special Services on May 28, 2024 at 8:05 a.m.
31. Email with PWN attachment from Assistant Director of Special Services to Director of Special Services and mom on May 29, 2024 at 6:45 a.m.

32. Ready, Willing and Able (RWA) letter related to Extended School Year (ESY) from Assistant Director of Special Services to the mother dated June 18, 2024
33. Call with mother and family friend on July 9, 2024 at 9:00 a.m.
34. Call with the Director of Special Services on July 9, 2024 at 4:00 p.m.
35. Call with the Assistant Director of Special Services on July 10, 2024 at 8:00 a.m.
36. District response to complaint dated July 15, 2024
37. Call with the Social Worker on July 16, 2024 at 10:00 a.m.
38. Call with the Director of Special Services, Principal of the elementary building and Assistant Director of Special Services on July 18, 2024 at 4:00 p.m.
39. The student's primary paraprofessional's record of learning credits dated July 18, 2024
40. District record of student's suspensions for the 2023-2024 school year dated July 18, 2024
41. Email exchange referencing missing OT service logs between the OT and Director of Special Services dated July 19, 2024

Background Information

The subject of this complaint is a 10-year old male student enrolled in the 4th grade at Park Hill Elementary School during the 2023-24 school year. According to the student's mother, he was first diagnosed with Level 3 Autism around three years of age. He was also diagnosed with Post-traumatic Stress Disorder (PTSD) in May 2024 and Disruptive Mood Dysregulation Disorder (DMDD) in June 2024.

The student's October 23, 2023 IEP goals include naming objects and their corresponding functions, comprehension skills, verbal/sign/symbolic communication, following a visual schedule, subtraction, identification of coins, story comprehension, and striking a ball/object with a bat, hand or racket. Related services include indirect OT, indirect and direct speech, adapted physical education, indirect counseling and special education services. Support for school personnel includes OT as a resource for fine motor and handwriting. The student may use the special education bus for transportation to and from school. The supplementary aids and services in the IEP include visual supports, sensory items, adaptive paper, pencils and writing board, consistent schedule, choice when possible and verbal reinforcement. The student qualifies to take the alternate state assessment, does not receive program modifications but does qualify for extended school year.

Issues Investigated

Based on the written complaint and an interview with the complainant, four issues were identified and investigated.

Issue One

The USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to notify the parent with a Prior Written Notice (PWN) including the rationale for the district's placement decision and the parent's recourse if in disagreement with the schools decision for school year 2024-2025.

Applicable Law

Federal regulations implementing the IDEA at 34 C.F.R. 300.503(b)(3) require that the PWN sent by the school district includes, "(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;". State regulations at K.S.A. 72-3430(d) require, "a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;".

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 had a serious behavioral incident on April 25, 2024 resulting in an out of school suspension.
2. The mother was able to get the student admitted to a local children's mental health hospital on April 25, 2024 where he stayed until April 30, 2024.
3. On May 1, 2024 there was a serious behavioral incident which resulted in an out of school suspension.
4. On May 7, 2024 there was an additional serious behavior incident which did not result in an out of school suspension, but rather the second admission to a children's mental health hospital May 7 to 9, 2024
5. Upon the student's release on May 9, 2024 the mother requested a meeting to discuss student's behavior support at school and a possible alternative placement.
6. An IEP update meeting was held on May 14, 2024 to discuss behavioral support and potential change in placement. Attending were the principal, social worker, special education teacher, assistant director of special services, the mother and a family friend.
7. At the meeting the district shared a conversation they had with the hospital's physician who stated that the student was now diagnosed with PTSD as a result of interactions with his biological father. The doctor also shared that, "public school may not be the place" for the student but did not suggest private placement or a reevaluation, according to the principal.
8. There are no minutes from this meeting.
9. A PWN dated May 17, 2024 was sent as a result of the May 14, 2024 meeting and signed by the mother on May 17, 2024.

10. The PWN did not include evaluation procedures, assessments, records or reports used in the district's decision making, as required by IDEA.

Conclusion

In this case, the May 17, 2024 PWN included most of the required information; however, it lacked any descriptions of evaluation procedures, assessments, records, or reports used to determine the district's response, as required in both federal and state law. The statement included in the PWN to fulfill the requirement for 34 C.F.R. 300.503(b)(3) and K.S.A. 72-3430(d) reads, "Teacher observations, data collection, parent input, Special Services Administration Input." This statement does not mention evaluation procedures, assessments, records or reports used in the district's decision making. Further, the district reported that they did not have behavior data summaries to use in the meeting, but rather daily data sheets. There are no meeting minutes reflecting the use of data in the district's decision making. The student's recent behavior had become severe enough to warrant three days of out of school suspensions; two days in April and one day in May, 2024, as well as two emergency hospitalizations at mental health facilities in a two week period (April 25 and May 7, 2024). Given these serious events, summarized and easy to understand behavior data, current behavioral assessments, the BIP, FBA or other relevant information would have been appropriate for the team to review and use for data-based decision making.

The requirement in this portion of the PWN is to give a "description" of the evaluation procedures, assessments, records, or reports, that the district used. Merely inserting a list of reports, as the district did here, is insufficient.

As stated above, the description may be summarized and in easy to understand language. It does not have to include excessive detail. It may be a general description, but it does need to sufficiently "describe" any evaluation procedures, assessments, records, or reports used to determine the district's response. For example, this PWN says "teacher observations." It does not "describe" the teacher observations. It simply "lists" teacher observations. The parents in this complaint have not been informed of what the teacher observations were or even whether those observations supported the team's decision. The district could have complied with the requirement of this section by providing a short statement in the PWN indicating that there were: (a) teacher observations of serious behavior incidents and signs of emotional distress in the student; (b) parent concerns about the state of the student's mental health; Special Services Administration concerns about the safety of this student and other students; and data collection showing that serious behavior incidents were accelerating.

Based on the foregoing, ***it is substantiated*** that USD #260 failed to issue a PWN on May 17, 2024 which included a sufficient description of data used as a basis for decision making including evaluation procedures, assessments, records, or reports.

Issue Two

The USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to get parent consent for a change in placement during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.503(a)(1) requires a school district to provide PWN when it "(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child;" Kansas regulation KSA 72-988(b)(2) states that parents have the right to prior written 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.

Additionally, 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. 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).

K.A.R. 91-40-21(c)(1) offers, "(c) (1) In determining the educational placement of a child with a disability, including a preschool child with a disability, each agency shall ensure that the placement decision meets the following requirements: (A) The decision shall be made by a group of persons, including the child's parent or parents and other persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options."

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 Mother reported that in the last few months of school her son was in a "small room throughout the day with only a paraeducator for instruction and companionship, missing out on social interaction such as recess and lunch with his classmates."
2. The Assistant Director of Special Services shared in an interview on July 10, 2024 that the district was not aware until the May 14, 2024 IEP update meeting that the special education teacher had moved the student to the sensory room for instruction and that he was not having lunch or recess with his classmates.
3. This change in educational environment constitutes a substantial change in placement, for which parent consent is required.
4. The special education teacher is no longer employed by the district as of the end of the 2023-2024 school year.

5. The district was not able to provide documentation of how many days instruction was solely provided to the student in this location, nor the level of supervision provided to the paraeducator by the special education teacher.
6. There is no record of a team meeting, data review or meeting with the mother to change the location of instruction for the student and remove him from recess and lunches with his classmates.
7. Although at some point mom knew her son was in this new location with a paraprofessional as sole instructor, she was not provided a PWN including a rationale for this decision nor a meeting to discuss a path for the student to resume instruction, recess, and lunches with his classmates, nor given the opportunity to either grant or withhold consent.
8. There is no mention of the use of the sensory room as a location for instruction in the student's October 23, 2023 IEP.

Conclusion

In this case, the mother was not provided a PWN as a result of the change of placement for instruction, nor was notified that her son would not have recess or lunch with his classmates, nor provided with the opportunity to grant or to withhold consent for this substantial change in placement.

The mother reports that the student was in the sensory room all day with a paraprofessional for the last few months of school. The district is not able to offer records or reports that show where the student received instruction. The school has no record of what date this arrangement first took place, no record of how many days it occurred and no information on the level of supervision the special educator offered to the paraprofessional who delivered instruction to the student.

It appears the decision to move the student to one-on-one instruction by a paraprofessional in a small room was made unilaterally by the special education teacher who is no longer at the district and not available for an interview. There was no team meeting prior to, or during this change in placement.

Based on the foregoing, ***it is substantiated*** that the USD #260 failed to issue a PWN or to obtain the mother's consent for a change of placement of more than 25% made unilaterally by the special education teacher for the last few months of the 2023-2024 school year.

Issue Three

The USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop and follow an appropriate behavior intervention plan, including emergency procedures during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.324(b)(1)(ii) require that the IEP team revises "the IEP, as appropriate to address—(A) 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 following finding of facts is based upon a review of the documentation noted previously and interviews with both parties.

1. The most recent BIP update occurred in October of 2023 and was included in the IEP dated October 23, 2023.
2. The district states there is a current Functional Behavior Assessment, but is not able to produce it.
3. The district reports that staff training on the student's BIP is ongoing although they are not able to provide documentation as to who has been trained or when the training took place.
4. The student's current IEP behavior goals include reducing behaviors such as; yelling, laying on the floor, hitting, kicking, biting and spitting at others. Each of these behaviors has baseline data collected from August 15, 2023 to October 22, 2023.
5. The behaviors first summarized by the district at the end of the 2024 school year in graphic form reflect data for; disruptive vocalizations (screaming/verbal refusal), physical aggression, elopement, throwing, refusal to move, destruction of property, and climbing.
6. The behaviors summarized by the district at the end of the 2023-2024 school year do not match the behaviors in the student's current BIP thus determining progress from baseline is difficult.
7. The district has behavior data for much of the 2023-2024 school year but is missing data for October and the first half of November.
8. Elopement, a potentially life threatening behavior, which occurred between 10-15 times during the 2023-2024 school year, is not addressed in the BIP.
9. There were seven days of out of school suspension during the 2023-2024 school year: December 6, 2023 for two days; January 5, 2024 for one day; April 11, 20204 for two days; April 25, 20204 for one day and May 1, 2024 for one day.
10. On April 3, 2024 staff reported that an Emergency Safety Intervention (ESI) was used to deal with the student's behaviors.
11. Law enforcement officers were called to the school to physically restrain the student at least once in the spring of 2024.
12. There were two emergency mental health hospital placements (April 25 and May 7, 2024) due to extreme behaviors at school.

13. There was a team meeting to discuss the student's behavior and possible alternative placement on May 14, 2024, there are no minutes from this meeting.
14. The mother reports in her July 2, 2024 complaint that her son's classmates were often instructed to evacuate the room due to her son's behavior, "at one point, the need for evacuation had become a daily occurrence for an entire week".

Conclusion

Federal regulations at 34 C.F.R. 300.324(b)(1)(ii) require that the IEP team revises the IEP as appropriate to address the lack of expected progress toward the annual goals.

In this case, the quarterly progress reports for 2023-2024 school year for this student do not include progress on his behavior goals. In the BIP section of the student's IEP it states that for progress monitoring, "a Behavior Tracking Sheet/Report will be reviewed quarterly". There is no evidence that these quarterly reviews occurred. In the interview with district personnel on July 18, 2024 they reported that although they have a team process to review behavioral issues for students without an IEP, there is no team process in place to review behavioral issues for students who have IEPs. The district reports they have no record of the student's BIP being reviewed, can not locate the most current FBA, are missing data for October and the first half of November 2023, and can produce no record of staff training on the BIP. The only team review of the raw data (not graphed or summarized) is at the May 14, 2024 IEP update meeting. IDEA requires that the IEP team revise the IEP to address lack of progress. In spite of the dangerous and disruptive nature of the student's behaviors, there is no evidence of ongoing monitoring of behavior data necessary to gauge progress.

Based on the foregoing, *it is substantiated* that USD #260 failed to revise the IEP, specifically the BIP to address lack of progress toward the annual goals during the 2023-2024 school year.

Issue Four

The USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP by providing Occupational and Behavioral therapies 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.

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 IEP dated October 23, 2023 states the student will receive indirect OT once per month, for 10 minutes.
2. USD #260 shared OT logs which confirmed that indirect services were delivered once per month for 10 minutes as agreed upon in his October 23, 2023 IEP for each month of the 2023-2024 school year except December 2023, January and February 2024 for which documentation is not available.
3. The October 23, 2023 IEP includes a Positive Behavior Intervention Plan, however it does not require behavioral therapies as a related service.

Conclusion

In this case, the student's October 23, 2023 IEP required indirect OT services to be provided for 10 minutes, one time per month. A review of OT therapy service logs reflected that these services were provided as required in the IEP except for the months of December 2023, January and February of 2024 for which there are no service logs. The district was asked, but was not able to provide additional information such as teacher schedules or OT progress reports which reflected provision of OT services as written in the October 23, 2023 IEP.

A review of related services in the October 23, 2023 IEP contains no mention of behavioral therapy outside of the Positive Behavior Intervention Plan.

Based on the foregoing, ***it is not substantiated*** that USD #260 failed to follow the student's IEP by providing behavioral therapies during the 2023-2024 school year. However, ***it is substantiated*** that USD #260 failed to follow the student's IEP by ensuring provision of Occupational Therapy during the 2023-2024 school year.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. 300.503(b)(3) and K.S.A. 72-3430(d) was found based on the incomplete PWN sent on May 17, 2024 which did not include a specific description of the data used as a basis for the district's action. Corrective action is required.
    a. CORRECTIVE ACTION:
        i. The district shall immediately, within 21 days, by August 22, 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 Federal regulations at 34 C.F.R. 300.503(b)(3) and K.S.A. 72-3430(d) which requires a description of the data used as a basis for the district's action.
        ii. The district shall train IEP team members responsible for completing the PWN document to include a description of the data used as a basis for the district's action within 60 days, by September 30, 2024.
        iii. The district shall submit documentation of staff training to Special Education and Title Services (SETS) within 65 days, by October 5, 2024.

iv. The district shall, by August 9, 2024, provide a PWN to the parents that includes an appropriate description of any evaluation procedure, assessment, record, or report used in making any proposed change to the student's IEP at the May 14, 2034 IEP meeting.

b. Dates Due: (i) August 22, 2024; (ii) September 30 ,2024; (iii) October 5, 28, 2024 (iv) August 9, 2024.

2. ISSUE TWO: A violation of 34 C.F.R. 300.503(a)(1), KSA 72-988(b)(2), KAR 91-40-27(a)(3), KAR 91-40-1(sss), and K.A.R. 91-40-21(c)(1) was found based on the failure of USD #260 to issue a PWN for the mother's consent for a change of placement of more than 25%, made unilaterally by the special education teacher, for the last few months of the 2023-2024 school year. Corrective action is required.

a. CORRECTIVE ACTION:

i. The district shall immediately, within 21 days, by August 22, 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 34 C.F.R. 300.503(a)(1), KSA 72-988(b)(2), KAR 91-40-27(a)(3), KAR 91-40-1(sss), and K.A.R. 91-40-21(c)(1) which require school districts to issue a PWN for consent for change of placement of more than 25%, and be made by the IEP Team.

ii. The district will ensure and document training related to the appropriate issuance of a PWN for changes of placement of more than 25% including who has the authority to make the change of placement determination within 60 days, by September 30, 2024.

iii. The district shall provide documentation of this training to SETS within 65 days, by October 5, 2024.

iv. The IEP team shall meet to determine placement within the new elementary school within 12 days, by August 13, 2024.

v. The district shall offer compensatory education of no less than two months directed toward the student's most recent IEP goals. The district shall, within 30 days by August 31, 2024 calculate the days of missed instruction for the last two months of the 2023-2024 school year.

vi. Subsequent to SETS review, the district will provide the offer of compensatory education to the mother. The mother shall have 10 days to accept none, some, or all of the compensatory education offer. The district will provide a PWN to the mother resulting from the mother's response to the compensatory education offer.

vii. The district shall submit the PWN to SETS as evidence of its completion within 100 school days by January 1, 2025.

b. Dates Due: (i) August 22, 2024; (ii) September 30 ,2024; (iii) October 5, 2024; (iv) August 13, 2024; (v) August 31, 2024; (vii) January 1, 2025.

3. ISSUE THREE: A violation of 34 C.F.R. §300.324(b)(1)(ii) was found based on the fact that the district failed to review behavioral data in order to gauge progress and revise the October 2023 IEP, specifically the BIP, as appropriate to address the lack of expected progress toward the annual goals. Corrective action is required.

a. CORRECTIVE ACTION:
   i. The district shall immediately, within 21 days, by August 22, 2024 submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal and state statutes and regulations at 34 C.F.R. §300.324(b)(1)(ii) require that the IEP team revises "the IEP, as appropriate to address—(A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;"
   ii. The district shall review and revise if needed their policy and procedures for ensuring revision of the IEP as appropriate throughout the school year. The district shall submit its policy review and any possible revisions, to SETS within 60 days, by September 30, 2024.
   iii. The district will conduct a FBA within 30 days, by August 31, 2024.
   iv. The district will hold an IEP meeting to review the FBA and a summary of the target behavioral data from 2023-2024 school year, within 45 days, by September 15, 2024.
   v. The district will ensure and document training related to the student's BIP for the school staff who will support the student during the 2024-2025 school year within 10 days of the IEP meeting, no later than September 25, 2024.
   vi. The district shall submit evidence of actions (ii-v) to SETS as evidence of their completion no later than October 5, 2024.
   vii. The district will ensure and document quarterly review and sharing of behavior data with the mother at least four times during the 2024-2025 school year, by the end of the 2024-2025 school year.

b. Dates due: (i) August 22, 2024; (ii) September 30, 2024; (iii) August 31, 2024; (iv) September 15, 2024; (v) September 25, 2024; (vi) October 5, 2024.

4. ISSUE FOUR: A violation of 34 C.F.R. §300.323(c)(2) was found based on the failure to ensure provision of OT services as required in the October 23, 2023 IEP. Corrective action is required as follows:

   a. CORRECTIVE ACTION:
      i. The district shall immediately, within 21 days, by August 22, 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 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 review and revise if needed their policy and procedures for ensuring provision of IEP services throughout the school year. The district shall submit its policy review and any possible revisions, to SETS within 60 days, by September 30, 2024.
      iii. Because the student is transferring to a different elementary school within the district, compensatory OT indirect services will be delivered at the new

elementary school. The student will receive an additional 10 minutes of OT indirect services per month in August, September and October 2024.

b. Dates due: (i) August 22, 2024; (ii) September 30, 2024; (iii) August 31, 2024; September 30, 2024 and October 31, 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 #500
ON JULY 22, 2024

DATE OF REPORT: AUGUST 9, 2024

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

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 parent through a phone call with a translator on July 24, gathering additional information and verifying the specific allegations to be investigated. Laura Jurgensen provided the specific allegation to be investigated to the parent (in Spanish) and the district (in English) via email on July 24. The parent did not dispute how the complaint investigator framed the issue to be investigated. The parent and investigator also exchanged multiple emails in Spanish. The district special education director provided the investigator with a response to the issue the investigator identified, as well as all documentation and data the investigator requested.

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

- Student 2023–24 Behavior Detail Report Screenshot, Aug. 7, 2024.
- District's Response to the Complaint, Aug. 6, 2024.
- Student 2023–24 Attendance Summary, Aug. 5, 2024.
- Student 2023–24 Attendance Detail, Aug. 5, 2024.
- Parent's Complaint, Jul. 12, 2024.
- Prior Written Notice and Request for Consent for the Initial Provision of Services on the Student's IEP, Apr. 8, 2024.
- Student IEP, Apr. 8, 2024.
- Student Evaluation/Eligibility Report, Feb. 2, 2024.
- Student Occupational Therapy Evaluation, Nov. 7, 2023.

Background Information

This complaint focuses on a student in first grade during the time period covered by the complaint investigation. The student's IEP describes her as "kind and outgoing." The student's IEP also indicates that she exhibits needs in math and speech-language.

Issues

In the written complaint and the complaint investigator's discussion with the complainant, the parent alleges one issues upon which this investigation will focus:

> Did USD 500 ensure that the student's IEP Team determined whether the student needed Applied Behavior Analysis (ABA) therapy to receive a free appropriate public education? (34 C.F.R. §§ 300.101, .320(a)(4); K.S.A. § 72-3410(a)(2); K.A.R. § 91-40-2.)

Issue

ABA Therapy through the IEP

Applicable Law

State and federal special education legal requirements obligate a district to make a free appropriate public education to a child identified with a disability through an IEP. (34 C.F.R. § 300.101; K.S.A. § 72-3410(a)(2); K.A.R. § 91-40-2.) Each child's IEP must include the:

> *special education and related services and supplementary aids and services . . . to enable the child . . . [t]o advance appropriately toward attaining [their] annual goals; [t]o be involved in and make progress in the general education curriculum in accordance with [the child's present levels of academic achievement and functional performance], and to participate in extracurricular and other nonacademic activities; and [t]o be educated and participate with other children with disabilities and nondisabled children in the activities described in this section . . . .*

(34 C.F.R. § 300.320(a)(4).)

In the comments to the 2006 regulations implementing the Individuals with Disabilities Education Act, the United States Department of Education weighed in on who decides whether a child with a disability needs a specific instructional methodology. "The Department's longstanding position on including instructional methodologies in a child's IEP is that it is an IEP Team's decision. Therefore, if an IEP Team determines that specific instructional methods are necessary for the child to receive FAPE, the instructional methods may be addressed in the IEP." (71 Fed. Reg. 46,665 (2006).)

Analysis: Findings of Fact

In the complaint and the initial discussion with the complaint investigator the parent maintains that the district is not addressing the student's behavior needs and the parent must obtain outside therapy. The parent has secured applied behavior analysis (ABA) therapy for the

student through KinCare. (Parent's Complaint, Jul. 12, 2024.) The parent maintains that she made a request to school staff that the student be permitted to leave school to participate in ABA therapy and school staff indicated that if the student left early once a week or once a month, the school would excuse the absence, but if the student leaves early each school day, then school staff will mark the student absent for the entire school day. (Complaint Investigator and Parent Phone Call, July 24, 2024.) The district maintains the school has not received a request from the parent for the student to be absent to receive outside therapy. (District's Response to the Complaint, Aug. 6, 2024.) The complaint investigator's initial understanding of the parent's concern is that staff at the student's school was marking the student absent each time the student left early for therapy so in the district's response it provided the student's attendance records showing the student was not leaving school early. (District's Response to the Complaint, Aug. 6, 2024; Student 2023–24 Attendance Summary, Aug. 5, 2024; Student 2023–24 Attendance Detail, Aug. 5, 2024.) The parent later clarified that the student was not leaving school early for ABA therapy because the parent believed school staff would mark the student absent for the entire school day. (Email from Parent to Complaint Investigator, Aug. 6, 2024.) The parent did not respond to the investigator's request for more detail around the parent's perception that school staff would mark the student absent if the student left school early to participate in ABA therapy. (Email from Complaint Investigator to Parent, Aug. 7, 2024.)

The focus of the parent's concern in this complaint is whether the district ensured that the IEP Team determined whether the student needed ABA therapy to receive a free appropriate public education (FAPE). (Complaint Investigator and Parent Phone Call, July 24, 2024.) The role of the IEP Team is to determine what the student needs to receive FAPE. (71 Fed. Reg. 46,665 (2006).) This investigation will focus on the student's needs and the IEP Team's discussion and decisions about how to meet those needs to provide the student with FAPE. (71 Fed. Reg. 46,665 (2006).)

The parent indicates that the district is not meeting the student's behavior needs, forcing the parent to obtain outside ABA therapy to meet the student's needs. (Email from Parent to Complaint Investigator, Aug. 6, 2024.) The district maintains that the parent did not request that the district provide ABA therapy through the student's IEP. (District's Response to the Complaint, Aug. 6, 2024.) KinCare provides information on its website on the types of needs that it can treat with ABA therapy "that will bring several benefits to a learner's life." (https://www.kincarebh.com/aba-frequently-asked- questions/) "Examples of benefits include increasing social skills, increasing requesting, improving and developing daily living skills, communication, toilet training, bedtime routines, feeding, and self-management. ABA can also be used to address repetitive and interfering behaviors." (https://www.kincarebh.com/aba-frequently-asked- questions/)

The student's evaluation/eligibility report includes several needs that align with ABA therapy, as KinCare offers. (Student Evaluation/Eligibility Report, Feb. 2, 2024;

https://www.kincarebh.com/aba-frequently-asked-questions/.) In the area of Social/Emotional, the evaluation indicates that the student "has difficulty using verbal and non-verbal communication appropriately to initiate, engage in, and maintain social contact with peers and adults. She has trouble tolerating changes in routine, engages in apparently purposeless, stereotypical behaviors, and overreacts to certain sensory experiences. She also has deficits in attention and/or motor/impulse control." (Student Evaluation/Eligibility Report, p. 4, Feb. 2, 2024.) The student's needs articulated here could, theoretically, be supported through KinCare's ABA therapy with a focus on "increasing social skills," "communication," and "self-management." (https://www.kincarebh.com/aba-frequently-asked-questions/) In the area of Speech- Language, the evaluation indicates that "the student showed delays in her core language, and language content and use, due to lack of vocabulary for her age, difficulty constructing sentences to communicate a message, understanding information that is being said, giving questions-related answers, and staying on topic during an interaction." (Student Evaluation/Eligibility Report, p. 11, Feb. 2, 2024.) The student's needs articulated here could, theoretically, be supported through KinCare's ABA therapy with a focus on "communication." (https://www.kincarebh.com/aba- frequently-asked-questions/) In the area of behavior:

> *Clinically Significant concerns were reported in the areas of Atypicality and Functional Communication . . . [meaning that the student] . . . engages in behaviors that are considered strange or odd . . . [and] . . . At-Risk to Clinically Significant concerns were reported in the areas of Hyperactivity, Withdrawal, and Leadership Communication . . . [meaning that the student]*
>
> *. . . displays a moderately high number of disruptive, impulsive, and uncontrolled behaviors, has difficulty making and maintaining friendships, and may have some difficulty making decisions.*

The student's needs articulated here could, theoretically, be supported through KinCare's ABA therapy with a focus on "communication." (https://www.kincarebh.com/aba-frequently-asked-questions/) Speaking to the district's understanding of the student's needs, the district also submitted the student's occupational therapy evaluation, a component of the student's overall evaluation, that concluded that the student did not display needs in this area that impacted her educational performance. (Student Occupational Therapy Evaluation, Nov. 7, 2023.) The district also submitted a screenshot of the behavior detail report for the student for the 2023–24 school year showing that the district did not log any behavior related incidents for this student. (Student 2023–24 Behavior Detail Report Screenshot, Aug. 7, 2024.)

Following the student's evaluation, the student's IEP Team developed an IEP for the student. (Student IEP, Apr. 8, 2024.) The evaluation report identified three need areas that correspond with ABA therapy, as offered by KinCare. (Student Evaluation/Eligibility Report, Feb. 2, 2024; https://www.kincarebh.com/aba-frequently-asked-questions/) Stated generically these three need areas are: (1) Using verbal and non-verbal communication appropriately to initiate,

engage in, and maintain social contact with peers and adults; (2) Vocabulary; and (3) Disruptive, impulsive, and uncontrolled behaviors. (Student Evaluation/Eligibility Report, Feb. 2, 2024.) The student's IEP Team has the responsibility of putting together an IEP that provides the student with FAPE. (34 C.F.R. § 300.101; K.S.A. § 72-3410(a)(2); K.A.R. § 91-40-2.) The student's IEP Team must determine which special education and related services and supplementary aids and services the student needs to

> *advance appropriately toward attaining [their] annual goals; [t]o be involved in and make progress in the general education curriculum in accordance with [the child's present levels of academic achievement and functional performance], and to participate in extracurricular and other nonacademic activities; and [t]o be educated and participate with other children with disabilities and nondisabled children in the activities described in this section*

(34 C.F.R. § 300.320(a)(4).)

To do this, the IEP Team may choose to select a specific instructional methodology to include in the IEP, such as ABA therapy. The United States Department of Education, through its Office of Special Education Programs (OSEP), included a comment in the federal special education regulations, explaining: "There is nothing in the [Individuals with Disabilities Education Act (IDEA)] that requires an IEP to include specific instructional methodologies The Department's longstanding position on including instructional methodologies in a child's IEP is that it is an IEP Team's decision. Therefore, if an IEP Team determines that specific instructional methods are necessary for the child to receive FAPE, the instructional methods may be addressed in the IEP." (71 Fed. Reg. 46,665 (2006).) For this student, the IEP Team chose to address the student's vocabulary needs through a vocabulary goal. (Student IEP, Apr. 8, 2024.) Without explanation, this student's IEP Team, including the parent, did not address the student's needs in the areas of using verbal and non-verbal communication appropriately to initiate, engage in, and maintain social contact with peers and adults and disruptive, impulsive, and uncontrolled behaviors. (Student IEP, Apr. 8, 2024.) There is no explanation in the student's evaluation report, IEP, or the Prior Written Notice the district provided to the parent requesting her consent for the initial provision of special education services of why the student does not need support through her IEP in these areas. (Student Evaluation/Eligibility Report, Feb. 2, 2024; Student IEP, Apr. 8, 2024; Prior Written Notice and Request for Consent for the Initial Provision of Services on the Student's IEP, Apr. 8, 2024.) Additionally, the parent did not provide any information or documentation showing that she requested that the district meet the identified needs through the student's IEP.

Federal and state special education legal requirements indicate that a parent must provide consent for the initial provision of special education services. (34 C.F.R. § 300.300(b); K.A.R. § 91-40-27(a)(2)). The parent provided consent for the initial provision of special education services for this student despite the student's IEP not including services in areas where the parent remains concerned about the student's needs. (Prior Written Notice and Request for

Consent for the Initial Provision of Services on the Student's IEP, Apr. 8, 2024.) The parent did not provide information to explain this decision nor did the parent provide any documentation to show the parent had voiced the concerns in this complaint to the district prior to filing this complaint.

The district certainly has access to information about the student's social/emotional, communication, and behavior needs, but the IEP Team, including the parent, chose not to address those needs within the student's IEP and the parent consented to the initial provision of services. The IEP Team, including the parent, decided on the initial provision of services approximately a month before the school year ended and neither the district nor the parent presented any information during the investigation that showed that the IEP Team should consider a different decision.

Conclusion

As a member of the IEP Team, the parent participated in creating an IEP to provide the student with FAPE and consented to the initial provision of services. (Student IEP, Apr. 8, 2024; Prior Written Notice and Request for Consent for the Initial Provision of Services on the Student's IEP, Apr. 8, 2024.) The IEP Team could have chosen to put a specific instructional methodology into the student's IEP to meet her needs, but it did not, choosing to meet the student's needs through the goals and services articulated in the IEP. (Student IEP, Apr. 8, 2024; 71 Fed. Reg. 46,665 (2006).) Therefore, this investigation concludes that USD 500 met its obligation to ensure that the student's IEP Team determined whether the student needed Applied Behavior Analysis (ABA) therapy to receive a free appropriate public education. 34 C.F.R. §§ 300.101, .320(a)(4); K.S.A. § 72-3410(a)(2); K.A.R. § 91-40-2. As there is no violation, no corrective action is needed. The parent and district could choose to address the concern in this complaint by convening an IEP Team meeting.

Investigator

Laura N. Jurgensen

Laura N. Jurgensen 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.

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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 #263 MULVANE PUBLIC SCHOOLS
ON JULY 9, 2024

DATE OF REPORT: AUGUST 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." -------- 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 #263 (Mulvane Public Schools). In the remainder of the report, USD#263 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 July 9, 2024 and the 30-day timeline ended on August 8, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Gwen Beegle, reviewed evidence and documentation, which was provided by both the district and the complainant(s). Emails to the Complaint Investigator were received from the district from July 17, 2024 to August 7, 2024 and from the parent from July 20, 2024 to August 7, 2024.

The parent was interviewed to clarify the issues of the complaint on July 17, 2024 and interviewed again on August 7, 2024. Four district staff members were interviewed: Renee Sweetwood on July 29, 2024; Casey Lucas (Assistant Special Education Director) Kyle Dillon (current special education teacher, and Diane Tuhro (paraprofessional) were interviewed on August 1, 2024. Follow up questions to Casey Lucas were sent via emails through August 7, 2024.

Although other documentation was also reviewed, the following documentation and information were used in consideration of the issue(s):

1. Student's IEP amendment dated May 10, 2023
2. Health Care Plan dated May 10, 2023

3. Prior Written Notice (PWN) dated May 10, 2023 for changes to the IEP including material change in services and substantial change in placement for a meeting on May 20, 2023 and signed by the parent giving consent on May 18, 2023.
4. Teacher and paraprofessional service schedule for student, 2023-24 school year
5. Speech Language Pathologist service log, 2023-24 school year
6. Text messages exchanged between the parent and Gavin Pickering (Special Education Teacher) beginning on or before August 15, 2023 and ending March 6, 2024.
7. Student's IEP amendment without a meeting dated September 8, 2023 signed by the parent consenting not to have a meeting on September 8, 2023
8. Prior written notice dated September 8, 2023 for changes to the IEP including material change in services and substantial change in placement signed by the parent giving consent on September 8, 2023
9. Student Health Plan dated September 8, 2023
10. Parent request to Mulvane Elementary School for IEP amendment dated September 15, 2023
11. Email from the parent to Renee Sweetwood dated September 18, 2023 at 10:20 am forwarded to Casey Lucas.
12. Email exchange from Casey Lucas to Renee Sweetwood, the parent, L. Sorenson, Trista Cuthbertson (Assistant Superintendent), A. Branine (Kindergarten Teacher), Gavin Pickering (Special Education Teacher) the father, and Kylie Ferrer (Speech Language Pathologist) beginning September 19, 2023 at 12:06 p.m. and ending on October 24, 2023 at 3:41 p.m.
13. Prior written notice for re-evaluation dated September 19, 2023 and signed by the parent giving consent on September 20, 2023
14. Behavior data sheets dated September 22, 2023 through May 9, 2024.
15. Parent consent for release of medical information and Medicaid reimbursement signed by the parent refusing consent on September 23, 2023
16. IEP progress report for IEP amended on October 24, 2023, with entries dated October 16 and December 3 and 16, 2023
17. Notice of Meeting dated October 16, 2023 for a meeting on October 24, 2023
18. Prior written notice dated October 24, 2023 for changes to the IEP including material change in services for a meeting on October 24, 2023 signed by the parent giving consent on October 26, 2023
19. Agenda for October 24, 2023 IEP meeting
20. Student Health Plan dated October 24, 2023
21. Social work assessment rubric dated December 1, 2023
22. Student IEP dated December 4, 2023
23. Student Health Care Plan dated December 4, 2023
24. Student reevaluation dated December 4, 2023
25. IEP meeting notes dated December 4,, 2023

26. Prior written notice for eligibility, services and changes to the IEP with material change in service and change in placement dated December 4, 2023 unsigned by parent
27. Email exchange between Casey Lucas, the parents, Gavin Pickering, and Renee Sweetwood beginning December 18, 2023 at 1:20 p.m. and ending December 19, 2023 at 2:38 p.m.
28. IEP progress report for IEP dated December 4, 2024 with entries dated January 10, March 4, and May 15, 2024
29. Document sharing notice from Gavin Pickering dated January 18, 2024 at 12:41 p.m.
30. Document sharing notice from Gavin Pickering dated January 24, 2024 at 1:47 p.m.
31. Notice of meeting dated January 30, 2024 for IEP meetings on February 7 and February 8, 2024, with parental signature dated January 30, 2024 consenting to waive 10 day notice.
32. Letter to parent dated February 1, 2024 requesting meeting for February 7 and February 8, 2024.
33. Email from the parent to Casey Lucas dated February 7, 2024 at 4:43 p.m.
34. IEP meeting notes and transcripts dated February 7 and February 8, 2024
35. Prior written notice (revised) for eligibility, services and changes to the IEP with material change in service and change in placement dated December 4, 2023 signed by the parent giving consent on February 18, 2024
36. Document sharing notice from Gavin Pickering dated February 28, 2024 at 8:13 a.m.
37. Email from the mother to Casey Lucas, Renee Sweetwood, the father, Amy Branine, Kyle Dillon, Kylie Ferrer (Speech Language Pathologist), Kellene Rorabaugh (Social Worker) Laura Canfield (nurse) on Apr 25, 2024 at 6:10 p.m.
38. Notice of meeting for a meeting on May 9, 2024 with parent signature dated April 25, 2024
39. Transcript of IEP Meeting dated May 17, 2024
40. Student Health Plan dated May 9, 2024
41. IEP Amendment dated May 9, 2024 and May 17, 2024 with parental signature agreeing to changes without a meeting dated May 22, 2024
42. PWN dated May 9, 2024 for meetings on May 9, 2024 and May 17, 2024 for changes to the IEP including a material change in services, with parental signature dated May 22, 2024 giving consent
43. Letter to parent dated May 13, 2024 for incident on May 10, 2024
44. Email exchange between Casey Lucas to the parents, Renee Sweetwood, and Kyle Dillon beginning on May 21, 2024 at 2:42 p.m. and ending May 23, 2024 at 3:56 p.m.

Background Information

The student is 6 years old and attended kindergarten in USD #263 during the 2023-24 school year. The student also attended preschool in the district. The student's most recent IEP states eligibility for special education as a student with autism and speech language disorders. During the 2023-24 school year, the student received speech language therapy, pull out special

education resource services, and special education support in the general education classroom, along with numerous accommodations to address sensory, disability and behavioral concerns. The student has numerous health considerations and a health plan at school. The student had a behavior intervention plan included in the IEP.

Issues Investigated

1. ISSUE ONE: The USD #263 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the student's behavior plan, accommodations, paraprofessional services, placement in general education, providing behavior data to the parent providing specific behavior information to parent
2. ISSUE TWO: The USD #263 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP that addressed the child's disability, specifically considering parental concerns and input into accommodations and behavior planning, avoiding use of restraint and isolation, and staff training on student support needs.
3. ISSUE THREE: The USD #263 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to providing Prior Written Notice to parent for actions such as denying parental requests

Issue One

The USD #263 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the student's behavior plan, accommodations, paraprofessional services, placement in general education, providing behavior data to the parent providing specific behavior information to parent

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 student's IEP had not been followed in a number of ways, especially with regard to his behavior. The parent alleged that the staff were not using de escalation techniques, that the student was in seclusion for more than 30 minutes at a time, and that the district was supposed to provide detailed daily behavior notes to the parent. In the written complaint, the parent alleged that the student's behavior plan had not been followed when he was injured with a rug burn on his back. The parent believed that this event was unwitnessed at school because the paraprofessional who was assigned to provide 1:1 services to the child was not present and providing special education services. The parent alleged that she did not believe the child was getting his general education time and that the district was not using the child's communication device. The parent alleged that the student was not getting his general education time and that the field trip had not been appropriate for the student due to his allergies. The parent alleged that the student's accommodations had not been provided by the school, and that the district had not provided the required speech language device to the student or the behavioral data to the parent as required by the IEP.

The district responded that it had followed the IEP by providing the services, accommodations, and staff training required by the student's IEP. The district responded that they met many times with the parent to discuss the student's needs and communicated frequently with the parent about the implementation of the IEP, including the provision of accommodations during the school day and the student's behavior. The district responded that the student's schedule provided for a special education teacher or special education paraprofessional to provide support for the student, along with speech language therapy services. The district responded that staff were trained in CPI.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #263. The findings will be organized to show the timeline of special education actions and the midyear re-evaluation, followed by IEP services including assistive technology, behavior intervention plan, accommodations and supplementary aids and services, staff training to implement the IEP, and daily behavior communication with the parent.

Timeline of special education events

During the past year, the student had two IEPs which were amended through a series of IEP meetings. IEP 1: The student's IEP dated December 7, 2022 was amended on May 10, September 8 and October 24, 2023. IEP 2: The student's annual IEP meeting including the triennial reevaluation was held on December 4, 2024, with continuation meetings on February

7 and 8 2024, followed by two meetings on May 8 and May 17, 2024 that resulted in an IEP amendment.

IEP Required Services and Implementation

The student's IEP dated December 7, 2022 amended on May 10, 2023 required a gradual lengthening of the student's school day over the first 4 weeks of kindergarten, beginning with 245 minutes beginning August 14, 202) and increasing to a full day of 435 minutes a day beginning September 16, 2023. The IEP was amended on September 8, 2023 to alter the schedule slightly, add a strategy to the behavior plan, and to add two additional accommodations. On September 15, 2023, the parent requested revisions to the IEP and according to the district, student and staff illnesses interfered with scheduling the IEP meeting until October 24, 2023. The following paragraphs summarize the student's services and accommodations for this period of time.

After the student's day was increased beginning September 23, 2023, the IEP as amended on September 8, 2023 required following services: speech language services (10 minutes 4 days a week), special education support in special classes (45 minutes 4 days a week), attendant care at lunch, special education services in special education setting (30 minutes 4 times a day 5 days a week), special education support in general education classes (195 minutes 4 days a week, 175 minutes 1 day a week), special education support in general education (recesses) (45 minutes 5 days a week). Purposes listed for special education in special education settings (pull out) were for arrival and dismissal requirements, sensory breaks, movement activities, social/emotional instruction, practice with headphones, relationship building and restroom breaks. The IEP did not specify one to one adult to student services in the services.

The IEP team met on December 4, 2023 to develop the IEP and complete the re-evaluation. The IEP included 8 goals (in brief): (1) sit in designated area during group activities, (2) work independently on assignments, (3) have no more than one physical aggression 3 of 5 days a week, (4) increase receptive and expressive language, (5) increase grammar and language structure, (6) write letters and numbers, (7) produce sounds in words, and (8) name 6 coping strategies.

The student's services listed in this IEP were: speech language services (10 minutes 4 days a week), special education support in special classes (45 minutes 5 days a week), attendant care at lunch, special education services in special education setting for emotional support (30 minutes 4 days a week), special education support in mathematics (30 minutes 5 days a week), special education support in reading (125 minutes 4 days and 95 minutes 1 day a week), special education services in general education for social emotional and adaptive behavior (45 minutes 5 days a week), special education services in special education setting for sensory breaks throughout the day (60 minutes 5 days a week), social work services in social worker's office (20 minutes 1 day a week); ESY speech language and ESY special education services were also listed.

PWN dated December 4, 2023 was provided to the parent, who signed it giving consent for the material change in services (social work) on February 17, 2024.

The district reported that the student's IEP services had been provided, as evidenced by the staff and student schedule. The student schedule, after full time kindergarten was established beginning September 23, showed: Arrival 7:50-8:00; Morning Meetings 8:00-8:15 a.m.; Math in Kindergarten 8:15-9:15 a.m.; Recess 9:15-9:30 a.m.; SEL Time (Special education classroom) 9:30-10:00 a.m.; Special education support in kindergarten or special classes 10:00-11:40; Lunch 11:40 a.m.-12:10 p.m.; Recess 12:10-12:25 p.m.; General education support for academics, specials and recesses till dismissal at 2:50 p.m., with speech therapy 12:40-12:50 p.m. 4 days a week.

The paraprofessional's schedule showed that she was assigned to the student from his arrival at school through his departure, except during her assigned lunch period, 11:40 a.m.-12:30 p.m. During that period, the teacher was assigned for the student's lunch period and recess each day. In addition, the special education teacher's schedule showed that he supported the student with the paraprofessional at arrival time as needed (10-20 minutes 4 days a week). The special education teacher provided social emotional learning for one hour 4 days a week in the special education classroom, and special education in the kindergarten class 50 minutes 3 times a week, 20 minutes one time a week, and in special classes 30 minutes 2 times a week and 20 minutes one time a week. The district showed the speech language pathologist's service log showing speech language services 10 minutes 4 times a week.

Assistive technology

The IEP as amended May 10, 2023 required the following assistive technology: school provided speech generating device (currently proloque2go Ipad app) AAC for communication of emotions and needs at school and a second AAC device for communication of emotions and needs in the home. The IEP dated December 4, 2023 required a school-provided dedicated speech generating AAC device (currently ProLoQuo2Go) for communication of emotions and needs at school, to be used at times of dysregulation.

In an interview, the assistant special education director reported that, at the beginning of the school year when she realized only one device was being used (going back and forth with the student), she talked with the parent. She reported that she believed that the parent agreed to have only one device being used in two settings and the IEP would be updated at the next meeting.

Accommodations

Fourteen accommodations were listed in the student's IEP as amended May 10, September 8, and October 24, 2023: (1) Access to headphones, (2) First then phrasing, (3) Delayed arrival early departure, (4) Task boxes, (5) Reinforcers for leaving school and getting in the car (6) Visual schedule, (7) Dismissal Social Story, (8) Separate setting for testing, (9) Parent supplied

Jiobit tracker, (10) Parent supplied Seizure bracelet and cell phone, (11) 20 minutes story time Google Meet, (12) Separate arrival and dismissal location, (13) Brain breaks and Sensory breaks, and added October 24, 2023 was (14) Extended time on assignments and assessments

The accommodations in the IEP dated December 4, 2023 maintained these ten accommodations: Access to headphones, First then phrasing, Task boxes, Visual schedule, Separate setting for testing, Parent supplied Jiobit tracker, Parent supplied Seizure bracelet and cell phone, Separate arrival (7:50 am and 8:50 am on Wednesday) and dismissal (2:50 pm) location, and Brain breaks and sensory breaks. It added these five accommodations: Extended time on assignments and assessments, Parent provided wrist support resting pad, Reduced workload by 50%, Multi modal assignments (paper, chromebook, Ipad, apps), and Access to sensory tools (fidgets, seating, apps, or other preferred sensory objects). Three accommodations were deleted: 20 minutes story time Google Meet, reinforcer leaving school and getting in the car and dismissal social story.

In interviews, the paraprofessional reported that she used the student's accommodations throughout the day. In an interview, the principal reported that accommodations were used in the general education classroom.

Undated text messages between the parent and the principal showed that the parent alerted the principal to the student's allergies related to the class field trip and that the field trip was discussed at the student's IEP meeting. The principal then offered the parent an alternative field trip, which the parent refused.

Behavior Intervention Plan and Implementation

The student's Behavior Intervention Plan (BIP) associated with the first IEP amended on May 10, September 8, and October 24, 2023 identified the following problem behaviors resulting from skill deficits in communication, emotional regulation and social skills: refuse to complete transition, hide behind person/object, throw items, vocalize frustrations, push, attempt to leave area, lay on ground/floor. The BIP focused on one problem behavior, refusing to transition, and identified the motivation as escape/avoidance. The BIP included the following strategies. *Environmental Structure & Supports* were: first/then phrasing, visual schedule, consistent schedule, high rate of positive reinforcement, offering choices when appropriate, visual supports to communicate emotions and needs choices, access to a sensory room, with an addition on September 8, 2023 of escorted walk in the hallway when dysregulated. *Proactive Interventions* were: social story, promissory reinforcer, early dismissal, visual schedule, first/then phrasing, offer visual supports to communicate emotions and needs, choices, allowed to pull a wagon during transitions, delayed arrival. *Teaching New Skills* (replacement) were: Modeling AAC use, yes/no teaching, teaching emotions-recognizing own and emotions of others teaching calming strategies teach use of visual aids to help identify emotions and replacement choices. *Consequence Interventions* were: rewarded with chosen reinforcer at dismissal rewarded with replacement activity when communicating emotions and needs.

The student's Behavior Intervention Plan (BIP) associated with IEP dated December 4, 2023 and amended on May 17, 2024 continued the provisions of the prior IEP. The parent provided consent to the PWN dated December 4, 2024 on February 18, 2024. The BIP identified the two problem behaviors, continued to focus on refusing to complete transitions, added a second behavior, physical aggression/throwing/crawling under staff, and identified the motivation as escape/avoidance for both and added sensory needs as a second motivation for physical aggression. The BIP strategies to address both behaviors remained largely the same as in the prior IEP, now addressing two behaviors. For *Environmental structure and supports*, access to the special education classroom as needed was added, and "as needed" was added to access to the sensory room. For *Proactive Interventions*, social story and promissory reinforcer were deleted and "visual" schedule was changed to "posted classroom" schedule. *Teaching new skills* section was unchanged. The *Consequence Interventions* section was slightly changed, rewarded with chosen reinforcer "when the reinforcement chart is full" instead of "at dismissal." and verbal praise was added.

No mention of the use of de escalation techniques was found in the IEPs in place during the 2023-24 school year.

When asked in an interview and follow up email, the district staff reported that documentation of the sensory breaks occurred in behavior sheets provided to the parent. When asked in an interview, district staff reported that the procedure for the use of the sensory room required the student to be calm for a period of time before exiting.

In an interview with the parent, the parent stated that the student was being left in isolation for longer than 30 minutes. The paraprofessional, special education teacher and assistant director were asked about any use of isolation in interviews. The district staff reported a description of the sensory room's use, which was witnessed by the parent. The sensory room is near the main office with no harmful things within it and the procedure is that the student must remain regulated for a period of time before leaving, although the student is never blocked from leaving the room and the door is open. If they leave, they are redirected to the room to restart the calming process.

The parent reported in the written allegation and provided in email a description and photo related to an incident on or before March 6, 2024, when the parent found what appeared to be a rug burn on the student's back. An examination of the daily behavior sheet for March 5, 2024 found it to be incomplete, with entries only through 10:05 a.m. showing participation in activities. An examination of two daily behavior sheets for March 6, 2024 found that during reading class the student had 8 instances of hitting/kicking, 2 instances of running around the classroom, 5 instances of throwing objects and stated that the student went home early. On March 6, 2024, the parent sent a text with a picture of the child's back injury to the principal and requested a phone call. In an interview, the principal stated that she investigated the incident by asking the special education teacher about what happened. The special education

teacher reported to the principal that the student had mentioned it to him, that he had examined it, and believed it to be a few days old at that time. In an interview, the paraprofessional reported that she did not see any incident causing the injury; in addition, the paraprofessional reported that she was present every day according to her schedule, except for leave, lunch and bathroom breaks.

The district reported and showed documentation that the student had been restrained 5 times on the following dates: January 18, January 24, February 1, February 28, and May 10, 2024. The district did not have access to detailed reports for 3 of the 5 incidents due to loss of electronic records (emails) eliminated automatically when the student's teacher resigned in March, 2024. The district reported that the student had been restrained for less than one minute each time. Daily behavior sheets on February 1, February 27, 2024 and May 10, 2024 described the procedure used for restraint. The district provided evidence that the current special education teacher, prior special education teacher and the paraprofessional had attended Crisis Prevention Institute (CPI) training at the beginning of the school year.

Staff use of behavior intervention plan and accommodations.

In interviews, the current special education teacher and the paraprofessional were asked if they followed the student's behavior plan and used his accommodations. The paraprofessional, who described her work as a "high needs para", listed the following accommodations and strategies when asked about a typical day: sensory break and de escalation (when dysregulated), sensory breaks, sensory apps if dysregulated, noise canceling headphones, wrist rest, Chromebook, Ipad as alternate for paperwork, communication device (although unused by student), walks in hallway, offering choices for activities and work, first/then requests, reinforcers, schedule choices, train stamps, prizes from box, and verbal praise "good job." The special education teacher added social emotional support during pull out services, including talking about feelings and coping strategies, first/then, choices, alternative settings for work, and breaks. The assistant special education director reported that she observed the previous special educator using times, reinforcers, games with timers, and strategies to begin work.

Support for Staff (training) in the Student's IEP

All three district educators interviewed reported having extensive work experience with persons experiencing autism; two reported experience as family members of persons with autism. The district reported and showed evidence that the teacher and paraprofessional received CPI training. Implementation of health plans is related to the investigation through the IEP requirement for staff training, which is the focus here.

The IEP as amended May 10, September 8, and October 24, 2023, required support for staff (training) in three areas: seizures and allergic reactions, AAC device, and use of and location of the AED [defibrillator], detailed as: (a) training in seizures, including absent seizures,

procedures and allergic reactions by the school nurse once a semester (b) training staff in modeling and use of speech generating AAC device once a month and (c) use of and location of the AED once a year. The IEP dated December 4, 2023 continued the staff support, slightly reworded as: (a) training in seizures, including absent seizures, procedures and allergic reactions, location of AED by the school nurse to occur one time a semester or for new staff and substitutes and (b) Training staff in modeling and use of a dedicated speech generating AAC device one time a semester.

Text messages submitted by the parent showed that district staff were in frequent conversation with the parent regarding the student's health and diet at school (see August 15, August 30, September 12, 2023; January 30, February 6, March 6, 2024). In interviews, the district staff working with the student reported that they had been trained on the student's health plan and the specific elements in the student's IEP, including anaphylaxis plan/procedure, seizures and seizure watch, and the use of the communication device. In an interview, the special education teacher reported being trained by the nurse on health plans and meeting with the speech language pathologist on the communication device when he was hired.

The principal reported that the district staff working with the student received training on the student's health plan needs from the school nurse, including AED device, seizures, first aid, allergies and reactions, special wipes, soap and hand sanitizer, and "look fors." In an interview, the principal reported that the nurse, trained nursing assistant or both were present in the building each day. Nursing records showed that the student was taken to the nurse for ailments listed in his health plan or other health concerns (such as fever) on 9 occasions during the school year on the following dates: August 15, October 17 (2 times), November 28, and December 11, 2023; February 6, February 14, April 1, and May 2, 2024.

Daily communication - behavior sheets

Neither IEP in place during the 2023-24 school year included the requirement that behavior data be communicated to the parent daily. However, the parent is to receive IEP reviews as progress reports each quarter.

The parent reported that she wanted detailed behavior sheets in order to understand why the student was having behavior problems at school that were not evident at home. The parent reported that she believed these were required by the IEP and that the district had changed the format enough that she no longer had detailed information on the student's behavior at school.

Photos of the behavior sheets in the parent's text messages corresponded to those provided by the district as evidence. Behavior sheets sent home from August, 2023 to March, 2024 were in the form of a schedule with participation or problem behavior tally marks, with narrative descriptions at the bottom of the page that detailed any significant behavioral events. Behavior

sheets sent home from beginning February 14, 2022 - May 10, 2024 showed the student's schedule and a 3-choice rating scale for each period, with space for brief notes along the side and at the bottom, with some of the daily sheets having a second page with the student's schedule and tally marks for number of prompts, aggressions, and leaving the area, with space for written descriptions.

The IEP team met on May 9 and May 17, 2024 to amend the IEP. No changes to the BIP or special education and related services were made. Home school communication (daily behavior data) format was discussed. According to the transcript of the May 17, 2024 meeting, the team looked for where the home communication format was located in the IEP, and not finding it, added the behavior sheet format to parental concerns.

According to the PWN dated May 9 and May 17, 2024, the IEP was amended (1) to state that substitute teachers would receive the student's medical information with their lesson plans, with two changes to the rationale for this change (2) to delete the accommodation of the seizure bracelet (3) to update conditions for the use of the headphones at his request or when the need is seen by an adult, and (4) to add to the parent concerns regarding the daily communication tool being used.

According to the district and the progress reports provided, the parent received progress reports quarterly, in October and December, 2023 and March and May, 2024.

Conclusion

In this case, the student's team met many times during the school year to address parental concerns, to complete the student's re-evaluation, and to review the IEP for needed changes. The student had detailed health plans in place, and during the investigation, the parent disclosed allegations of particular instances when the health plan precautions were not properly followed, such as providing specific parent provided birthday cupcakes instead of previously provided frozen ones or wiping the lunchroom table with special wipes before the student's lunch box was placed on it. However, these were not investigated beyond staff training and support required by the IEP to implement the student's IEP which referred to the health plans and communication needs. The health plans themselves were not included in the student's IEP. Evidence showed that the staff had been provided training and support to implement the student's health plan, that nursing services were in the building and accessed by staff for the student, and the staff communicated with the parent about the student's diet, allergic reactions and other health related concerns.

In the written complaint, the parent specified an alleged incident of abuse. This could not be investigated by this investigator and other resources were provided to the parent. In the IDEA issue clarification interview with the parent, the parental concern for implementation of the behavior plan, accommodations, paraprofessional services, and time in general education

were expressed and included in the issues provided to the district and are addressed in this report.

As noted above, the district reported and provided staff schedules showing continual paraprofessional support throughout the day except for breaks and lunch, when the special education teacher was scheduled to be present to provide attendant care. The staff schedules showed both pull out special education services and special education support by both paraprofessional and teacher in the general education setting. At times during the student's day, both the teacher and the paraprofessional were present to provide special education and supplementary aids and services including accommodations.

Evidence in interviews, supported in part with daily behavior sheets, showed that the district staff were familiar with and providing accommodations listed in the student's IEP, including relying frequently on the use of the sensory room for breaks and student calming. The sensory room and breaks are included as accommodations and in the student's behavior intervention plan. It cannot be determined the extent to which the use of sensory breaks detracted from the student's general education participation. However, these were accommodations and behavior intervention strategies required by the IEP and being used routinely by district staff.

The format of the daily behavior sheets was discussed at IEP meetings but not listed in the IEP as a requirement. The parents were provided quarterly IEP reviews reporting progress. Therefore, the district's daily communication with the parent is seen as ordinary home school partnership efforts. The alternative for the field trip (discussed at the October 24, 2023 meeting and in the associated PWN) was offered by the principal to the parent when the parent expressed her concern regarding possible allergens at the chosen field trip site.

Based on the foregoing, ***it is not substantiated*** that USD #263 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the student's behavior plan, accommodations, paraprofessional services, placement in general education, and providing behavior data to the parent.

Issue Two

The USD #263 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP that addressed the child's disability, specifically considering parental concerns and input into accommodations and behavior planning, avoiding use of restraint and isolation, and staff training on student support needs.

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. In particular, 34 CFR 300.324(a)(2)(ii) states that in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. Federal and state statutes at 34 CFR 300.324(b)(ii) and K.S.A. 72-3429(f) require that the IEP team reviews the child's IEP periodically, no less than annually, to determine if the goals are being achieved and revises the IEP as appropriate to address lack of expected progress toward goals or general education curriculum, results of a reevaluation, information about the child provided by the parents, the child's anticipated needs or other matters.

Analysis: Findings of Fact

The parent alleged that the district did not take their concerns into account when developing the IEP, including suggestions for accommodations, curriculum needs (advanced mathematics), and staff understanding of alternative communication when the student is unable to speak, and staff use of parent suggested strategies for behavior and communication support to prevent the need for restraint and isolation. The parent stated the staff did not understand the student's disability and could not tell the difference between "melt down" and "temper tantrum" in the student's behavior and that the staff did not use de-escalation techniques.

The district responded that they had met with the parent multiple times to address the parent's concerns and had incorporated multiple parent suggested strategies into the IEP. The district responded that the staff were trained in behavior prevention techniques and that the district had maintained the student's communication device at school despite their assessment that the student now communicated his wants and needs orally. The district responded that the staff are familiar with many unique individuals with autism, including 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 #263.

The IEP team amended the student's IEP on May 10, 2023 in anticipation of the student's entry into kindergarten, with a delayed start time beginning August 14, 2023 to allow the student to adjust to the new schedule, gradually increasing to a full day schedule by September 23, 2023. The IEP team amended that schedule with participation by the parent on September 8, 2023.

On September 15, 2023, the parent wrote to the district requesting specific accommodations and technology applications to be integrated into the IEP and to have an amendment or an IEP meeting prior to the annual IEP. The district responded to begin scheduling the meeting, which was delayed until October 24, 2023 due to student and staff illnesses. The parent

requested (1) zoom in for reading time, (2) allowed to complete missed school work at home within 3 days, (3) electronic formats for school work, (4) iPad Air 5 and I Pencil 2, (5) Floreo VR preloaded on the Meta Oculus 2. In the letter, the parent asserted that the student could do advanced mathematics and would learn social interaction and other skills by using the virtual reality headset and apps suggested. In response, the IEP team met on October 23, 2024 and amended the IEP to include two new accommodations: (1) Google meet for reading time when absent, (2) extended time on all assignments needed for processing time or absences.

According to the October 24, 2023 PWN, the district added that the student would have 3 days to complete school work, in electronic formats as requested by the parent, In addition, the PWN stated that the upcoming re-evaluation would address the continued need for the communication device and, rather than providing a virtual reality headset (with risk of seizures and lack of research with young children) that the student be assessed for social work services to develop his social interaction and coping skills. The PWN also stated that the parent-requested IPAD Air 5 and I Pencil 2 would be purchased and used as a trial device for the student.

The district provided a PWN dated October 24, 2023 which stated that the team met to discuss accommodations related to work completion and assistive technology requested by the parent. The PWN stated that the school would purchase, collect data, and trial an IPAD Air 5 and Pencil 2 as the student's assistive technology, and that the upcoming evaluation would include assessing the student's need for AAC. In response to the parent's request for social interaction software, the IEP team discussed an evaluation for social work services to meet the student's social development needs. The PWN listed an accommodation for work completion when he missed school due to medical concerns. In response to the parental concerns about participation in a field trip, the IEP team discussed two possible accessible field trip options or virtual participation, which were not listed as accommodations on the IEP amendment, nor are they listed on the LRE considerations of the IEP amendment. The parent signed the PWN giving consent on October 26, 2024.

Triennial Reevaluation

The prior written notice for re-evaluation (PWNE) dated September 19, 2023 and signed by the parent giving consent on September 20, 2023. The PWNE stated that existing data would be examined for health and motor skills, and new data would be collected in social emotional, academic performance, general intelligence, and communicative status.

The student's re-evaluation dated December 4, 2023 stated that the purpose of the re-evaluation was to determine continued eligibility and levels of services needed to allow the student to make progress toward state standards. The re-evaluation found that the student was eligible for special education as a student with autism and speech language disorder. Testing found cognitive ability in the below average range and academic achievement in the impaired, below average or borderline impaired ranges.

Social emotional skills were assessed and delays were found. The evaluator used the BASC-3, using the parent, general education teacher and special education teacher to complete the scales on internalizing, externalizing, behavioral symptoms and adaptive skills. Across the raters, behavioral difficulty and social emotional delays were noted in adaptability, hyperactivity, atypicality, with some raters noting problems in activities, daily living, functional communication, anger control, and withdrawal. Teachers reported level of aggression at school to be similar to other children the same age.

The communication portion of the re-evaluation used both assessments and observations, stating that during testing the student had access to a communication device but used only verbal language during the session. During classroom observations, the student used age appropriate, 3-8 word sentences; expressed his requests, questions, comments and thoughts about an activity; used adjectives; and answered yes and no questions. Standardized testing found the student to be impaired in general language ability with needs in both expressive and receptive language. The re-evaluation found that the student had made progress in expressing his wants and needs, asking and answering questions and commenting on activities, with a need for continued speech language services to expand receptive and expressive language, language structure and articulation skills.

The district reported and pointed to the student's reevaluation as evidence that the student did not show the need for an advanced mathematics curriculum. The district reported that they tried advanced math with the student as requested by the parent but did not find the student responsive.

The district provided the social work evaluation that found the student eligible for social work services and the teacher reports showed that the student deficit in emotional awareness, responsibility, following directions, relationships, self control, and executive functioning.

The meeting notes dated December 4, 2023 showed that the parent participated in the discussion about the evaluation on the following topics: handwriting, using restroom at school, dominant hand, digital and paper instructional format, speech and language progress, use of pronouns, and verbal agreement to social work services. During the IEP discussion on December 4, 2023, the meeting notes showed that the team discussed that the communication device was not needed due to the student's vocabulary and the IPAD that was used for communication would remain at school. The meeting notes showed that the parent asked about what would be done when the student hit or acted violently, and the district staff discussed teaching replacement behavior and using CPI techniques. The notes showed "keeping hands and feet to self" to be added to the intervention plan.

Following the December 4, 2023 IEP meeting, the district provided PWN dated December 4, 2023 to the parent for the student's continued eligibility and special education services; continuing the existing services and adding social work services for 20 minutes one time a week. The PWN listed services to be provided as listed in the IEP dated December 4, 2023

(listed above), removed three accommodations (reinforcer for getting in the car after dismissal, dismissal social story and 20 minute story time google meet) and added four (wrist rest pad, reduced assignments by 50%, multimodal assignments, access to sensory tools). The PWN continued the AAC device and listed the need to continue to collect data on the special education trial device (IPad Air 5 and Pencil 2) initiated in October, 2023.

In an exchange of emails with the parent beginning December 18, 2023, the district followed up to ask for consent for the PWN's material change in services, and the parent expressed concern with the new IEP's provisions, including the changed assistive technology communication device requirement, from two to one device, used at school.

In interviews, the district reported that, although the assistive technology device was available to the student at all times and he was prompted to use it at times of duress, the student used understandable oral language instead of the device. The district further reported that the December 4, 2023 reevaluation of the student's communication showed that he did not need the assistive technology device for communication and it was maintained in the IEP at the parent's request. The district reported that the parent had asked for assistive technology in the form of an IPAD Air 5 and I Pencil 2 for school work along with specific apps for learning and coping, which the district purchased and the student used at school, as per the October 24, 2023 PWN.

The district reported that, due to the parent's concerns and lack of consent for the PWN dated December 4, 2023, the district convened the IEP team on February 7 and 8, 2024 as a continuation to the December 4, 2023 IEP determination and evaluation review.

According to meeting notes, the parental concerns were discussed as the evaluation results and IEP provisions were reviewed, section by section. According to the meeting transcript for February 7, 2024, multiple topics were discussed including: medical records provided to the school and permission to contact health providers, the health plan, hand dominance, reviewing of the evaluation assessment results, content of the evaluation report showing teacher responses to test protocols, discussion of regressive autism and OCD, the student's communication assessments by the school and other providers, other syndromes, medication, allergic reactions, birthday cupcakes, hand sanitizer, using the trial device for academic work, chromebook versus IPAD for classroom work, historical discussion of communication device and rationale for two devices due to therapist recommendations, discussion of unique communication and phrasing by the student to express needs, communication apps and programs, use of AT when student self harms if seen at school. The February 8, 2024 transcript showed discussion of the behavior plan, social work services, social/emotional/behavior goal, teaching coping skills and using timers, assistive technology, questions about pictures used in testing, reading and writing, math, staying on task and in place, IEP goals, using fidgets and headphones, listing and use of IEP accommodations.

A revised PWN dated December 4, 2023 with services to be implemented beginning February 8, 2024 was provided to the parent, who signed the PWN on February 18, 2024 giving consent for the services. Revisions to the PWN dated December 4, 2023 included rewording two accommodations (separate arrival and dismissal to "agreed upon location," and visual schedule was changed to posted classroom schedule). The PWN determined the student's continued eligibility for special education, listed the student's services as per the December 4, 2023 IEP including the new social work service, reworked the list of accommodations, maintained the AAC device at school and continued the trial of the assistive technology initiated in October. The PWN did not include a change to the student's behavior intervention plan.

Concerns regarding behavior

As noted previously, the parent and school discussed the student's aggressive behavior as early as the December 4, 2023 IEP meeting, and physical aggression was added to the BIP as a second focus behavior. Teacher input into the reevaluation (occurring in the fall of 2023) did not report that the student was more aggressive than other students his age. As noted previously, the student's behavior required restraint five times from late January to mid May.

Undated text message exchange between parent and principal, on or before April 16, 2024, showed that the parent alerted the principal that the daily behavior sheets being sent home were not acceptable due to lack of detail. An April 26, 2024 text exchange showed that the parent repeated her disagreement with the form of the behavior sheets and her contacts with the school about them. A reply from the principal showed that they had contacted the assistant special education director to discuss alternatives to the behavior sheets.

The parent wrote an email on April 25, 2024 to the assistant special education director to express her concern that the home communication format (daily behavior notes) had changed and she no longer found them as useful as those notes sent previously. In it she stated, ". . .when we had our last IEP meeting it was agreed at that time that an account of each class lesson and [student] behaviors as well as what he did in that class would be recorded and sent home daily to allow us to track patterns and behaviors of [the student] with a hope of better aiding this team with [student] needs during IEP meetings and throughout the year. It was at that time asked if we could use a pre-existing form the school already used and it was agreed that this would be fine as long as EACH class/lesson had an accounting of that activity and how [student] did."

In an interview when asked, the assistant special education director reported that the parent did not ask for a functional behavior assessment in the discussions of information needed on the student's behavior problems occurring at school.

An examination of the quarterly progress reports on the student's behaviorally related IEP goals showed that the student had not met the IEP goals related to social emotional behavior as of May 17, 2024. Data provided showed that the student stayed in place, "in his designated

area during whole group instruction 0 of 5 trials for 80% he sat an average of 55% of the time over the 5 trials." Data provided showed that the student "demonstrated no more than 1 physical aggressive behavior throughout the school day in 0/5 school days. Over the 5 days observed [the student] averaged 3 physical aggressions."

According to the transcript of the meeting on May 17, 2024, the IEP team discussed the student's behavioral needs. The parent asked for the district staff to get down to the student's level (on the ground if needed) as a behavior strategy. The district pointed to staff training in CPI which has preventive strategies, and stated that the district would suggest getting closer to the student's level but wouldn't require staff to get on the ground. The parent expressed her concern about the use of restraining and the extensive use of the sensory room which she called seclusion. At the IEP meeting on May 17, 2024, the parent stated her concern that the student's behavior was worsening, that his "manipulative" problems needed to "stop before he's too big," and that she believed the student was being placed in seclusion too much, whether or not the conditions of the sensory room accommodations met the definition of seclusion (as defined by the district). In the meeting, the district stated that the procedures for seclusion are specified by law and include if the student is being blocked from exiting a room. At the meeting, the district attempted to clarify what the parent wanted to occur when the student was dysregulated and removed from the general education for sensory breaks, to go to the special education classroom, or to otherwise calm himself. Discussion included calling the parent if the student was dysregulated for 30 minutes at a time, or in the sensory room for 3 times in a day. The district responded positively to the parent's suggestion of using the headphones more often and to repeat the offer of them when the student declined them.

The PWN resulting from this meeting does not change the student's behavior intervention plan. The PWN dated May 17, 2024 and signed by the parent giving consent on May 22, 2024 includes the following additions to staff supports for student's medical needs:

> *"1. Substitute teachers will be provided with his relevant medical information to be included with the teacher lessons plans. This was added in the description of the training. 2. [The student] will have a red folder in his backpack with all his medical information to transition with him across the school campus so information is readily available if he is in a location where it is not readily available, was added into the rationale. 3. Substitute teachers will be provided with his relevant medical information to be included with the teacher lessons plans so they are aware of all medical needs and plans, was added into the rationale."*

The PWN dated May 17, 2024 also stated: "Health Care Plan was updated. Deleted Accommodation record 7 referring to the seizure bracelet and no longer using it. Updated Accommodation record 1 regarding headphone usage and to not limit it to noisy environments but at his request at any time in the day or when an adult sees he may benefit from it to offer it and remind him that he has them available. Added record 3 under parent input/concerns to address daily communication tool back and forth."

In an interview with the parent, the parent reported that she believed the school agreed at the May 17, 2024 meeting that the IEP would be amended to show that the school would call the parent if the student had need of the sensory room for more than 3 times in one day or if the student stayed in the sensory room for 30 minutes at one time. However, an examination of the IEP as amended and the PWN of that date did not show this provision.

Conclusion

In this case, the district and the parent had many meetings and interactions pertaining to the student's needs. The staff were professionally and personally familiar with individuals with autism and their needs. The staff were attentive to the communication and social development needs of the child, and implemented the IEP's services and technology to address them. The district provided a health plan to address parental concerns regarding the student's health. The district conducted a timely re-evaluation that included an assessment of the student, including the need for social work services for social development, assistive technology and other services. The IEP included multiple accommodations and assistive technology, which was extensively tried using school provided technology including apps suggested by the parent. The parent brought student needs and requirements to the IEP team and the district implemented many of the suggestions and services to meet those student's needs.

Therefore, it is found that the district did develop an IEP that addressed the student's disability, specifically considering parental concerns and input into accommodations, and staff training on student support needs.

Although the student's teachers did not note physical aggression as problematic in the fall when they completed their assessment for the reevaluation, the student's physically aggressive behavior was being discussed at the December 4, 2023 and February 8, 2024 IEP meetings. Although a new behavior (physical aggression) was added to the BIP, the strategies were not substantially changed from that in place from the beginning of the school year, carried forward from the IEP developed in 2022. The student's behavior plan called for sensory breaks throughout the day, not defined as seclusion by the school or consequent strategies in the behavior plan. It is noted that the sensory breaks may have operated as consequent strategies, but it is beyond the nature of this investigation to make this determination.

The student's behavior apparently began to deteriorate after January 18, 2024, requiring brief periods of restraint 5 times between late January and mid-May. Progress report data in May reported that the student had physically aggressive behavior more than one time each school day. In late April, 2024, the parent began to communicate with the school about the student's behavior problems and her lack of information on the reasons for the student's behavior problems at school, which took the form of protesting the format of the daily behavior notes sent home. After the two IEP meetings May 9 and May 17, 2024, the district amended the IEP with regard to accommodations, staff support for the health plan, and the student's health

plan, but the district did not move to address the core concern lodged by the parent or its own evidence that the student's behavior was deteriorating across time at school.

Therefore, it is found that the district failed to meet its obligation to revise the IEP to address the lack of progress (C.F.R 300.324(b)(ii)(A), K.S.A.72-3429(f)(ii)(A)).

Based on the foregoing, ***it is not substantiated*** that USD #263 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP that addressed the child's disability, specifically considering parental concerns and input into accommodations and behavior planning, avoiding use of restraint and isolation, and staff training on student support needs. However, ***it is substantiated*** that USD #263 failed to consider the parental input into behavior planning and avoiding use of restraint and isolation.

Issue Three

The USD #263 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to providing Prior Written Notice to parent for actions such as denying parental requests

Applicable Law

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. 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 did not provide PWN to her when making changes to the IEP, specifically the assistive technology requirement of a "school provided speech generating device (currently proloque2go Ipad app) AAC for communication of emotions and needs at school and a second AAC device for communication of emotions and needs in the home." The

parent alleged that the district did not provide timely PWN to the parent and that her requests were denied at IEP meetings.

The district responded that the parent's requests were discussed at IEP meetings and proper PWN was provided to the parent.

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 #263.

Six instances of PWN were provided to the parent during the 2023-24 school year.

1. Prior written notice dated September 8, 2023 for changes to the IEP including material change in services and substantial change in placement signed by the parent giving consent on September 8, 2023
2. Prior written notice for re-evaluation dated September 19, 2023 and signed by the parent giving consent on September 20, 2023
3. Prior written notice dated October 24, 2023 for changes to the IEP including material change in services for a meeting on October 24, 2023 signed by the parent giving consent on October 26, 2023
4. Prior written notice for eligibility, services and changes to the IEP with material change in service and change in placement dated December 4, 2023 unsigned by parent
5. Prior written notice (revised) for eligibility, services and changes to the IEP with material change in service and change in placement dated December 4, 2023 signed by the parent giving consent on February 18, 2024
6. PWN dated May 9, 2024 for meetings on May 9, 2024 and May 17, 2024 for changes to the IEP including a material change in services, with parental signature dated May 22, 2024 giving consent

The assistant special education director reported in an interview that she contacted the parent to discuss the second device and that she believed the parent agreed to use only one device to meet the student's needs at school and at home until the IEP could be amended.

Conclusion

Based on the evidence reviewed above and in Issue One and Two, the district provided PWN associated with each IEP amendment with or without IEP meetings through the year. The evidence did not show that the district denied parental requests for services. The IEP meeting on October 24, 2023 discussed the virtual reality technology requested by the parent and determined an alternative (assessment for social work services for social development).

With regard to the student's assistive communication device, the IEP dated December 4, 2023 changed the IEP stating that only one, not two, assistive technology devices for communication were required. The IEP as amended on October 24, 2023 and the PWN associated with it required two devices, one for school and one for home.

It is noted that the district provided a device that functioned for the purposes of the IEP's provisions as a communication device in both settings. However, the district should have provided PWN at the time they realized that a single rather than two devices could serve the purposes of the IEP. Unless this change met the definition of a material change in services in K.A.R. 91-40-27(a)(3), parental consent would not be required.

Findings in Issue Two point to a second issue with the district's provision of PWN. After the discussion at the May 17, 2024 IEP meeting, the parent believed that the IEP team had agreed to change the behavior plan to call her when the student was in the sensory room 30 minutes at a time or 3 times in a day. It is unclear if the parent requested it, the district suggested it in the course of the discussion, or the IEP team agreed to it. However, as an important option related to the student's behavior problems, the PWN dated May 17, 2024 should have included it in its provisions as proposed or refused. It is noted that the parent signed the PWN dated May 17, 2024.

Based on the foregoing, ***it is substantiated*** that USD #263 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to providing Prior Written Notice to parent for actions such as denying parental requests

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 above. Corrective action is not required.
2. ISSUE TWO: A violation of 34 CFR 300.324(a)(2)(1) and K.S.A.72-3429(f)(ii)(A)) was found, based on the facts above. Corrective action is required (as follows):
    a. CORRECTIVE ACTION:
        i. By September 6, 2024, USD #263 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 C.F.R 300.324(b)(ii)(A) and K.S.A.72-3429(f)(ii)(A)).
        ii. The district shall bring in an outside behavior expert from TASN to assist the IEP team in planning for and conducting an FBA as well as writing a BIP that comes from the FBA, if the team determines the FBA or BIP is needed. The IEP team shall discuss and determine if the outside expert should continue to provide technical assistance and follow along to review the data to support the IEP team. The district shall provide PWN recording the decisions made about this plan. The district shall submit evidence to SETS that the district completed these actions, such as the IEP team meeting notes, the PWN provided to the parent, the outside expert consulted and the resulting plan of action.
        iii. Date due: September 30, 2024

3. ISSUE THREE: A violation of 34 CFR § 300.503(a)(2) and K.S.A 72-3430(b)(2) was found based on the facts above. Corrective action is required (as follows):
    a. CORRECTIVE ACTION:
        i. By September 6, 2024, USD #263 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 CFR § 300.503(a)(2) and K.S.A 72-3430(b)(2).
        ii. The district will provide PWN for providing only one rather than two school provided communication devices.
        iii. The district will review their policy and procedures for writing and providing PWN to parents. The district will consult with KSDE to acquire out of district training and provide that training on PWN to relevant special educators and administrators in the district, to include the relevant members of the student's IEP team. The district will provide the agenda and date, the training provider, a list of participants, and outline of the training content to KSDE as evidence of its completion.
        iv. Date due: September 30, 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 #435
ON JULY 10, 2024

DATE OF REPORT: AUGUST 10, 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", "parent", or "mother".

The complaint is against USD #435 (Abilene Public Schools) who contracts with the Central Kansas Cooperative in Education (CKCIE) to provide special education services to students enrolled in the school district. In the remainder of the report, both of these 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 60-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 July 10, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all the documentation provided by both the complainant and the district.

The complainant was interviewed by telephone on July 25, 2024 as part of this investigation. The following USD #435 staff were also interviewed on July 25, 2024:

- Shelia Mortimer, CKCIE Special Education Coordinator
- Christine Prater, General Education Science Teacher
- Greg Brown, USD #435 Superintendent
- Gary Frederking, Special Education Teacher
- Dawn Gentry, Speech/Language Pathologist
- Laura Relph, General Education Literature Teacher
- Jenna Delay, Abilene Middle School Principal
- Sarah Loquist, CKCIE General Counsel

The following written documentation was used in consideration of the issue:

1. Individualized Education Program (IEP) for the student dated April 6, 2023

2. Emails dated September 13, 2023 through June 22, 2024 between the parent and various school district staff regarding absences, make-up work, and educational concerns during the 2023-24 school year
3. Medical Excusal Letters for the student dated between October 11, 2023 and April 26, 2024
4. Truancy Referral for the student dated February 23, 2024
5. Notification of Meeting (NOM) dated March 26, 2024
6. IEP for the student dated April 3, 2024
7. Notes from the April 3, 2024 IEP team meeting, handwritten by Dr. Delay
8. PWN for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated April 3, 2024
9. Reevaluation Not Needed – Waiver Request dated April 3, 2024
10. Notes from a parent/student/principal meeting held on May 2, 2024, handwritten by Dr. Delay
11. Email dated May 8, 2024 at 12:39 PM written by the parent to Dr. Delay
12. NOM dated May 10, 2024
13. Conference Summary of the May 15, 2024 IEP team meeting
14. PWN for Evaluation or Reevaluation and Request for Consent dated May 15, 2024
15. IEP Goal Progress Reports for the 2023-24 school year
16. Report Card / Attendance Record for the 2023-24 school year
17. School Board Policy AED titled “School Year and Learning Opportunities”
18. School Board Policy JFB titled "Promotion and Retention”
19. Letter dated July 22, 2024 written by Ms. Mortimer to the parent
20. USD #435 Response to the Allegations dated July 24, 2024 written by Ms. Loquist

Background Information

The student is a 13-year-old young man who was enrolled in the seventh grade in USD #435 during the 2023-24 school year at Abilene Middle School. The student was initially determined eligible for special education in 2015 and his most recent reevaluation was conducted on May 9, 2021,at which time the student was determined to continue eligibility for special education services under the exceptionality category of Speech Impairment. Documentation shows the required three-year reevaluation was waived during the April 3, 2024 IEP team meeting and that the student continues to receive speech therapy to address articulation errors for the phoneme /r/ in conversational speech.

The parent reports and the district staff acknowledged the student has multiple medical diagnoses including Autism Spectrum Disorder (ASD), Attention Deficit Hyperactivity Disorder (ADHD), and gastrointestinal (GI) problems. The parent stated that the student is also diagnosed with Spina Bifida, scoliosis, Sensory Processing Disorder, Oppositional Defiant Disorder (ODD) and Disruptive Impulse Control Disorder (DIDC). However, the district staff indicated the parent has not provided any written documentation of these diagnoses and

noted that they have requested, but not yet received, written consent for release of information to confirm and gather additional information regarding the impact of these diagnoses on the student's education.

Issues Investigated

Based on the written complaint, three issues were identified and investigated.

Issue One

USD #435, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with appropriate notification of the May 16, 2024 IEP team meeting, specifically by not listing the names or positions of all of the participants invited to the IEP team meeting.

Applicable Law

Federal regulations at 34 C.F.R. 300.322(b)(1)(i) require that the district provide the parent with notification of the IEP team meeting indicating the purpose, time, and location of the meeting and who will be in attendance.

Kansas regulations at K.A.R. 91-40-17(b) allow the district to use either the names and/or the titles or positions of the persons who will attend on behalf of the school. The school is to notify the parents about who will be in attendance at an IEP team meeting, however, individuals may be indicated by position only. The school may elect to identify participants by name, but they have no obligation to do so.

Analysis: Findings of Fact

The parent reported that she requested an IEP team meeting at the end of the school year to discuss concerns with multiple absences due to health issues and the district's decision to retain the student in 7th grade for the 2024-25 school year. She indicated that this meeting was held on May 16, 2024 and that she was unaware that all of the student's general education teachers would be in attendance at the IEP meeting in addition to the required IEP team members and the two persons working with the student from The Family Initiative (TFI) who she had invited to the meeting because they had expertise and knowledge about the student. The parent stated that she felt "blind-sided and overwhelmed" by having 17 people in her son's IEP team meeting on that date.

The district reported and documentation showed that the parent requested an IEP team meeting on May 8, 2024 and the meeting was actually held on May 15, 2024. The parent acknowledged that she was aware of the purpose, location, and time of the IEP team meeting and that she attended and participated in the IEP team meeting for the student.

Documentation showed that a Notification of Meeting (NOM) dated May 10, 2024 was emailed to the parent stating "As required by federal and state law, in addition to you, we will have the following people at our meeting:" The NOM then listed who would be invited to the May 15, 2024 IEP team meeting including: "a general education teacher(s) of your child; a special education teacher(s) of your child; a school representative(s); a person who can interpret the instructional implications of evaluation results; the student for transition purposes; and any other person(s) who can help explain the evaluation results or who have special knowledge or expertise regarding your child or services that may be needed". This statement is followed by a section titled "TEAM MEMBERS / POSITION" which was left blank.

The district provided copies of previous NOMs showing the district's practice is to only list the positions of the people who will be attending the scheduled IEP team meeting and not list the names of each person.

Conclusion

Federal regulations require that parents are informed of who will be attending a student's IEP team meeting. Kansas state regulations allow for school districts to list the names of the persons and/or the positions of the persons who will be attending the student's IEP team meeting. There is no obligation for the district to identify the IEP team participants by name.

However, the district should be cautious of lumping a group of people under some general title such as "any other person(s) who can help explain the evaluation results or who have special knowledge or expertise regarding your child or services that may be needed". That kind of lumping of "any other person(s)" can result in exactly what happened here: where the parent feels "blind-sided and overwhelmed" by the number of people at the meeting. This IDEA notice requirement was intended to ensure that parents would not be subjected to this kind of surprise at IEP meetings. When not using names, the district must at least notify parents of the titles of those who will be invited, such as school psychologist, speech therapist, school counselor, special education director, assistant special education director, school attorney, county sheriff, etc. There should be no surprise guests for parents walking into these meetings. That is the purpose of this part of the notice requirement.

In this case, the NOM did not rely on the "any other person(s) " statement. The NOM stated that "a general education teacher(s) of your child" would attend the meeting. While this description did not specifically inform the parent that every general education teacher of her child was going to be invited, the use of the plural "teacher(s)" did adequately notify the parent that she could expect that multiple general education teachers could be invited.

In this case, the LEA provided the parent with a written NOM on May 10, 2024 listing the positions of the persons invited to the May 15, 2024 IEP team meeting. While there may have been some confusion on the part of the parent as to who would be attending because the ambiguous "teacher(s)" and the section of the NOM titled "TEAM MEMBERS / POSITION" being

left blank, the district did meet the compliance requirement to list the positions of the persons who would be attending the by stating "a general education teacher(s) of the student" would be attending the IEP team meeting in addition to the parent. Based on the foregoing, the district is found to be *in compliance* for this issue.

Issue Two

USD #435, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with appropriate prior written notice following the May 16, 2024 IEP team meeting addressing the actions refused by the district.

Applicable Law

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.

It is noted that the IDEA does not address grade placement or retention of a student with a disability. Instead, this authority is granted to local school boards by the state of Kansas and described in local school board policy. For this reason, the decision to retain the student will not be addressed in this investigation other than as a parent request for a re-consideration of the decision made at the May 15, 2024 IEP team meeting.

Analysis: Findings of Fact

As noted in Issue One, the date of the IEP meeting was May 15, 2024.

The parent reported that she requested another IEP team meeting be held so soon following the April 3, 2024 IEP team meeting because of the Middle School Principal's unilateral decision to retain the student in 7th grade due to absences during the second semester. She indicated that she also requested that the student be reevaluated to determine eligibility for special education services under the exceptionality category of Other Health Impaired (OHI) as well as the development of a behavior intervention plan (BIP) to address the student's significant absences during the second semester.

The parent indicated she did not have any notes from the May 15, 2024 IEP team meeting and that she would contact the two persons from TFI who had also attended the IEP team meeting and provide any notes they took. No additional documentation has been received from the parent in regards to May 15, 2024 IEP team meeting notes to date.

The Conference Summary of the May 15, 2024 IEP team meeting showed that the IEP team discussed the parent's request for a reevaluation for possible eligibility under the exceptionality category of OHI. The notes reflect that the IEP team agreed that a reevaluation was necessary and proposed gathering additional information in the areas of Health,

Academic, Social/Emotional/Behavioral as well as conducting a functional behavioral assessment (FBA) in order to gather the necessary data to develop a BIP, if determined necessary.

The Conference Summary also showed that the retention decision was discussed and the parent advised that this was an issue that fell under USD #435 School Board Policy. It is noted the parent subsequently requested and was granted a hearing with members of the USD #435 Board of Education to consider reversing the building administrator's recommendation for retention per the school board policy.

The district provided a copy of a Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent dated May 15, 2024 and the CKCIE Coordinator reported this notice was provided to the parent along with multiple Release of Information forms for various health agencies at the conclusion of the IEP team meeting. District staff reported that no response was received from the parent and that the CKCIE Coordinator wrote a letter to the parent dated July 20, 2024 which summarized the May 15, 2024 IEP team meeting and again requested consent for the proposed reevaluation. Documentation shows the PWN was emailed and mailed to the parent again on July 22, 2024. The parent was unsure if she had originally received the PWN at the IEP team meeting but acknowledged receiving the emailed copy.

Conclusion

Federal regulations require that districts provide prior written notice of any decisions proposed or refused related to the identification, evaluation, educational placement, or the provision of FAPE to the student.

In this case, the parent requested the district consider a reevaluation of the student for the exceptionality category of OHI, the development of a BIP to address attendance concerns, and re-consideration of the retention decision at the May 15, 2024 IEP team meeting. Documentation showed these topics were discussed by the IEP team, including the parent, and that the district provided the parent with PWN requesting consent to conduct a reevaluation and FBA of the student on order to gather additional data to determine eligibility for the exceptionality category of OHI and the development of a BIP, if necessary, following the IEP team meeting on May 15, 2024. When consent had not been provided, the district staff provided the parent with additional information and another copy of the PWN requesting consent to conduct the reevaluation.

It is noted that the parent's request for reconsideration of the retention decision was not included in the PWN; however, retention does not fall under the jurisdiction of the IDEA. Accordingly, the IEP team refused to address the issue by taking no action, neither refusing nor accepting the parent's proposal. While the district might have included the rationale for the refusal to address the issue of retention at the IEP team meeting or in a PWN to clarify this

issue for the parent, it was not required and subsequent actions taken by the parent reflect an understanding of School Board Policy JFB titled "Promotion and Retention".

Based on the foregoing, USD #435 is found to be in compliance with the requirement to provide the parent with appropriate prior written notice following the May 15, 2024 IEP team meeting.

Issue Three

USD #435, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by not providing the required special education services during the 2024 extended school year.

Applicable Law

Federal regulations at 34 C.F.R. 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. In addition, federal regulations at 34 C.F.R. 300.106(b) require that the IEP team must consider the need for extended school year services in order to provide a free appropriate public education (FAPE) to each student with a disability.

Federal regulations implementing the IDEA at 34 C.F.R. 300.324(b)(1) also 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.

Federal regulations implementing the IDEA at 34 C.F.R. 300.303(b)(2) require that a reevaluation of the student with a disability be conducted at least once every three years unless the parent and the district agree that a reevaluation is unnecessary. In addition, federal regulations implementing the IDEA at 34 C.F.R. 300.304(b)(6) require that any special education evaluation be sufficiently comprehensive to identify all of the child's special education and related service needs.

Finally, federal regulations at 34 C.F.R. 300.327 require that, consistent with 34 C.F.R. 300.501(c), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

Analysis: Findings of Fact

The findings of Issue Two are incorporated herein by reference.

During the 2023-24 school year, the student had two IEPs in effect. The first was developed on April 6, 2023 at the end of the 2022-23 school year and the second was developed on April 3,

2024 at the end of the 2023-24 school year. Both IEPs required 20 minutes per week of speech therapy during the 2023-24 school year. Neither IEP required extended school year (ESY) services.

The parent reported and the district acknowledged that the student missed the majority of second semester due to medical and mental health issues and that the parent provided multiple medical excusals to the district and made efforts to get the student to school including calling the police for assistance. Both parties stated that school district staff also assisted in attempting to get the student to school by going to the student's home as well as providing 1-1 assistance between the car and the school entrance on several occasions.

The second semester grade card showed the student failed all 7th grade classes and missed a total of 62 school days during that time frame.

IEP goal progress report for the third quarter indicated the student was not making progress towards his IEP goal and stated, "Student has been absent since last report. No new data to report."

The annual IEP team meeting was held on April 3, 2024. Documentation and interviews showed that the IEP team waived the required three-year reevaluation and continued eligibility and special education services for a Speech Impairment. Handwritten notes from the meeting kept by the Middle School Principal stated that the student had recently been hospitalized and his medications updated but that he was able to return to school with no restrictions after the parent kept him home for one week.

The IEP goal progress report for fourth quarter indicated the student was making progress towards his IEP goal and stated, "Student has frequent absences since his last IEP. No new data to report at this time."

The parent indicated the district reported her for truancy during the third quarter and then determined the student would be retained in the 7th grade for the next school year. She was informed of the retention decision at a meeting with the Middle School Principal on May 2, 2024. The parent stated that she was told to return the student's computer and to keep the student home for the remainder of the school year because there was no way he would be able to pass the 7th grade at this point.

Handwritten notes from the Middle School Principal dated May 2, 2024 stated:

- Discussed attendance and explained that he hasn't attended more than 11 days this semester, so we have to retain.
- Mom/student asked about summer school but understands it's not an option because of lack of exposure to curriculum.
- Asked student about why he isn't into school – bullying? issues with teachers? issues with peers? Student said only issue is he doesn't want to wake up early because he is up late on game.

Attendance records show the student's attendance was not marked beginning May 3, 2024; previously, the student's attendance was recorded as "U" when the student was absent.

The parent requested an IEP team meeting on May 8, 2024 which was held on May 15, 2024, which was two days prior to the last day of the school year and nine school days following the May 2, 2024 meeting between the parent, student, and Middle School Principal.

At that meeting, the district offered a plan to allow the student to attend summer school to complete assignments to show mastery of the 7th grade standards in an effort to avoid retention and the parent reported she decided to start the student back in school at the beginning of summer school. The parent reported the student was assigned to work in the principal's office with no teacher assistance during summer school, and the student did not complete the assigned work.

Documentation showed that the parent requested and the district proposed a reevaluation of the student during the May 15, 2024 IEP team meeting to determine if the student met the eligibility criteria for an exceptionality in the area of OHI and needed special education services including a BIP to address the significant number of absences from school.

The parent reported that she has subsequently requested for the student to transfer to USD #473 for the 2024-25 school year.

Conclusion

Federal regulations at 34 C.F.R. 300.106(b) require that the IEP team must consider the need for extended school year (ESY) services to provide a student with FAPE. In this case, there is documentation to support that ESY was considered at the April 3, 2024 IEP team meeting and a determination made by the IEP team that speech therapy services were not necessary during the summer for the student to address the /r/ phoneme in conversational speech.

It is noted that the parent's original allegation specifically stated that services were not provided to the student during ESY. Based on interviews during the investigation, it appears that the parent confused ESY services for speech therapy with the district's plan to allow the student to demonstrate mastery of 7th grade standards during summer school. The IDEA does not address the provision of general education summer school nor of grade placement / retention and both issues fall under the jurisdiction of school board policy and, as such, no findings related to these allegations will be made in this report.

However, federal regulations at 34 C.F.R. 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 and federal regulations 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, IEP goal progress reports for the third and fourth quarters of the 2023-24 school year both reflect that there was no new data to report during both reporting periods. In addition, the grade card showed the student had failed all 7th grade classes during this period and had been absent the majority of the second semester due to medical and mental health issues.

The district reported it was ready, willing, and able to provide the student with the 20 minutes per week of speech therapy during the third and fourth quarters of the 2023-24 school year and that the lack of services and data collection was the result of student absences rather than any failure on the part of the district.

Interviews and documentation show that the student's IEP team was reconvened on April 3, 2024 and again on May 15, 2024 to review and revise the IEP. In both instances, documentation showed the medical diagnoses and student absences were considered in the development of the IEP at each meeting and the parent was provided with PWN continuing the 20 minutes per week of speech therapy on April 3, 2024 and again on May 15, 2024. Based on the foregoing, it appears the district followed the appropriate procedures required by the IDEA and noncompliance is not identified for failing to implement the student's IEP or for failing to reconvene the student's IEP due to lack of progress towards IEP goals.

It is also noted that federal regulations at 34 C.F.R. 300. 303(b)(2) require that a reevaluation of the student with a disability be conducted at least once every three years unless the parent and the district agree that a reevaluation is unnecessary. In addition, federal regulations implementing the IDEA at 34 C.F.R. 300.304(b)(6) require that any special education evaluation be sufficiently comprehensive to identify all the child's special education and related service needs.

In this case, IEP goal progress report for the third quarter of the 2023-24 school year reflected that there was no new data to report during this reporting period because of student absences and the grade card showed the student had failed all 7th grade classes during third quarter as well. However, while the district was aware of multiple medical issues that may have been contributing to these concerns, the parent and district agreed to waive the three-year reevaluation of the student at the April 3, 2024 IEP team meeting and to continue eligibility under the category of Speech Impairment after consideration of the student's most recent hospitalization, change of medication, and release to return to school with no restrictions as documented in the handwritten meeting notes as well as the PWN.

On May 15, the parent requested and the district agreed to conduct a reevaluation of the student to determine eligibility and the need for special education and related services under the suspected exceptionality category of OHI. Documentation shows the district provided the parent with appropriate prior written notice to conduct the proposed reevaluation. Based on the foregoing, noncompliance is not identified in regards to conducting a reevaluation at least

once every three years and to determine all of the special education and related service needs of the student.

Finally, federal regulations at 34 C.F.R. 300.327 require that parents be included in any decision to change the educational placement of the student and be provided with appropriate PWN describing any such proposed changes.

In this case, the parent reported the Middle School Principal told her to not send the student to school at the May 2, 2024 meeting, which was held to discuss retention. The Middle School Principal reported and notes do not reflect this statement being made during the meeting.

While It is unclear what was actually said at the meeting, it is obvious that the parent believed the student was no longer allowed to return to school for the remainder of the 2023-24 school year because of the decision to retain the student in 7th grade due to excessive absences as evidenced by the student's lack of attendance after May 2, 2024 and the parent's subsequent request for an IEP team meeting to discuss a reevaluation for an eligibility determination under the exceptionality category of OHI, to discuss the need for a BIP to address the significant absences, and the request to reconsider the retention decision.

Documentation and interviews showed the district appropriately responded and conducted an IEP team meeting on May 15, 2024 to address the parent's requests and clarified that the student was allowed to attend summer school in an effort to avoid retention. While a finding of noncompliance is not identified for parent's perception that the Middle School Principal unilaterally changed the placement of the student at the May 2, 2024 meeting because of the decision to retain the student in accordance to School Board Policy JFB, it is recommended that training, or at least additional information, be provided to administrators in USD #435 regarding any decisions that might impact the educational placement of students with disabilities and the requirement that placement decisions are made by the IEP team, including the parent, in order to avoid future misunderstandings with parents.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of federal regulations at 34 C.F.R. 300.322(b)(1)(i) and Kansas regulations at K.A.R. 91-40-17(b) w*as not found* because the district provided the parent with a NOM for the May 15, 2024 IEP team stating the positions of the persons who would be in attendance.
2. ISSUE TWO: A violation of federal regulations at 34 C.F.R. 300.503(a) *was not found* because the district did provide the parent with appropriate PWN regarding issues that fell under the jurisdiction of the IDEA and not local school board policy, specifically retention.
3. ISSUE THREE: A violation of federal regulations at 34 C.F.R. 300.106(b) i*s not substantiated* because the IEP team did consider the need for ESY services for the student during the 2023-24 school year. In addition, a violation of federal regulations at

34 C.F.R. 300. 323(c)(2) and 34 C.F.R. 300.324(b)(1) is not substantiated because the lack of services provided to the student was the result of student absences not the district's failure to have services available and the IEP team was reconvened on April 3, 2024 and again on May 15, 2024 to address absences of the student. A violation of federal regulations at 34 C.F.R. 300. 303(b)(2) and 34 C.F.R. 300.304(b)(6) is also not substantiated because the district considered and determined the required three-year reevaluation was not necessary at the April 3, 2024 IEP team meeting but subsequently determined a reevaluation was necessary at the May 15, 2024 IEP team meeting a provided the parent with appropriate PWN to gather additional data to determine eligibility for the category of OHI and to determine the need for any special education services including a BIP. Finally, a violation of federal regulations at 34 C.F.R. 300.327 is not substantiated because it is unclear whether the Middle School Principal actually told the parent not to send the student to school for the remainder of the school year because of the decision to retain the student in accordance with School Board Policy JFB or if this was just the parent's interpretation of the discussion following the May 2, 2024 retention meeting. Regardless, this issue was clarified with the parent at the IEP team meeting held on May 15, 2024 and, while noncompliance was not identified, it is recommended that USD #435 provide additional training and/or information to school administrators regarding careful communication with parents in regards to any decisions that might impact the educational placement of students with disabilities and the requirement that placement decisions are made by the IEP team, including the parent, in order to avoid future misunderstandings with parents.

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 JULY 12, 2024.

DATE OF REPORT: AUGUST 15, 2024

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

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 parent through a phone call with a translator on July 24, gathering additional information and verifying the specific allegations to be investigated. Laura Jurgensen provided the specific allegation to be investigated to the parent (in Spanish) and the district (in English) via email on July 24. The parent did not dispute how the complaint investigator framed the issue to be investigated. The parent and investigator also exchanged multiple emails in Spanish. The district special education director provided the investigator with a response to the issue the investigator identified, as well as all documentation and data the investigator requested.

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

- Kan. State Bd. of Educ. License for Student's Teacher, Nov. 6, 2022–Nov. 6, 2027.
- District's Updated Response to the Complaint, Aug. 9, 2024.
- Student 2023–24 Attendance Summary, Aug. 9, 2024.
- District's Response to the Complaint, Aug. 6, 2024.
- Parent's Complaint, Jul. 12, 2024.
- Student's DRDP Assessment Instrument, May 22, 2024.
- Lesson Plans for Student's Classroom, Feb.–May 2024.
- Student Evaluation/Eligibility Report, Mar. 7, 2024.
- Student Evaluation/Eligibility Meeting Notes, Mar. 7, 2024.

- Student's Desired Results Developmental Profile (DRDP) Assessment Instrument, Mar. 6, 2024.
- Child Find/Parent Referral Process, last updated Feb. 26, 2023.
- Kan. City Kan. Pub. Sch. Bd. Policies, Child Find, Identification, and Eligibility, last updated Aug. 28, 2018.

Background Information

This complaint focuses on a student in early childhood during the time period covered by the complaint investigation. In December 2023 this parent filed a complaint asserting that the district was not meeting child find requirements with her child. The district agreed to evaluate the child and the parent withdrew the complaint. On July 12, the parent filed the present complaint, which is identical to the December 2023 complaint. When the district questioned the complaint, Kansas State Department of Education (KSDE) staff informed the district that the complaint investigator would clarify the allegation and that nothing prevented the district from reaching out to the parent to clarify the concern and see if there was anything the district could do to resolve it. (Email from KSDE Staff to District, Jul. 19, 2024.)

Issues

Through the complaint investigator's discussion with the complainant, the parent alleges one issues upon which this investigation will focus:

Issue: Child Find

Did USD 500 follow child find requirements with this student? 34 C.F.R. § 300.111(a)(1)(i); K.A.R. §§ 91-40-7(a), (c)(1), (2).

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). A local board may refer a child who is enrolled in public school for an evaluation if one of the following conditions is met:

(1) School personnel have data-based documentation indicating that general education interventions and strategies would be inadequate to address the areas of concern for the child.

(2) School 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)(1), (2).

Analysis: Findings of Fact

The parent maintains that the decision not to find the child eligible in the March evaluation was incorrect. (Complaint Investigator and Parent Phone Call, July 24, 2024.) A review of the evaluation report and the meeting notes from the evaluation/eligibility meeting shows that the parent signed to indicate her agreement of the evaluation report and the meeting notes do not provide any information regarding the parent's disagreement. (Student Evaluation/Eligibility Report, Mar. 7, 2024; Student Evaluation/Eligibility Meeting Notes, Mar. 7, 2024.) This complaint investigator explained to the parent that if the parent disagrees with the evaluation, the parent may request that the district provide an independent education evaluation. (Complaint Investigator and Parent Phone Call, July 24, 2024.) The parent did not indicate that the evaluation was inappropriate in any way, only her disagreement with the evaluation's conclusion. (Complaint Investigator and Parent Phone Call, July 24, 2024.) The parent asserts that the student did not make progress for the remainder of the school year, which she believes should have led the district to evaluate the student again and find him eligible for special education. (Complaint Investigator and Parent Phone Call, July 24, 2024.) Therefore, this investigation focused on whether the district fulfilled its child find obligations to this student following the March 7 evaluation and decision not to find the child eligible for special education.

The complaint investigator requested information and documentation from the parent to support her concern that the student did not make progress following the March 7 evaluation that should have led the district to evaluate the student. (Emails from Complaint Investigator to Parent, July 24, Aug. 6 and 7, 2024.) The parent indicated she had no documentation to provide and did not provide any anecdotal information to support her concern. (Email from Parent to Complaint Investigator, Aug. 6, 2024.)

The district provided a great deal of information to support that it met the requirements of K.A.R. § 91-40-7(a) and K.A.R. § 91-40-7(c)(1), (2). First, to show that it meets the requirement in K.A.R. § 91-40-7(a) to "adopt and implement policies and procedures to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction," the district provided its

written child find policies and procedures. (Kan. City Kan. Pub. Sch. Bd. Policies, Child Find, Identification, and Eligibility, last updated Aug. 28, 2018.) Second, to show that it met the requirements of K.A.R. § 91-40-7(c)(1), to consider an evaluation if the district has "data-based documentation indicating that general education interventions and strategies would be inadequate to address the areas of concern for the child" the district provided the data upon which it based its decision that general education interventions and strategies continued to be appropriate to address the child's needs. The March 7 initial evaluation contained a great deal of data and information that led the student's evaluation and eligibility team, including the parent, to conclude that the child was not eligible for special education. (Student Evaluation/Eligibility Report, Mar. 7, 2024.) The district did not have access to any information that would have indicated the data and information relied on in this evaluation was no longer relevant or had changed in the just over two months of the school year following the evaluation. (District's Updated Response to the Complaint, Aug. 9, 2024.) Additionally, the student participated in the district's general education progress assessment with his peers on March 6 and May 22, 2024, and that assessment indicated he was performing at the level just below kindergarten performance, as expected for a student in the spring before his kindergarten year. (Student's DRDP Assessment Instruments, Mar. 6 and May 22, 2024.) The district also provided informal data from the student's teacher and information on the child's consistent school attendance to further support the district's conclusion that, "the student continued to make progress in the general education setting and there were no concerns raised by the parent or the school that would trigger the district to complete a second evaluation." (District's Updated Response to the Complaint, Aug. 9, 2024.)

To support that it met the requirements of K.A.R. § 91-40-7(c)(2) in not referring the child for a second evaluation, the district provided several items. To show that the district provided the child with "appropriate instruction in regular education settings," the district provided lesson plans from the child's teacher, grounded in the district's early childhood curriculum, from the time of the evaluation through the end of the school year. (K.A.R. § 91-40-7(c)(2)(A); Lesson Plans for Student's Classroom, Feb.–May 2024.) These lesson plans are detailed and provide alignment in each subject to the district's early childhood curriculum. (Lesson Plans for Student's Classroom, Feb.–May 2024.) The district also provided information to show that the district delivered instruction to the student through "qualified personnel" by providing a copy of the license for the student's teacher, which the complaint investigator independently verified through KSDE's Educator License Lookup. (K.A.R. § 91-40-7(c)(2)(A); Kan. State Bd. of Educ. License for Student's Teacher, Nov. 6, 2022–Nov. 6, 2027; https://appspublic.ksde.org/TLL/SearchLicense.aspx.) Additionally, the district provided the previously referenced general assessments for this student to show that the district "repeatedly assessed" "[t]he child's academic achievement . . . at reasonable intervals that reflected formal assessment of the student's progress during instruction." (K.A.R. § 91-40-7(c)(2)(B); Student's DRDP Assessment Instruments, Mar. 6 and May 22, 2024.) The student's

general education assessments support the district's conclusion that the, "student demonstrated knowledge and results [that] were in the last tier in preparation for Kindergarten. [The student's] data, outside of English Development [the student's first language is Spanish], never fell in the responding or exploring levels, all of his scores fell in the building [level] meaning that the student understood how something works and not just exploring or responding with senses." (Student's DRDP Assessment Instruments, Mar. 6 and May 22, 2024.) Reviewing this student's general education assessments shows that this student was progressing appropriately to be ready for kindergarten. (Student's DRDP Assessment Instruments, Mar. 6 and May 22, 2024.) The district indicated that it met the requirements of (K.A.R. § 91-40-7(c)(2)(C) to provide the referenced assessment results to the child's parent by sending the results "home with students at the end of each quarter in their take home folders. The principal reports that the student's portfolio of work was also sent home to the parent at the end of the year." (District's Updated Response to the Complaint, Aug. 9, 2024.) All this information led the district to conclude that a second evaluation would be inappropriate. (District's Updated Response to the Complaint, Aug. 9, 2024.)

Conclusion

The district was able to provide clear information to show that it met its child find obligations by having written child find policies and procedures. The district was able to provide a great deal of clear information to show that the child continued to make progress in the just over two months of the school year following the student's evaluation and that evaluating the student again would not have been appropriate. Neither the parent nor the district could point to any information that would provide justification for the parent's assertion that the district should have evaluated the child again between the child's first evaluation and the end of the 2023–24 school year.

Therefore, this investigation concludes that USD 500 met its obligation to follow child find requirements with this student under 34 C.F.R. § 300.111(a)(1)(i) and K.A.R. §§ 91- 40-7(a), (c)(1), (2). As there is *no violation*, no corrective action is needed.

Investigator

Laura N. Jurgensen

Laura N. Jurgensen 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.

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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 #107, ROCK HILL PUBLIC SCHOOLS
ON JULY 30, 2024

DATE OF REPORT: AUGUST 30, 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 Beloit Special Education Cooperative provides special education services to the district. In the remainder of the report the Beloit Special Education Cooperative will be referred to as the "cooperative" or the "coop." The district accessed an attorney during the investigation and in the report, Ms. Tammy Somogye will be referred to as the "district attorney."

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 July 30, 2024 and the 30-day timeline ended on August 30, 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 Parent. All evidence submitted was reviewed, but some evidence was not specific to the issues of investigation or older than twelve months. The evidence listed below was used in consideration of the investigation.

Additionally, the Investigator contacted the District via the district attorney and Parent several times by phone and email to clarify evidence. The Investigator spoke with the mother by phone on August 2 and August 19, 2024 and by email on several occasions to clarify specific points. The investigator interviewed the student on August 19, 2024 with the mother present. The Investigator interacted with the District by email to clarify evidence and a phone interview was conducted on August 19, 2024 with Christie Gerdes, Special Education Director, Beloit Special Education Cooperative, 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:

- ● Weekly email blast to high school teachers from principal dated August 27, 2023 at 8:26 a.m.; September 24, 2023 at 11:17 a.m.; October 8, 2023 at 8:33 a.m.; October 15, 2023 at 9:28 a.m.; October 29, 2023 at 10:08 a.m.; November 5, 2023 at 7;46 a.m.; November 12, 2023 at 7:27 a.m. January 14, 2024 at 10:22 a.m.; January 18, 2024 at 10:02 a.m.; February 4, 2024 at 9:13 a.m.; February 18, 2024 at 9:20 a.m.; March 17, 2024 at 12:33 p.m.; April 7, 2024 at 9:04 a.m.; April 8, 2024 at 5:56 a.m.
- ● Student's pediatrician's letter dated December 12, 2023
- ● Email from principal to PE teacher, business teacher, art teacher, social studies teacher and English teacher dated January 5, 2024 at 7:43 a.m.
- ● Letter from district attorney to parent dated October 16, 2023 in response to parent September 29, 2023 request to superintendent and special education director
- ● Email from special education teacher to special education director dated January 9, 2024 at 7:14 a.m.
- ● Prior Written Notice dated January 24, 2024
- ● Letter from mother to superintendent dated January 24, 2024
- ● Email from superintendent to mother dated January 29, 2024 at 4:55 p.m. including attached letter dated January 29, 2024
- ● Letter from district attorney to parent dated January 31, 2024
- ● Email from art teacher to special education teacher dated March 21, 2024 at 11:45 a.m.
- ● Email from English teacher to special education teacher dated March 25, 2024 at 10:38 a.m.
- ● Email from special education teacher to principal, speech and language pathologist, school psychologist, interrelated teacher, Beloit, English teacher, and social studies teacher dated March 25, 2024 at 1:22 p.m.
- ● Emails from business teacher to special education teacher dated March 26, 2024 at 11:04 a.m.
- ● Notice of Meeting dated March 26, 2024, signed by parent April 9, 2024, documenting parent rights were provided
- ● Prior Written Notice dated April 8, 2024; parent provided consent April 9, 2024
- ● Email exchange between parent and special education director dated April 8, 2024 between 12:25 p.m. and 3:16 p.m.
- ● Individualized Education Plan dated April 9, 2024
- ● Staffing Summary/Team Report, dated April 9, 2024
- ● Parent concerns written document dated April 9, 2024
- ● Prior Written Notice for Evaluation or Reevaluation and Request for Consent, dated April 18, 2024

- Letter from special education director to parent dated April 19, 2024 in response to parent concerns dated April 9, 2024
- 24FC107-001 investigation report, dated June 18, 2024
- District response received August 14, 2024
- Email from mother to investigator dated August 19, 2024 at 3:14 p.m.
- Email from mother to investigator dated August 20, 2024 at 7:32 a.m.
- Email from district's attorney to investigator dated August 20, 2024 at 12:08 p.m.
- Email exchange between the investigator and district's attorney dated August 20, 2024 between 2:25 p.m. and 10:48 p.m.
- Email exchange between the investigator and parent August 21, 2024 between 9:38 a.m. and 10:08 a.m.
- Email exchange between the investigator and district's attorney dated between August 21, 2024 at 9:40 a.m. and August 22, 2024 at 11:43 a.m.
- Kansas Educator Code of Conduct
- United States Department of Education Office of Special Education and Rehabilitative Services Personnel Qualifications under Part B of the Individuals with Disabilities Education Act (IDEA), dated October 4, 2022
- Partially redacted three page excel spreadsheet (undated) of transition survey with headings of last and first name of student, grade, five things of interest and any notes for the 6-12 school counselor to consider provided to parent through a KORA request. Twenty-five 8th graders, fifteen 9th graders, 22 10th graders, nineteen 11th graders (including student) and fifteen 12th graders not redacted
- Student schedule
- Teacher License for Amy Michelle McDill, expires February 13, 2024
- Teacher License for Dusti Renee Herz, expires June 30, 2024, June 30, 2026

Background Information

The student was a junior during the 2023-2024 school year where he was eligible for special education and related services under the category of Autism and Other Health Impaired because of a medical diagnosis of ADHD. He had an additional medical diagnosis that required an accommodation but was not considered for eligibility. During the 2023-2024 school year the Student had two IEPs in effect. The student received special education and related services for speech language and psychological services.

This complaint addresses the student's transition plan, implementing a student accommodation, inappropriate release of personally identifiable information, appropriate teacher certification, appropriate use of paraeducators, and procedural practices associated with Notice of Meetings, Prior Written Notices, planning meetings and school attorney role in IEP preparation, and IEP present levels.

Issues Investigated

Eleven issues were investigated and are listed below.

1. Did USD #107 provide the parent a Prior Written Notice either agreeing to or refusing to conduct a transition evaluation when requested during the 2023-2024 school year?
2. Did USD #107 include transition goals for the student in the April 9, 2024 IEP based on current transition evaluation?
3. Did the USD #107 share Personally Identifiable Information (PII) about the student and other students with the staff and the parent during the 2023-2024 school year?
4. Did the special education teacher(s) at the student's high school in USD #107 hold current and appropriate Kansas certifications during the 23-24 school year?
5. Did USD #107 use paras in the role of teachers during the 23-24 school year at the student's high school?
6. Did USD #107 use paras to teach the student life skill goals included in the student's IEP during the 23-24 school year?
7. Did USD #107 provide a NOM for the 4/9/2024 annual IEP meeting to the parent, incorrectly listing the parent as an outside member of the IEP team?
8. Did the student's IEP team hold staffing meetings and collect feedback from the district's attorney prior to holding the April 9, 2024 IEP meeting with the entire IEP team?
9. Did USD #107 provide the student his IEP accommodation paper to take notes during his April 9, 2024 IEP meeting?
10. Did the student's draft IEP dated April 9, 2024 contain incorrect information about the student's present levels and the student receiving para help?
11. Did USD #107 provide the parent a PWN reporting IEP team decisions for the April 9, 2024 IEP annual meeting to the family prior to the annual IEP meeting?

Issue One

Did USD #107 provide the parent a Prior Written Notice either agreeing to or refusing to conduct a transition evaluation when requested during the 2023-2024 school year?

Applicable Law

According to Federal regulations at 34 C.F.R. §300.503 (a)(1) and 34 C.F.R. §300.503 (a)(2), and Kansas state statutes at K.S.A. §72-3430(b)(2) prior written notice 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; or (2) 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 she requested that the student have a new transition evaluation done during the April 9, 2024 IEP. She stated that this request was denied by the director of special education because the parent had agreed to refer the student to vocational rehabilitation, and they would evaluate the student. The parent stated that the vocational rehabilitation evaluation was not timely for the IEP planning for the April 9, 2024 annual IEP.

The District responded that the district had completed transition evaluation the previous school year as part of the three-year reevaluation for the student and they felt they had enough information to develop the IEP with the updated assessment. Further, the student was being referred to vocational rehabilitation services and another comprehensive evaluation would be conducted as part of that.

The staffing summary/team report dated April 9, 2024 does not record any discussion or decision about the transition plan, evaluation, or assessment.

A document submitted by the parent on April 9, 2024 titled, "Parent Concerns" records, "I would like another transition evaluation done with a hands-on skills assessment. [Student] can tell you how to do different skills, but he has never actually physically done them."

The director of special education stated during the August 19, 2024 interview with the investigator that the transition coordinator for the Coop had completed a comprehensive transition evaluation the previous school year as part of the three-year reevaluation.

The mother stated during the August 19, 2024 interview that when she asked for a transition evaluation, she was told the district would not do another one because a thorough evaluation will be conducted as a part of the student's referral to vocational rehabilitation services.

In a letter from the special education director to the parent on April 19, 2024 in response to the parent's April 9, 2024 document it states, "[Student] was referred to Voc Rehab during the meeting and the parent signed the release of information form at that time. Voc Rehab is in the process of scheduling a time to meet with [Student] and parents to discuss a functional vocational assessment.

The prior written notice for evaluation or reevaluation and request for consent, dated April 18, 2024 documents that the cooperative refuses to conduct a reevaluation, with the explanation, "The parent has requested a re-evaluation of [Student's] transition skills with a hands-on assessment. The cooperative completed a re-evaluation on 03/27/2023 which included a transition assessment with parent, teacher, and student interviews. The assessment also included Life Centered Career Education Knowledge & Performance Battery and the Enderle-Severson Transition Rating Scale. These results were included in the reevaluation at that time. At the IEP meeting on 4/9/24, the parent signed a release between the Cooperative and Voc Rehab. Voc Rehab is in contact with both the transition coordinator for [cooperative] and the

parents. Voc Rehab will be scheduling a time for a functional vocational assessment to be completed with [student]."

Conclusion

It is found that the parent made a request for a transition reevaluation on April 9, 2024 in the form of a written request. On April 19, 2024, the district rejected the request through a prior written notice. Based on the foregoing, ***it is not substantiated*** that USD #107 failed to provide the parent a Prior Written Notice either agreeing to or refusing to conduct a transition evaluation when requested during the 2023-2024 school year.

Issue Two

Did USD #107 include transition goals for the student in the April 9, 2024 IEP based on current transition evaluation?

Applicable Law

Federal regulations at 34 C.F.R. §300.320(b)(1) and Kansas state statutes at K.S.A. §72-3429(c)(8)(A) state that the IEP for each exceptional child shall include, beginning at age 14, and updated annually thereafter: (A) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and where appropriate, independent living skills.

Analysis: Findings of Fact

The Parent alleged during her discussion with the investigator that the district used transition evaluation from the previous year to develop the transition plan for the student during the April 9, 2024 IEP. She stated that because the student would be evaluated as part of his referral to vocational rehabilitation, as explained to her by the special education director it was not necessary to evaluate him. She stated however, that the student had accomplished many things and learned more about what he wanted to do post school since his last IEP and a current evaluation was necessary to develop an appropriate IEP that includes current and appropriate postsecondary goals.

The District responded that as noted in the student's April 9, 2024 IEP the student was given a transition assessment on February 5, 2024 and that assessment was used to develop the goals and activities of the transition plan.

The findings of Issue One are incorporated herein by reference.

The IEP dated April 9, 2024 documents the date of the Enderle-Severson Transition Rating Scale (TRS 1.0) as February 5, 2024 and records the following informal assessments scores as Employment: 62%; Recreation/Leisure: 100%; Home Living: 71%; Community Participation; 50%, Post-Secondary Education: 56%.

The Enderle-Severson Transition Rating Scale findings from the February 5, 2024 administration reported the following needs:

Area	Skills
Employment	• Hygiene and grooming skills • Job seeking skills • Experience completing a job application • Job interviewing skills • Career research • Create a resume • Community-based work experience
Home Living	• Develop an understanding of government/civics and how to register to vote • Develop an understanding of concepts related to physical, emotional, and relational awareness • Basic banking skills • Experience in making medical/dental appointments • Money management skills such as budgeting, paying bills on time, and taxes • Basic parenting skills • Experience planning & cooking a balanced meal
Community Participation	• housing • options for large purchases (credit cards & loans) • insurance
Post-Secondary Education	• Identify post-secondary options Identify higher education support services • Prepare for and take ACT, Accuplacer, or other college entrance exam • Apply for post-secondary education • Apply for financial assistance to access post-secondary training
Recreation	• No needs identified

The IEP records transition services in the areas of life skills for the remainder of the 2023-2024 school year and speech/language skills for the remainder of the 2023-2024 school year, continuing into the 2024-2025 school year. The speech goal which includes benchmarks for initiating communicative interactions, conversational turn-taking, identifying and understanding non-verbal social communication, identifying breakdown, in communications and making appropriate adjustments, and learning and applying strategies for resolving conflicts with peers and adults, will support the student's post-secondary goals, as these types of communication skills are necessary for students who plan to attend a community or technical college and/or

work as a law enforcement dispatcher. The life skill goal, taught during the life skills class covered the needs identified in the IEP.

During the August 19, 2024 interview with the investigator the special education teacher described that the focus of life skills was writing checks and checking accounts as well as guided towards being a senior and what life would be after that. The textbook and curriculum used have sections designed to address the student's needs. The special education teacher stated that the plan was to focus on post-secondary education (along with his senior classmates) and application of living skills during the senior year.

The mother stated during the August 19, 2024 interview that she thought the February 5, 2024 assessment and findings were not an accurate view of what he could do because they only asked him to self-rate his ability to do the skills rather than asking him to do anything hands-on. She stated that he was very knowledgeable about how to do many adult life skills but would struggle with actually performing the skills.

Conclusion

It is found that the needs assessment conducted to develop the April 9, 2024 IEP was current and that the goals and activities were derived from the assessment. It is acknowledged that the life skills were simulated and not hands-on, but it was not specified in the IEP that the activities would be taught or practiced in the community (or applied environment). It is further acknowledged that the student, parent, and district agree that hands-on instruction and practice in the community or natural environment in which the skill will be performed will be important for the student. Therefore, *it is not substantiated* that USD #107 failed to include transition goals for the student in the April 9, 2024 IEP based on current transition evaluation.

Issue Three

Did the USD #107 share Personally Identifiable Information (PII) about the student and other students with the staff and the parent during the 2023-2024 school year?

Applicable Law

Federal regulations at 34 C.F.R. §§300.610 though 300.626 identify the confidentiality requirements that apply to children under Part B of the IDEA. They protect the personally identifiable information (PII) in education records collected, maintained, or used under Part B of the IDEA.34 C.F.R §300.32 define PII as 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 of student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Under 34 CFR § 300.622(a) of the IDEA Part B regulations, parental consent must be obtained before PII is disclosed to parties, other than officials of participating agencies. Under IDEA Part

B and pursuant to the FERPA regulations at 34 CFR § 99.31(a)(1), prior written consent is not required to disclose PII from student education records to school officials, including teachers, within the educational agency or institution, whom the agency or institution has determined to have legitimate educational interests. 34 CFR § 99.31(a)(1)(i)(A).

The Kansas Open Records Act (KORA) is a state law that requires public agencies, including school districts, to make their records available to the public upon request. This means that parents and students can request access to documents, emails, and other records held by the school district.

Analysis: Findings of Fact

The Parent alleged that a letter from the student's pediatrician containing a medical diagnosis, direction for classroom staff and the pediatrician's name and practice that was submitted to the principal was distributed to the student's teachers, rather than kept private with the information shared at a meeting. The parent alleged that the staff did not need to know where the student goes to the doctor. The parent additionally alleged that the principal sends a weekly email to all high school staff with the names and dates of students with upcoming IEP meetings. Finally, the parent alleged that information she received through a Kansas Open Records Act request disclosed information about other students at the high school.

The District responded that the principal shared the letter concerning the student's diagnosis with five of the student's teachers during the second semester of the 2023-2024 school year. Additionally, the district responded that the principal began sending weekly emails to staff each Sunday in response to staff climate survey results indicating a desire for more timely and complete information on events for planning purposes – including collaboration between general and special education staff. The principal includes IEP meetings because they are a regular part of school activities. The date that an IEP meeting is held is not personally identifiable information. Finally, the district responded that KORA requests do not require the district to redact the information.

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

<u>Distribution of student's pediatrician letter to school staff.</u>

Documentation demonstrated that the principal distributed the pediatrician's letter dated December 12, 2023 in an email to the PE teacher, business teacher, art teacher, social studies teacher, and English teacher on January 5, 2024 at 7:43 a.m. with the following direction, "Please see the attached doctor's note for [Student]. If you have to leave the room and there is not another adult in there, bring him to the office to sit and wait. This does not say anything about locker rooms or bathrooms or passing periods or anything like that. Please let me know if you have any questions."

The director of special education stated during the August 19, 2024 interview with the investigator that the principal shared the letter after teachers had asked for clarification about what to look after they had heard that he was not to be left unattended. The district's attorney expressed that they invited the mother to an IEP meeting after this information (letter) was given to the school and she did not accept.

The April 9, 2024 Staffing Summary/Team Report recorded, "Clarification of Health PLEP – can be left alone in a classroom without an adult up to 5 min. Staff will check on him if he has left the room (e.g. bathroom, locker) & hasn't returned within 10 min."

The director of special education stated during the August 19, 2024 interview with the investigator that the parent was invited to talk with the staff about the pediatrician letter, but she declined.

Weekly emails from principal to school staff and superintendent containing names of students with upcoming IEPs.

The parent and district provided emails from the principal to the high school teachers and superintendent dated August 27, 2023 at 8:26 a.m.; September 24, 2023 at 11:17 a.m.; October 8, 2023 at 8:33 a.m.; October 15, 2023 at 9:28 a.m.; October 29, 2023 at 10:08 a.m.; November 5, 2023 at 7;46 a.m.; November 12, 2023 at 7:27 a.m. January 14, 2024 at 10:22 a.m.; January 18, 2024 at 10:02 a.m.; February 4, 2024 at 9:13 a.m.; February 18, 2024 at 9:20 a.m.; March 17, 2024 at 12:33 p.m.; April 7, 2024 at 9:04 a.m.; April 8, 2024 at 5:56 a.m. containing the names of students with his or her IEP date, time or location.

The district's attorney stated during the August 19, 2024 interview with the investigator that the principal started the weekly emails in response to a staff climate survey. He decided to include IEP meetings because they are part of school activities and propose staff planning.

The district response stated, "Nevertheless, to resolve any potential concern about identifying students in these weekly emails, [principal] has been instructed that if he is going to include an IEP meeting in these weekly emails, he is to list the IEP meeting without including the student's name or initials and/or to identify the staff members who need to attend the meeting. This is in place now and going forward."

Incomplete redaction of names and student grades of high school students as part of KORA request made by parent.

The parent provided an undated three page excel spreadsheet with the first page redacting identifying information and the last two pages unredacted. The final two pages showed the last and first name of student, grade, five things of interest and any notes for the 6-12 school counselor to consider of twenty-five 8th graders, fifteen 9th graders, 22 10th graders, nineteen 11th graders (including student) and fifteen 12th graders.

The district's attorney stated that they may have missed redacting everything, but they are not required to redact KORA documentation but did so (for most/not all) documents because they thought it was a good idea to do so. She stated it was not an IDEA issue.

Conclusion

There were three specific incidences alleged regarding sharing PII and are addressed separately in the conclusion. The first case regards the principal sharing a letter containing the name of the student's pediatrician and pediatrician's practice to the student's teachers regarding a medical diagnosis and medical advice while the student was at school. It is found that the principal correctly distributed the information to school personnel who had a need to have this information. While the parent objected to the principal sharing the name of the pediatrician and location of the practice, *this is not covered as PII*.

The second instance addressed the principal sharing the names of student (PII) who are eligible for special education, that they have an IEP planned and the date of the meeting with all school staff at the high school and superintendent.

IDEA regulations, at 34 C.F.R. 300.622(a) require parent consent before PII is disclosed to parties, other than officials of participating agencies, unless the disclosure is authorized by the Family Education Rights and Privacy Act (FERPA). FERPA permits disclosure of PII to school officials who the agency has determined to have legitimate educational interests (34 C.F.R. 99.31(a)(1)(i)(A)). A school official has a legitimate educational interest if the school official needs to review an education record in order to fulfill his or her professional responsibility (See, Letter to Anonymous, 22 FAB 42 (FPCO 2018). Thus, under FERPA and IDEA regulations, each school official who receives an education record must have a need to review that education record in order to fulfill his or her professional responsibility. When a school official is given an education record that includes the PII of students for which the official has no professional responsibility, a violation of both FERPA and the IDEA has occurred.

There is one exception. IDEA regulations 34 C.F.R. 300.622(b)(1) adds that parent consent is not needed when PII is released to school officials for the purpose of meeting the requirements of the IDEA. However, that does not mean PII can be given to all school officials when only one needs the information for the purpose of meeting the requirements of the IDEA. This regulation means that the release of information may be made to school officials who need the information for the purpose of meeting the requirements of the IDEA. When PII is released to school officials who do not need that information to fulfill his or her professional responsibility or to otherwise meet the requirements of the IDEA, a violation of both FERPA and IDEA results.

Therefore, it is concluded that the principal's sharing the names of students (PII) who are 1) eligible for special education, 2) have an IEP meeting planned, and 3) the date of the IEP meeting, with all school staff at the high school, without consideration of whether staff needs

that information to fulfill his or her professional responsibility or to otherwise meet the requirements of the IDEA, *a violation of the IDEA has occurred*.

Finally, the third instance addressed the district providing an excel spreadsheet containing the first and last names and grades of high school students, partially redacted with the parent through a Kansas Open Records Act (KORA) request. The district admitted this error. While this is concerning, and the district should examine their redaction practices *it does not fall under the IDEA in this case* for two reasons. There is no indication that the student's information was disclosed to people other than the parents. The list does not indicate a student's special education status.

Based on the foregoing, *it is substantiated* that USD #107 incorrectly shared Personally Identifiable Information (PII) about the student and other students with the staff during the 2023-2024 school year. *It is not substantiated* that USD #104 incorrectly shared PII with the parents.

Issue Four

Did the special education teacher(s) at the student's high school in USD #107 hold current and appropriate Kansas certifications during the 23-24 school year?

Applicable Law

Federal regulations at 34 C.F.R. §300.156(c)(i) states that each public school special education teacher who teaches in a secondary school have obtained full state certification as a special education teacher and holds a license to teach in the state as a special education teacher.

Analysis: Findings of Fact

While the initial complaint alleged that it was rumored that teachers hired for the 2024-2025 were not certified teachers, during discussion with the complaint investigator the complaint was clarified that the parent alleged that the teachers who provided the student special education services were not appropriately or currently certified.

The District responded that during the 2023-2024 school year the student's special education teacher is the special education teacher assigned to the high school. Another teacher in the district co-teaches with the student's special education teacher and holds a Kansas emergency substitute license.

The findings of Issues One through Three are incorporated herein by reference.

The district's website lists the student's special education teacher as the only special education teacher for the high school. Another staff is listed as a 6-12 Special Education Paraprofessional/Teacher.

According to the KSDE teacher licensure lookup, the special education teacher is listed as a 6-12 Special Education Teacher on the district website and holds professional certificates for Elementary –(K-9); Gifted (K-12): Special Education Interrelated (K-12); Special Education English Language Arts and Math (PreK-12). Her teacher license expiration is February 13, 2027. The 6-12 Special Education Paraprofessional/ Teacher holds an Emergency Substitute Teacher PreK-12 license which expires June 30, 2026.

During the interview with the district on August 19, 2024 the special education teacher stated that she was the student's teacher and stated she was a co-teacher who delivered instruction but did not function as the student's teacher.

An email from the district's attorney dated August 20, 2024 at 10:41 p.m. reported that the 6-12 special education paraprofessional/teacher has an associate's degree and is working toward her Bachelor of Arts in Education. At 10:48 p.m. the district attorney further explained, "[6-12 special education paraprofessional/teacher] primarily functions as/performs the duties of a special education para, as she works toward obtaining her Bachelor of Arts in Education. The [6-12 special education paraprofessional/teacher] is not a special education teacher and is not in charge of a caseload, IEPs, documentation, lesson plan development, etc. When [special education teacher] is absent, [6-12 special education paraprofessional/teacher] fills in as a substitute, since she is licensed by KSDE as an emergency substitute."

The April 9, 2024 IEP shows that the special education teacher signed the IEP, and the special education paraprofessional/teacher did not.

Conclusion

Based on the foregoing, *it is not substantiated* that the district failed to employ currently and appropriately certified teachers for the student during the 23-24 school year.

Issue Five

Did USD #107 use paras in the role of teachers during the 23-24 school year at the student's high school?

Applicable Law

Federal regulations at 34 C.F.R. §300.207 and state regulations at K.A.R. 91-40-1(kkk)(2), (3) state that 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.

According to the KSDE Kansas Special Education Process Handbook, "The State of Kansas has no statewide requirements for employment as a paraeducator or paraprofessional in a school;

however, state, and federal funding for certain positions may have requirements pertaining to those positions. Individual local education agencies (LEAs) may set requirements for employment. Paraeducators (paras) cannot be given responsibility for designing or be the primary person in charge of delivering classroom content." It should be noted that in order to receive state reimbursement for part of the cost of employing a paraeducator, the paraeducator must be a high school graduate or have a GED certificate, and complete an orientation session (Special Reimbursement Guide).

Analysis: Findings of Fact

The Parent alleged that one of the special education professionals is listed as a 6-12 special education paraprofessional/teacher but has no teaching qualifications or education and is an emergency substitute.

The District responded that it licenses personnel who deliver instruction to special education students. Paraprofessionals work with the special education students to practice and reinforce content taught by special education teachers.

According to the district website staff directory this staff is listed as a 6-12 special education paraprofessional/teacher. An email from the district's attorney dated August 20, 2024 at 10:48 p.m. asserted the, "[6-12 special education paraprofessional/teacher] primarily functions as/performs the duties of a special education para, as she works toward obtaining her Bachelor of Arts in Education. The [6-12 special education paraprofessional/teacher] is not a special education teacher and is not in charge of a caseload, IEPs, documentation, lesson plan development, etc. When [special education teacher] is absent, [6-12 special education paraprofessional/teacher] fills in as a substitute, since she is licensed by KSDE as an emergency substitute."

The special education teacher stated during the August 19, 2024 interview with the investigator that when her students are attending general education classes the paraprofessionals monitor the students to assist with understanding the lessons; to assist with reading and/or writing for students who need this accommodation or take notes. In the resource room paraprofessionals often reteach or review content or assist with homework or reading tests to students. The special education teacher stated that she collects all data collection for IEP goals. She states she meets with the paraprofessionals before and/or after school and relies on the paraprofessional's reports of the student's behavior in general education classes as she does not have regularly scheduled times to observe the students in their general education classrooms.

The student stated during his interview with the investigator on August 19, 2024 that when in the resource room the special education teacher taught him about half of the time and in the remaining times paraprofessionals taught him. He said there was not a consistent

paraprofessional with him. He described that he used textbooks and worked on worksheets during this time.

Conclusion

According to the Kansas paraprofessionals cannot be given responsibility for designing or be the primary person in charge of delivering classroom content. It is found that in this situation that the paraprofessionals or any one paraprofessional was not the primary person in charge of designing or delivering classroom content. Based on the foregoing, ***it is not substantiated*** that USD #107 used paras in the role of teachers during the 23-24 school year at the student's high school.

Issue Six

Did USD #107 use paras to teach the student life skill goals included in the student's IEP during the 23-24 school year?

Applicable Law

Federal regulations at 34 C.F.R. §300.207 and state regulations at K.A.R. §91-40-1(kkk)(2), (3) state that 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.

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

Analysis: Findings of Fact

The Parent alleged that the student received at least 50% of his life skills class instruction from a para. Further, most of the time this was when the student was learning new content.

The District responded that the special education teacher delivered the student's life skills instruction. On rare occasions, when the special education teacher was absent the emergency substitute delivered instruction. There were also times that the emergency substitute teacher supervised the student's independent work during the portion of the day he was in the resource room for life skills instruction.

The findings of Issues One through Five are incorporated herein by reference.

The special education teacher stated during the August 19, 2024 interview with the investigator that life skills were taught in the resource room where she provides special education services. She stated that during the 2023-2024 school year that life skills were taught individually and were primarily simulated instruction. The special education teacher stated that she used the curriculum, You're On Your Own for the life skills. You're On Your Own is a comprehensive consumer education curriculum out of Tennessee developed to simulate living in the real world after high school. She stated she is the student's case manager and prepares the student's special education services. She stated that when she was absent the emergency substitute taught the life skills.

The special education teacher stated during the August 19, 2024 interview that she meets with the paraprofessionals before and after school to go over the lessons, review data findings and discuss student progress or changes. She stated that paraprofessionals go through student IEPs at the beginning of the year to become familiar with the student's accommodations and goals.

The student stated during an interview with the investigator on August 19, 2024 that at least four paraprofessionals had taught the activities in the life skills class about half of the time and the special education teacher taught him alone about half of the time. . He verified the class was in the resource room and used a textbook and worksheets. He stated it did not prepare him for life because he was not actually doing these things, but rather learning information about them.

Conclusion

It is found that paraprofessional did deliver life skills instruction to the student. Although the district and student differ on the amount of time in Kansas it is permissible for paraprofessionals to deliver instruction as long as these staff have been appropriately and adequately prepared and trained (34 C.F.R. §300.207; K.A.R. §91-40-1(kkk)(2). Based on the interviews with the district staff the paraprofessionals participated in training on their roles, the individual student IEPs and how to deliver instruction prior to the start of the school year. Further, the paraprofessionals meet regularly with the special education teacher to debrief and problem solve on student progress and instruction. Therefore, *it is concluded that the district is in compliance* with 34 C.F.R. §300.207 and K.A.R. §91-40-1(kkk)(2) in using paraprofessionals to deliver the life skills instruction to the student.

Issue Seven

Did USD #107 provide a NOM for the 4/9/2024 annual IEP meeting to the parent, incorrectly listing the parent as an outside member of the IEP team?

Applicable Law

According to C.F.R. §300.322(a) and K.A.R. 91-40-17(a) parents must be members of the IEP team and are equal partners, playing an active role in providing critical information about their child's abilities, interests, performance, and history. They are involved in the decision-making process throughout the development of the IEP. Therefore, each public agency must take steps to ensure that one or both parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate.

According to C.F.R. 300.501(b)(2) parents are to be provided notice of meetings related to eligibility, evaluation, reevaluation, IEP development, provision of a free appropriate public education (FAPE) for their child and educational placement decisions, to ensure that they have the opportunity to participate in the meetings.

Analysis: Findings of Fact

The Parent alleged that the Notice of Meeting for the IEP meeting occurring on April 9, 2024 "has the parent listed as an outside agency not a team member. That is how most of the staff treat the parents."

The District responded that a copy of the Notice of Meeting for the April 9, 2024 IEP meeting identified the mother and father as legal educational decision makers on page 1. No agencies or people from outside agencies are included in the Notice of Meeting.

The findings of Issues One through Six are incorporated herein by reference.

The Notice of Meeting dated March 26, 2024 prepared and distributed to the parents for the April 9, 2024 IEP meeting did not include a section for outside agency persons, nor list any persons or roles representing outside agencies. Each parent was indicated next to LEDM (Legal Education Decision Maker).

Conclusion

It is found that the parents are indicated as the legal education decision makers for the students. Based on the foregoing, it is not substantiated that USD #107 provided a NOM for the 4/9/2024 annual IEP meeting to the parent, incorrectly listing the parent as an outside member of the IEP team.

Issue Eight

Did the student's IEP team hold staffing meetings and collect feedback from the district's attorney prior to holding the April 9, 2024 IEP meeting with the entire IEP team?

Applicable Law

Federal regulations at 34 C.F.R. §300.501(b)(3) state that a meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting

also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

Analysis: Findings of Fact

The Parent alleged that "it is also a known fact in the [district] that there is a staffing before any special education meeting. The Elementary principal told one of her parents that they must get their "story" straight or make sure everyone was on the same page. I have also seen that in emails from past meetings, when [student] was in 10th grade." Further, in a response to a question to the special education director, "it was clear these answers were provided to her by her attorney."

The District responded that staffing meetings to prepare for IEP meetings and obtaining legal advice are not prohibited by the IDEA.

The findings of Issues One through Seven are incorporated herein by reference.

The special education director stated in the interview with the investigator on August 9, 2024 that there is not a formal procedure or practice of preemptively alerting the district's attorney and inviting him/her to participate in a meeting. The only time they would involve the district's attorney is when a parent files a due process or a formal complaint. She stated that the purpose in this instance would be to be doubly sure that they were doing what was needed with procedure. The district attorney then stated that the parent had previously submitted a variety of complaints to KSDE and threatened to sue so in that instance it is in the district's best interest to reach out to the attorney.

The special education teacher described that in preparation for the student's IEP she followed the district practice and the practice she follows of emailing the student's teachers and related services in advance to collect information and generally gather dates to be offered to the parents to meet the IEP. She stated that because the student was transition age the transition coordinator at the coop was involved in collecting assessment information and that the student participated in preparing and reviewing the draft of the IEP. She stated that the notice of meeting is sent once a date is determined and a draft of the IEP is sent. Right before the meeting date she prints out copies of the draft IEP and a copy of the prior written notice in anticipation of signatures. She stated that she did not have a meeting with school staff prior to the April 9, 2024 IEP meeting and does not have meetings with school staff to prepare or discuss a student's IEP. Instead, she said she regularly relies on emails to gather information. She stated she would not rule out an in-person meeting with school staff, if necessary, but the logistics of scheduling the meeting would be very challenging. She stated she is more likely to talk with a single person if she needs clarification.

Emails from the special education teacher and the student's teachers between March 21 – 25, 2024 document that the special education teacher asked for input about the student's

behavior and performance in their respective classes and suggested dates for the student's IEP meeting.

Documentation shows that the notice of meeting was sent to the parent on March 26, 2024.

Conclusion

It is found that the district has a regular practice for preparing and drafting the student's annual IEP and the special education teacher described it and followed it. It is further found that the district has regular practices for what triggers the district to contact the district attorney, and the director of special education described why she reached out to the district attorney, and it was compatible with the district practices. Based on the foregoing, it is not substantiated that USD #107 held student's IEP team staffing meetings and collected feedback from the district's attorney prior to holding the April 9, 2024 IEP meeting with the entire IEP team.

Issue Nine

Did USD #107 provide the student his IEP accommodation paper to take notes during his April 9, 2024 IEP meeting?

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 the student was not provided paper during his IEP meeting in spite of his asking and a need to accommodate his remembering by writing things down on paper to better remember.

The District responded that the IEP in place for the student at the time of the April 9, 2024 meeting did not require the provision of paper for him to take notes during the IEP meeting.

The findings of Issues One through Eight are incorporated herein by reference.

The IEPs dated April 19, 2023 and April 9, 2024 did not include an accommodation for providing paper to the student for notetaking.

The special education teacher stated that the student was provided a draft paper copy of the IEP so he could follow-along and that pens were available for him to take notes. She stated she did not hear the student ask for paper nor was aware that the student wanted paper. She

stated that the student appeared comfortable during the IEP meeting and participated by providing preferences and input.

The mother stated during the interview with the investigator on August 19, 2024 that the student was not initially in the meeting due to his preference to not attend. She stated that she asked the student to come into the meeting to provide information about paraprofessional use. She and the student who joined the interview stated that they shared a draft copy of the IEP.

Conclusion

It is clear that the parent and district disagree as to whether the student had access to paper and writing instruments during the IEP. The IDEA at 34 C.F.R. §300.323(c)(2) require school districts ensure that the special education and supplementary aids and services be available not later than 10 school days after parental consent is granted, but this accommodation was not included in either IEP. Therefore, the district had no IDEA obligation to provide paper and writing instruments to the student during the IEP and it is not substantiated that USD #107 failed to provide the student his IEP accommodation paper to take notes during his April 9, 2024 IEP meeting.

Issue Ten

Did the student's draft IEP dated April 9, 2024 contain incorrect information about the student's present levels and the student receiving para help?

Applicable Law

Federal regulations at 34 C.F.R. §300.320(a)(1) define the individualized education program as including a statement of the child's present levels of academic achievement and functional performance.

Federal regulations at 34 C.F.R. §300.618-300.621 describe amendment of records at parent's request. They state that 1) a parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information; 2) the agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request; and if the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §300.619. §300.619 through §300.621 describes the opportunity, procedures, and results of a hearing.

Analysis: Findings of Fact

The Parent alleged that the IEP was not marked "Draft," and contained false information about the student's having help, wanting to use notes and para support written in the present levels. She indicated two statements in the IEP she received were incorrect, "[Student] has developed confidence in his abilities and typically completes his assignments in the general education classroom setting without special education services such as para, when one is provided. He is completing the same assignments in the same manner as his peers." in the Student Strengths section and "[Student] did not want to use notes or have help on 3 History tests and received scores or 81%, 94%, and 76% and was very proud of himself for his accomplishments." in the Staff Concerns section of the present levels. Further, she stated that the information about him receiving para support was incorrectly written as discovered in the previous child complaint 24FC107-001.

The District responded that the IEP document provided to the parent prior to, or at the IEP meeting was a draft and not having it marked as "draft" was an oversight. The district stated that it was stated during the meeting that it was a draft. They further stated that present levels in the student's April 9, 2024 IEP are accurate and do not include these statements.

The findings of Issues One through Nine and 24FC107-001 are incorporated herein by reference.

The special education teacher stated during her August 19, 2024 interview with the investigator that she got the information about the present levels from her daily experience as the student's special education teacher, from other teachers and from discussion with the student. She stated that she and the student went over every section of the IEP prior to the meeting for completeness and accuracy.

The history teacher responded to the special education teacher's request for present level information to prepare the IEP on March 21, 2024 at 11:21 a.m. "The student is cooperative and polite. The student attends to the lesson and has thoughtful comments."

The IEP dated April 9, 2024 provided by the parent and district as evidence contains the following statement in the Student Strengths section of the PLEP - "[Student] has developed confidence in his abilities and typically completes his assignments in the general education classroom setting without special education services such as para, when one is provided. He is completing the same assignments in the same manner as his peers."

The child complaint 24FC107-001 was completed June 18, 2024 and substantiated that USD #107 failed to implement the student's IEP during the 2023-2024 school year by discontinuing paraeducator support and committed a procedural error in not meeting and/or amending the IEP.

The IEP dated April 9, 2024 provided by the parent as evidence contained the following statement in the Staff Concerns section of the PLEP - "[Student] did not want to use notes or have help on 3 History tests and received scores or 81%, 94%, and 76% and was very proud of

himself for his accomplishments." In the Staff Concerns section of the present levels section of the IEP." This statement is not contained in the final IEP dated April 9, 2024 provided by the district and implemented.

Conclusion

Complaints alleging that information in education records is inaccurate or misleading is subject to the amendment process described in 34 C.F.R. 300.618-300.621, not this complaint process. Therefore, while the parent provided instances of discrepancies in the document versions the parent needs to follow the procedures described in 34 C.F.R. 300.618-300.621 to reconcile any concerns of incorrect information. Therefore, *this issue was not investigated*.

Issue Eleven

Did USD #107 provide the parent a PWN reporting IEP team decisions for the April 9, 2024 IEP annual meeting to the family prior to the annual IEP meeting?

Applicable Law

According to Federal regulations at 34 C.F.R. §300.503 (a)(1) and 34 C.F.R. §300.503 (a)(2), and Kansas state statutes at K.S.A. §72-3430(b)(2) prior written notice 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; or (2) 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 a prior written notice dated April 8, 2024 was printed on April 9, 2024 at 7:22 a.m. prior to the IEP meeting at 8:30. It was not provided five days before the meeting and the district has never provided a prior written notice before a meeting; it is always provided at the end for a signature. Further, the prior written notice was already filled in with the IEP decisions prior to the meeting.

The District responded that the prior written notice dated April 9, 2024 outlined IEP changes that school staff planned to propose, in anticipation of consensus, but in no way intended it was the decisions prior to the meeting. The preparation of the document is to avoid using signed consent via email or hand delivery if consensus with the draft is achieved, but it is district practice to discard the prepared prior written notice and make changes to reflect any decisions made during the meeting.

The findings of Issues One through Ten are incorporated herein by reference.

The mother stated during the interview with the investigator on August 19, 2024 that the prior written notice was dated April 8, 2024 and it was presented to her during the meeting.

The prior written notice for identification, special education and related services, educational placement, change in services, change in placement, and/or request for content for the IEP meeting on April 9, 2024 is dated April 8, 2024. The prior written notice proposes both a material change in services and a substantial change in placement. It reports that "The team, including [student], feel that the proposed services are most appropriate to meet the student's needs."

The proposed decisions included in the prior written notice include,

> *The team is proposing that [student's] service time in the resource room setting change after the 2023-2024 school year. For the 2024-2025 school year, the team proposes that [student] only receive direct instruction for a Study Skills call for 45 minutes, 5 days a week. He will participate in the general education math class and an elective class of his choice. The team is also proposing the dismissal of special education support services in general education for English and Science. This is being proposed because [student] has found that he would rather depend on the general education teacher for help or choose to go to the resource room for special education services if needed. [Student] will receive 20 minutes, every other week, for psychology services and 25 minutes weekly for speech/language.*

The mother stated to the investigator in a phone conversation on August 2, 2024 that the prior written notice served as the agenda during the April 9, 2024 IEP meeting, causing the mother to not be prepared for the decisions that were being made. She stated this practice diminished her ability to participate in discussing her student's IEP and give input as to decisions, as the document portrayed them as completed. She stated that she prepared and distributed a document listing her concerns at the meeting.

The parent sent an email to the district on April 5, 2024 at 9:53 stating, "I receive the draft IEP. [Student] and I looked through the draft IEP and discussed the changes [special education teacher] wants to make. [Student] is not Happy about the changes, he said 'They didn't listen to anything I said Wednesday!' Please, allow extra time for the IEP meeting because it's going to be a long one. I understand that it is a draft, but to a parent it appears that the Changes have already been decided."

The special education teacher stated during the interview with the investigator on August 19, 2024 that it would have been prepared prior to the meeting and that it would be reviewed at the meeting and altered as needed.

The staffing summary/team report noted the following decisions, the use of headphones/listening to music is up to the teacher and will be kept as a special education accommodation; the Health PLEP will be clarified to state that the student can be left alone in a classroom without an adult up to 5 minutes and staff will check on him if he leaves the room to go to bathroom or locker after ten minutes; notes will be provided for general education classes, note taking instruction will occur during life skills or study skills classes, life skills will

focus on application and will be incorporated into speech, a visual clock or option of vision 360 application will be added to the IEP. While the staffing summary/team report documented the parent document, it is recorded that, "parent concerns provided in writing - did not want to review further during meeting."

An email from the district's attorney to the investigator on August 22, 2024 at 11:43 a.m. was sent in response to the investigator asking how the prepared prior written notice was discussed at the IEP meeting. "Per [special education teacher], the Prior Written Notice was discussed at the IEP meeting. The team reviewed, discussed, and made changes to the draft IEP. At the conclusion of that discussion, [special education teacher] led (sic) the parent and the team through the Prior Written Notice, which she identified as a 'shortened version of the IEP.' She reviewed each section of the Prior Written Notice and asked [mother] and the other IEP team members if there were any concerns. No concerns were identified and [mother] signed consent for the changes to the IEP."

Documentation shows that the parent signed the April 9, 2024 prior written notice on April 9, 2024.

The student's IEP shows that the decisions contained in the April 9, 2024 prior written notice and staffing summary/team report were incorporated into the IEP.

Conclusion

It is found that the PWN provided at the IEP meeting reported decisions that were discussed and further required parental consent. Consent from the parent was acquired at the conclusion of the IEP meeting. The staffing summary/team report documented two additional decisions were made during the meeting, 1) teaching notetaking during life-skills class or study skills classes and 2) teaching application of the life-skills. These two instructional decisions impact the provision of FAPE to the child and should have been documented in a prior written notice. Therefore, ***it is substantiated*** that USD #107 failed to provide the parent a PWN reporting these two IEP team decisions resulting from the April 9, 2024 IEP annual meeting.

Summary of Conclusions/Corrective Action

ISSUE ONE: A violation of 34 C.F.R. §300.503 (a)(1) and 34 C.F.R. §300.503 (a)(2) was not found, based on the facts above. Corrective action is not required.

ISSUE TWO: A violation of 34 C.F.R. §300.320(b)(1) was not found, based on the facts above. Corrective action is not required.

ISSUE THREE: A violation of 34 C.F.R. §§ 300.622(a) and 99.31(a)(1) was found, based on the facts above. It is acknowledged that the district has taken steps to no longer disclose the student's PII in weekly emails to all school staff.

1. Corrective action is required as follows:

a. CORRECTIVE ACTION:

i. By September 30, 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. §§ 300.622(a) and 99.31(a)(1).

ii. **Date due:** September 30, 2024

b. CORRECTIVE ACTION:

i. Compile a list of students whose PII was disclosed during the 2023-2024 school year in the weekly emails to all school staff and write letter to the parents/legal guardians of each student stating the dates the student's PII was disclosed and explaining the remedy the district has taken to ensure that the student's PII is not disclosed going forward. Provide evidence to SETS to demonstrate this action has been completed.

ii. **Date due**: October 30, 2024.

ISSUE FOUR: A violation of 34 C.F.R. §300.156(c)(i) was not found, based on the facts above. Corrective action is not required.

ISSUE FIVE: A violation of 34 C.F.R. §300.207 was not found, based on the facts above. Corrective action is not required.

ISSUE SIX: A violation of 34 C.F.R. §300.207 was not found, based on the facts above. Corrective action is not required.

ISSUE SEVEN: A violation of C.F.R. §300.322(a) was not found, based on the facts above. Corrective action is not required.

ISSUE EIGHT: A violation of 34 C.F.R. §300.501(b)(3) was not found, based on the facts above. Corrective action is not required.

ISSUE NINE: A violation of 34 C.F.R. §300.323(c)(2) was not found, based on the facts above. Corrective action is not required.

ISSUE TEN: A violation of 34 C.F.R. §300.320(a)(1) was not found, based on the facts above. Corrective action is not required.

ISSUE ELEVEN: A violation of 34 C.F.R. §300.503 (a)(1) and 34 C.F.R. §300.503 (a)(2) was found, based on the facts above. It is acknowledged that the student is no longer attending school and receiving special education and related services in the district.

1. Corrective action is required as follows:

a. CORRECTIVE ACTION:

i. By September 30, 2024, USD #107 shall write a prior written notice documenting the two April 9, 2024 IEP team decisions 1) teaching notetaking during life-skills class or study skills classes and 2) teaching application of the life-skills and provide to the parent and add to the student record that is sent to the receiving school.

ii. Date due: September 30, 2024

b. CORRECTIVE ACTION:

i. By September 30, 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 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. §72-3430(b)(2).

ii. Date due: September 30, 2024

c. CORRECTIVE ACTION:

i. USD #107 shall review and revise, as needed the annual IEP procedures/practices for preparing the draft PWN, guidance for when the draft PWN needs revision, distinguishing when the PWN needs to have signed consent and when the PWN is written to document a decision. The results of the review and possible revision shall be provided to SETS.

ii. Date due: October 15, 2024

d. CORRECTIVE ACTION:

i. USD #107 shall conduct training with high school special education teachers on the requirements and contents of a prior written notice associated with the annual IEP meeting. The training shall contain information on including all IEP team decisions in the PWN, not just those requiring parent consent. The training PowerPoints and/or materials along with the sign in sheet for participants shall be provided to SETS.

ii. Date due: October 15, 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)

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 107
Rock Hill Public Schools: 25FC107-001

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on July 30, 2024, by ------, on behalf of her child, ------. 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 August 30, 2024. That Complaint Report concluded that there was a violation of special education statutes and regulations on Issue 3 and Issue 11, and there was not a violation on any of the remaining issues.

Thereafter, the parent filed an appeal of the Complaint Report with regard to Issues 1, 2, 9, 10 and 11. 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 the district's response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

Preliminary Matters

A copy of the regulation regarding the filing of an appeal [K.A.R. 91-40-51(f)] was attached to the Complaint Report. That regulation states, in part, that: "Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect." Accordingly, the burden for supplying a sufficient basis for appeal is on the party submitting the appeal. When a party submits an appeal and makes statements in the notice of appeal without support, the Committee does not attempt to locate the missing support.

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

Issues on Appeal

There are 5 issues on appeal, Issues: 1, 2, 9, 10, and 11. They are:

Issue One

Did USD #107 provide the parent a Prior Written Notice either agreeing to or refusing to conduct a transition evaluation when requested during the 2023-2024 school year?

Issue Two

Did USD #107 include transition goals for the student in the April 9, 2024 IEP based on current transition evaluation?

Issue Nine

Did USD #107 provide the student his IEP accommodation paper to take notes during his April 9, 2024 IEP meeting?

Issue Ten

Did the student's draft IEP dated April 9, 2024 contain incorrect information about the student's present levels and the student receiving para help?

Issue Eleven

Did USD #107 provide the parent a PWN reporting IEP team decisions for the April 9, 2024 IEP annual meeting to the family prior to the annual IEP meeting?

This complaint, and the parents appeal, are difficult to follow. The original complaint was filed on July 30, 2024, listing four issues. First, the parent alleged a failure to provide FAPE because the district denied the parent's request for a new transition evaluation and that "There were no measurable transition goals put into the IEP." Second, the parent under the heading "Concern #3" listed a privacy concern regarding a communication with staff members. Third, the parent under the heading "Concern #4," alleged that the cooperative allowed special education students to be taught by unqualified teachers. Fourth, also under the heading "Concern #4," the parent alleged that the student's placement was pre-determined at a meeting where a Prior Written Notice (PWN) was drafted prior to the IEP meeting.

Four days after the complaint was filed, on August 3, 2024, the investigator sent an email to the parent and the special education director of the cooperative, saying, "Based upon the written complaint and an interview with the mother, the following allegation(s) will be investigated (emphasis added)." The list of allegations expanded from four concerns to eleven. This is a customary, and even required, procedure under both federal and state regulations.

Federal regulation 34 C.F.R. 300.152(a)(2), states that a State Department of Education, as a "minimum procedure" must:

> (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

our Kansas regulations, at K.A.R. 91-40-51(c)(1) are even more explicit, saying:

> (c) Upon receipt of a complaint, an investigation shall be initiated. At a minimum, each investigation shall include the following:
>
> (1) A discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded (emphasis added);

As happened in this case, the mandatory discussion between the investigator and the parent often results in a change to the allegations in the complaint, or the addition or subtraction of allegations. In this case, as indicated previously, the number of allegations expanded from four to eleven.

Also as indicated previously, on August 3, 2024, four days after the complaint was filed, the investigator sent an email to the parent and the special education director of the cooperative saying, "Based upon the written complaint and an interview with the mother, the following allegation(s) will be investigated (emphasis added)."

This communication was written notice to both parties of the issues to be addressed in the complaint. That communication listed eleven separate allegations, each of which were addressed in the report. If the parent believed that any of the issues identified in this notice were inaccurate she should have promptly notified the investigator instead of waiting until the investigation was completed and a report issued. In this appeal, the parent submitted no evidence that after receiving the revised list of issues to be investigated, she made any contact with the investigator about the accuracy of the issues she wanted to be addressed. Under that circumstance the Appeal Committee will not conclude that an issue identified by the investigator prior to the investigation, and reported in writing to both parties, was incorrectly described.

This interpretation is consistent with state regulations at K.A.R. 91-40-51(f) permitting the appeal of "findings or conclusions of a compliance report…" There is no appeal of issues that were not addressed in the report.

In addition, federal regulations, at 34 C.F.R. 300.152(a)(3) require that school districts be given the opportunity to respond to any complaint allegation. A school district is denied this opportunity when an allegation first arises in the appeal of a complaint report.

For all these reasons, the Appeal Committee concludes that issues one, two, nine, and ten in the complaint report, as the parent described them in this appeal, and none of which were in the initial complaint filed by the parent or addressed by the investigator, are not subject to appeal.

Because these issues were not addressed in the complaint report, the parent may submit them in a separate complaint. If these issues are submitted in a separate complaint, the Appeal Committee suggests that if, after the obligatory "discussion" between the parent and the investigator, there is any change to the issues exactly as stated by the parent, the parent provide written acknowledgement to the investigator that the change is, or is not, an accurate description of the parent's allegation.

With regard to Issue 10, the investigator correctly cited 34 C.F.R. 300.618 through 300.621 as the process for parents to challenge the accuracy of information in education records. The investigator's conclusion is correct with regard to the issue as stated in the investigator's correspondence with the parties. In this appeal, the parent states her real issue is not that the records are inaccurate. Her appeal clarifies that the issue she intended to allege is that that because of alleged false information in the draft IEP, she was denied meaningful parent participation in the IEP development process to the extent that her child was denied a free appropriate public education (FAPE). The Appeal Committee recognizes the distinction and agrees the parent may use this complaint process to present this allegation in a subsequent complaint. To be successful in such a complaint, the investigator must find that, (a) the specified information in the draft IEP was false; and (b) the false information in the IEP significantly impeded the parents opportunity to participate in the decision-making process or the false information in the IEP impeded the child's right to a free appropriate public education (FAPE).

That leaves only the appeal of the conclusion in Issue Eleven. That issue was stated in the report to be: Did USD #107 provide the parent a prior written notice (PWN) reporting IEP team decisions for the April 9, 2024 IEP annual meeting to the family prior to the annual IEP meeting?

In her appeal, the parent confirms that her complaint was that she was provided with the proposed changes to the IEP in the prior written notice (PWN), dated April 8, 2024, before the meeting that occurred on April 9, 2024. The parent alleges that this April 8, 2024 prior written notice amounted to predetermination of parts of the child's IEP and that it denied the parent's right to involvement in the decision of the IEP team.

With regard to this issue, the Committee notes that It is not a violation of law to provide parents with a draft PWN and a draft IEP proposing specific changes in an IEP before the IEP meeting is held. The office of special education programs (OSEP), which is the office in the United States Department of Education that writes the federal special education regulations, addressed this very question in its comments to the special education regulations, in the Federal Register, August 14, 2006, page 46691. In that document, OSEP responded to a comment suggesting that the regulations require the IEP meeting to occur before a prior written notice is given to the parents. OSEP replied:

> A public agency meets the requirements in Sec. 300.503 so long as the prior written notice is provided a reasonable time before the public agency implements the proposal (or

> refusal) described in the notice. The commenter confuses the Act's prior written notice requirements with the requirements governing IEP Team meetings. Section 300.503(a), consistent with section 615(b)(3) of the Act, requires prior written notice whenever a public agency proposes to initiate or change (or refuses to initiate or change) the identification, evaluation, or educational placement of a child, or the provision of FAPE to a child. A public agency meets the requirements in Sec. 300.503 so long as the prior written notice is provided a reasonable time before the public agency implements the proposal (or refusal) described in the notice. A public agency is not required to convene an IEP Team meeting before it proposes a change in the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child (emphasis added).

It is clear from this guidance that providing parents with a draft IEP and with an accompanying PWN, before an IEP meeting, each proposing changes to an IEP or refusing to adopt proposed changes to an IEP, is a common practice that is not, by itself, a violation of law. Rather, the requirement is that the parent be provided with a prior written notice of the IEP teams ultimate decision before the implementation of the proposal or refusal.

On pages 31 and 32 of the report, the investigator fully discussed the issue presented, including a discussion of an email from the district's attorney to the investigator stating that the initial prior written notice was discussed at the IEP team meeting. The team (including the parent) reviewed, discussed, and made changes to the draft IEP. The special education teacher led the parent and the team through the initial prior written notice. The special education teacher reviewed each section of the initial prior written notice and asked the other IEP members if there were any concerns. No concerns were identified and mother signed consent for the changes to the IEP. There is no evidence indicating that the district implemented any of the proposed changes in the PWN before presenting the proposals at the IEP meeting for consideration by the team.

The courts which have considered this matter have reached the same conclusion. See Nack v. Orange City Sch. Dist., 106 LRP 44290 (6th Cir. 2006), adding that predetermination is not synonymous with preparation and that the school may draft an IEP in advance as long as they are willing to listen to the parents and the parents have the opportunity to make objections and suggestions. The committee believes this interpretation also applies to a draft PWN that is discussed later at an IEP meeting.

The appeal committee finds nothing in the description provided to the investigator by either the parent or the special education teacher that is a violation of law. Team members can prepare for an IEP meeting by speaking with each other and developing a proposal that will be discussed at a later meeting, as long as a decision is not made until the team meets (See federal regulation, 34 C.F.R. 300.501(b)(3)).

The committee notes that the complaint report found a violation in Issue 11 for making two additions to the student's IEP without including these additions on a prior written notice. That conclusion was not contested in this appeal.

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 19th day of September, 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 #202
ON AUGUST 13, 2024

DATE OF REPORT: SEPTEMBER 11, 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 #202 Turner Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #202.

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 August 13, 2024, and the 30-day timeline ended on September 12, 2024.

Investigation of Complaint

The Complaint Investigator, Tania Tong, interviewed District staff on September 3, 2024. The Parent did not respond to a request for an interview.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the District. The Parent did not respond to requests for materials. Although additional documentation was provided and reviewed, the following materials were used as the basis of the findings and conclusions of the investigation:

1. Complaint Response, 08/15/24
2. Comprehensive Special Education Cooperative Evaluation/Eligibility Report, 04/09/24
3. Early Childhood Speech-Language Evaluation Results, 04/09/24
4. Eligibility Determination, 04/09/24
5. Individualized Education Program (IEP), 04/09/24
6. PWN, 04/09/24
7. PWN, 08/13/24
8. Notice of Meeting, 08/13/24
9. Notice of Meeting, 08/13/24
10. Conference Form, 08/13/14
11. School Calendar, 2023-24 school year

12. School Calendar, 2024-25 school year
13. Contact Log, 08/13-08/14/24

Background Information

This investigation involved a 4-year-old preschool Student enrolled at an elementary school in the District in their morning inclusive preschool classroom. The Student receives special education as a child with a disability under the Individuals with Disabilities Education Act (IDEA). The Student was enrolled and screened for the four-year-old At-Risk Preschool Program on June 18, 2024. After the Student's initial screening, the Parent informed the School District that the Student had an IEP from the Student's Previous District. Upon reviewing the current IEP, dated April 9, 2024, it was noted that the Student did not demonstrate a need for special transportation. Therefore, transportation services were not required as a related service in the IEP. The Student was assigned a general education bus before school started.

Positions of the Parties

The Parent alleged that on August 13, 2024, the Student's IEP failed to be implemented at the beginning of the school year when specialized transportation was not provided to the Student on the first day of school. The Student was enrolled and screened for the four-year-old At-Risk Preschool Program on June 18, 2024. After the Student's initial screening, the Parent informed the School District that the Student had an IEP from the Student's Previous District. On the morning of August 13, 2024, the Parent contacted the Transportation Department, expressing concern that the special education bus did not arrive to pick up the Student. The Transportation Department confirmed the Student was not routed on special transportation and explained that several buses were delayed due to it being the first full day of school. The Transportation Department offered to send a bus for the Student, but the Parent declined transportation, choosing to transport the Student on their own.

The District acknowledged that the Student was enrolled and screened for the four- year-old At-Risk Preschool Program on June 18, 2024. After the initial screening, the Parent informed the District that the Student had an IEP from their Previous District. The District received records from the Previous District and shared them with the service providers on July 29, 2024. Upon reviewing the IEP dated April 9, 2024, it was noted that the Student did not demonstrate a need for special transportation. Therefore, transportation services were not required as a related service in the IEP. The Student was routed on a general education bus. The Elementary Special Education Coordinator noted that a consent to evaluate for transportation as a related service and sensory needs was signed on April 9, 2024, the day of the Student's eligibility in the Previous District. When reviewing both District calendars the District was within the 60 school day timeline for evaluation with 26 days remaining. The District continues to evaluate the need for special transportation as a related service by collecting data through September 3, 2024.

Findings of the Investigation

The following findings are based on a documentation review and interviews with staff in the District.

1. The Student is four years old and attends the At-Risk Preschool Program at an elementary school.
2. The Student is eligible for special education under developmental delay and a receptive/expressive language disorder.
3. The Student's strengths are, "[The Student] is kind and quiet. … [The Student] is compliant to teacher directions when [they] want to be. … [The Student] enjoys playing with [their] siblings. … [The Student] enjoys playing with preferred peers and interacting with preferred adults. [The Student] loves anything crafty … and playing outside on the playground."
4. A Special Education Action dated April 9, 2024 indicated the Previous District proposed to conduct a reevaluation to consider "[W]hether any additions or modifications to the special education and related services are needed to enable your child to meet the measurable annual goals set out in the IEP of your child and to participate, as appropriate, in the general education curriculum."

   A Prior Written Notice from the Previous District dated April 9, 2024, indicated that the Student was eligible for special education services. The proposed action indicated, "[The Student] meets criteria for special education services and is demonstrating a need for specialized instruction. Speech and language services in the general education setting is proposed to work on social-communication skills within [the] preschool setting."
5. On April 9, 2024, an IEP meeting was held for the Student in the Previous District. Parent concerns included, "[The Student] will point to or get items if [the Student] is not understood. … [The Parent] mentioned [the Student] does demonstrate anxiety at home and are not sure how to support them." (D32) According to the IEP, Transportation Services indicated, "The [S]tudent does not require transportation as a related service."
6. According to the Director of Special Services, the Student was enrolled and screened for the At-Risk PreSchool Program on June 18, 2024. After the initial screening, the Parent informed the District that the Student had an IEP from their previous District. The records from the Previous District were shared with the current District's service providers on July 29, 2024.
7. The Student was "[E]nrolled in the School's morning inclusive preschool classroom as a Student with a disability, with a start date of August 13, 2024. Upon reviewing the current IEP, dated April 9, 2024, it was noted that [the Student] did not demonstrate a need for special transportation. Therefore, transportation services were not required as a related service in the IEP. Prior to school starting, [the Student] was routed on a general education bus, as all students in [the District] receive free transportation from their homes regardless of [sic] from school."

8. According to the Director of Special Services, "On the morning of August 13, 2024, [the Parent] contacted the transportation department, expressing concern that the special education bus did not arrive to pick up [the Student]. The transportation department confirmed that [the Student] was not routed on special transportation and explained that several buses were delayed due to it being the first full day of school. Transportation offered to send a bus for [the Student], but [the Parent] declined transportation, choosing instead to transport [the Student] on [their] own."
9. According to a Contact Log dated August 13, 2024, the Parent contacted the Director of Special Education, "I am writing to formally lodge a [C]omplaint against the transportation department of [the District]. My [Student] has an [IEP] that explicitly states that [they require] specialized transportation. However, on [their] first day of school, there was no bus available for [the Student], and we were told that we would have to transport [the Student] ourselves, with no reimbursement for our expenses or compensation for the time we would miss from work. I have previously dealt with the head of transportation, and I can attest to the fact that [they lack] basic customer service skills and does not seem to care about the needs of students."

   The Transportation Department indicated, "A bus was offered to come and pick [the Student] up. [The Parent] was abrasive and threatening. [The Parent] also would not allow any type of response from [the Transportation Workers]. … [A Transportation Worker] then terminated the call due [to the Parent's] intimidating threats and scare tactics."

   According to the Elementary Special Education Coordinator, on August 13, 2024, "Transportation called to offer to send a bus to pick [the Student] up, but [the Parent] refused to consider [sic]. I explained special transportation is not included on [the Student's] IEP or noted in [their] eval. [The Parent] said the school system amended the IEP to include [sic]. I explained we have nothing to indicate that the IEP was amended but there is a signed consent to evaluate for transportation that was signed on the same date as the initial eligibility meeting. [The Parent] said transportation should already be on it. I explained that [the Previous District] did not complete the evaluation before the end of the school year and that we are happy to pick up where [the Previous District] left off. I explained that we are still within the 60-school-day timeline for evaluation. The IEP clearly states it was not a need at the time of eligibility. I do not understand why they obtained consent, but we will consider [the Parent's] request for special transportation and respond through [Prior Written Notice] PWN. … Considering the [Previous District] school year calendar and [the District] school year calendar, we are within the 60-school-day timeline, as today marks day 34."
10. "[The Parent] contacted the Special Services Office and spoke with [the Elementary Special Education Coordinator] regarding [the Parent's] transportation concerns. [The Elementary Special Education Coordinator] explained that special transportation was not included on [the Student's] current IEP. [The Elementary Special Education Coordinator] did note that a consent to evaluate for transportation as a related service and sensory need was signed on April 9, 2024, the day of [the Student's] initial eligibility

meeting in [their] previous District. Additionally, conference notes from the eligibility meeting indicated that a follow-up meeting was scheduled for April 26, 2024, to review data and determine the need for transportation as a related service."

11. On August 13, 2024, the Elementary Special Education Coordinator indicated, "However, during our meeting with [the Parent] today, [the Parent] reported that no [Team Meeting] occurred to determine the need for special transportation."
12. On August 13, 2024, a Notice of Meeting was sent to the Parent due to the Parent "requesting a meeting to consider special transportation as a related service. The Parent agreed to waive their right to a ten-day notice, according to the District. The Director of Special Services indicated, "[The Parent] was provided Procedural Safeguards and signed the Notice of Meeting. During the meeting, [the Parent] reported that no [T]eam [M]eeting had occurred in the previous [D]istrict on April 26, 2024. [The Parent] was provided the opportunity to share [their] concerns regarding [their] request for [the Student] to receive special transportation. [The Parent] stated [they] would like [the Student] to ride the special education bus because [the Student's] older [sibling] receives special transportation, and it would be a comfort to [the Student]. Due to the lack of data from [the Previous District] showing a need for special transportation, [the District] denied [the Parent's] request through Prior Written Notice." The Notice of Meeting indicated, "The IEP [T]eam will review information related to the evaluation for special transportation and consider [the Parent's] request for special transportation."

    "The [T]eam is continuing to evaluate the need for special transportation as a related service by collecting data through September 3, 2024. The [P]arent verbally agreed to meet on September 4, 2024, to review the data and determine the need for special transportation. [The District] will still be within the 60 school day timeline."
13. A PWN for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated August 13, 2024, indicated, "The [LEA] refuses to initiate or change the identification, educational placement, or provision of special education and related services as explained … . [The District] considered the request by [the Parent] to add special transportation as a related service to [the Student's] current special education services. [The District] is declining to add transportation as a related service at this time. General transportation has been offered and will continue to be offered for [the Student]."
14. The Parent was given the following documents on August 13, 2024, at the meeting to discuss Parent concerns:
    a. "Procedural Safeguards";
    b. "Signed Notice of Meeting";
    c. "Signed Conference Notes";
    d. "Prior Written Notice responding to [P]arent request for special transportation"; and
    e. "Notice of Meeting for September 4, 2024."

15. According to a Conference Form dated August 13, 2024, the Parent shared that it took a while to get the Student assessed at the Previous District. The Parent shared that they wanted special transportation to be provided and extended time to eat because the Student is a slow eater. The Parent indicated the Student did not have transportation at the Previous School last year because of an age requirement. The Parent would like the Student to ride the bus with the older sibling to help the Student get to school. The Parent feels the sibling would provide comfort to the Student due to the Student's anxiety.
16. According to the Previous District's 2023-24 School Calendar and the current District's 2024-25 Calendar, the District was within the 60-day timeline for assessment completion with 26 days remaining at the time of the file review.
17. The Complaint was filed on August 13, 2024.
18. According to the Director of Special Services, the School spoke with the Student's family when they came in for their at-risk screening over the summer. They stated that because the Student was in general education, any transportation information would have gone through the transportation department. "So whenever parents enroll, we ask them to enroll and ride. … I think it's called Ride 360. It's an online app that shares all of the transportation information and then they send that information out to parents."
19. The Special Services Coordinator said, "And I can tell you that the day that [the Student] came in for a [sic] preschool screening, I did not know that [they] had an IEP until right before [sic] parent left. [The Parent] said [the Student] went through the screening process for our at-risk preschool, and [the Parent] said … '… just so you know, [the Student] has an IEP.' And I said, 'oh … [they] did not have one the previous year before.' And [the Parent] said, 'yes, they wrote an IEP for [the Student] … .' … And I said, '… I haven't gotten any information.' [The Parent] said, 'well, I can send it to you.'

    The Special Services Coordinator recalled the Student came in on June 18, 2024 for their screening, and confirmed the Student had never previously attended the District before.
20. According to the Director of Special Services, since the Student was not assigned to specialized transportation under their IEP, the School had no direct contact with the Parent about special transportation. They stated the process for the Student's transportation was the same as that for general education students, following standard procedures before the school year began.

    The Special Services Coordinator said, "Nothing was said to me about transportation. Only that there was an IEP."
21. According to the Director of Special Services, "[The Parent] did speak with transportation and they offered to send a bus back around to get [the Student]. And [the Parent] ended that phone conversation and brought [the Student] to school [themself]. But … transportation was offered to come back and get [the Student] that day, and [the Parent] refused it."
22. The Director of Special Services said, "And I have not had any contact with [the Parent] at all until the morning that [they] had sent me the email that [they] had filed the complaint and then met [them] for the first time that afternoon in person." The Director

of Special Services stated that when the Complaint was filed, the Special Services Coordinator spoke with the Parent several times that morning.

23. The Special Services Coordinator said, "It was the first day for our preschoolers. And as soon as I got into the office, I had notifications that [the Parent] was upset about transportation. … I pulled the child's file … it clearly said in the IEP that transportation was not a need for this child at the time. The evaluation report did not indicate that there was a need for this child. When I spoke with [the Parent], [they] said that they had amended the IEP … and added transportation. And I said, '… I don't see anything that shows that they amended the IEP regarding transportation.' [The Parent] said, 'well, I can send you the form.' So [the Parent] sent me a consent to evaluate that was actually signed on the date of the IEP meeting."
24. The Special Services Coordinator explained that when addressing concerns raised by the Parent, they proposed a meeting to discuss what would be most appropriate for the Student. They informed the Parent that a notice of meeting was required but offered to meet sooner if they were willing to waive their 10-day notice right, allowing the team to address the Parent's concerns and decide on next steps.
25. The Special Services Coordinator stated the Parent agreed to meet, but stated they were bringing an attorney with them. The Special Services Coordinator said they met with the Parent that day. The Special Services Coordinator stated that during the meeting they listened to the Parent's concerns and clarified that no special transportation had been added to the IEP. They reviewed conference notes from the Previous District, which indicated a meeting was supposed to take place on April 26, 2024 to review special transportation data. The Special Services Coordinator stated the Parent explained to them that the April 26th meeting was canceled because the Parent informed the Previous District that the Student was transferring to this School, which they believed would handle it. According to the Special Services Coordinator, the current School's team is in the process of collecting data to assess the need for special transportation.
26. The Special Services Coordinator stated in the interim, the Student has rode general transportation to and from school.

    According to the Special Services Coordinator, daily data has been collected on the Student's bus rides. They explained there was one incident where the Student had a disagreement with another child, but the bus driver separated their seats, resolving the issue. The Special Services Coordinator stated that reports from teachers and the bus driver have been positive, noting that the Student had excellent rides and no issues boarding or riding the bus.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.323(a),(c) and K.A.R. 91-40-16(3), each school district must make Free Appropriate Public Education (FAPE) available to all eligible children beginning on their third birthday, and continuing until a reevaluation indicates the child is no longer eligible and

the parents consent to termination of services. For children with disabilities, age 3 through 5, an Individualized Family Services Plan (IFSP) may serve as the Individualized Education Program (IEP) of the child if the school and parents agree. An IEP must be developed within 30 calendar days of a determination that the child needs special education and related services and must be implemented within 10 school days after written parent consent is granted for the services in the IEP or IFSP unless reasonable justification for a delay can be shown. In addition, the school is required to ensure that an IEP or IFSP is in effect at the beginning of each school year for each child with an exceptionality.

The Student was eligible for special education as a child with a disability per the Individuals with Disabilities Education Act (IDEA). After the Student's initial screening on June 18, 2024, the Parent informed the District that the Student had an IEP from the Student's Previous District. The District received records from the Previous District and shared them with the service providers on July 29, 2024. Upon reviewing the IEP from April 9, 2024, it was noted that the Student did not demonstrate a need for special transportation. The Student was assigned a general education bus before school started, a free service for all students in the District.

According to the Director of Special Services, the process for the Student's transportation was the same as that for general education students, following standard procedures before the school year began.

According to the Director of Special Services, the Parent contacted the transportation department on the morning of August 13, 2024 and expressed concern that the special education bus did not arrive to pick up the Student. Transportation offered to send a bus to pick up the Student, but the Parent declined and chose to transport the Student on their own.

The Special Services Coordinator stated they listened to the Parent's concerns during a meeting held on August 13, 2024 and clarified that no special transportation had been added to the IEP. They reviewed conference notes from the Student's Previous District, which indicated a meeting was supposed to take place on April 26, 2024 to review special transportation data. The Special Services Coordinator stated the Parent explained to them that the April 26th meeting was canceled because the Parent informed the Previous District that the Student was transferring to this School, which the Parent believed would handle the services.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is unsubstantiated*** that the District failed to implement the Student's IEP. The IEP did not state the Student required transportation services at the time of eligibility. While an evaluation to consider transportation services was part of the IEP, a meeting between the Parent and the Student's Previous District to discuss the matter never took place, and the IEP was never amended.

Complaint 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 #107, ROCK HILL PUBLIC SCHOOLS
ON AUGUST 12, 2024

DATE OF REPORT: SEPTEMBER 17, 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 Beloit Special Education Cooperative provides special education services to the district. In the remainder of the report the Beloit Special Education Cooperative will be referred to as the "cooperative" or the "coop." The district accessed an attorney during the investigation and in the report, Ms. Tammy Somogye will be referred to as the "district attorney."

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 12, 2024, and the 30-day timeline ended on September 12, 2024. On September 11, 2024, the investigator requested an extension due to personal illness and received an extension revising the timeline to end September 17, 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 Parent. All evidence submitted was reviewed; some evidence was older than twelve months and used for context rather than investigation of the issues. The evidence listed below was used in consideration of the investigation.

Additionally, the Investigator contacted the district via the district attorney and parent several times by phone and email to clarify evidence. The Investigator emailed with the mother by phone on August 16 August 19, and September 5, 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 scheduled on August 29, 2024 with Christie Gerdes, Special Education Director, Beloit Special Education Cooperative, Amy McDill, Special Education Teacher along

with Tammy Somogye the District's Attorney, was cancelled by the investigator due to personal illness. It was finally completed via email questioning between August 30, 2024 and September 3 2024 due to the investigator illness. The following documentation and information were used in consideration of the issues:

- Email from school psychologist to special education director of cooperative (2023-2024 school year), assistant director of special education, principal, special education teacher, occupational therapist, speech language pathologist, English teacher, science teacher, cooperative transition coordinator, and coop professional staff, dated March 21, 2023 at 7:55 a.m. Multidisciplinary Team Report dated March 27, 2023, including parent concerns dated March 27, 2023
- Individualized Education Plan dated April 19, 2023
- Email between special education teacher and school psychologist dated September 8, 2023 between 6:50 a.m. and 7:09 a.m.
- Email among special education director, principal, special education teacher, superintendent, school psychologist and speech and language pathologist dated between March 19, 2024 at 4:01 p.m. and March 22, 2024 at 10:24 a.m.
- Email among special education teacher, business teacher and English teacher dated March 25, 2024 between 10:38 a.m. and 1:41 p.m.
- Email between parent and special education director dated between April 5, 2024 at 9:53 p.m. and April 8, 2024 at 3:16 p.m.
- Individualized Education Plan dated April 9, 2024
- Parent concerns written document dated April 9, 2024
- District response received August 23, 2024
- Email from district's attorney to investigator dated September 3, 2024 at 11:58 a.m.
- Email from parent to investigator dated September 15, 2024 at 10:01 p.m.

Background Information

The student was a junior during the 2023-2024 school year where he was 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 received special education and related services for speech language and psychological services. The student is no longer enrolled as a student in the district.

This complaint addresses the district's obligation to provide related services to the parents and conduct a functional behavior assessment for the student.

Issues Investigated

1. Did the district offer parent counseling and training as a related service to the complainant or any other parents the complainant asked during the 2023-2024 school year?
2. Did the district develop appropriate services for the student's ADHD by conducting an FBA for work refusal or distraction during the 23-24 school year?

Issue One

Did the district offer parent counseling and training as a related service to the complainant or any other parents the complainant asked during the 2023-2024 school year?

Applicable Law

Federal regulations at 34 C.F.R. §300.34(c)(8)(i)(ii)(iii) and Kansas Regulations at K.A.R. 91-40-1(ww) define parent counseling and training' in three ways, 1) Assisting parents in understanding the special needs of their child; (2) providing parents with information about child development; and (3) helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

Analysis: Findings of Fact

Issue One was both an individual complaint on behalf of the complainant/student and a systemic complaint. On August 23, 2024, the district responded in their response that parent counseling and training is considered and will be provided when students' needs require this related service. They further stated that they have not been informed of additional parents who were not offered parent counseling and training. The investigator requested that the complainant provide additional information to fully investigate the systemic complaint, and the parent replied on September 5, 2024, at 2:16 p.m. that "I reached out to these parents but have not heard back from them. You can just investigate for just myself." As such this issue will be investigated specifically to this child and additionally to determine if the procedures and practices are in place in the district to implement the regulation for other students in the district.

The Parent alleged that the district did not offer parent counseling and training as a related service to the complainant. She stated the district should have offered this service. "There has been nothing but a power struggle over [Student's] Education. I believe a lot of the disagreements could have been avoided if the 'TEAM' had worked with us and explained the reasoning of the way they wanted to do things. Instead, I was turned into DCF for interfering with my Boy's education. This was only information the school staff would know."

In a clarification of the complaint on September 5, 2024, at 2:16 p.m. the complainant wrote in an email, "I do not want anything regarding this complaint, I cannot go back in time. Had they

offered parent support or training, perhaps the last year would not have been such a nightmare for our family. I guess more training would help." Further, "They made sure to put staff support in [student's] April 23/24 IEP. They didn't even offer any to the parent. The [special education director] asked if I wanted someone from Families Together to attend the IEP Meeting on April 9, 2024. That was the only thing ever offered."

The District responded that parent counseling and training must be included in an IEP when it is necessary for the student to receive a free and appropriate public education (FAPE). The IEP team did not identify parent counseling and training as a service required to provide the student FAPE in either IEP during the 2023-2024 school year. The district responded that several factors support the conclusion that parent counseling and training was not necessary. First, at the mother's request the student completed all of his work at school. Second, there was frequent communication between district/coop personnel about the student, including the student's mother providing regular feedback about various aspects of the student's schooling. Next, there was no indication that any behaviors were happening at home that would have triggered the need for the student's mother to receive assistance or training regarding how to handle them. In regard to district practices and procedures the coop and district state that parent counseling and training is considered and provided when students' needs require this related service.

The April 29, 2023 and April 9, 2024 IEPs do not include parent counseling and training as a supplementary service.

The parent wrote in an email to the investigator on September 15, 2024 at 10:01 p.m. "I feel it (not getting parent counseling or training) greatly impacted [student] receiving FAPE. The school chose to turn [student's] education into a power struggle, by doing this his needs were not met. I did not realize that parent training or counseling was something the school should offer until towards the end of the year. Had this been offered perhaps I could have explained my thoughts for [student's] needs in a different way so that everyone understood what my concerns were, not that I was interfering in his education."

The April 9, 2024 IEP staffing notes referenced a document written by the parent and appended to the April 9, 2024 IEP that referred to concerns about parent involvement. This document states, "We know that the DCF report came from the school, just by what was said in the report. If anyone has an issue with me holding the staff accountable, please let me know. This is [student's] future. When he is not provided the instruction to learn the skills he needs, It only lessens the chance for [student] to successfully live independently."

The district stated that the school-based IEP team has not considered recommending parent counseling or training because "the parent had a very good understanding of her child's needs and offered suggestions to school staff on accommodations and how to meet her child's needs. She presented information from various resources (doctors, therapists, previous services on IEPs, resources from websites regarding her child's disability) to the IEP team for

their consideration and engaged in multiple conversations regarding programming and planning for services to meet the needs of her child. The team did not have any reason to believe that the parent required additional counseling or training in order to understand her child's disability or how it impacted him on a daily basis in the school environment and parent did not request parental counseling or training, so there was not any specific discussion about this topic during IEP meetings." As such, the district responded that the IEP team focused on the student's needs and developed a plan to meet his needs.

On September 3, 2024 at 11:38 a.m. in an email to the investigator the district responded to the question, Under what conditions or circumstances do you recommend parental counseling or training as a special education service, "Parents are provided detailed information regarding their child's disability in multidisciplinary evaluation reports which encompass summarizing testing results, eligibility criteria for the state of Kansas, impact of the child's disability on their academic achievement and performance, and recommendations for school supports/services. Parent counseling and/or training would be considered and/or recommended when consistency between home and school is necessary in order to provide appropriate programming and for the student to make progress on IEP goals. A non-exhaustive list of examples include: providing some instruction in American Sign Language if the student is hearing impaired, working with parents on how to utilize an FM trainer that the student uses at school or at home, training parents how to use different AAC devices for communication that the student uses at school or at home, providing cane training resources to assist a visually impaired student in her home and the community, and training parents to assist with generalization of skills in non-school environments. In addition, a team would consider parent counseling or training upon parent request."

Conclusion

There is no requirement in the IDEA that an IEP team offer everything that is available through special education. What is required is that the IEP team offer a free appropriate public education (FAPE). That is, the IEP team must offer only the special education and related services that the team believes the child needs. In this case, the evidence does not show that the parents needed assistance in understanding the special needs of their child, information about child development or skills to support the implementation of the student's IEP (34 C.F.R. §300.34(c)(8)(i)(ii)(iii)) and (K.A.R. 91-40-1(ww)). So, not offering parent counseling or training during the IEP meeting when there was nothing that indicated parent counseling or training was necessary in order for the child to make appropriate progress does not constitute a violation. According to the district they stated they would consider offering parent counseling or training if the parent requested the service, but no evidence was found that the parent specifically requested parent counseling or training.

As a part of interviewing the district about their practices and procedures for including parent counseling or training as a related service they stated that they do not routinely offer this

related service for families of students with IEPs, but instead consider it on an individual basis when any one of the three conditions outlined in IDEA and Kansas regulation are identified with the IEP team.

Therefore, ***it is not substantiated*** that USD #107 did not offer parent counseling and training as a related service to the complainant or any other parents the complainant asked during the 2023-2024 school year.

Issue Two

Did the district develop appropriate services for the student's ADHD by not conducting an FBA for work refusal or distraction during the 23-24 school year?

Applicable Law

Federal regulations at 34 C.F.R. §300.304(c)(6) and (7) state that when evaluating a child with a disability under §§300.304 through 300.306, the evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified, and further the assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

Federal regulations at 34 C.F.R. §300.324 state that in developing each child's IEP, the IEP Team must consider the strengths of the child, the concerns of the parent for enhancing the education of their child, the results of the initial 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, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

Analysis: Findings of Fact

The Parent alleged that there are numerous emails that state the student had refused to work or was frequently distracted. There was no correspondence with parents about this issue, nor was an FBA suggested or completed. These emails "had a feeling" that the student was just being lazy rather than struggling with the work.

The District responded that the IEPs were developed with goals and accommodations to address work refusal and distraction associated with ADHD based on the ongoing assessment and the most current reevaluation, and therefore a functional behavior assessment was not needed.

The Multidisciplinary Team Report dated March 27, 2023, documented that the student' medical diagnosis of ADHD, predominantly inattentive type was confirmed during June 2020. The IEPs dated April 19, 2023 and April 9, 2024 indicate the student's secondary eligibility category of special education was other health impaired due to the ADHD.

The most recent Multidisciplinary Team Report, dated March 27, 2023 noted that there was evidence of a severe discrepancy between the performance in mathematics, communication, transition/student skills, and executive functioning. Additional comments in the report addressed not staying on task during English and math class observations. Suggested instructional strategies were noted throughout to maintain or regain attention to academic work. In the staff concern section, "figure out how to help get himself focused. He gets distracted by activities going on in the room and loses track of what he is working on. This often keeps him from getting his work completed in a timely fashion." was documented. The student's ability to complete work tasks appropriately and/or in a timely fashion was evaluated to be clinically elevated. The student's ability to begin an activity was clinically elevated as rated by the parent and one of three teachers. The student self-evaluated himself as "I often get distracted." And finds it hard to concentrate the whole time when sitting in a long class or meeting. And his mother stated he is inattentive. The special education and general education teachers completing the evaluation did not identify distractibility or work refusal as concerns.

The IEP dated April 19, 2023 listed staff concerns derived from the March 27, 2023 reevaluation as: when the student is off task and a teacher is trying to help him with strategies to get refocused, he views these prompts as "bugging him." His special education teacher stated she would like him to improve his focus and getting work done on time. The parent indicated that the work gets overwhelming and he needs assignments that match his learning style. "Formal cognitive testing found that it is possible his focus/attention to task may have led to the variance of cognitive testing scores." Functionally, it was noted that the primary weakness/concern for the student was figuring out how to get himself focused. The special education teacher stated, "he gets distracted by activities going on in the room and loses track of what he is working on. This often keeps him from getting his work completed in a timely fashion."

The April 9, 2024 IEP documented the following data collection to develop the annual IEP: input from classroom teachers and student, updated transition assessment, Fastbridge scores, the BRIEF 2 for executive functioning, parent concerns and strengths. The IEP indicates that two of the student's goals are impacted. First, the student's independent ability to focus and complete math activities, and implement executive functioning skills are impacted and will be met in the IEP through: general education supports, accommodations, modifications, supports for school personnel, assistive technology, supplementary aids and supports and positive behavioral supports.

The April 9, 2024 IEP included accommodations to address focus and work refusal, including alternate place to complete work, use of personal headphones (to improve focus during learning activities), a visual timer (to assist with task completion), planner (to assist with time management), breaking down assignments to daily task requirements (assist with time

management), and checking for understanding (to ensure the student knows how to start assigned work).

The parent wrote in an email to the investigator on September 15, 2024, at 10:01 p.m. that there was never a discussion with the district about conducting an FBA for distraction or work refusal because the special education teacher "refused to correspond with me." The parent further wrote, "[student] was able to focus better in all of his classes, except for the classes in [special education teacher's] room. Which were Math, Study Skills and Social Skills. If an FBA would have been done, we could have narrowed down the issues he was having in these classes."

The parent stated in her email to the investigator dated September 15, 2024, at 10:01 p.m. that the student told his mother when asked about any accommodations or strategies that allowed the student to keep focus that, "really did not have any strategies to help him stay focused. He tried his headphones, but [special education teacher] had an issue with him taking too long to pick songs etc."

Conclusion

In determining if the district had an obligation to conduct an FBA for work refusal or distraction the investigation examined if the March 27, 2023, Multidisciplinary team evaluation was sufficiently comprehensive to develop an IEP for the student. Based on report and assessment used in preparation of the April 19, 2023 IEP and April 9, 2024 IEPs it is found that the two IEPs implemented during the 2023-2024 school year appropriately and adequately identified student strengths, parent concerns, incorporated most recent evaluation, assessment and did not indicate additional assessment was needed to address the work refusal and distraction. Therefore*, it is not substantiated* that USD #107 failed to conduct an FBA for work refusal or distraction during the 23-24 school year.

Summary of Conclusions/Corrective Action

ISSUE ONE: A violation of 34 C.F.R. §300.34(c)(8)(i)(ii)(iii) and (K.A.R. 91-40-1(ww) was not found, based on the facts above. Corrective action is not required.

ISSUE TWO: A violation of 34 C.F.R. §300.304(c)(6) and (7) and 34 C.F.R. §300.324 was not found, based on the 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 #469
ON AUGUST 27, 2024

DATE OF REPORT: SEPTEMBER 26, 2024

This report is in response to a complaint filed with our office on behalf of a student, ------, by his 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 # 469 Lansing Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #469.

The Kansas State Department of Education (KSDE) allows 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 August 27, 2024, and the 30-day timeline ended on September 26, 2024.

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video call on September 20, 2024. District staff were interviewed on September 19, 2024.

The Complaint Investigator also received emails from the Parent and the District between September 22, 2022 and August 9, 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:

From the District:

1. Complaint Response, 09/06/24
2. Individualized Education Program (IEP), 03/24/23
3. Amendment IEP, 02/15/24
4. PWN, 02/13/24
5. PWN, 04/22/24
6. Request for Consent, 04/22/24-04/25/24
7. Evaluation/Eligibility Team Report Reevaluation, 03/31/23
8. Meeting Notes, 10/27/23

9. Contact Log, 08/16-09/05/24
10. Instruction Log, 06/03-06/27, no year

From the Parent

1. Email, re: services for 24-25 school year, 08/09/24

Background Information

This investigation involved a ninth-grade student who received homebound instruction in the District. The Student is currently eligible for special education or related services as a child with an Autism Spectrum Disorder disability per the Individuals with Disabilities Education Act (IDEA). The Student has been on a homebound instruction plan since 2023 due to the disagreement between the District and the Parent about the appropriate placement. Homebound instruction was delivered in the morning during the 2023-24 school year.

The Student Services Director indicated in an interview that the Student had been with the District for three years and, during his first year, exhibited behavioral challenges that led to various placement changes, starting from the least restrictive environment (LRE) in a Special Education setting with inclusion to a more restrictive, self-contained setting. The escalating behavior, which included physical aggression, elopement, property destruction, disrobing, urination, throwing objects, physical contact with staff and students, and self-harm, ultimately led to homebound instruction toward the end of the Student's first year in the District. However, the Director of Student Services described that there had been significant progress with the homebound instruction and the Board-Certified Behavior Analyst (BCBA) Team's plan, and the Student is ready to return to a self-contained program in the District.

Issue One

USD #469, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP at the beginning of the 2024-25 school year. 34 C.F.R. 300.323(a) and K.A.R. 91-40-16(b)(3).

Positions of the Parties

The homebound instruction was executed in the morning during the 2023-24 school year. During the 2024-25 school year, the District sent an afternoon schedule as opposed to "the status quo," which interfered with the Student's afternoon therapy sessions. (Parent Complaint, August 27, 2024)

The District's position is that they attempted to provide homebound services under the Student's current IEP. The District acknowledged that due to internal miscommunication, the District did not send service providers to the home on the first two days of the school year. Since then, the District has attempted to provide services daily, but they have been denied access to the Student. (District Response, September 6, 2024)

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Parent and District staff.

1. The Student is 13 years old, in 9th grade, and was scheduled to receive homebound instruction for the 2024-25 school year.
2. The Student is eligible for special education as a student with Autism.
3. On February 15, 2024, an IEP meeting indicated the Student had IEP goals for communication, motor, sensory, social-emotional, reading, math, and written language. The IEP also indicated:
    a. Student strengths indicated the Student used total communication to communicate their basic wants and needs. "The Student uses words, phrases, gestures, body language, and a speech-generated device (SGD) for communication. … When given a visual model, [the Student] is able to correctly copy numbers in regular lined paper … [The Student] is a joy to be around. [The Student] is a fun student and has high energy."
    b. Accommodations included visual models, access to a scribe, access to sensory strategies, decreased visual and auditory input, priming of upcoming transitions, access to prompts, manipulatives for math, and read-aloud supports.
    c. Support for school personnel included a team meeting every other week for 30 minutes, starting on 12/11/2023 and ending on 04/16/2024.
    d. Assistive technology included an AAC device provided weekly to the Student.
    e. The Educational Placement and Special Education Services section described the range of services tailored to the Student's specific challenges, including occupational therapy consultations to address self-regulation and fine motor skills impacted by sensory processing difficulties. For communication needs, the Student received both homebound and pull-out speech-language therapy. Due to significant behavior concerns and low academic skills, the Student received direct instruction in behavior, life skills, and academics. This instruction was provided both in a homebound setting and in a specialized educational setting, with varying frequencies and durations throughout the school year.
    f. The potential harmful effects included "time away from same-aged peers in this setting."
4. According to the Student Services Director, the Student's homebound instruction included three hours of daily instruction from a Special Education teacher and paraprofessional, with virtual support from a BCBA Team that utilized video recordings and headsets for real-time feedback and communication. One time each week, the Student received 30 minutes of speech-language services.
5. The Student did not receive a full day of services. The Student's services were "based on what [the Student's] tolerance and stamina are related to how long [the Student] can participate and engage in instruction."

6. The Student Services Director indicated that the IEP Team met to review and revise the Student's IEP on the following dates: August 17, 2023, October 27, 2023, December 11, 2023, January 12, 2024, and April 12, 2024.
7. A Teacher Log with a date range of June 3, 2024, through June 27, 2024, indicated the Student received ESY instruction in reading, writing, math, and behavior support on average for 3 hours a day for 14 days.
8. According to a Teacher Log with a date range of August 16, 2024 through September 5, 2024, the teacher went to the home to deliver instruction on 13 different days during the date range, arriving before 12:30 p.m. The Parents did not answer the door on any occasion.
9. According to a Response to Formal Complaint Letter dated September 6, 2024, the Director of Student Services indicated, "Due to [a] miscommunication internally, the [D]istrict did not send service providers on the first two days of the school year. August 14th was the first day of school at [the District High School] for freshmen only. School personnel have attempted to provide services every day since then and have been denied access to the [S]tudent."
10. In an interview, the Parent shared that the District maintained a homebound plan with a morning schedule for the Student throughout the summer. For the start of the 2024-25 school year, the District provided an afternoon schedule, which the Parents disagreed with, citing the Student's poor performance in the afternoon and therapy sessions that the Student needed to attend in the evening. The Parent indicated that they and their attorney had indicated that this schedule was unsuitable.
11. On August 9, 2024, the Parent's Attorney emailed the Director of Student Services and the Parent, "I have spoken with my clients, who have the following concerns":
    a. "Regarding the proposed 1-4 p.m time:"
        i. "[The Student] has [a] long[-]standing therapy appointment in the afternoon."
        ii. "[The Student] is at [their] best for academic learning in the morning."
        iii. "The proposed hours also affect after[-]school obligations and opportunities for [their sibling]."
    b. "Regarding the new teacher: please provide information and an introduction: credentials, whether [they are] part of the District's staff or a contract employee."
    c. "The plan for addressing the 2500+ hours of lost education time." "Parents have shared their long-standing concerns about [the Student's] needs, including training of staff, interaction with peers, and accelerated times to address the education time lost. To that end, they are renewing their request for [the Student's] placement at [the Private Academy]. That placement provides the FAPE to which [the Student] is entitled and addresses both the educational hours deficit and provides additional support for critical staff training for delivery of [the Student's] FAPE."

12. The Student Services Director indicated that the time the School had available to serve the Student was from 1:00 p.m. to 4:00 p.m. and that last year, they provided services from 8:00 a.m. to 11:00 or 8:30 a.m. to 11:30 a.m. The paraprofessional they had scheduled for the afternoon time slot worked with the Student during the extended school year and knew the Student well, "… we've got our new teacher trained up as well. So we are ready, but they don't answer the door." The Student Services Director understood that the Parents had some schedule conflicts with the afternoon time slot. The Parents indicated that the Student has afternoon therapy services and their other child's activities may affect their availability. The Student Services Director mentioned that regarding the afternoon time slot, "We don't have another time available. So that is the time that we currently have available with the staffing that we have." The Attorney for the District added that the District has offered to provide services in the morning in the self-contained program, and the Parent had refused this option.
13. When asked about not answering the door when the teachers arrived at 1:00 p.m. to provide home instruction, one of the Parents indicated, "Yeah … [the Relative] has heard … somebody ring the bell." One of the Parents indicated that the Student is at home from 1:00 p.m. to 4:00 p.m.
14. The Parents shared in an interview that the Student has two therapy sessions in the afternoon on Mondays and Wednesdays, and tutoring for sign language on Tuesdays and Thursdays. The Parents shared that the therapies begin at 5:00 p.m., and they leave the house at "4:20ish." The Parents indicated that the Student does not do well in the afternoon, that the Student is excited and unfocused, and that having instruction in the afternoon until 4:00 p.m. and then going to therapies does not work for the Student.
15. On September 6, 2024, the Director of Student Services reported in a Response to Formal Complaint Letter, "the [D]istrict is following the [S]tudent's current plan. … The IEP [T]eam met on several occasions since the current plan was agreed upon, but [sic] new plan has been agreed to or consented to. … the [T]eam met on April 12, 2024." Meeting notes indicated the Parents refused to consent to the change offered in the plan.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.323(a) and K.A.R. 91-40-16(b)(3), each school district must make FAPE available to all eligible children beginning on their third birthday and continuing until a revaluation indicates the Student is no longer eligible and the parents consent to termination of services. An IEP must be developed and implemented within ten school days after written parent consent is granted for the services in the IEP.

At the beginning of the 2024-25 school year, the District attempted to provide homebound instruction to the Student, in compliance with 34 C.F.R. 300.323(a) and

K.A.R. 91-40-16(b)(3). The District's proposed afternoon instructional period conflicted with the Parents' preference for morning instruction and scheduled therapy appointments. The

Student's IEP did not require special education services be provided in the Student's home in the afternoon. The scheduling of services is an administrative function of the District. District personnel reported being unable to access the Student during the scheduled afternoon sessions. Despite the disagreement between the Parents and the District on the scheduling of the instructional sessions, the District fulfilled its obligation to offer services in accordance with the Student's IEP.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the District failed to provide a FAPE to the Student.

Issue Two

USD #469, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to convene an IEP meeting and obtain parent participation before refusing parent-requested special education. 34 C.F.R 300.320 and K.A.R. 91-40-21.

Positions of the Parties

The Parents proposed an alternative placement at the Private Academy. According to the Parent, the District promised to discuss the Parent's proposed placement at an IEP meeting. The Parent alleged the District reached a decision to deny the placement before the IEP meeting convened. (Parent Complaint, August 27, 2024)

The District maintained that they adhered to the Student's existing IEP. Although the IEP Team met multiple times, most recently on April 12, 2024, no new plan had been agreed upon or consented to.(District Response, September 6, 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 meeting notes dated October 27, 2023, there was a discussion regarding the Student's reintegration into the school building. The Director of Student Services indicated they would send the data points to the Parent to give them an idea of how the integration plan was going. The Attorney for the Parent explained that the Team needed to be better about communicating, and the Parent "need to know about schedules and the process of integration."
2. A Prior Written Notice (PWN), dated February 13, 2024, indicated the Team met to review the special education and related services for the Student and the appropriate educational placement to provide special education and related services identified in the Student's IEP. "The IEP [T]eam proposes for [the Student] to begin in transition from homebound to receive services in a special education classroom. The [T]eam proposes a five-week transition plan starting with an hour in the building each day and increasing

the time by 30 minutes each week. Homebound services would decrease weekly as special education classroom minutes increase until [the Student] attends for 3 hours in the special education classroom setting. Each week, the sum of minutes is the homebound and special education each day will equal 180 minutes."

3. In an interview, the Parent shared that the original transition plan involved gradually reintroducing the Student to the School through incremental visits. However, this plan was scrapped in favor of a direct transition to what the Parent described as "seclusion" in the School. The Parents and the private BCBA disagreed with this change, citing the previously agreed-upon plan. According to the Parent, the District remained firm on their decision, leading to a stalemate.
4. Staffing Notes dated April 12, 2024, indicated, "Proposed placement/services: remain receiving services in the homebound setting and change to services within the high school building in August. Discussion of [the Private Academy]."
5. The Parent described in an interview that the Student's doctor recommended "for [the Student] to be sent to an alternative placement, a private placement at [the Private Academy]. [The doctor] put that in writing, and we submitted that to the School and requested for them to send [the Student] to [the Private Academy]. And they said no, that they would not. They said initially that it'll be discussed by the IEP [T]eam during the IEP meeting. So we went to the IEP meeting … close to the end of the meeting, we asked, 'What about our request for private placement?' They said, 'Well … the [T]eam has decided against it.' And I asked them, 'Are the Parents part of the IEP [T]eam?' They say, 'Yes.' I say, 'So who and who decided against it.' They wouldn't answer me."
6. Regarding the discussion about the out-of-district placement, the Student Services Director recalled, "It was a proposal by the Parents to initiate just the conversation about the out-of-district placement at this … Academy. … Our proposal had been, we worked on it for a while … was for [the Student] to come back into our school environment because the data suggests that [the Student's] behavior is under control. We have instructional control, and so the data supports coming back into the School. … [The] prior written notices that we provided with the different proposals … there was like a five or six- week plan that we were going to increase [the Student's] time each week. It was to start out in the self-contained setting, and then we work our way to see how [the Student] transitions … . But the plan was to set up the School as close as possible to what the homebound looks like with just [the Student] and the staff working together because that was successful and the behavior was managed. … So we propose for that five, six-week plan to introduce [the Student] back into the school setting because the data shows that our homebound works and that we're ready for that next step, but they don't like starting out in the self-contained setting. So they brought that proposal for the out-of-district placement to us at our meeting in April."
7. A PWN dated April 22, 2024, indicated, "The [T]eam considered the least restrictive environment and potential harmful effects. The special education classroom is a less restrictive environment as compared to home bound [sic], but [the Student] will still have limited access to peers. Considering safety and helping [the Student] adjust to the

new environment, limiting access to peers is important but necessary for now, but being in the school building will bring [the Student] closer to supervised, structured interactions with peers and ultimately being able to work toward transition back into special education and general education classroom and environments."

"The [T]eam will continue to review behavior data to determine the appropriate placement for [the Student] to receive special education services. The [T]eam will consider the continuum of special education services to include an alternative program outside of school district boundaries if the data indicates this level of service/support is needed and would consider and meet with [the Private Academy] at that time. The [T]eam will meet weekly to discuss behavior data and plan to incorporate inclusion opportunities into [the Student's] school day." The Parent did not consent to the special education placement specified in the PWN.

8. The Parent shared in an interview, "They're insisting on bringing [the Student], transitioning [the Student] back to school but to a seclusion in the high school, not even in the middle school. … we also rejected that idea. So we remained on the homebound plan, but they are not executing as expected."
9. The Student Services Director shared in an interview that "Our response is that we make data-based decisions, and our data suggests that [the Student] is ready for reentry into the School setting. If the data were to show differently that the behaviors were ramping up and we weren't successful, then we would be able to try that. But, we didn't have the data to support the need for an out-of-district alternative placement at this time. And also that we will consider that with the data to support it."
10. The Student Services Director believed that the Parents viewed the self- contained setting as "solitary confinement" and wanted their child to be included with peers as much as possible. The School explained the new High School's setup, which allowed for easy transitions between the self-contained setting and inclusion based on the Student's behavior.
11. The Parent indicated in an interview that they asked again about sending the Student to the Private Academy when they received the afternoon homebound schedule for the 2024-25 school year. According to the Parent, the School declined that option without reason. The Parent described that the first time the family asked about the out-of-district placement, the School indicated that they didn't know much about the program. According to the Parent, the second time they asked about the out-of-district placement, the School said that "they have similar services as [the Private Academy]." The Parent disagreed and indicated that at the Private Academy, the Student would not be in "seclusion."

Applicable Regulations and Conclusions

According to 34 C.F.R 300.320 and K.A.R. 91-40-21, in determining the location of special education and related services, the IEP team must consider the continuum of educational placements necessary for the IEP. The school must ensure that each student's parents are

members of any group that makes decisions on the educational placement of their child. The placement decision must be made in conformity with the requirement of providing services in the LRE. The educational placement is to be determined at least annually and based on the Student's IEP.

The District proposed a gradual reintegration plan from homebound instruction to classroom instruction at the School for the Student, starting with one hour in the School building and increasing incrementally, which demonstrated consideration for the LRE. The District issued PWNs detailing the proposed changes to the Student's placement and services, ensuring the Parent was informed and had an opportunity to participate in the decision-making process. The District's decision to transition the Student back to the school setting was based on data indicating improved behavior and instructional control, which aligned with the requirement to make placement decisions based on the Student's individual needs. Although the District ultimately rejected the Parent's request for an out-of-district placement at the Private Academy, they considered it and stated they would reconsider if data supported the need.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the District failed to involve the Parent in the decision-making process regarding the Student's placement.

Complaint 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
Against Unified School District No. 469
Lansing Public Schools: 25FC469-001

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on August 27, 2024, by -------- on behalf of his 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 allegations, was issued on September 26, 2025. 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 notice of appeal, and the district's response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

Preliminary Matters

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.

Discussion of Issues on Appeal

From Parents

The report identified two issues: (1) the district failed to implement the student' IEP at the beginning of the 2024-2025 school year and (2) the district failed to convene an IEP meeting and obtain parent participation before refusing parent-requested special education.

The parent's appeal, in its entirety, states:

> *I wish to submit my Notice of Appeal for the findings and conclusions indicated in the attached. The investigator failed to use the pieces of evidence we supplied and did not even mention them as part of this investigation. Page 2 of this report failed to mention video evidence that we provided. The investigator was made aware of the daily schedule of -------- to keep his morning educational routine as the School is not providing educational instructions, but that was not indicated in this report also. False reports to the DCF report by the school that was part to be part of this investigation is not mentioned anywhere in this report. With these reasons and more, I wish to file a Notice of Appeal.*

The Appeal Committee has already noted, above, that Kansas regulations specify minimum requirements for appeal of a complaint report, namely: "Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect," and that the appeal process allows for an appeal of only the "findings and conclusions" in the report. A copy of this regulation was included in the complaint report sent to the parent, on pages 14-15 of the report.

Accordingly, the burden for supplying a sufficient basis for appeal is on the party submitting the appeal. When a party submits an appeal and makes statements in the notice of appeal without support, the Committee does not attempt to locate the missing support. The appeal process is a review of the Complaint Report. 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."

The Committee finds this appeal to be lacking the clarity required by K.A.R. 91-40-51(f), for the following reasons:

The appeal states:

1. *The investigator failed to use the pieces of evidence we supplied and did not even mention them as part of this investigation.*

The Committee finds that this portion of the notice of appeal fails to describe the evidence that was supplied, but not used, or relevance of such evidence to any finding or conclusion;

2. *The report failed to mention video evidence that we provided.*

The Committee finds that this portion of the notice of appeal fails to describe what video evidence was provided or how that evidence is relevant to the findings or conclusions in the report.

3. *The investigator was made aware of the daily schedule of (the student) to keep his morning educational routine as the School is not providing educational instructions, but that was not indicated in this report.*

The Committee finds that this portion of the notice of appeal is difficult to interpret, does not indicate which issue it addresses, and that it fails to describe how the omission of this information from the report is relevant to any of the findings or conclusions in the report.

4. *False reports to the DCF by the school that was to be part of this investigation is not mentioned anywhere in this report.*

The Committee reviewed the original complaint filed by the parent and found no reference to a DCF report. The Committee finds that the omission of information regarding DCF reports in the complaint report is not error.

The Committee has reviewed the report in its entirety and finds that sufficient evidence exists to support the findings and conclusions in the Complaint Report

Conclusion

For the reasons stated herein, the Complaint Report is sustained in full.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 16th day of October, 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 #469 LANSING PUBLIC SCHOOLS
ON SEPTEMBER 3, 2024

DATE OF REPORT: OCTOBER 3, 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." ------- is the father of -------, 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 # 469. 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 September 3, 2024, and the 30-day timeline ends on October 3, 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). Because the parent alleged that the district had failed to provide required special education service time to other students in addition to the student in this case, a systemic inquiry into this issue was conducted to determine if the issue identified by the parent affected more children in the school. The parent was interviewed to clarify the complaint on September 3, 2024 and interviewed again on September 30, 2024.

Interviews with Tyler Hays (Assistant Principal), LaKrystal McKnight (Special Education Coordinator) and Jennifer Kolb (Principal) were held on September 10, 2024. Interviews with the prior year school staff held on September 10, 2024 included: Lori Geise (Special Education Case Manager), Nevada Runnebaum (Paraprofessional) and Emily Pendergras (Paraprofessional). Interviews with the current year teaching staff held on September 10, 2024 included: Brandi Lynn (Third Grade Teacher), Bishama Samuel (Paraprofessional), Geovanni Popoca (Special Education Case Manager), and Ellie Schwinn (Social Behavioral Skills Special Education Teacher). Emails were exchanged between the district and the investigator from September 6, 2024 to September 25, 2024.

In addition, the following documentation and information were used in consideration of the issue:

1. The student's evaluation, dated January 6, 2022
2. The student's IEP, dated December 7, 2023
3. Student Progress Report, with entries dated December 15, 2023, March 8, 2024, April 23, 2024 and May 22, 2024.
4. Para PLC Meetings, 2023-24 School Year
5. TASN Registered Behavior Technician (RBT) Training Application, dated May 24, 2024
6. Prior written notice for changes to the IEP (ESY) dated June 24, 2024, emailed to the parents on the same date, unsigned
7. Kindergarten, Second and Third Grade Service Delivery Schedule, undated
8. Speech Language Data Form, 2024-25 School Year, with entries beginning August 27, 2024 and ending September 10, 2024
9. Document: "K-5 SpEd Coordinator Project/ Systems/ Processes Planning" 2024-25 School Year
10. IEP Services/Support Log Grade 3 beginning August 14, 2024 and ending September 3, 2024
11. Lansing Elementary School Master Caseload List, dated August 8, 2024
12. Lansing Elementary School Master Schedule, 2024-25, dated August 20, 2024
13. Lansing Elementary School Paraprofessional Absences, 2024-25
14. Lansing Elementary School Student CG minutes, Kindergarten through Third Grade, 2024-25 School Year
15. Special Education Progress Reporting Periods, 2024-25 School Year
16. The district's response to the issues, dated September 13, 2024
17. Email from the district to KSDE and the investigator dated September 13, 2024 at 12:12 p.m.
18. Services: Updated Log (for the student) received September 24, 2024
19. Additional Requested Information dated September 25, 2024

Background Information

The student attends the third grade at the district's elementary school where he receives special education services in special education and general education settings. The student was identified with Autism Spectrum Disorder with cognition in the average range, primarily due to language delays and stereotype language at three years of age. Having attended a Tiny K and the district's preschool program prior to transitioning to kindergarten in January, 2022, the student's current IEP includes goals in language development and social skills, with the majority of the school day in the general education third grade classroom. A behavior

intervention plan, speech language therapy, extended school year (ESY) and transportation are included in the IEP.

Issues Investigated

Issue One

The USD # 469 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 the amount of special education and related services required by the student's IEP.

Because the allegation included the assertion of knowledge of this issue occurring in at least two grades in the school, the investigation included an inquiry into the lack of special education support in the general education classroom in the school.

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 last year, a paraprofessional brought it to the parent's attention that the para often left the student in the general education setting in order to provide services to other children. The parent alleged that she inquired about the practice and found it to be in place this year, depriving her child of needed special education support in the general education classroom and support to be dismissed to the bus or car pick up line appropriately.

The district responded that it acknowledged that mistakes had been made, depriving the student of special education service minutes in the general education classroom. "General education inclusion service minutes are impacted when staff absences occur. The beginning of the current school year has had days where multiple staff members have been absent on the same day. . .. When this occurs, our current practice is to prioritize student safety and cover the students with the most intensive needs and shuffle/rearrange the schedules of available staff.

The district response continued: "The needs hierarchy is individualized, and takes into account each student's independence level and adaptive skills to navigate the school environment safely, and level of disruptive social-emotional behavior exhibited by the student. General education teachers are provided a log to track/log missed minutes; this log is shared with the student's case manager and building administrators. Then, special education case managers monitor student progress toward IEP goals. When the student's progress report indicates that the student has continued to make progress and/or achieved their goals, the team then uses this data to inform decisions about Least Restrictive Environment; the student may no longer need the same level of special education inclusion support, and placement changes can be made at that time per the IEP team discussion and decision and ultimate parent consent. If progress monitoring data indicates the student is not making progress toward their IEP goals, the student is then prioritized in the intensive needs hierarchy when staff absences occur and staff schedules are shuffled/rearranged. Regarding the student in question, a log of missed minutes is [provided] for the current school year. Additionally, [the student's] last progress report, dated 4/23/24, indicated [the student] continues to make adequate progress towards his IEP goals; the next progress report is due to parents on 10/16/24. The IEP team will review [the student's] progress and determine the best placement for services and LRE based on the results."

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #469.

The student's IEP dated December 7, 2023 includes the following goals (in brief): (1) communicate seven communicative functions (e.g. request objects, request/direct actions, request assistance, request, recurrence, request cessation, ask questions, express opinions, inform, protest, complain, etc.), (2) to return a greeting with unfamiliar adults and students, and (3) demonstrate appropriate play skills, peer relations, cooperative learning and

assertiveness. The student's behavior is supported by a positive behavior support plan and the IEP includes a functional behavior assessment. The student's IEP does not include reading goals, math goals, or health needs that impact his educational plan.

The student's IEP dated December 7, 2023 requires special education services in both the special and general education settings. In the special education setting (pullout): direct social skills instruction, 45 minutes, 5 days per week; attendant care for transitions, 10 minutes, 5 days per week; speech/language therapy, 20 minutes, 2 days per week, every 3 out of 4 weeks. In the general education setting (inclusion): electives (specials) 50 minutes, 5 days per week and inclusion in the classroom for social and behavior, 225 minutes, 5 days per week. The IEP also requires indirect speech/language consultation (15 minutes, every 4th week), assistive technology (speech generating device), special transportation and extended school year (ESY). Accommodations and modifications include a separate quiet setting for assignments, tests and assessments to process what is expected; access to a more restrictive setting, visual schedules, whole daily and individual task schedules.

The parents declined to send the student to ESY in the summer of 2024. The district emailed the Prior Written Notice (PWN) reflecting this service change to the parents dated June 24, 2024.

The district provided a summary of missed special education services in general education (inclusion) minutes as follows: August 19, 2024: 50 minutes. August 20-23, 2024: 50 minutes. August 26-29, 2024: left blank. September 3, 2024: 105 minutes.

The student's schedule, cross referenced with the paraprofessional absence schedule (through September 10, 2024) showed that the paraprofessional assigned to the student's third grade classroom was absent on August 19 and September 3, 2024. The paraprofessional assigned to assist the student for dismissal at the end of the day (3:00-3:10 p.m.) was not listed as absent; however, during interviews with the district, the district acknowledged that a different (new) paraprofessional had failed to properly dismiss the student at least one time since the beginning of the current school year.

In an interview with the current teaching team, the paraprofessional and case manager stated that the paraprofessional had been pulled several times to cover more intensive need classrooms and students since the beginning of the current school year. The investigator inquired to determine the extent to which this occurred in two ways. First, in the interview, the paraprofessional estimated that it had happened a few times each week since the beginning of school. Second, with a follow up email dated September 23, 2024 with a chart cross referencing all paraprofessional absences with the paraprofessional assigned to the student's general education setting. At times, the paraprofessional's services in the third grade classroom were replaced by other special education staff. The district reported that the paraprofessional who supported the student in the third grade was pulled away or was absent on the following dates resulting in lost special education support for the student, as follows:

August 8 (225 minutes), August 19 (85 minutes), August 21 (50 minutes), August 22 (50 minutes), August 23 (50 minutes), August 29 (145 minutes), August 30 (15 minutes), and September 3, 2024 (105 minutes) for a total of 725 minutes. On four days (August 22, August 23, August 26, and August 27, 2024), the teacher noted on the service log that an uncertain amount of in-class support was missed.

Conclusion

In summary, extensive paraprofessional absences and policy procedures followed by the district resulted in removing special education services from the student in the third grade setting. It is noted that the district's policy prioritizes student safety and that the district has taken actions to ameliorate service interruption due to staff absences.

Based on the foregoing, ***it is substantiated*** that USD # 469 in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide the amount of special education and related services required by the students' IEPs in the school, specifically in the kindergarten and third grade.

Systemic Inquiry

The USD # 469 in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide the amount of special education and related services required by the students' IEPs in the school, specifically in the kindergarten and third grade.

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 parent alleged that other students in the school were also affected by the lack of paraprofessional support in general education classes. The parent alleged that she had learned this through speaking with school staff persons and that the problem of lack of support in general education classes was school-wide.

The district responded: "Staff attendance and depth of the hiring pool, especially for paraeducators, has been a challenge for the district for the past few years as it has been for most districts across the state. To ensure that we are still able to meet the needs and required IEP minutes for all students, job postings for paraeducator positions are always available and accepting new applicants. Building administrators schedule interviews weekly when new applicants become available. Since the first day of school, five new paraeducators have been hired to join the team at Lansing Elementary school (LES)." The district also responded that the

Elementary Special Education Coordinator "focused on a multi-year plan to provide consistent support and build structural systems in the areas of resources for teaching and learning, collaboration amongst general education and special education, training and professional development, and finally overall systems of support and processes."

The district also responded, "we have prioritized working to increase our special education staffing as well as provide them with resources. . . to provide additional training and support for our current paraprofessionals." The district listed the following steps: (a) Registered Behavior Technician (RBT) training for current paraprofessionals and RBT contracting with outside agencies (b) adding a full time Board Certified Behavior Analyst primarily supporting the elementary building students and staff, (c) having floater staff (.50 FTE) to cover absences (d) having a lead paraprofessional at the building to provide training and to cover absences (e) supporting a Paraprofessional PLC for training and support, and (f) holding weekly administrative meetings to discuss any concerns related to special education to work together to address problems collaboratively.

The district summarized its response by saying, "In conclusion, this complaint implies that we have a systematic flaw in implementing student IEPs by not providing the amount of special education and related services required by the student's IEPs as regulated by the Individuals with Disabilities Act (IDEA) and state and federal guidelines. Lansing USD 469 refutes this claim based on the evidence provided . . . We do recognize that student inclusion minutes are not provided when staff absences reduce the building's support staff to student ratio, however, as outlined in this response, we have district practices in place to monitor and adjust to meet the needs of all special education students."

The findings of Issue One are incorporated herein by reference.

Interviews with district administrators along with the district's response show that the district policy is to pull paraprofessional staff from providing services in the general classroom when needed to cover intensive need classrooms or ensure student safety in the building.

Interviews with district administrators and the district's response to the allegations stated that five paraprofessionals were hired since the beginning of the year. The district submitted evidence of paraprofessional assignments schoolwide. The district reported policy and practices to provide adequate special education services according to students IEPs, including a regular hiring process, a half time "floater" position, a lead para to provide training and coverage for absences, quarterly paraprofessional training, a classroom-based tracking system for missed minutes, and weekly administrative review of service provision in the school. Interviews with school personnel showed awareness of the staff reallocation/paraprofessional substitute policy based on need and paraprofessional skill as well as the implementation of the service tracking system reported by the district.

In a follow up email dated September 25, 2024, the district reported, "All of our paras are not able to work in higher needs programs (SLC and/or SBS) due to the intensity of the programs and various health needs, so we have specific staff members we utilize when absences in these programs cause us to shift our supports." One interrelated resource para is pulled from general education support services to cover other absences, the Para Lead is not assigned service minutes but serves as a floater and trainer, and one para serves only as an SLC substitute on a half time basis. Based on all the paraprofessional absences till September 13, 2024 when the evidence was submitted, there were 49 days of absences during which the school would have needed to cover paraprofessional services in the school.

Using a paraprofessional absence chart showing the 49 absence days the district was asked to provide a list of additional students affected by the paraprofessional substitute policy, focused on when a para was pulled from the general education classroom to provide services elsewhere in the school. The district reported that four students lost a total of 2 hours of special education services due to the policy, as follows: Student 1 (60 minutes), Student 2 (60 minutes), Student 3 (30 minutes) and Student 4 (30 minutes).

Conclusion

In summary, the district's policy appears to accept failure to provide general education support services when absences require the reallocation of staff in the school. The district acknowledged that four additional students were affected. It is noted that the school has put into place additional strategies that minimize the effect of staff absences since the beginning of the school year.

Based on the foregoing, ***it is substantiated*** that USD #469 failed to provide the amount of special education and related services required by the students' IEPs in the school (systemic inquiry).

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. 300.323(c)(2) was found, based on reported absences of special education staff in the student's third grade classroom. Corrective action is required (as follows):
    a. CORRECTIVE ACTION:
        i. By November 1, 2024, USD #469 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 that the district implement the student's IEP.
        ii. By November 1, 2024, USD #469 shall offer the parents 725 minutes of compensatory education directed toward assisting the student to make progress on IEP goals or in the general education curriculum. The parents shall have till November 15, 2024 to accept all, some, or none of

the compensatory education offered by the district. The district shall provide the parents prior written notice regarding the compensatory education offer and parental reply by November 30, 2024.

iii. By November 1, 2024, USD #469 shall provide training to any and all paraprofessionals who have responsibility for dismissing the student.

iv. By November 30, 2024, USD#469 will provide documentation of completion of 1(a)ii and 1(a)iii to SETS.

2. Systemic Inquiry: A violation of 34 C.F.R. 300.323(c)(2) was found, based on the loss of 120 minutes of special education services by four students in addition to the student. Corrective action is required (as follows):

a. CORRECTIVE ACTION:

i. By November 1, 2024, USD #469 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 that the district implement all students' IEPs in the building by providing the special education support services in general education classrooms regardless of staff absences.

ii. By November 30, 2024, USD #469 shall revise as necessary the staff reallocation/para substitute policy in light of the corrective action in order to provide special education services in general education classes in the school as required by student IEPs, and the district shall submit the revised policy to SETS for approval. USD # 469 may contact TASN to request assistance in revising this policy.

iii. By November 1, 2024, USD #469 shall notify the parents of the four additional students that service minutes were missed, offer to meet with the parents, and provide an offer of equivalent compensatory service minutes to those missed by the students due to the staff reallocation/para substitute policy, directed toward assisting the students to make progress on IEP goals or in the general education curriculum. The parents shall have till November 15, 2024 to accept all, some, or none of the compensatory education offered by the district. The district shall provide the parents prior written notice regarding the compensatory education offer and parental reply by November 30, 2024.

iv. By November 30, 2024, USD#469 will provide documentation of completion of 2(a)ii and 2(a)iii 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)

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 469
Lansing Public Schools: 25FC469-002

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on September 3, 2024 by _____ on behalf of her son,_____. In the remainder of this decision, _____ will be referred to as "the parent," and ____ will be referred to as "the student." _____ is the father of_____, and in the remainder of the report will be referred to as "the father." Together, _____and _____ will be referred to as "the parents." An investigation of the complaint was undertaken by a complaint investigator on behalf of the Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, a Complaint Report, addressing the allegations, was issued on October 3, 2024. That Complaint Report concluded that there were violations of special education statutes and regulations

Thereafter, the district filed an appeal of the Complaint Report. Upon receipt of the appeal, an appeal committee was appointed and it reviewed the original complaint filed by the parent, the Complaint Report, the district's notice of appeal, and the parent's response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

Preliminary Matters

A copy of the regulation regarding the filing of an appeal [K.A.R. 91-40-51(f)] was attached to the Complaint Report. That regulation states, in part, that: "Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect." Accordingly, the burden for supplying a sufficient basis for appeal is on the party submitting the appeal. When a party submits an appeal and makes statements in the notice of appeal without support, the Committee does not attempt to locate the missing support.

The Committee also notes that the Kansas regulation, cited above, permits appeal of the "findings or conclusions" of a complaint report. it does not permit an appeal of the corrective actions specified in a report.

The appeal committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report.

Discussion of Issues on Appeal

The basis for this appeal is summarized in the second paragraph of the districts appeal, as follows: *"Compensatory services are required to remedy for learning gaps due to missed educational opportunities. There is no data supporting a learning gap, therefore there was no denial of FAPE. There is no evidence of a decline in progress toward IEP goals, and the students continue to have access to the general education curriculum."*

The investigator's findings and conclusions are summarized in the report, under the title: "CONCLUSION," as follows:

> *In summary, **extensive paraprofessional absences and policy procedures followed by the district** resulted in removing special education services from the student in the third grade setting. It is noted that the district's policy prioritizes student safety and that the district has taken actions to ameliorate service interruption due to staff absences* (emphasis added).

This appeal does not object to this or any other finding or conclusion of the investigator. Rather, it objects to the corrective action ordered in the report. The Appeal Committee has no legal authority to set aside corrective action ordered by an investigator when it can locate no error in any fact or conclusion, as is the case here.

A Kansas complaint investigator has discretion to withhold an order for compensatory services upon a finding that missed services did not interfere with a student's progress in the general education curriculum and/or the student's progress toward IEP goals. When a district asserts that missed services did not adversely affect a student's progress, it should provide clear and convincing evidence to that effect to the investigator so that the investigator can make findings and conclusions on that assertion. There is nothing in the report or the appeal that indicates the district made any such assertion or produced any evidence that supported any such assertion. The Appeal Committee notes, however, the investigator's summary statement (under the heading "CONCLUSION" that "*extensive paraprofessional absences and policy procedures followed by the district resulted in removing special education services from the student in the third grade setting*."

The Appeal Committee agrees with this conclusion that the district's failure to provide services was extensive. Moreover, the district's assertions in this appeal, that the student remained successful in the classroom and so was not adversely affected by the missed services, is not supported by any direct evidence provided in the district's appeal.

The district also stated, in its appeal that:

> "*Finally, the complaint report extends past 12 months in reference to instances that occurred when the student was in kindergarten; this exceeds the formal complaint time frame*."

The Appeal Committee notes that the investigator concluded that the there was a substantiated a violation "*specifically in the kindergarten and third grade.*" The Appeal Committee finds that including kindergarten in that conclusion was improper. Therefore, the word "*kindergarten*" in this conclusion, shall, by operation of this decision, be removed as part of the investigation report. this does not affect the corrective action specified in the report.

Conclusion

For the reasons stated herein, the word "*kindergarten*" is removed from the conclusion portion of the Complaint Report. Otherwise, the Complaint Report is sustained in full.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 30th day of October, 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 #490
ON SEPTEMBER 10, 2024

DATE OF REPORT: OCTOBER 4, 2024

This report is in response to a complaint filed with our office by ------- on behalf of preschool students residing in USD #490. For the remainder of this report, ------- will be referred to as "the complainant."

The Butler County Special Education Interlocal (BCSEI) provides services for special education for students who are enrolled in USD #490. For the remainder of this report, BCSEI will be referred to as "the Interlocal." USD #490 will be referred to as "the district." April Hilyard, Director of the Interlocal, will be referred to as "the director." The Superintendent of USD #490, Jenifer Davis, will be referred to as "the superintendent."

Kate Hedley, the spouse of the complainant and a speech/language pathologist for the district, will be referred to as "the wife of the complainant" or "the speech/language pathologist." Amy Brewer is the school psychologist who was interviewed during this investigation. Ms. Brewer will be referred to as "the school psychologist."

A number of children were identified by name in discussions during the course of this investigation. However, circumstances involving only two of these individuals will be discussed in detail in this report. These students will be referred to as "Student A" and "Student B."

Investigation of Complaint

On September 12 and 27, 2024, the investigator spoke with the director of the interlocal and the superintendent of USD #490. On September 17, 2024, the complaint investigator spoke via telephone with the director. The investigator spoke by telephone with the complainant on September 16, 2024. On September 17, 2024, the investigator spoke with the wife of the complainant. On September 27, 2024, the investigator spoke with a school psychologist who serves buildings containing both Early Childhood Special Education and at-risk preschools. On September 27, 2024, the investigator spoke by telephone with the mother of Student A. On September 27, 2024, the investigator also spoke by telephone with the mother of Student B.

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

- Initial Application and Criteria Checklist for Student A dated May 17, 2024
- Notice of Meeting dated August 23, 2024
- Evaluation and Eligibility Report for Student A dated September 6, 2024

- IEP for Student A dated September 6, 2024
- 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 6, 2024
- Email exchanges dated September 6, 2024 between the speech/language pathologist and the Director of Instructional Supports for the district
- Email exchanges dated September 8, 2024 between the speech/language pathologist, the Director of Instructional Supports, a building principal, a school psychologist, and an Assistant Director for the Interlocal
- Email exchange dated September 9, 2024 between the speech/language pathologist and the superintendent
- Email dated September 10, 2024 from the complainant's spouse to staff at KSDE
- Email dated September 13, 2024 from the superintendent to the State Preschool Programs Consultant for the Early Childhood Department of the Kansas State Department of Education
- Kansas State Department of Education Information Sheet – Early Childhood Funding Considerations for 2024-25 and 2025-26
- Kansas State Department of Education 2024-25 Preschool-Aged At-Risk Program Requirements

Background Information

The complainant is a graduate of USD #490. Though not a resident of the district, he reports that he has family members who are currently served by or employed by USD #490. While able to identify family members who have interacted with district staff regarding preschool services, the complainant told the investigator in a telephone call on September 16, 2024 that he does not personally know the names of individual students whose circumstances he has addressed in his complaint. Rather, he has become aware of these situations through conversations with his wife and other staff members. The complainant provided contact information for those individuals as well as for a family member with a preschool-aged child.

The website for the district includes a section entitled "Preschool Programs" (https://www.usd490.org/pagepreschool-programs) which states that the district offers

> *"…half day preschool programs at [three elementary school sites]… taught by certified, high-quality teachers who provide a solid educational and social foundation for children to learn in a developmentally appropriate setting. Children attend a half-day preschool program, either in morning or afternoon sessions, at their residence elementary school."*

In addition to Early Childhood Special Education preschool classrooms that serve students who have been determined eligible for special education support, the district offers two other

preschool options. These general education options fall under the supervision of the superintendent and members of her staff.

- Role Models: "Role Model" students are – according to the superintendent – children who demonstrate age appropriate skills and are enrolled in Early Childhood Special Education preschool classrooms. Applicants for these slots must have a completed application on file and must complete screening using the ASQ (ASQ: SE-2 and ASQ-3), developmental and social-emotional screening tools for children from birth to 6 years. They must be *3 years old on or before February 28 of the current year and no older than 5 years old on or after August 31 of the current year*. A "Try Out" for the program is required and students must live in the district. These try outs are conducted in the Spring for positions in August and again in the late Fall for openings in January. Approval during try out is based on the following factors:
    - The date of Application, school of residence, and the availability of openings; and
    - screening in the areas of language, speech, motor, social, self-help, and pre-academic skills.
- Pre-Kindergarten Program: Children applying for this program must be *3 years old on or before August 31 of the current year and no older than 5 years old on or after August 31 of the current year*. Students must live in the district. Application approval is based on the date of application and "boundary school," in addition to the following "Qualifying Factors" which mirror the "At-Risk" criteria established under the 2024-5 Preschool-Aged At-Risk Program Requirements established by the Kansas State Department of Education. These factors include:
    - Eligible for food assistance;
    - Single-parent family;
    - Limited English Proficiency;
    - Either parent lacking high school diploma or GED;
    - Teen parent when child was born;
    - Agency referral;
    - Concern for developmental delays based on screening results; and
    - Child qualifies for migrant or transitional housing status.

Applicants are required to meet at least one of these criteria in order to be considered eligible under the "at-risk" category.

Pre-Kindergarten classrooms are located in district elementary schools. These programs are funded through at-risk funds from the State of Kansas and through a Kansas Preschool Pilot (KPP) grant which establishes criteria regarding the classrooms. The adult-to-child ratio for the Pre-Kindergarten classrooms must be no more than 1:10 at all times, with a classroom size not to exceed 20 students, although districts may request a waiver for unique circumstances that lead to class size exceeding 20 students. The district currently maintains a maximum class size of 15 students for each of the Pre-Kindergarten classrooms.

According to the grant application submitted by the district, the Pre-Kindergarten classrooms serve both at-risk and not at-risk students. Across the three district programs, the ratio of at-risk to not at-risk students cannot at any time include more not at-risk students than students who are designated as at-risk.

Applications for the Role Models and Pre-Kindergarten preschool programs are, according to the district website, available at any school or district administrative office or online. Parents are also asked to provide the child's birth certificate and immunization record.

As noted on the application form, a child's application is considered "completed" only when the paper application has been submitted and the two required ASQ screening questionnaires have been finalized. If parents submit only an application without the ASQ forms, the child is placed on an "ASQ needed" list where the date the paper application was received is shown. Parents are subsequently notified that completed ASQs are needed in order to finalize the application process.

As stated on the district website,

> *"Submitting an application/interest form does not guarantee admittance. [Applicants] will be placed per review of district policies and qualifying factors set forth by the Kansas State Board of Education."*

Once a child's application is complete, he or she is either given a slot in a Pre-Kindergarten classroom or his/her name is placed on a waiting list which is maintained by the district and is used when filling vacancies in the Pre-Kindergarten programs. Children on the waiting list fall into two categories:

- students who meet criteria to be considered at-risk, and
- students who are not at-risk.

Vacancies are filled by the district in a manner that maintains a ratio of at-risk to non-at-risk students whereby no more than half of the Pre-Kindergarten class roster across the district is made up of not at-risk students. Classes are generally full at the start of the school year. As vacancies occur, the superintendent or her staff determines whether the vacancy is for an at-risk or not at-risk position. A child from the appropriate cohort is selected for enrollment based on the date his/her application was considered to be completed.

Issues

The United States Code – a consolidation and codification by subject matter of the general and permanent laws of the United States prepared by the Office of the Law Revision Counsel of the United States House of Representatives - cover a wide range of areas beyond education including such topics as National Park services, Patents, Highways, Banks and Banking, and Navigable Waters. The complainant asserts that the district's actions in the case of Student A are representative of systemic violations of Title 20 of these laws – those related to education.

Title 20 includes 80 chapters addressing a broad range of education-related subjects including the National Zoo, Foreign and Exchange Students, and the Education of Individuals with Disabilities. Sections 1412 and 1414 (referenced by the complainant) establish standards regarding how States are deemed eligible to receive federal assistance for the provision of services to students with disabilities. To receive such support, the state of Kansas is required to provide assurances that policies and procedures are in effect to ensure that the State meets requirements in a number of areas.

The complainant asserts that the district has violated four elements of Title 20:

1) Denial of FAPE (free appropriate public education): 20 USC 1412(a)(1);
2) Violation of Least Restrictive Environment (LRE): 20 USC 1412(a)(5):
3) Failure to Fulfill Child Find Obligations: 20 USC 1412(a)(3); and
4) Violation of IEP requirements: 20 USC 1414(d).

The State has complied with requirements to provide Title 20 assurances and has developed regulations associated with the four areas identified by the complainant. In his complaint, the complainant does not assert that the State has failed to provide assurances that it is complying with these four elements. Rather, the complainant asserts that the district has violated special education laws regarding the implementation of statutes and regulations established by the State with regard to each of these areas. Relevant state statutes and regulations will be cited below as each of these areas is addressed later in this report.

In his complaint, the complainant alleges multiple violations of the Individuals with Disabilities Education Act (IDEA) regarding the provision of services to preschool-aged children with disabilities. Specifically, the complainant asserts that the superintendent for the district and the district's administration have taken actions that delay the provision of special education services to children aged 3 to 5 years in order to manipulate grant requirements and funding structures to the benefit of the district. According to the complainant, the superintendent has stated that children who qualify for special education services (specifically speech therapy) are being denied access to the district's preschool program despite there being available openings. The complainant asserts that the superintendent has stated that these students do not qualify as "at-risk" for the program if they are receiving special education services, and that the reclassification has had an impact on the funding the district receives from the State.

The complainant contends that parents are being forced to choose between enrolling their child in the preschool without accessing needed special education services or receiving "walk-in" speech therapy without the benefit of full preschool participation.

The complainant cites the case of one particular child who was determined eligible for speech therapy under an IEP who was denied a spot in the district's preschool program where openings existed because the superintendent stated that "receiving special education services makes the child ineligible to be counted as "at-risk." When asked if the student could

potentially receive services later in the year while enrolled in the preschool program, the superintendent is alleged to have replied that "it was not a count day issue, but due to KPP grant assurances that run the length of the year." Therefore, according to the complainant, the family had to decide between preschool enrollment with no special education services or "walk-in" speech with no preschool participation for this year and potentially next year depending upon at-risk numbers, enrollment, and available openings.

Issue One

Denial of FAPE

Complainant's Position Regarding a Denial of FAPE:

The complainant asserts that the district is denying students their right to FAPE by refusing to provide special education services in a timely manner and forcing parents to choose between receiving necessary services or enrolling in preschool. The complainant contends that this is a violation of IDEA because FAPE must be provided to all children with disabilities, regardless of their classification as "at-risk."

Applicable Statutes and Regulations Regarding FAPE:

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.

An IEP must be developed within 30 calendar days of a determination that the child needs special education and related services and must be implemented within 10 school days after written parent consent is granted for the services in the IEP unless reasonable justification for a delay can be shown. It is important to keep in mind the requirements of IEP development and implementation of the IEP are both part of the 60 school day timeline of initial evaluation (K.S.A. 72-3429(a)(1); K.A.R. 91-40-8(h), (i); K.A.R. 91-40-16(b)(1)–(3); K.A.R. 91-40-16(c); 34 C.F.R. 300.323(a), (c)).

Investigative Findings Regarding the Denial of FAPE:

The complainant did not – in either his written complaint or in a subsequent telephone call with the investigator – name any specific child who had been denied FAPE by the district. Rather, the complainant referenced a written statement in an email exchange between the superintendent and the complainant's wife wherein the superintendent stated that in certain situations parents would be asked to choose between having their child (who had been determined eligible for special education support) participate in a district preschool program

OR having their child receive special education services. The complainant wrote that if the parent opted to have the student participate in the preschool program, the IEP proposed for the student would not be implemented, thereby denying the student FAPE.

The complainant referred the investigator to his wife, a speech/language pathologist employed by the Interlocal to provide services in the school district. When the investigator spoke by telephone with the complainant's wife, she identified one student (Student A) who had been evaluated and determined eligible for speech language support. It was this student who had been the subject of email exchanges between the complainant's wife and the superintendent which contained the statement referenced by the complainant.

The paper application for Student A to participate in the Pre-Kindergarten program was submitted by the parent on May 17, 2024. The application did not, however, include completed ASQ forms. An email was sent to the parents on May 21, 2024 to let them know the application was considered incomplete. In mid-July, staff contacted the parents to let them know that Student A's application remained incomplete. The parents submitted completed ASQ forms on July 30, 2024.

Student A's name was added to the waiting list for the Pre-Kindergarten as a "not at-risk" student. On the paper application form, the parent noted possible communication and adaptive delays, but none of Student A's scores on the ASQ fell at level 3 ("further assessment with a professional may be needed").

The student participated in the district Child Find process and demonstrated problems in the area of speech sound production. On August 23, 2024, the parents of Student A provided written consent for an evaluation to determine his eligibility for special education services. That evaluation was completed, and an eligibility meeting was held on September 6, 2024. Following eligibility determination, an IEP was proposed. The mother of Student A told the team that she wanted to discuss recommendations with her husband and said she would get back to staff with a decision soon.

The parents of Student A gave written consent for the student to be provided special education services under the district's proposed IEP on the same day this complaint was filed (September 10, 2024). The superintendent contacted Student A's mother on September 13, 2024 to discuss Pre-Kindergarten program options – including enrollment in a preschool program with an opening for a not at-risk student.

The student's mother told the superintendent that she preferred that the student participate in the program at the school Student A's siblings were attending. Because there were no "not at-risk" vacancies in the program at the preferred school, Student A's mother opted to have him put on the waiting list for a future opening for not at-risk students in her preferred school.

Walk-in speech services for the student were initiated on September 23, 2024, less than 10 school days after consent for services was given by the parents.

In a telephone conversation with the investigator on September 27, 2024, the mother of Student A reported that after only three speech sessions, she had already seen improvements in her son's articulation skills.

Neither the complainant's wife nor a school psychologist with whom the investigator spoke could identify any other student whose parents had been asked to choose between receiving special education services or participating in a district-sponsored preschool program. In a telephone conversation with the investigator on September 17, 2024, the complainant's wife stated that this situation was a "one off" – the first time she had been told that parents would be required to make such a choice.

Summary and Conclusions Regarding the Denial of FAPE

This investigation did not uncover any evidence of a systemic denial of FAPE by the district. Neither the complainant nor any other individual to whom the investigator was referred by the complainant identified more than one child who may have been denied FAPE.

When facts associated with that identified student were investigated, the investigator determined that the district had followed legal requirements regarding his evaluation and subsequent placement in special education services. The written email statement by the superintendent (which will be discussed in greater detail below with regard to LRE and Placement) in no way impacted the decision of the parent with regard to the provision of special education services to Student A nor the decision by the parent to have the student remain on a waiting list for the preschool program at the parent's preferred school.

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

Issue Two

Least Restrictive Environment (LRE)

Complainant's Position Regarding LRE

The district is not placing children in the least restrictive environment. By denying preschool enrollment to children solely based on their eligibility for special education services, the district is preventing the children from being educated alongside their typically developing peers in an inclusive setting.

Applicable Statutes and Regulations Regarding LRE and Relevant Grant Information

The Kansas Preschool Pilot Grant provides a funding opportunity for districts to provide preschool services to children who are considered to be at risk of entering Kindergarten socially, emotionally, or academically unprepared for success. The school district applied for and received a KPP grant for the 2024-25 school year.

At-risk criteria for the KPP grant include

"1. Poverty – Qualifies for free or reduced-price meals under the National School Lunch Program on September 20, 2024 (family income is less than 185% of the Federal Poverty Level).

2. Single Parent families – Custodial parent is unmarried on the first day of school.

3. Children in foster care, custodial grandparents/kinship care, or out of home placement, or children who have been referred by the Department for Children and Families – Child is in foster care, custodial grandparents/kinship care, or out of home placement at the time of enrollment. For children referred by DCF, the reason for referral must describe the need for the child to attend the Pre-K program or receive the early childhood service and be documented and signed by the DCF agent.

4. Teen parents – At least one parent was a teenager (19 or younger) when the child was born.

5. Either parent is lacking a high school diploma or GED – At least one parent is lacking a high school diploma or GED on the first day of school.

6. Limited English Proficiency – Documentation that the student qualifies for bilingual weighting and ESOL services must be provided. Forms must be in the child's file…

7. Lower than expected developmental progress in at least one of the following areas: cognitive development; physical development; communication/literacy; social emotional/behavior; adaptive behavior/self-help skills – Based on appropriate and valid assessment results, the developmental progress of the child has been determined by a trained professional to be lower than typically expected for his/her chronological age, yet above what would be considered eligible for special education services (based on the procedural manual and guidance materials of specific assessment instruments). Scores that fall at or below the 40th percentile indicate 'at-risk'.

8. Child qualifying for migrant status – Copy of Certificate of Eligibility must be on file.

9. Children who experience chronic or episodic homelessness – Residence of homeless student while homeless must be completed in the KIDS Collection System as determined by local educational liaison.

10. Children lacking health insurance – At the time of enrollment, the child has no health insurance coverage."

The guidelines require children to meet one or more of the above criteria in order to be considered "at-risk."

Having an IEP neither automatically conveys at-risk status nor precludes a student from being considered at-risk. Page 7 of a document entitled Kansas Preschool Pilot (KPP) Grant Requirements and Application contains the following statement:

> *"[School districts who apply for this grant] should prioritize services for children most at-risk of entering kindergarten socially, emotionally, or academically unprepared for success. At a minimum, 50% of students served using Kansas Preschool Pilot grant funds must meet one or more of the at-risk criteria…**A student with a disability who also meets an at-risk criterion may be included as an at-risk student when determining that 50% of students served by the Kansas Preschool Pilot meet an at-risk criterion**"* (emphasis added).

As noted in Chapter 6 of the Kansas Special Education Process Handbook:

> *"For preschool children ages 3-5 with disabilities, placement and LRE requirements are the same as for school-aged children (K.A.R. 91-40-21(b)(c)). This means that preschool children with disabilities are to have a continuum of placement options available and have the right to be educated with their peers without disabilities to the maximum extent appropriate. As with school-aged children, the needs of preschoolers are to be considered individually. The individual needs of the child would determine the most appropriate setting for services to be provided. Most preschoolers benefit from placement in a preschool program with typically developing peers.*
>
> *School districts that do not operate programs for preschool children without disabilities are not required to initiate general education programs solely to satisfy the LRE requirements. However, various educational placement options are possible, both within the community and at the school. School districts that do not operate early childhood programs for children without disabilities may seek alternative means to provide inclusive options for young children through collaborative relationships with private preschool programs or other community-based settings. The key question for the IEP Team to consider is where this child would be if the child did not have a disability. The full continuum of placement options at K.A.R. 91-40-21(b), including integrated placement options with typically developing peers, must be available to preschool children with disabilities. Examples include Head Start, community-based preschools (may be in churches, whether or not religiously affiliated), child care centers or family child care homes, mothers'-day-out programs, Title I programs, at-risk 4- year-old preschools, migrant or bilingual programs, Even Start, play groups, and other such early childhood programs. If a preschool child with a disability is already attending a general education preschool program, the IEP team should consider whether special education and related services can be provided in that setting with the use of supplementary aids and services, or supports for school personnel (Federal Register, August 14, 2006, p. 46589)."*

Investigative Findings Regarding LRE

The district offers preschool programs for at-risk students in three elementary schools in the district. Two classrooms at Blackmore Elementary serve 3-year-olds in the morning and 4-year-olds in the afternoon. Grandview Elementary houses one classroom where 4-year-olds are served in morning or afternoon sessions. Skelly Elementary is the site of one classroom where 4-year-olds are served in the morning and 3-year-olds are served in the afternoon. The district is responsible for staffing and overseeing these programs.

The district has established a procedure for families to apply for acceptance into the KPP supported at-risk preschool program. Applicants must complete a paper application and submit two developmental screening forms before an application is considered to be completed. Applications are reviewed by the superintendent and her staff to determine whether a child meets at-risk criteria. Children are accepted into the program based upon the date of their completed application and slots are filled in a manner that maintains a balance of no more than 50% not at-risk enrollment. Once a base level of openings has been filled – typically no more than 15 students per class – remaining applicants are placed on a waiting list for future openings and flagged as at-risk or not at-risk. As of September 27, 2024, the ratio of at-risk to not at-risk students across all three site locations was 60% at-risk and 40% not at-risk.

On May 17, 2024, the parent of Student A completed a paper application for the student to participate in the district's Pre-Kindergarten program. When completing the application, the parent noted that she was concerned that her son was demonstrating lower than expected developmental progress in the areas of communication/literacy and adaptive behavior/self-help skills. No other at-risk criteria were cited by the parent.

The initial paper application was not accompanied by the required developmental screenings. Those requirements were not completed until July 30, 2024 at which time the student's application was considered completed and his name was added to the wait list for openings in the KPP program.

Student A was, on August 23, 2024, evaluated to determine his eligibility for special education services. An eligibility meeting for Student A was held on September 6, 2024. At that meeting, the team determined that Student A did not demonstrate overall developmental delays in any area including adaptive/self-help skills or language development that would warrant early childhood special education intervention. However, Student A did evidence significant delays with regard to the production of speech sounds. The team recommended that he receive direct speech therapy. According to his evaluation and eligibility report, "services [could] be provided if he attends the 3-year-old preschool classroom or on a walk-in appointment basis."

The student no longer could be considered "at-risk" because of a developmental delay because – as stated in the KPP criteria – his speech deficit fell low enough to qualify for special

education services under an IEP (criteria #7). Student A evidenced none of the other at-risk criteria. He could, however, continue to be listed on the wait list as a "not at-risk" student.

At the time the student was being considered for an opening in the program, 48% of the students in the KPP preschool were "not at-risk" while 52% were "at-risk." Three of the students who were already enrolled in the preschool class were being evaluated for special education – an action that could lead to them being re-categorized as "not at-risk." Additionally, 7 other students who were attending classes did not yet have documentation of eligibility under their lunch status (criteria #1). The possibility remained that some of these students would have to move to "not at-risk" status. If any of these students were moved to not at-risk status, that action would mean a longer wait for Student A to enter the program as a not at-risk student since the already enrolled students would not be removed from the program.

The team presented a "draft IEP" to the parent of Student A on September 6, 2024 proposing the provision of 30 minutes per week of speech services. The parent told the team that she wanted to speak to her husband about the services and would get back to the team with a decision within a few days.

Following the eligibility meeting, the speech/language pathologist (the complainant's wife) and the Director of Instructional Supports exchanged a series of emails regarding placement of the student in a KPP program. On Friday, September 6, 2024, the speech/language pathologist wrote the director stating that the student qualified for "speech only" support. The speech/language pathologist wrote that the eligibility team had discussed with the parent of Student A the option of enrollment of the student in an afternoon preschool program at Skelly (an elementary school that is the site of one of the KPP preschool programs) or "walk-in speech at Blackmore [another elementary school where another KPP classroom is located]." The Director of Instructional Supports responded that there were no openings for the student in the Skelly program and the student would "need to stay on [the] waitlist." The director also stated that Student A would "need to receive walk-in services at [Blackmore]. Please contact the mom and let her know."

The speech/language pathologist wrote back to the director, including the school psychologist, building principal for Blackmore, and an Assistant Director for the Interlocal. The pathologist asked

> *"Can you explain why there is not space for him when they're sitting at 7 out of 10 students and his application was submitted in May [the date the student's paper application was received minus the developmental screening information]? Some of the other students listed on that same class roster submitted applications in August? Also, [the school psychologist] has an email dated from 8/23/24 when our team initially emailed about [Student A], and at that time you said you there was a spot."*

The director responded

> *"This has to do with grant funding for the KPP, and the associated count day and audit paperwork. Because of [Student A's] classification, he cannot be counted under at risk numbers and would have to be paid for under KPP. It all comes down to where we are in relation to the threshold, and right now we are not in a position to allow another not at risk acceptance at this time. That is why the waiting list is used. If the balance shifts, that could change at a later date.*
>
> *Additionally, I have located the email in question. My statement on the 23rd was only that he was on the waitlist pending evaluation results. No placement was guaranteed. We have to be very careful with state-provided grant funding and we cannot surpass the mandated threshold."*

The speech/language pathologist responded

> *"I guess it confuses me as to why he wasn't already offered a spot, since his preschool application was submitted on 5/17/24, and all other students currently placed in that 3-year-old program are dated from 6/12/24 and later? I know his Child Find was in May, but his evaluation could've taken place while he was already in school this August.*
>
> *Since we just had a student in green (that KPP covers) move to a role model spot at Blackmore, could [Student A] take that spot instead? Wouldn't the numbers be the same for funding?"*

The school psychologist included on the email chain responded that she too was confused about the situation. The Director of Instruction suggested that the group meet in person the following Friday to discuss the issue.

On September 9, 2024, the speech/language pathologist sent an email to the superintendent stating

> *"I spoke with [the assistant director of the Interlocal assigned to work with this district] on the phone this afternoon. I asked her a question that she wanted me to clarify with you about [Student A] before I call his mother. If she decides to decline the speech IEP so that he may attend Skelly, can he be monitored and receive RTI and eventually be picked up after count day? Or do I need to tell her that he can be monitored and receive RTI this year, and we can look at a speech IEP placement before next year if it is still needed?"*

The superintendent responded on September 9, 2024, writing

> *"It's not count day that is the concern- it's our grant assurances that run the length of the school year. We have to maintain assurances as an At Risk preschool program. He would count as at risk with no sped services – sped services would make him ineligible to be counted as at risk. We can't offer him a preschool spot when he is a non-at risk student on an iep- that is the conflict.*
>
> *His parents would have to decide between preschool enrollment with no sped services or walk in speech with no preschool for at least this year and possibly next year depending on at risk numbers, spots, and enrollment."*

The speech/language pathologist wrote back asking

> *"Based on that information, does that mean moving forward throughout this year that any other students that may need services in those rooms can also not be identified due to the grant assurances that run through the length of the year? I just want to make sure I'm understanding correctly, as I already have speech referrals and I believe the [speech pathologists from other schools] do as well."*

The superintendent responded

> *"Any preschooler could qualify for speech services anytime throughout the year, but the parents would need to make a decision about which supports to engage: either Speech with SpEd (ie. walk in) and no more At Risk programs (ie. give up spot in preschool) or no SpEd program supports but keep spot in the preschool At Risk program."*

In a telephone call with the investigator on September 17, 2024, the speech/language pathologist stated that this statement from the superintendent represented what the pathologist considered to be a new position. According to the pathologist, she was not aware of any other family having been asked to choose between enrolling their child in preschool or having that child receive special education services.

The parent gave written consent on September 10, 2024 for the student to receive speech services. In a telephone conversation with the investigator on September 27, 2024, Student A's mother reported that the superintendent, in a telephone call with the parent on September 13, 2024, had told her that there was an opening for Student A in the preschool program at Skelly. According to the parent, the superintendent offered two speech service options for Student A: one 30-minute session per week at Blackmore (the walk-in option) or two 15-minute sessions per week if the student enrolled at Skelly.

According to both the superintendent and the parent, the parent opted for the student to participate in walk-in speech services, did not want to have the student attend the Pre-Kindergarten classroom at Skelly, and preferred to have him remain on the waiting list for the Blackmore classroom located in the same school attended by Student A's siblings. The student began receiving speech/language services on September 23, 2024. The student has – based on the decision of his mother – remained on the waiting list for the parent's preferred school (Blackmore). Another student, whose application was completed after the application for Student A was finalized, was placed in the KPP program at Skelly, the position that would have gone to Student A had his mother allowed him to be enrolled there.

As of September 27, 2024, eight of the students being served in the KPP preschool programs were receiving speech services. Three other students in these programs have been referred for additional speech screening. Five of the 8 students currently receiving speech support also demonstrate another at-risk factor but are not currently being counted as "at-risk" for the KPP class roster.

There is no evidence to show that any student enrolled in the KPP preschool program has been removed from that program if he/she was determined to be eligible for speech support.

No evidence was found to show that the evaluation of a child has been delayed in order to preserve his/her status as "at risk."

Summary and Conclusions Related to LRE

Despite written email statements from the superintendent to the wife of the complainant, there is no evidence of any systemic action on the part of the district to require the parents of prospective preschool students to make a choice between enrolling their child in a district KPP program with no special education services or having their child receive special education speech support. Further, there is no evidence to show that students have been removed from a preschool program they were attending if they were subsequently determined to be eligible for and in need of special education speech services. Currently, there are a number of students who are receiving speech services while concurrently being enrolled in the district KPP preschool.

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

It should be noted, however, that while this investigation did not identify a current violation regarding LRE, a violation would have been substantiated had the district acted in accordance with the written email statement made by the superintendent on September 9, 2024 that Student A's parents would

> *"have to decide between preschool enrollment with no sped services or walk in speech with no preschool [because the district] can't offer him a preschool spot when he is a non-at risk student on an iep – that is the conflict."*

In an email to the State Preschool Programs Consultant for the Early Childhood Department of the Kansas State Department of Education dated September 13, 2024, the superintendent wrote

> *"Just to clarify: We have 15 total spots in each of our PreK program classrooms- all funded by KPP. I understand that we could offer [a] spot to [Student A]- however, doing so while the student also receives SpEd services would either throw our current KPP 50/50 ratios or take a classroom spot from another At Risk student. This is the immediate concern. Last year during our audit, we had to drop many SpEd students from our KPP roster because of their "not at risk" factor status changes to SpEd. This changed our ratio with remaining KPP students (almost voiding the assurances) and ended up tying up many of our spots that should have been for At Risk students."*

In a conference call with the investigator on September 27, 2024, the superintendent continued to assert that a child who was being served under an IEP could not be counted as

at-risk if they demonstrated another at-risk factor unrelated to the developmental delay that led to the student being served under an IEP.

The district cannot ask the parent to choose between having the student attend the preschool program without special education support OR having the student continue to receive walk-in speech services at the same school. Rather, Student A's IEP should continue to be implemented while the student also participates in the preschool program.

State funding requirements can be complicated. A school district cannot collect funding under both the IDEA and the Preschool-Aged At-Risk slots that are available. However, children with disabilities must have an equal opportunity to participate in at-risk classrooms, even though they cannot participate in this preschool aged at-risk source of funding. For that reason, a district might try to avoid putting special education students in their at-risk classrooms. That practice would result in an LRE violation because the school has made placement decisions for funding reasons, and not based on an IEP team decision that is addressing each student's individual needs.

Additional Issue

While the complainant did not specifically call out federal regulations at 34. C.F.R. 300.110, it became clear during the course of this investigation that this regulation is central to the facts of this complaint.

Federal regulations, at 34 C.F.R. 300.110, state that school districts must make the same variety of educational programs and services that are available to general education students, also available to special education students. This federal regulation is the IDEA's counterpart to the Section 504 regulation at 34 C.F.R. 104.4 which says that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives federal financial assistance.

34 C.F.R. 300.110 requires that when schools are filling at-risk program slots, decisions must be made in a neutral way so the children with disabilities are neither excluded from the at-risk classrooms nor given an unfair disadvantage in being selected.

This means that the fact that a child has an IEP cannot, by itself, be used to deny that child an equal opportunity to participate in any program or service available to nondisabled children. It also means that a district cannot interpret state guidance to allow it to deny a child with a disability an equal opportunity to participate in any program or service available to nondisabled students.

When we say a district cannot "interpret "indicator 7 in a way that places an extra burden on a child with a disability, what does that mean? An example might be a child with a disability who attends preschool for three hours a day to get special education and related services and only

appears to qualify as at-risk under factor 7. That child could be placed in the non-at-risk group due to having an IEP. That would not be a disadvantage for that student because that student would not have to choose either speech services or pre-school. The student would receive services as a non-at-risk student and would not take up any at-risk funding, regardless of the ratio the district uses to fill its at-risk slots. What a district can't do is to interpret indicator 7 in a way that makes it more difficult for a child with a disability to participate in pre-school, which may be more likely to occur when the child's IEP consists of only 30 minutes of speech services per week.

This provision in 300.110 in the federal regulations makes no exception for how district programs are funded. When funding and the right of children with disabilities to participate in public school programs clash, the participation rights of children with disabilities must prevail.

In the case of this district, acceptance into the KPP program is determined in a manner that maintains an equal balance of at-risk and not at-risk students. A balanced classroom roster is developed before the start of the school year with students being selected for enrollment from these two categories based on the date their completed application was received. Applicants who were not selected for participation in the program before the start of the school year are put on a waiting list – divided into two categories in order of application date. As vacancies occur throughout the school year, waiting list students are moved into the program based upon the nature of the vacancy – at-risk or not at-risk.

The district continues to accept into the Preschool program students with an IEP whom they have categorized as "not at-risk." Student A was placed on the waiting list as a not at-risk student based on criteria established for the KPP program. Should an opening for a not at-risk student arise at Student A's parents' preferred school for which Student A was eligible based on the completion date for his application, Student A will be enrolled in the KPP program without regard for the fact that he has an IEP.

The enrollment criteria adopted by a district should be applied in a neutral manner to fill all available slots. The fact that a child has an IEP should not affect the selection of students for the at-risk classrooms, positively or negatively. The fact that a child has an IEP should not put a child at the front or the back of the line, it should, instead, be a nonfactor. That means when a district sets its criteria for a student to qualify for an at-risk program that criteria cannot include the fact that a child has an IEP.

In the case of this district, children are placed in the preschool based on a "first come, first served" basis, looking at the date the child's application for the program was finalized, and are identified for enrollment in a manner that keeps a 50/50 balance of at-risk to not at-risk. If a not at-risk vacancy arises and Student A is next in line to fill such a vacancy, he should fill it, regardless of the fact he has an IEP.

At the time this report was completed, there was no opening in the parent's preferred school for Student A to fill. Should an opening arise in that preferred school, another child could still fill that vacancy ahead of Student A if that child's completed application had been received prior to the date Student A's completed application had been received. His status as a student with an IEP would neither disadvantage him nor give him priority in the process.

If the ratio of at-risk to not at-risk students in this program changes in a manner that reflects an imbalance between these two categories whereby more at-risk students are placed than not at-risk students, the fact that this student is considered not at-risk because he has an IEP could result in a violation. However, at this time, a violation of special education statutes and regulations is not substantiated on this issue.

Through the course of this investigation, it became evident that there is confusion among staff as to how a student with a speech only IEP is to be managed with regard to his/her participation in the KPP preschool program. There also appears to be confusion as to where such students stand on the waiting list for entry into these programs. The superintendent remains reluctant based on her past experience with the audit process to count as "at-risk" on the KPP roster those students with IEPs who demonstrate additional at-risk qualifying criteria. The superintendent is encouraged to seek out additional direction from the Early Childhood division of the Kansas State Department of Education in this regard.

While no corrective actions are required in response to this complaint, training for staff is strongly encouraged in order to ensure that there is a clear understanding as to how to proceed should another student with similar circumstances to Student A be identified.

Issue Three

Child Find

Complainant's Position

The complainant asserts that the district has a duty to identify, locate, and evaluate all children who may have disabilities. It is the position of the complainant that delaying evaluations and services, or denying services based on grant funding requirements, violates the Child Find provision of the Individuals with Disabilities Education Act (IDEA).

Applicable Statutes and Regulations

A formal complaint must allege that a violation of special education laws has occurred within the twelve-month period prior to the date the complaint is received (K.A.R. 91-40-51(b)(1)).

At K.A.R. 91-40-7, Kansas statutes establish requirements regarding "child find." Districts are required to adopt and implement policies and procedures to

> *"identify, locate, and evaluate all children with exceptionalities residing in [their] jurisdiction…[P]olicies and procedures under this regulation shall include age-appropriate screening procedures that meet the following requirements:*
>
> *(1) For children younger than five years of age, observations, instruments, measures, and techniques that disclose any potential disabilities or developmental delays that indicate a need for evaluation, including hearing and vision screening…*
>
> *Each board, at least annually, shall provide information to the public concerning the availability of special education services for exceptional children, including child find activities conducted by the board.*

Programs are required to ensure each child receives a valid, reliable developmental screening. The tool must be approved by KSDE, and programs must share results with the child's family. Programs may determine whether children receive screenings prior to the start of the school year or once school begins. Students who enroll after the beginning of the school year must receive a screening within 90 days of enrollment. KSDE recommends but does not require that the program select the ASQ:3 and ASQ:SE-2 developmental and social-emotional screenings for preschool-aged students.

Investigative Findings

Child Find screenings are conducted monthly at the three elementary school locations that house the district's KPP funded preschool programs. The district website at https://www.usd490.org/pagepreschool-programs states that

> *"[the district] also offers early childhood special education classes at [three] elementary schools to qualifying children ages three to five. The [interlocal] offers free Child Find developmental screenings for infants and preschool children throughout the school year. The purpose of the screening is to help parents identify potential learning problems and find help.*
>
> *If your child has difficulty walking, talking, seeing, hearing, or learning, please call the Special Education office… to schedule a free appointment.*
>
> *If you have developmental concerns about an infant or toddler (0-3 years), please call Rainbows of Butler County at 316-320-1342.*
>
> *Please note that Child Find screenings are by appointment only."*

As a part of the application process for participation in the district's KPP preschool program, parents are asked to complete ASQ developmental screening questionnaires regarding their child. These ASQs are reviewed by the superintendent and her staff. If these questionnaires yield results that show that further assessment may be needed, parents are provided information regarding the Child Find screenings. If the majority of the areas on the ASQ suggest that the child may need further assessment, the ASQ data and parent information is

forwarded to a school psychologist for follow-up and possible special education evaluation to determine eligibility and need for special education services.

Information regarding Child Find screenings is shared with the district's KPP-related Task Force.

Referrals from outside agencies that come through the Interlocal are also funneled through the Child Find process.

The complainant did not – in either his written complaint or during a telephone call with the investigator on September 16, 2024 – identify any specific instances when the district had failed in its child find responsibilities. Instead, he referred the investigator to others who he felt could provide that information. These individuals included the complainant's wife, a school psychologist, and the complainant's sister.

In a telephone call on September 27, 2024, the investigator spoke with the sister of the complainant regarding her son, hereafter referred to as Student B. According to Student B's mother, he has a diagnosis of Autism. While the parent stated that she had called the district about having her son enrolled in the Pre-Kindergarten (KPP) program, the district has no record of a paper application for the student nor any other application-related documentation.

Student B's mother told the investigator that she did receive a call from the Interlocal and that Student B was evaluated, but she reports that no one from the district has contacted her about the preschool classroom.

Records show that the student was evaluated on September 6, 2024. The parent reports that the Interlocal staff clearly explained the evaluation process. She acknowledged that staff spoke with her about services for the student. According to the parent, she did not feel comfortable having the student start school "late" and opted not to move ahead with the process.

The parent stated that she was disappointed that no one from the district contacted her about the district's (general education KPP) preschool program, noting that she would have been "open to any school."

In a telephone call on September 27, 2024, the school psychologist was asked by the investigator whether she knew of students who had been missed by the preschool-level Child Find process. The school psychologist identified one student who is now in first grade and is receiving services under an IEP. The school psychologist stated that the student – who was also referenced by the complainant's wife during a telephone call with the investigator – experienced problems shortly after the start of his Kindergarten year. It is the opinion of both the school psychologist and the complainant's wife that this student should have been identified earlier. However, this student would have gone through the preschool child find process more than two years ago, well outside the 12-month period prior to the date this complaint was received. The case of this student was not investigated.

The school psychologist spoke about another student who went through the process last year at age 3 and was identified as needing special education services but the parent opted not to place the student in services offered in a school outside the student's area of attendance.

Summary and Conclusions Regarding Child Find

The district and Interlocal have policies and procedures in place related to Child Find. No specific evidence was provided by the complainant or those individuals contacted by the investigator to show that the district or Interlocal have failed in their Child Find responsibilities. A violation of special education statutes and regulations *is not substantiated* on this issue.

Issue Four

Violation of IEP Requirements

Complainant's Position Regarding IEP Requirements

The complainant asserts that children with IEPs are legally entitled to receive all services outlined in their IEPs. It is the complainant's position that the district's refusal to allow preschool attendance unless the parents opt out of special education services violates this legal requirement because the child's IEP should be implemented in a manner that provides both educational opportunities and the necessary support services.

Investigative Findings, Summary, and Conclusions Regarding IEP Requirements:

As shown above under Issue Two, evidence has not been found in the course of this investigation to show that the IEP for Student A has not been implemented. In fact, the student is currently receiving walk-in speech and language support, and Student A's mother feels that he is making progress.

Neither the complainant nor any other individual to whom the investigator spoke have identified any other student whose parents have agreed to the provision of special education services but whose IEP has not been implemented. The only examples provided are students whose parents have declined to complete the identification/eligibility process or declined proposed 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 an issue presented in this complaint. Therefore, no corrective actions are warranted.



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. 490,
El Dorado Public Schools: 25FC490-001

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on September 10, 2025, by ------- on behalf of unnamed children. In the remainder of this decision, ------- will be referred to as "the complainant," and the unnamed students will be referred to as "the students." An investigation of the complaint was undertaken by a complaint investigator on behalf of the Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, a Complaint Report, addressing the allegations, was issued on October 4, 2025. That Complaint Report concluded that there were no violations of special education statutes and regulations

Thereafter, the complainant filed an appeal of the Complaint Report. Upon receipt of the appeal, an appeal committee was appointed and it reviewed the original complaint, the Complaint Report, the complainant's notice of appeal, and the district's response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

Preliminary Matters

A copy of the regulation regarding the filing of an appeal [K.A.R. 91-40-51(f)] was attached to the Complaint Report. That regulation states, in part, that: "Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect." Accordingly, the burden for supplying a sufficient basis for appeal is on the party submitting the appeal. When a party submits an appeal and makes statements in the notice of appeal without support, the Committee does not attempt to locate the missing support.

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

The complainant is not the parent of any child connected with this complaint. Due to confidentiality requirements, the complainant will be advised only that the Committee has met and issued a decision on this matter, but will not be given a copy of the decision nor advised of the content of the decision.

Discussion of Issues on Appeal

From Complainant

The report identified four issues: (1) Denial of FAPE; (2) Least Restrictive Environment violation; (3) Child Find violation, and (4) IEP implementation violation.

Only Issue 2 is being appealed. The appeal states:

> *"My appeal specifically addresses the findings related to the least restrictive environment LRE mandate, which, I believe, was not fully substantiated in the initial investigation."*

In explanation, the complainant states:

> *"Basis for Appeal:*
>
> *The investigation found no systemic violation of the LRE mandate but acknowledged that a violation would have been substantiated had the district acted in accordance with the written e-mail statements made by the Superintendent, Ms. Jennifer Davis, on September 9, 2024. The superintendent's statements indicate a misunderstanding of the LRE requirements, suggesting that parents must choose between enrolling their child in the district's preschool program or receiving special education services, such as speech therapy, which directly contradicts federal regulations under the individuals with disabilities Education Act (IDEA) and Kansas special education process handbook."*

The investigator wrote a 28 page report which included a detailed analysis of the pre-kindergarten "At-Risk" program, how district officials interpret the participation requirements of that program, and how the district actually selected students to participate in that program.

The investigator found a discrepancy in how the district interpreted the participation rules and how participation was actually calculated. This is an important distinction because the complaint regulations, at K.A.R. 91-40-51(a)(1) state that a complaint "shall" include a "statement that the agency has violated a requirement of state or federal special education laws or regulations (emphasis added). In other words, it is not enough to allege that a district has misstated or misunderstood a legal requirement sufficiently to presume a violation has occurred or is likely to occur. To be actionable, the complaint must allege that a district "has violated" a special education law or regulation.

With regard to Issue 2, alleging a violation of the Least Restrictive Environment (LRE) requirement, the report concluded that:

> *Despite written email statements from the superintendent to the wife of the complainant, there is no evidence of any systemic action on the part of the district to require the parents of prospective preschool students to make a choice between enrolling their child in a*

> *district KPP program with no special education services or having their child receive special education speech support. Further, there is no evidence to show that students have been removed from a preschool program they were attending if they were subsequently determined to be eligible for and in need of special education speech services. Currently, there are a number of students who are receiving speech services while concurrently being enrolled in the district KPP preschool.*

In the appeal, the complainant cites only the superintendent's statements in emails, indicating that those emails "clearly stated that parents of a child receiving special education services under an IEP would need to decide between preschool enrollment without special education services or receiving walk in speech therapy without preschool participation. This statement reflects a direct misinterpretation of the LRE requirements."

In the report, the investigator said:

> *It should be noted, however, that while this investigation did not identify a current violation regarding LRE, a violation would have been substantiated had the district acted in accordance with the written email statement made by the superintendent on September 9, 2024 that Student A's parents would:*
>
> *"have to decide between preschool enrollment with no sped services or walk in speech with no preschool [because the district] can't offer him a preschool spot when he is a non-at risk student on an iep – that is the conflict."*

However, after examining the evidence regarding what actually happened, the investigator concluded that:

> *Despite written email statements from the superintendent to the wife of the complainant, there is no evidence of any systemic action on the part of the district to require the parents of prospective preschool students to make a choice between enrolling their child in a district KPP program with no special education services or having their child receive special education speech support. Further, there is no evidence to show that students have been removed from a preschool program they were attending if they were subsequently determined to be eligible for and in need of special education speech services. Currently, there are a number of students who are receiving speech services while concurrently being enrolled in the district KPP preschool. (Emphasis added.)*

The Appeal Committee agrees that the complaint could have been substantiated if the facts had been different and agrees with the investigator comments on pages 19 – 20. The Appeal Committee also agrees with the investigator's analysis of federal regulation 34 C.F.R. 300.110 on pages 20 - 21 of the report, that the district's view, as stated in the emails of the Superintendent, would be a violation of 34 C.F.R. 300.110 if actually put into practice. According to the investigator

there was no evidence to substantiate that a parent was forced to decide between special education services and participation in an at-risk pre-school program.

The Appeal Committee has already noted, above, that Kansas regulations specify minimum requirements for appeal of a complaint report, namely: "Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect," and that the appeal process allows for an appeal of only the "findings and conclusions" in the report. in this appeal, the complainant merely restates the original complaint issue, citing the Superintendent's emails, and does not provide a detailed basis of why the report reaches the wrong conclusion on the specific facts of this complaint.

Again, the burden for supplying a sufficient basis for appeal is on the party submitting the appeal. When a party submits an appeal and makes statements in the notice of appeal without support, the Committee does not attempt to locate the missing support. The appeal process is a review of the Complaint Report. 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." With regard to this issue, the Appeal Committee finds that there is sufficient evidence to support the findings related to Issue 2.

The Committee has reviewed the report in its entirety and finds that sufficient evidence exists to support the findings and conclusions in the Complaint Report

Conclusion

For the reasons stated herein, the Complaint Report is sustained in full.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 30th day of October, 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 #385
ON SEPTEMBER 20, 2024

DATE OF REPORT: OCTOBER 16, 2024

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

The complaint is against USD #385 Andover Public Schools. In the remainder of the report, USD #385 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 20, 2024, and the 30-day timeline for the complaint investigation ends with the publication 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). Interviews with district staff on October 4, 2024 included the following individuals: Brianna Oglesby (Kindergarten Teacher), Nicole Nickel (Speech Pathologist), Stacy Austin (Paraeducator), Joli Skaer (Teacher of the Visually Impaired), Shelly Jonas (Assistant Special Education Director), and April Hilyard (Special Education Director). Follow up questions and emails were exchanged with district administrators between September 20, 2024 and October 14, 2024. Dawn Shannon (Health Assistant) was interviewed on October 11, 2024. The parent was interviewed to clarify the issues in the complaint on September 23, 2024 and the parents were interviewed with follow up questions on October 12, 2024. Emails were exchanged with the parents between September 9, 2024 and October 9, 2024.

One person, a former employee of the district, was asked for an interview but did not respond to the investigator's requests.

Along with the interviews, the following documentation and information were used in consideration of the issue(s):

1. Certification of Eligibility for Vision Impairment for the student dated September 9, 2022
2. Evaluation and Eligibility Report for the student dated September 9, 2022
3. IEP Meeting Notes dated March 22, 2024
4. Prior Written Notice for Change in Services Including a Material Change in Services, Change of Placement, and Other Changes to the IEP dated May 10, 2024 signed by the parent giving consent on the same day
5. Progress Report for the student for the 2023-24 school year
6. Progress Report for the student dated May 17, 2024
7. Text exchange among the parents, Jacqulean Kearns (former paraprofessional), Joli Skaer (Vision Teacher) beginning August 13, 2024 at 2:38 p.m. and ending at 5:55 p.m.
8. Speech Language Data and Attendance Chart for the student with entries dated August 14, 2024 to September 25, 2024
9. Text communication between Joli Skaer (Visually Impaired Teacher) and the parent transcribed, with entries beginning August 19, 2024 to September 17, 2024
10. Break Logs for the student with entries dated August 19 to September 13, 2024
11. Nursing Log for the student, dated August 27, 2024 to September 17, 2024 provided by the district
12. [The student's] bathroom logs from nurse (provided by the parent) with entries dated August 22, 2024 to September 17, 2024.
13. Nurse Notes for Bathroom Visits (provided by the parent) with entries dated September 9, September 13, September 16 and September 17, 2024
14. Physical Therapy Notes for the student with entries dated August 27, 2024 to September 17, 2024
15. Email exchange between Shanda Siebel (Prairie Creek Elementary School Principal), Brett White (Superintendent, USD#385 Andover Public Schools) and the parents beginning September 17, 2024 at 4:19 p.m. and ending on September 24, 2024 at 10:12 a.m.
16. Texts between the parent and Jacqulean Kearns (former paraprofessional) undated "Wednesday, 10:06 a.m."
17. Letter from parent to Brianna Oglesby (Kindergarten Teacher) dated September 20, 2024 and undated reply to parent
18. Speech Therapy Schedule for the student, 2024-25
19. Paraprofessional Schedule, 2024-25
20. Classroom Schedule 2024-25
21. Paraprofessional Schedule 2024-25
22. Andover USD 385 District Calendar
23. District response to the complaint, received XXX
24. Timeline of events prepared by the district

25. Email from the parent to the investigator dated September 30, 2024 at 11:00 a.m.
26. Email exchange between the parents and (Special Education Director) copied to the investigator, beginning October 4, 2024 at 10:16 a.m. to October 9, 2024 at 7:19 a.m.

Background Information

The 5 year old student attends kindergarten at an elementary school in USD #385. The student was medically diagnosed with Leber's Congenital Amaurosis (LCA9), a rare eye condition likely to worsen over time, with retinal degeneration, nystagmus, and hyperopia. The student attended the district's early childhood program and qualified for special education due to vision impairment and speech language delay. The student's evaluation dated September 9, 2022 noted difficulty in getting the student to complete the diagnostic assessments and therefore used existing testing data from an outside agency from 2021. For the evaluation, the student was observed in the school environment and the assessor noted when frustrated during the assessment, the student would yell, cry, kick and hit. The student used a cane and wore glasses. The evaluation also found the student eligible for speech language services due to language delays along with occupational therapy and physical therapy services. At the time of the complaint, the student was receiving indirect occupational therapy services, direct and indirect speech/language services, physical therapy, special education services in the regular kindergarten classroom, attendant care, and special education (vision) services.

Issues Investigated

1. ISSUE ONE: Did USD #385 implement the student's IEP, specifically by providing the amount and type of special education, related services (including attendant care) and accommodations required by the student's IEP?
2. ISSUE TWO: Did the district's attendants follow the written procedures and regular classroom and/or individual student toileting schedule with the child?

Issue One

Did USD #385 implement the student's IEP, specifically by providing the amount and type of special education, related services (including attendant care) and accommodations required by the student's IEP?

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

In the written complaint and interview to clarify the issues of the complaint, the parent alleged that the student's IEP had not been followed. The parent alleged that the staff removed the student from the general education classroom for unwarranted lengths of time for breaks, including for playing with a flashlight in a darkened room that the parent believed was leading to behavioral problems with the student who then demanded more of these play opportunities. The parent alleged that the staff were not providing the attendant care and intimate care policy written in the IEP and alleged that the student had not had adequate bathroom breaks each day resulting in wet or soiled diapers that were left unchanged for long periods of time. The parent alleged that she alerted the district staff to the student's current bathroom needs prior to the beginning of kindergarten.

The district responded (in brief) that the student's IEP dated May 10, 2024 required services (Speech/Language, Physical Therapy, Special Education) outside the classroom and the student "receives most special education services (335 x 1 and 305 x 4) in the general education classroom plus attendant care services (95x1 and 105 x 4). Additionally, per [the student]'s IEP, [the student] may be out of the general education classroom for: 'Frequent breaks when [the student] has reached a level of frustration', 'until [the student] is ready to continue learning'. [and] 'Separate testing location on all assessments' 'until all assessments are completed.'"

The district responded that administrator interviews with staff showed no evidence that the student spent time outside the general education classroom for anything not listed in the IEP

such as special education or related services and breaks; breaks associated with escalated behavior have included calming activities in the special education classroom or the school psychologist's office. The district further responded that the student had meltdowns in the classroom that included screaming, kicking and hitting, and the adults have usually been able to return to working, but if not either paraprofessionals or the VI Teacher removed her from the classroom for a break.

The district's response concluded: "Since all of [the student's] time out of the classroom is associated with time in service listed on the IEP or in association with a break that is listed as an accommodation, there is no evidence that the district is in violation of IDEA nor is it a failure to provide FAPE."

Findings

The IEP team including the parent met on May 10, 2024; the IEP team directed no change to the student's current early childhood program and proposed services for the student's kindergarten program. The district provided Prior Written Notice (PWN) of services to occur at the outset of the students kindergarten year, beginning August, 2024, to include: special education support in the general education classroom 305 minutes 4 days a week and 335 minutes 1 day a week, 105 minutes of attendant care 4 days a week and 95 minutes one day a week; that Speech Language (SPL) services would shift to a blended approach both in and out of the general education classroom, that Occupational Therapy (OT) services would be consultation only, and direct Physical Therapy (PT) 20 minutes one time a week. The parent signed giving consent for the material change in services in the PWN.

The present levels of functional and academic performance in student's IEP dated May 10, 2024 found that the student was exploring tactilely, experiencing anxiety over new things including food, and lacking in social skills. Quiet voices and using musical instruments were recommended as strategies to assist the student when needed. The student's IEP dated May 10, 2024 stated that the student's health strengths and needs included vision limitations, using a cane, transitioning from a visual to tactile learner, braille readiness and sensory training. The parent's additions related to the vision conditions of retinitis pigmentosa, macular degeneration, optic atrophy, nystagmus, and hyperopia. There was no health plan included in the IEP.

The IEP dated May 20, 2024 found that the student had needs in the social emotional area that required special education, including voicing her social emotional needs with support and that when her needs are anticipated "staff can usually guide [the student] to communicate needs in a more effective manner, calming [the student] down. [The student] will generally repeat speech models provided in these moments." Parental input noted anxiety about new things and tantrums due to being frightened of new things including food; the parent also noted difficulty introducing new activities and the need to communicate and socially interact with

children. Because the student would scream, hit, bite and kick when overstimulated, the IEP recommended that the student be introduced to things slowly by staff trained to do so and to be assisted in transitions. The parent asked that the student's speech language needs be prioritized due to her delayed language. The student's fine motor skills had improved to allow discontinuation of OT but her motor needs indicated the continued need for PT services.

The student's IEP dated May 10, 2024 had the following goals (in brief)

1. Listen to a social or perspective story, understand, comment and answer questions
2. Participate in conversations and play routines with peers and adults, sharing thoughts and feelings, taking turns, commenting and requesting
3. Improve listening, language understanding and expressive speech by responding to questions, indicating understanding, using personal pronouns, and identifying sounds
4. Use a cane to improve functional mobility, playground exploration, safety awareness, and participation
5. Open interior school doors and travel through
6. Discriminate shapes (preacademic)
7. Set, clear and read numbers on an abacus
8. Braille name

Services on the IEP dated May 10, 2024 were listed as: Speech Language (SPL) in special education room - 15 minutes one day a week, SPL indirect services - consultation 10 minutes one day a week, OT indirect services - consultation 10 minutes one day a week, PT 20 minutes one day a week, special education in the special education classroom for vision 20 minutes 4 times a week, special education support in the general education classroom for academics 305 minutes four days a week and 335 minutes one day a week, Special education support in the general classroom for nonacademics 105 minutes four days a week, and attendant care 95 minutes one day a week.

Notes following the listing of services stated "325 minutes four days per week support in the general education setting - 105 minutes four days per week attendant care support [and] 335 minutes one day per week support in the general education setting - 95 minutes attendant care support. General education support includes ELA. . . , ,math, science, social studies, AMP. . ., social development, class meeting/calendar, story time, and library. Attendant care support includes bathroom, lunch, recess, car rider pick up, and dismissal."

Classroom accommodations listed on the student's IEP dated May 10, 2024 included: magnification devices, materials adapted to braille, auditory instruction to supplement visual instruction, additional time to complete assignments, frequent breaks "when [the student] has reached a level of frustration in all academic and nonacademic settings until [the student] is ready to continue learning," modified physical education activities, on task supports-audio

input timer, use of a scribe, separate testing location, manipulatives and concrete objects to assist in understanding, tasks broken into smaller increments, alternative seating/fidgets for hands, and verbal cues and countdowns for transitions.

The IEP dated May 10, 2024 included the following: "Intimate Care Policy: "[The student] is currently not potty trained and needs assistance in the bathroom. Staff will assist in removal of clothing and helping with cleaning [the student's] body as needed. We will work on assisting [the student] in managing her own clothing and communicating when needing to use the restroom. When [the student] needs help in the bathroom, there is one staff member in the class bathroom with the door only partially closed and another staff member standing nearby on the other side of the door. Gloves are to be worn by staff during any changing or assisting the student in using the restroom."

Special education services

The first day of school for Kindergarten students according to the district calendar was August 19, 2024.

The speech language schedule for the student showed SPL services on Wednesdays 9:05 am-9:20 a.m., and Wednesdays and Thursdays at 2:05-2:20 p.m. Speech language attendance and data provided by the district showed that the student had speech language services on the following dates: August 21 (Indirect), August 22, August 28 (2 times), August 29, September 4 (3 times), September 11, and September 12, 2024. The notes say the student was absent at the time of therapy on September 18, 2024. An interview with the Speech Language Therapist stated that she provided additional support to the student and the classroom due to the new classroom for the student, whom she knew from the preschool setting, as shown in the schedule.

PT data and schedule showed that the student received PT services for 20 minutes on the following dates: August 27, September 3, September 10, and September 17, 2024.

The VI Teacher stated in an interview that she did not take the student out of kindergarten but provided direct services there, during language arts or math time; the VI Teacher's service log also stated that she did not remove the student from general education to provide direct services and listed the following service dates: August 19, 20, 22, 23, 26, 27, 28, 29, and 30, 2024; September 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, and 17, 2024. The VI Teacher stated that she provided training support for some but not every para on the student's language, braille, using materials, talking to the student before doing things, giving wait time, limiting competing voices, and helping the student in the classroom.

The paraprofessional schedule provided by the district showed that the student had paraprofessionals or a special education teacher or therapist present from the beginning of the school day through dismissal. Two paraprofessionals, Para JK (who has since left the district) and Para S were considered to be the student's "regular" paras. The district provided

two staff schedules, Schedule 1 showing when the former paraprofessional (Para JK) was present and Schedule 2 showing two days when Para JK was absent (September 16 and September 17, 2024). Schedule 1 showed that Para JK was assigned to be with the student from arrival (8:35 a.m. to 12:35 p.m.) when Para JK had lunch. Para V was also present on Fridays during the lunch period. The schedule showed that Para S was assigned to be with the student from 12:35 p.m. to 2:45 p.m., and that Para V was present in the classroom but not specifically assigned to the student (2:45-3:00 p.m.) and that Para V was assigned to the student from 3:00-3:30 p.m. at dismissal.

Schedule 2 showed that on September 16 and 17, 2024: Para V was assigned to be with the student from arrival at 8:30 to 10:30 a.m., Para D was assigned to be with the student at 10:30 through 11:55 a.m., Para V was assigned from 12:00-1:15 p.m., Para D was assigned 1:10-2:20 p.m., Para S was assigned 2:20 - 2:45 p.m., and Para V was assigned from 3:00-3:35 dismissal. Para V was present in the classroom but not assigned to the student from 2:45-3:00.

Interviews with and statements from district staff members show that the student was assisted by paraprofessionals in the general education classroom with accommodated lessons and materials, and that the student had an alternative to the "brain break" activity in the kindergarten classroom, due to student preference. An interview with the VI Teacher showed that she provided brailling lessons when kindergarten activities were not easily accommodated. Examples of accommodations provided in the classroom according to interviews were: talking to prepare for an activity, math workbook (tactile) adaptations, using the abacus, tallies and dots for math, braille reading and writing.

Breaks

The parent reported that the former paraprofessional told them that some school staff were concerned about the student being removed for breaks that were too long and that the long breaks were due to socializing among staff while allowing the student to play with a flashlight.

Interviews with the district staff indicated that student breaks were frequently given each day. The student was removed from the classroom at signs of frustration (screaming, hitting toward adults) and during activities like the brain break when an alternative break was provided. Breaks were also used to assist with difficult transitions (after lunch when paraprofessionals changed) or as a positive reinforcer in a "first/then" option after completion of work. In an interview, the kindergarten teacher said the breaks occurred two to four times a day, more often at the beginning and end of the day when the student was frustrated with being asked to do things she found difficult and that the regular paras took her to the resource room next door for 5-10 minutes. The paraprofessional said she used a 5 minute timer for the break period. The VI teacher said, 5 or 10, or 20 minute breaks occurred depending on the student's level of frustration. The district reported that the VI teacher used the flashlight activity for breaks in the school psychologist's office. The VI teacher reported flashlight play as a student preferred activity.

In a timeline prepared by the district, the kindergarten teacher reported that on 3 occasions the student was out of the room when not her normal break time or when escalated; most breaks are scheduled or due to being escalated, usually at the beginning of the day transition and during whole group reading. In the timeline, the district reported that the school psychologist stated that breaks in her office were timed at 10 minutes and didn't last longer than 20 minutes. In the timeline the district stated that the VI teacher stated that one break in the school psychologist's office lasted 20-30 minutes due to the student's level of escalation.

The district provided a break log by the VI Teacher which provided dates and times of breaks, as follows: August 19, 9:16 a.m. piano (in resource room) 12:24 p.m. piano and afternoon piano; August 20, 1:17 Theresa's room (school psychologist's office), afternoon Theresa's room, and 3:18 p.m. Theresa's room; August 22, 1:22 p.m. piano, August 23 Theresa's room, August 26 Theresa's room (flashlights as a reward), August 30, 2:00 p.m. piano, September 5, 2:40 p.m. violin (in resource room), September 6, 1:11 p.m., violin, September 9, Theresa's room, September 10, 10:15 a.m., Theresa's room (piano), September 13, 3:19p.m., piano in resource room.

Breaks were not always logged, according to staff interviews. Staff interviews also indicated that the student's escalated behavior was not being recorded or charted.

Attendant care

Kindergarten schedule provided by the district showed:

*8:35-8:55: Greetings, attendance taking, lunch count 8:55-9:10: Morning meeting/calendar 9:10-10:00: Whole group reading (CKLA) 10:00-10:30: Panther Time *10:35-10:50: Recess *10:50-11:10: Snack & Story *11:10-11:55: AMP [Specials] 11:55-12:05: Lunch procedures *12:05-12:35: Lunch *12:35-12:50: Rest time	12:50-1:20: Phonics/Phonemic Awareness Math Brain break 1:20-1:45: Whole Group Math (iReady) 1:45-2:20: Math centers 2:20-2:50 S.S/Science/Writing *Library on Thursdays 2:20-3:00/ Counselor every other Tuesday 2:20-2:40 2:50-3:10: Developmental Play & Pack up *3:10-3:25: Recess 3:30-3:40: Good things/rater for social contract/line up for dismissal (launch) 3:40- Dismiss *bathroom opportunities scheduled

The kindergarten schedule and interviews with the kindergarten teacher showed that, in addition to going upon request, kindergarteners were taken to or "welcome to use the bathroom" in the morning upon arrival, at the scheduled break/snack time (around 10:50),

after rest time (around 12:55 p.m.), each time the class left the classroom [lunch, AMP, library/counselor], and before the last recess of the day. These opportunities are noted on the class schedule table above with an asterisk (*).

Text message exchanges dated August 13, 2024 between the parents, Para JK and the VI teacher showed that the parent stated, "I wanted to talk with you two about [the student's] potty training. [The student] still requires a diaper although much more eager to use a toilet, but the issue remains that [the student] is not fully potty trained. In that case, I wanted to know if she would be allowed frequent bathroom breaks to help encourage her to use the toilet rather than waiting until her pullups are full and needing changed." The reply from Para JK showed her support for the idea and the VI teacher suggested going every 45 minutes at natural breaks in the kindergarten classroom schedule.

The student's first day of school was August 19, 2024. The parents reported that the student returned home with "pee soaked clothes" on August 19 and August 20, 2024. School records show the student was absent on August 21, 2024 for illness.

According to district staff interviews, the district purchased a child-size potty seat to go over the regular sized toilet and the Health Office allowed for privacy to assist the student with using the toilet and changing her pull up. According to an interview with the nursing assistant, it was an established practice to log each time the student used the bathroom in the Health Office, including noting which staff person brought her to the office and the witness. The nursing assistant stated that each time she was present in the building, the intimate care procedure for changing and witnessing was followed and logged. The nursing assistant stated that on one occasion, (September 16, 2024) around 1:00 p.m. or after, paraprofessionals who did not usually work with the student brought the student to the Health Office with a bowel movement in her pull up that had dried, indicating to her that it had not been immediately changed despite the evident smell. The nursing assistant and the nursing log showed that the nursing assistant instructed the paraprofessionals that paras were capable and responsible for the student's toileting needs and changing, and that the nursing assistant notified her supervisor (the nurse) of the situation so that administration could respond.

The nursing logs provided by the district and the parent showed the following documentation of toileting using the intimate care policy on the IEP by date, number of visits to the Health Office, and visit start times as recorded for each day.

Date (visits)	Times	Date (visits)	Times
August 27 (3)	9:43 am, 11:49 am and 2:22 pm	August 28 (2)	11:13 am, 2:30 pm
August 29 (3)	10:10 am, 11:08 am, 2:40 pm	August:30 (4)	9:13 am,10:45 am, 11:05 am, 3:03 pm
September 3 (3)	10:00 pm, 11:00pm, 1:30 pm	September 4 (3)	9:30 am, 11:01am, 1:35 pm
September 5 (3)	9:43 am, 11:10 am, 2:00 am	September 6 (2)	10:00 am, 11:15 am

Date (visits)	Times	Date (visits)	Times
September 9 (1)	2:34 pm	September 10 (2)	9:50 am, 1:40 pm
September 11 (2)	10:39 am, 1:40 pm	September 12 (3)	9:19 am, 10:45 am, 1:50 pm
September 13 (2)	10:04 am, 11:30 am	September 16 (1)	1:10 pm
September 17 (1)	10:30 am		

The nursing logs show that the student was assisted in toileting as per the intimate care policy three or four times on 7 days, two times on 5 days, and one time on three days, for a total of 15 days logged. The student was in attendance at the school for a total of 20 days beginning August 19, 2024 and ending September 17, 2024, according to the school calendar and student record of attendance provided by the principal.

According to the parents, the district and the nursing logs, the nurse called the parents to alert them to the bathroom incidents on September 16 and 17, 2024, when she called the parents to discuss the lack of bathroom visits to the Health Office, specifying that on September 9, 2024, the student was not brought until 14:33; on September 16, 2024 the student was not brought to change until 13:20 when the student was "caked in BM, dried to skin, diaper rash noted;" and on September 17, 2024 when the student was brought only at 10:30 am.

Conclusion

The student's IEP required that she receive special education and related services, and the district provided the requisite amount of services, with discrepancy in location from the IEP, with the VI Teacher providing special education services in the general classroom rather than in the special education room as stated in the IEP.

The district was correct in its response that the student was not removed from the classroom for any purpose not stated in the IEP. The district has the authority to choose the instructional methods used at school, which would include the flashlight play in this instance.

The IEP specifies frequent breaks "when she has reached a level of frustration in all academic and nonacademic settings until she is ready to continue learning;" and the IEP does not specify the frequency, duration, or activity of the breaks. District staff used breaks for this purpose and also as reinforcement in a "first/then" instructional strategy. Breaks were not routinely logged nor escalated behavior charted.

The Kansas Special Education Policy Manual (p. 108) states: "Sometimes it is difficult to be precise in determining just how much service will be required throughout the year. Sometimes services are provided on a situational basis, such as 'reading the math test to the child.' The IEP should not indicate these services are 'as needed.' The IEP has to describe when and how the service will be provided throughout the year". In this situation, the district is directed to use existing data to estimate the amount of service to be provided. In addition, "the amount of services to be provided must be stated in the IEP so that the level of the school'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 (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP (Federal Register, August 14, 2006, p. 46667)."

In this case, the accommodation of "frequent breaks 'when [the student] has reached a level of frustration in all academic and nonacademic settings until [the student] is ready to continue learning" was not logged or otherwise measured, precluding an estimation of how much time the student was being removed from required services in the general education classroom. In addition, the IEP does not specify the amount of time committed to the breaks in a manner clear to those implementing the IEP. It is noted that this is a kindergarten child during the first weeks of her kindergarten year, and thus a period of adjustment may have been expected.

At the time of the IEP (May 10, 2024), the district was aware that the student was not potty trained and made a plan known as an intimate care policy by which she could have her toileting needs met in kindergarten. The IEP's intimate care policy implied that incidental teaching related to toileting would occur, stating, "We will work on assisting [the student] in managing her own clothing and communicating when needing to use the restroom," as well as helping with cleaning her body. Attendant care was specified in the IEP as a service requiring either 95 or 105 minutes per day. "Attendant care involves providing assistance for people with disabilities to perform tasks they would normally be doing for themselves" in order to maximize independence across settings and situations (KSDE (2017).

The kindergarten schedule and interview with the kindergarten teacher showed ample opportunities offered to kindergarteners to go to the bathroom, either as part of the group, individually, or by request at any time. In a text prior to the beginning of school, the parent asked and was assured that the student would be toileted at naturally occurring opportunities in the kindergarten schedule, as frequently as every 45 minutes. The district is correct in that the frequency of toileting is not specified in the IEP. However, attendant care for "bathroom" is specified. It is a reasonable assumption that the adult assigned to provide attendant care would provide the structure and assistance needed for the visually impaired and language-delayed 5-year-old to use the toilet at least as often as the sighted kindergarteners with typical language and more often if individually needed.

Based on the foregoing, ***it is substantiated*** that USD #385 did not implement the student's IEP, specifically by providing the amount and type of special education, related services (including attendant care) and accommodations required by the student's IEP.

Issue Two

Did the district's attendants follow the written procedures and regular classroom and/or individual student toileting schedule with the child?

Applicable Law

Each IEP for a child with an exceptionality must include a statement of: the special education services; related services; supplementary aids and services (including accommodations), based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child; a statement of the program modifications; and supports for school personnel that will be provided for the child to: advance appropriately toward attaining the annual goals; be involved in and make progress in the general education curriculum, and participate in extracurricular and other nonacademic activities; and be educated and participate with other children with exceptionalities and nonexceptional children in these activities (K.S.A. 72-3429(c)(4)).

The IEP team must determine whether the child requires supplementary aids and services, that are appropriate and necessary, to afford the child an equal opportunity for participation in nonacademic and extracurricular services and activities. K.A.R. 91-40-3(b)(1) states: "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." Federal regulations at 34 C.F.R. 300.117 states that "The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings."

Analysis: Findings of Fact

The parent alleged that the student's attendant care for toileting was not carried out frequently enough. The parent alleged that not all days of attendant care for toileting were logged in the nurse's bathroom, indicating that the student either did not go to the bathroom on those days or the intimate care policy was not followed. Further, the parent alleged that she had alerted the student's teacher of the need to frequently assist the student in the bathroom, and she alleged she had been assured that the student would be assisted in this manner. The parent alleged that the student's toileting needs were neglected by the district.

The district responded (in full): "For the last two IEPs, including the current IEP (Dated 5/10/24), there has been no reference to an individual toileting schedule. The only reference to needing support for toileting is in the special considerations section of the IEP, it reads:

> Intimate Care Policy: [the student] is currently not potty trained and needs assistance in the bathroom. Staff will assist in removal of clothing and helping with cleaning her body

> as needed. We will work on assisting [the student] in managing her own clothing and communicating when needing to use the restroom. When [the student] needs help in the bathroom, there is one staff member in the class bathroom with the door only partially closed and another staff member standing nearby on the other side of the door. Gloves are to be worn by staff during any changing or assisting the student in using the restroom.

Per interviews, there is no evidence that the intimate care policy was not followed as there was never a time two people were not present when [the student] needed help in the bathroom or with help cleaning her body.

While there is no reference in the IEP to a toileting schedule, the staff did work to provide consistent bathroom opportunities. Per interviews with staff, these normally occurred at 9:30am, 11:30am and 2:30am. There is evidence that on 9/9, 9/16 and 9/17 [the student] only went to the nurse's office one time for a bathroom break. On these days, she was found to have urinated in her diaper (9/9), had a bowel movement (9/16) and there is no documentation of either urine or a bowel movement on the 9/17 date. The district acknowledges that on these days [the student] should have had more frequent restroom opportunities based on her normal routine. On each of these days, the paraeducator assigned to [the student] was different from her normally assigned staff and unfamiliar with the bathroom expectations. On 9/16, per interviews, the paraeducator assigned to [the student] from 12:35-1:00 was new and under the assumption that it was not her responsibility to take [the student] to have her pullup changed when she became aware that [the student] had had a bowel movement in her pullup. [The student] was then taken to the nurse's office at 1:10 when the paraeducators were directed to do so. It should be noted that staff indicate that [the student] usually lets them know if she needs to go to the bathroom or if she has had an accident by saying 'You need potty?' or 'You poopy?'.

The district acknowledges these missed bathroom opportunities need to be addressed and did so to staff in an email on 12:13 pm on 9/17 as soon as the principal was made aware of the situation. Additionally, on 9/18/24 at 8:17am, an email was sent to parents by the principal with a plan for implementation and letting them know that personnel matters would also be addressed.

While these issues do need to be addressed and have been per email documentation, the district does not believe these three missed bathroom [times] are a violation of IDEA nor is it a failure to provide FAPE."

Findings

Findings of Issue One are incorporated herein by reference.

The nurse's log reported that the student had at least three bathroom breaks as specified in the district's response, approximating the schedule given (9:30am, 11:30am and 2:30am.) on 7 of the 20 days when the student attended school.

Conclusion

In this case, the student's IEP included an intimate care policy that focused on a two-person procedure and stated that staff would assist the student in requesting and using the bathroom. The district was aware that the student was not potty trained and established an intimate care policy to assure that the student's toileting could be done in privacy, supported by two adults. The district's response to the complaint showed that the minimum number of toileting opportunities to be offered by staff was three times a day. The district failed to assure that the student had the opportunity to go to the bathroom each day at this rate, as often as the child needed, or as often as other kindergarten children could within the classroom schedule. It is noted that nursing logs and interviews indicated that when the student was taken to the Health Office, the two-person procedure was followed. Based on the foregoing, ***it is substantiated*** that USD 385 district's attendants did not follow the written procedures and regular classroom toileting schedule with the child.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. 300.323(c)(2) was found, based on the facts above. Corrective action is required (as follows):
    a. CORRECTIVE ACTION:
        i. By November 19, 2024, USD #385 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations 34 C.F.R. 300.323(c)(2) which require that school districts ensure special education and related services are made available to the child in accordance with the child's IEP.
        ii. By November 19, 2024, if the student returns to school, the district will provide service logs to be shared with the IEP team showing the amount, frequency and duration of breaks and logs of attendant care from the time the student returns to school to the time of the IEP meeting referenced in CA a(iii).
        iii. By November 19, 2024, the district must reconvene the Student's IEP Team and clarify the frequency, location, and duration of services (including accommodations) for special education and related services and include discussion of special education services and support in general education settings, breaks and attendant care so that the level of

the schools commitment is stated in a manner that is clear to all who are involved in both the development and implementation of the IEP. By November 8, 2024, the district will demonstrate that it has worked with the parents to set an IEP date and offered 10-day notice of an IEP meeting. The district will provide PWN to the parents and seek parental consent for a material change in services or substantial change in placement (K.A.R. 91-40-27(a)(3).

iv. By December 5, the district will provide evidence of completion of 1(a)ii and 1(a)iii to SETS.

2. ISSUE TWO: A violation of 34 C.F.R. 300.117, K.S.A. 72-3429(c)(4)) and K.A.R. 91-40-3(b)(1) was found based on facts listed above. Corrective action is required (as follows):

a. CORRECTIVE ACTION:

i. By November 19, 2024, USD #385 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal and state regulations 4 C.F.R. 300.117, K.S.A. 72-3429(c)(4)) and K.A.R. 91-40-3(b)(1) which require that school districts ensure special education and related services are determined and provided as required in nonacademic settings.

ii. By November 19, 2024, the District must reconvene the Student's IEP Team and clarify the frequency, location, and duration of services of special education and related services including attendant care, accommodations and services required by the student in nonacademic settings. By November 8, 2024, the District will demonstrate that it has worked with the parents to set an IEP date and offered 10-day notice of an IEP meeting.

iii. By December 5, the district will provide evidence of completion of 2(a)ii 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 #512
ON SEPTEMBER 17, 2024

DATE OF REPORT: OCTOBER 16, 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 # 512, Shawnee Mission Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #512.

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 September 17, 2024, and the 30-day timeline ended on October 17, 2024.

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video call on October 8, 2024. The following District staff were interviewed on October 10, 2024: the Special Education Director and the Science Teacher.

The Complaint Investigator also reviewed emails from the Parent and the District between March 31, 2023 and September 23, 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 relevant materials were used as the basis of the findings and conclusions of the investigation:

Parent Materials

1. Email, re: follow up from 12/14/23 meetings, 12/20/23-01/23/24
2. Email, re: team meeting for [Student], 08/23-10/27/23
3. Email, re: outstanding requests - [student], 11/26-12/03/23
4. Email, re: [Student] - environmental ed, 12/04-12/13/23
5. Email, re: IEE request, 10/12-12/19/23
6. Email, re: upcoming meeting, 01/26/24

7. Email, re: 2/29/24 follow up, 03/01-03/07/24
8. Email, re: follow up on questions, 04/25-04/26/24
9. Email, re: follow up, 04/10-05/16/24
10. Email, re: eoy updates, 05/20-05/24/24
11. Email, re: [Student] - sped records request (5), 05/28/24
12. IEP Attendance and Delivery Acknowledgement, 01/29, 02/13, 02/27, 03/29, 04/05 no year
13. PWN, 04/no day/24
14. Notice of Meeting, 01/11/24
15. IEP, 04/25/24
16. PWN, 04/05/24
17. IEP, 05/14/24
18. PWN, 04/05/24
19. PWN, 05/14/24
20. PWN, 10/09/23
21. IEE, 12/20/23
22. IEP Meeting Transcript, 09/19/24 PWN, 04/05/24
23. IEP, 05/14/24
24. PWN, 04/05/24
25. PWN, 05/14/24
26. PWN, 10/09/23
27. IEE, 12/20/23
28. IEP Meeting Transcript, 09/19/24d
29. Parent Interview on October 8, 2024

District Materials

1. IEE Responsive Action Documentation, no date
2. IEE Letter, 10/11/23
3. PWN, 05/22/24
4. Email, re: pre-annual IEP meeting request, 01/04/24
5. Email, re: IEE report, 01/04/24
6. Proposed PWN, 03/01/24
7. Email, re: welcome back [with meeting notes], 09/17- 09/23/24
8. District Interview on October 10, 2024

Background Information

This investigation involved a twelfth grade student enrolled in the District.. The Student is currently receiving services as a child with a Specific Learning Disability per the Individuals with Disabilities Education Act (IDEA).

Issue One

USD #512, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the Parent with access to educational records after repeated requests by the Parent for specific details regarding the dyslexia consultant hired by the district to support [the Student], including meeting notes, consultation goals, and actions taken. K.A.R. 91-40-50.

Positions of the Parties

The Parent alleged that despite repeated requests for specific information about the District's Dyslexia Consultant and their support for the Student, the Special Education Coordinator and Team "consistently failed" to provide this information, therefore "violating" the Parent's rights to be fully informed about the services and support provided to their child. The Parent further alleged that "On January 18, 2024, I requested that [the Chief of Special Education] provide details on where [the Student's] records were being stored. Despite this formal request, [the Chief of Special Education] did not provide the requested information."

The District rebutted that they provided copies of the Student's special education records multiple times at the Parent's request, including an electronic submission of special education records on May 28, 2024. The District asserted that they provided information about the dyslexia consultation in accordance with how it is listed as a support on the Individualized Education Program (IEP); dyslexia consultation occurred between staff members, so there are no educational records concerning this information. However, information and updates were provided verbally to the Parent at various IEP and in-person meetings.

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 October 6, 2023, an email was sent from the Parent to the School Psychologist asking for the latest information from the dyslexia consultant. The School Psychologist replied via email on October 10, 2023 indicating that they were going to meet with the Dyslexia Consultant and update the Parent afterward. The School Psychologist also indicated that check-ins with the Consultant occurred one time each semester.
2. On November 26, 2023, an email was sent from the Parent to the District Team indicating that they had not yet received any updates about the Dyslexia Consultant and requested to attend any future meetings with the Consultant. More emails were

sent between the District Team and the Parent on December 1, 2023. The School Psychologist clarified that the Dyslexia Consultant was contracted to work with the District to consult with teachers and answer questions about reading strategies and instruction, and their role did not include working with individual students or families.

3. On December 3, 2023, the Parent emailed the School Psychologist and indicated discrepancies in the information they had been given about the dyslexia consultant. They had been told they could look up contact information for the Consultant and contact them, but then they were told the Consultant's role did not include working with families directly.
4. On December 11, 2023, emails were exchanged between the Chief of Special Education and Parent verifying agenda items for an upcoming meeting. These items included the Parent's request for the Dyslexia Consultant to attend the meeting. The Chief of Special Education replied that the Dyslexia Consultant would not attend the upcoming meeting, but any information regarding consultation could be provided by the Case Manager during the meeting.
5. On December 20, 2023 and January 3, 2024, emails were sent between the District and Parent outlining notes from the December 14, 2023 meeting during which the Parent's concerns regarding the Student's records and Dyslexia Consultant information were discussed. The Parent clarified that they wanted specific details about what the Dyslexia Consultant was doing with, or for the Student, including who the Consultant met with, for how long, goals for the meeting, meeting notes, findings, conclusions, action items, service recommendations, and any other relevant information.
6. A January 17, 2024 email from the Chief of Special Education to the Parent verified adding agenda items for the January 19, 2024 IEP meeting to include discussing the utilization of the Dyslexia Consultant as a resource.
7. Via email on April 12, 2024 to the Chief of Special Education, the Parent requested the removal of the dyslexia consultation from the Student's IEP stating that it was not benefitting the Student or the IEP Team. The Chief of Special Education replied April 17, 2024 that the dyslexia consultation would be removed per the Parent's request. The Parent replied April 20, 2024 that they were requesting the removal because they never received details about the services provided and it should be noted in parental concerns as such.
8. On May 28, 2024 the Special Education Department sent five batched emails to the Parent containing special education records as requested by the Parent.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.613 and K.A.R. 91-40-50, Parents of a child with a disability have the right to inspect and review all of their child's education records related to identification, evaluation, educational placement, and the provision of a Free Appropriate Public Education (FAPE). An education record means those records that are directly related to a student and

maintained by an educational agency. According to FERPA regulation 34 C.F.R.99.3, the term "education record" does not include records that are kept in the sole possession of the maker.

The Parent requested records about consultation activities noted in the IEP between the District and the Dyslexia Consultant. When the Parent did not receive this information, they requested to attend consultation meetings between the District and the Dyslexia Consultant or to have the Dyslexia Consultant attend IEP meetings. The Parent asserted that the reasons for the requested information and attendance at these meetings was due to their desire for detailed information about the basis for educational services being provided, or decisions being made for the Student. District records indicated that utilization of the Dyslexia Consultant was an IEP meeting topic multiple times. The Parent requested the dyslexia consultation be removed from the IEP due to the District not providing information about the content of the consultation.

On May 28, 2024, the District provided the Parent with special education records and notified them that student records are housed in two online databases. The District also noted that as a designated support for school personnel, consultation by a dyslexia consultant occurred one time per semester as per the IEP, but there were no educational records specific to dyslexia consultation to provide to the Parent.

Based on the foregoing, according to IDEA and Kansas special education regulations i***t is not substantiated*** that the District failed to provide the Parent with access to educational records.

Issue Two

USD #512, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), denied the Parent's request for counseling services to address the safety and emotional needs of the Student. The Parent's concerns were not addressed in the IEP or the IEP process. Further, the paraprofessionals working with the Student have not received adequate training to support the Student. K.S.A. 72-3429(1)(3)(4); K.A.R. 91-40-18(b); K.S.A. 72-3429(c)(4).

Positions of the Parties

The Parent alleged that the Student had experienced bullying at school and they requested for the School to introduce the Student to the School Counselor so they would have a safe place to go when issues arose. The Parent alleged the School

> *"disregarded" their request and stated the Student had 'organically met the counselor.' The Parent stated that this response "failed to address the severity of the situation and left the Student without proper emotional support during a critical time."*

The Parent further alleged that "[f]or a significant part of the 2023-2024 school year, the IEP team refused to include our documented parental concerns in the main body of [the

Student's] IEP. Instead, they relegated these concerns to attachments, making them harder to locate and diminishing their importance in the decision-making process." The Parent further stated, "although our parental concerns have now been reinstated in [the Student's] IEP after a year of escalation, this delay has caused significant harm to [the Student's] educational progress. The issue took an entire year to resolve and demonstrates a pattern of neglect in addressing parental concerns."

Finally, the Parent alleged that the District only offered to re-train paraprofessionals after four years of raised concerns and "significant pressure" from the Parent. Furthermore, the Parent stated that their request for a paraprofessional to attend an IEP meeting was denied and the lack of support hindered the Student's progress and "[t]he reactive nature of these actions has caused ongoing delays in providing appropriate services for [the Student]."

The District responded that they fully complied with requirements in developing an IEP for the Student. The District also stated that the Parent "informed the team that the Student was engaged in a romantic relationship not approved by Parents.

> *... and [d]uring this discussion, there was no request by Parents or evidence the Student demonstrated a need for counseling services to address the safety and emotional needs of the Student." The District acknowledged the Parent requested for the Student to be introduced to their assigned counselor to help with the relationship the Parents did not approve of, but the team explained to the Parent that this was the role of the social worker instead. The District stated that following this request, the School ensured that the Student knew who their assigned social worker was and the "Student was re-introduced to the social worker on November 14, 2023, and then again in January 2024. At no time did [the] Parent request counseling services be included in the Student's IEP. Rather, this was an informal inquiry by [the] Parent about how the Student could be supported if necessary."*

The District further asserted that all students at the School have access to a social worker and do not need services listed on an IEP to access the support.

Furthermore, they noted that in an IEP meeting on March 29, 2024, there was a discussion about the Student's behavior and according to IEP documents, "the IEP team including Parents indicated that the Student's behavior did not impede the learning of [themself] or others. ... [T]here was not a need for accommodations, a goal, or a behavior intervention plan." In regards to paraprofessional training, the District responded that all staff at the School were trained in implementation of accommodations and modifications and provided a schedule of multiple trainings that occurred from August 11, 2023 through April 26, 2024. The District also stated that following an IEP meeting in December 2023 where the Parent shared concerns about paraprofessional training, a refresher training about the Student's services was provided to paraprofessionals in January 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. During interviews, the Parent stated there has been "back and forth" over the years about parental concerns being included as an attachment to IEPs instead of included within the document. The Parent questioned if someone would actually receive all the IEP information, including these attachments, when requesting records, so they wanted that information included within the IEP document. The Parent acknowledged that the District did start putting their parental concerns back in the parental input section of the IEP rather than as an attachment.
2. A PWN dated October 9, 2023, indicated that the Student had access to the "Student Services Center" and could see their "Counselor or the School Social Worker." It also indicated that paraeducators were given each student's IEP for the students they work with. They met with case managers to review student needs, and were instructed to work specifically with students who have IEPs, but were available to assist all the students in a class. It was noted that the Parent asked if teachers were trained on the nuances of student personality and behavior. The Associate Principal replied that paraeducators and teachers were having ongoing one-to-one conversations about how to work with the Student and problem-solve with team members. District and building-level training was also explained.
3. On October 15, 2023, via email to the Chief of Special Education, the Parent specified that they wanted the School to proactively introduce the Student to any counselors available at the School so the Student would know who to go to if needed. They did not want the Student to have to seek out counseling services on their own. The Parent further stated that the Student had demonstrated social and emotional changes over the previous two weeks that they alleged were a direct result of the Student's frustration with curriculum and services being provided. The Parent also noted that these behavior changes were new and had not been demonstrated or noted throughout any previous IEPs. The IEP dated May 14, 2024 indicated behavior was not an area of concern.
4. From December 20, 2023 through January 3, 2024, emails were exchanged between the District Team and Parent with follow-up items from a December 14, 2023 meeting. The Chief of Special Education stated that paraeducators who were supporting the Student's classes would be re- trained on accommodations and modifications in January 2024. They indicated they had been told in a meeting on October 6, 2023 that paraeducators received training for each student on a one-to-one basis, but the Parent said the Student was not receiving support in the classroom. The Parent alleged they had requested on December 4, 2023 to have paraeducator attendance at a meeting but were denied and re-training was only offered by the District when the Parent further pressed their concerns.

   Further, the Parent asked what training plan was being proposed, would the training be

repeated after the next IEP was written, what the plan was for new paraeducators, if the Parent or Parent's advocate could attend the training, and what the solution would be if the Student had concerns with the support they were receiving from the paraeducators. The Chief of Special Education replied January 17, 2024 that paraeducator training would be specific to the Student's current IEP accommodations and modifications, a re-training would occur at the conclusion of any changes to the IEP, and if the Student had difficulties with paraeducator support received, they could report to the Case Manager, General Education Teacher, or the Associate Principal. The Chief of Special Education also stated that paraeducators new to the school would receive an overview of IEP information for any student they support.

5. On September 17, 2024, the Parent emailed notes to the Chief of Special Education about the September 10, 2024 meeting. It was noted that the Case Manager had met with all teachers and paraprofessionals before the start of classes to review the Student's IEP. Ongoing communication and regular check-in meetings with specific teachers was also noted. It was mentioned that the Student reported that work modifications helped them feel less overwhelmed. Further, it was noted that there was inconsistent paraprofessional presence in American Government class and that per the School IEP Team, no paraprofessional support was needed in special education settings (Math, Strategic ELA, Strategies for Success).
6. During interviews, the Parent stated there has been inconsistent training for paraprofessionals regarding the content of the Student's IEP, including accommodations and modifications. The Parent also indicated inconsistency in staffing paraprofessional positions within the School or paraprofessionals not showing up in classes where the Student expects to receive support. The Parent stated that at every meeting they have now, they check-in to understand what documents are being provided to paraprofessionals.
7. During interviews, the Chief of Special Education stated that all staff, certified and classified, received a required District overview of accommodations, modifications, and requirements and then spend time with their special education case managers to review specific details of assigned students with IEPs.

   The Chief of Special Education noted that in response to the Parent's concerns about paraeducator training and support in the science class, the IEP Team changed from providing paraeducator support to providing a certified special education teacher to support the Student in the class.

Applicable Regulations and Conclusions

According to the IDEA and Kansas State regulations, exceptional children must have an IEP at the start of each school year. The IEP team is responsible for developing and modifying the IEP, including addressing special factors like behavior, language needs, visual or hearing impairments, and the need for assistive technology. Changes to the IEP can be made through written agreements or team meetings, and the IEP should be reviewed and revised at least annually. K.S.A. 72-3439; K.A.R. 91-40-16

If the IEP team determines that a child requires specific supports like behavioral interventions, accommodations, assistive technology, or program modifications to receive FAPE, those supports must be included in the child's IEP. K.S.A. 72- 3429(d)(4); K.A.R. 91-40-18(b);

A statement is required to outline the special education-related services, supplementary aids, and program modifications or supports that will be provided to the child. These services and supports are intended to help the child make progress toward their goals and enable the child to participate in the general education curriculum with their peers. K.S.A. 72-3429(4)

Paraprofessionals and assistants who are appropriately trained and supervised may be used to assist in the provision of special education and related services to children with disabilities. C.F.R. 300.156(b); K.A.R. 91-40-16(4)(5)

The Parent requested that the School directly introduce the Student to the school counselors. The District asserted that they informed the Parent and the Student of the accessibility of social workers to all students whenever needed. Further, that at no time, was it discussed during an IEP meeting that the Student demonstrated a need for behavioral support or counseling services. The District records confirmed this.

The Parent alleged that their parental concerns were not being documented within the IEP document and they were concerned this information wouldn't be available to professionals who requested and/or viewed the Student's records. The Parent acknowledged that this eventually was resolved.

The Parent alleged that the Student was receiving inconsistent support in the classroom and requested specific details about paraeducator training. The District provided a schedule of multiple required and informal trainings or meetings designated for paraprofessionals regarding accommodations, modifications, and working with specific students. Further, the District asserted that they responded each time they were notified about the Parent's concerns by involving paraeducators and IEP Team members in reviewing, updating, adding, or adjusting supports for the Student. District records documented paraprofessional trainings, meetings where support for the Student was discussed, and any related IEP changes.

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 counseling services to address the safety and emotional needs of the Student. It is further not substantiated that the Parent's concerns were not addressed in the IEP or the IEP process, or that the paraprofessionals working with the Student had not received adequate training to support the Student.

Issue Three

USD #512, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to remove a District staff member from the IEP Team when the Parent requested it. K.S.A. 72-3404(4).

Positions of the Parties

The Parent alleged that the Student's IEP was "mismanaged" continuously by the Special Education Coordinator and that "[d]espite ongoing efforts to resolve these issues, [the Special Education Coordinator's] repeated failures have significantly delayed [the Student's] educational progress and have led to serious concerns about [their] ability to fulfill [their] responsibilities." The Parent cited the other issues investigated in this report as part of the reason for the request for removal of the Special Education Coordinator from the IEP team.

The District responded that the Parent made requests for the Special Education Coordinator to be removed from the team, but "[t]he expressed basis for this request is that the Parent does not like working with the staff member, disagrees with statements that the staff member has made at meetings, and disagrees with the summaries of meetings that the staff member partnered in preparing." The District added, "Please note that, while [the] Parent has voiced their dissatisfaction with this staff member, through direct observations and interviews of IEP team members, there were no findings that this staff member had engaged in any negative or unprofessional interactions with [the] Parents." The District further asserted that there are no IDEA, state or federal regulations requiring a school district to remove required IEP team members at a parent's request or because a parent does not like, or agree with, team members. The District stated that the Special Education Coordinator was serving a required role of district representative for the IEP team and that the Parent had "never, either in email correspondence or in this second child complaint, made an allegation that the staff member who serves as the District representative is not sufficiently qualified or knowledgeable."

Finally, the District stated that there were multiple attempts, including by the Associate Superintendent of Leadership and Learning, to resolve the Parent's concerns about this issue, but they were unsuccessful and the Parent continued to demand the removal of the team member. "There is no qualification or knowledge deficiency that would justify removing the staff member from the IEP team, and so the staff member has not been removed."

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 December 6, 2023, the Parent emailed the Chief of Special Education requesting the removal of the District Special Education Coordinator from the IEP Team and cease their involvement in the Student's education. The Parent stated, "We have not seen a

level of professionalism or competence from … them when taking [the Student's] data, history and needs into consideration for [their] IEP." The Chief of Special Education replied that the Special Education Coordinator supported the School and would continue serving on the IEP Team. The Chief of Special Education further stated personnel matters would be addressed by them should they occur.

2. On April 12, 2024, the Parent emailed the Chief of Special Education requesting that a new special education coordinator be assigned to the Student. The Parent stated, "We have provided you data over multiple occasions why we believe [the Special Education Coordinator's] behavior, attitude, and lack of understanding of [the Student's] longitudinal data have created a severe impact on [the Student's] success, IEP teams [sic] ability to develop proper goals, and overall progress. This is my 3rd request for this since October. If you are denying it, we would like to have written details as to why." On April 17, 2024, the Chief of Special Education replied, "As previously explained, I am unable to accommodate requests to assign or not assign a specific special education staff member to a student based on parent preference. [The Special Education Coordinator] is the secondary coordinator, and [the School] is currently one of [their] assigned buildings."

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.321-322 and K.S.A. 72-3404(u)(4), the IEP team must include a school representative or designee who is directly involved in providing educational services and who is qualified to provide, or supervise the provision of, special education services, and is knowledgeable about the general curriculum and the agency's available resources.

The Parent requested removal of the Special Education Coordinator from the IEP Team due to alleged continuous "mismanagement" of the Student's IEP that they believe significantly delayed the Student's educational progress. The District asserted that the basis for the Parent's request was due to the Parent's dissatisfaction with the staff member, rather than negative or unprofessional behavior on the part of the staff member. The District further asserted that the Special Education Coordinator fulfilled a legally required role on the IEP Team and that there was no evidence suggesting a deficiency in qualification or knowledge that justified removal from the IEP Team.

Federal regulations , at 34 C.F.R. 300.156 require that qualification standards for special education staff be set by each state. The judicial authorities that have considered this issue have uniformly agreed that as long as personnel meet qualification standards established by state law, determinations as to which personnel will provide services to a child with a disability is left to state and local educational authorities. For example, in Slama by Slama v. Independent Sch. Dist. No. 2580, 39 IDELR 3 (D. Minn. 2003), this federal district court said, "School districts have the sole discretion to assign staff. In addition the district is not required to replace personnel with someone with equal or better qualifications. The services of any appropriately trained person is sufficient."

Based on the foregoing, according to IDEA and Kansas special education regulations it ***is not substantiated*** that the District failed to implement the requirements for IEP Team members.

Issue Four

USD #512, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement accommodations and modifications for the Student during their science class. K.A.R. 91-40-16(b)(3).

Positions of the Parties

The Parent alleged that the Special Education Coordinator, "failed to ensure that the accommodations and modifications outlined in [the Student's] IEP are implemented correctly. This includes core subjects like science, where [the Student] has not received the necessary support from teachers and paraprofessionals. These failures have prevented [the Student] from making meaningful academic progress."

The District responded that they "ensured that the Student's IEP was in effect and implemented at the beginning of the school year." They further stated that they implemented a process ensuring all general education teachers were informed about IEPs and received mandatory training regarding accommodations and modifications. The District asserted that each of the Student's general education teachers received a copy of the IEP at the beginning of the year and as changes were made to the IEP. Teachers were allowed to ask any clarifying questions regarding accommodations and modifications. The District provided a schedule of multiple trainings that occurred from August 11, 2023 through February 5, 2024, including for the Science Teacher specifically. Additionally, following receipt of the Parent's concerns, the Associate Principal met with the Case Manager and the Science Teacher in December 2023 and January 2024 to review accommodations.

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 November 29, 2023, the Parent emailed the Associate Principal indicating an immediate need to get modifications updated for the Student's science class. They mentioned the Student was working in seminar and with the Case Manager to complete assignments, but hadn't been able to keep up.
2. On December 4, 2023, the Parent emailed the Chief of Special Education requesting to address modifications being delivered to the Student in their Science class. They stated that the Case Manager and Student had been working together to get caught up and manage the classwork, but that all work that was being turned in late was only receiving 50% of the credit.

   According to the Parent, the Student believed even if they turned in all the work, they

wouldn't receive a passing grade. Concerns were also raised about a number of required outside volunteer hours counting toward the grade. The Parent requested a phone call with the Chief of Special Education, the Case Manager, and the Classroom Teacher to review modifications, consider a waiver of volunteer hours, and determine that work assignments be given 100% credit.

3. On December 6, 2023, emails were exchanged between the District Team and Parent. The Chief of Special Education stated that the Case Manager had access to the Canvas course and could modify assignments, the outside volunteer hours would not impact the Student's ability to pass the class, and that the Case Manager, the Science Teacher, and the Administrator would review grades in comparison to IEP modifications and accommodations. The Chief of Special Education further stated that the Associate Principal would meet with the Classroom Teacher to review the Student's IEP and ensure understanding of the accommodations and how to implement them.
4. On January 3, 2024, the Parent emailed the Chief of Special Education noting feedback given at a December 14, 2023 meeting regarding modifications and accommodations. They stated that implementation was more of a concern than how these were documented on the IEP.
5. The IEP amended April 25, 2024 contained "The Accommodations/Modifications/Supplementary Aids and Services" listed as:
    a. "State/District/Classroom Assessments:"
        i. "Alternate, small group setting";
        ii. "Frequent breaks";
        iii. "Read aloud instructions and content";
        iv. "Extended time by 2x the regularly allotted time";
        v. "Calculator";
    b. "Modify classroom assessments and assignments in length and complexity to the priority standards";
    c. "[The Student] will complete the assignments relating to the key concepts/priority standards of a unit prior to taking the summative assessment";
    d. "Shorten [the Student's] assignments by 50% and then chunk them into small manageable parts to demonstrate mastery of key concepts/priority standards";
    e. "Due to working memory challenges, allow [the Student] to use a teacher-approved 'cue card' or an index card during assignments, quizzes, or test";
    f. "Instruction:"
        i. "Frequent monitoring/checks for understanding";
        ii. "Explain written directions verbally. If more than 2 steps, repeat instructions and ask student what the first step will be";
        iii. "Scaffold explicit instruction to teach missing skills";

iv. "Teach use of calculator when needed";
v. "Repeat instructions if more than 2 steps";
vi. "Provide visual aids such as flow charts, diagrams, and other graphic organizers for main idea and details. Model use of aids";
vii. "Provide guided class notes or a copy of completed notes";
viii. "Read aloud instructions and assignments; provide audio versions of if [sic] a novel";
ix. "Provide frequent breaks";
x. "Pre-teach key vocabulary (look it up; use in a sentence; provide similar words)";
xi. "Use of a checklist for legibility and mechanics";

g. "Instruction:"
   i. "Provide [the Student] with additional processing time when directions are given, a question is asked in class, or if [the Student] is asked to start an activity (up to 2 minutes). After necessary processing time is given, check in with [the Student] to allow [them] to advocate if further clarification is needed";

h. "Assignments:"
   i. "Extended time by 2x the originally allotted time";
   ii. "Modified assignments and projects in length and complexity to practice priority standards";
   iii. "Allow [the Student] to use oral responses (which could be submitting an audio or video file) as an alternative to written work or a visual of the assignment";
   iv. "Prompt use of speech to text tool on [their] Macbook (Google or Mac tool both work well for [them]) on written assignments. Use microphone when dictating (inline mic built into earbuds works well)";
   v. "Explain written directions verbally. If more than 2 steps, repeat instructions";
   vi. "Use grammar and spell check on written work";

i. "Attention to task:"
   i. "Seating near peer model or teacher, away from distraction";

j. "Communication:"
   i. "If [the Student] produces a grammatically incorrect sentence either verbally or written, model the correct production back to [them]"; and
   ii. "If [the Student] is not understood, prompt [them] to repeat [themself], speak louder, and slow down. Provide a direct model of multisyllabic words if necessary."

k. Supports for School Personnel were listed:

i. "Consultation with Dyslexia Consultant, 1x semester, online or phone"; and

ii. "Assistive Technology Specialist will train [the Student's] team on assistive technology when new technology or new staff are added."

6. A PWN dated April 5, 2024 showed documentation of:

a. Review of special education and related services based on meetings from January 29, 2024, February 13, 2024, February 27, 2024, March 29, 2024, and April 5, 2024;

b. "Material change in services (Parental Consent Required)";

c. Proposal to add the following accommodations and modifications to the Student's IEP;

i. "Accommodations proposed on 12/19/23 via a [PWN]: Shorten [the Student's] assignments by 50% and then chunk them into small manageable parts to demonstrate mastery of key concepts/priority standards";

ii. "[The Student] will complete the assignments relating to the key concepts/priority standards of a unit prior to taking the summative assessment";

iii. "Accommodations proposed at the annual review of [the Student's] IEP (1/29/24): Due to working memory challenges, allow [the Student] to use a teacher-approved 'cue card' or an index card during assignments, quizzes or tests"; and

iv. "Accommodations proposed at 4/5/24 annual review meeting: Provide [the Student] with additional processing time when directions are given, a question is asked in class, or if [the Student] is asked to start an activity (up to 2 minutes). After necessary processing time is given, check in with [the Student] to allow [them] to advocate if further clarification is needed."

d. Explanation of why the actions were proposed;

i. For December 19, 2023 accommodations: "[The Student's] team, including Parent, met to discuss concerns regarding volume of work, pacing and timing of summative classroom assessments. The proposed accommodations/modifications are a result of that discussion. [The School] team is proposing these accommodations/modifications due to demonstrated need";

ii. For the January 29,2024 accommodation: "Findings of an Independent Educational Evaluation [IEE] indicate significant delays in working memory and processing speed. The IEE evaluation team recommended that [Student] utilize a 'cue card' to assist with working memory concerns. The [School] team has reviewed this recommendation and agrees";

iii. For the April 5, 2024 accommodation: "Due to slower processing skills, the team is proposing that [the Student] be provided with additional processing time following classroom directions"; and

e. Parent signature and date of April 25, 2024.

7. An additional PWN dated April 5, 2024 showed documentation of:
    a. Review of special education and related services and appropriate educational placement based on meetings from January 29, 2024, February 13, 2024, February 27, 2024, March 29, 2024, and April 5, 2024;
    b. "Material change in services (Parental Consent Required)";
    c. "Substantial change in placement (Parental Consent Required)";
    d. Proposal to add Study Skills "(50 minutes, 1 time a week and 90 minutes, 2 times a week in Special Education Setting) starting 8/13/2024." This was explained as, "An [IEE] recommends that [the Student] be provided the opportunity for organizational check-ins and assistance with learning and utilizing strategies to support organization and time management. Data collected by the school team indicates that [the Student] demonstrates the need for specially designed instruction in the area of executive functioning skills. Study Skills curriculum addresses these executive functioning skills and would provide the appropriate environment for [the Student] to learn organization and time management strategies";
    e. Proposal to remove in-class Science support starting May 29, 2024 due to the Student meeting science credit requirements at the end of junior year. A note was added that if the Student enrolled in a science class during senior year, support could be added back to the IEP;
    f. Proposal to remove in-class Social Studies support starting December 21, 2024 due to the class being only a semester long; and
    g. Parent signature and date of May 14, 2024.
8. On April 25, 2024, emails were exchanged between the District Team and the Parent regarding parental consent and the implementation of accommodations. The Associate Principal acknowledged there were accommodations proposed at an IEP meeting on April 5, 2024. A PWN dated April 10, 2024 was sent to the Parent requesting signature, and the consent was signed and returned April 25, 2024. Therefore, the accommodations on the IEP would be implemented beginning April 25, 2024. The Associate Principal also acknowledged that the Parent requested the "shortening of assignments by 50% be retroactively applied to the start of the 2nd semester," but stated that would go into effect beginning from the date of the signed PWN, April 25, 2024.

    The Associate Principal also stated that teachers would be informed of the modifications and accommodations and updated on expectations for the remainder of the school year. The Parent replied that the accommodation for reducing assignments by 50% was originally proposed and included on a PWN dated December 19, 2023 and

alleged there were five IEP meetings held to perform a review of the draft before having the final meeting and that the Student should not be impacted by this. The Parent also asked for more information regarding the decision that it could not be retroactive.

The Associate Principal replied, "The District cannot implement accommodations until parental consent is granted, and the IDEA and Kansas law do not provide for retroactive application of parental consent. Implementation starts after the parental consent is provided. To the extent that you are asking about 'who decided that it cannot be retroactive,' this is not a matter of an administrative decisions/discretion, but rather a matter of the requirements concerning parental consent to accommodations."

9. The IEP amended May 14, 2024, included a note stating that science support in general education would end on May 29, 2024 per a PWN signed by the Parent. A PWN dated for April 2024 (no day) also noted that the Student did not enroll in a science class for their senior year.
10. On May 19, 2024, the Parent emailed the Associate Principal suggesting a detailed plan for the last week of school that included a list of needed assignments, who would be assisting the Student with them, what final exam study materials would be provided, and what accommodations the Student could expect for each exam.
11. On May 20, 2024 via email, the Associate Principal explained that a list of missing science assignments represented priority standard work and needed to be completed, but were not. They further stated that accommodations and modifications had been in place and that time after- school had been given to work on them. The Associate Principal explained that a plan for early final exams had been developed between the Student and their teachers and was signed off by the Parent, the Student, and the Associate Principal. They also explained that locations and staff members to deliver the exams according to IEP accommodations had been identified and that the exams would be modified according to the IEP.
12. In a May 20, 2024 email reply to the Associate Principal, the Parent stated that they had done an audit of all Science assignments and found no consistency in what had been modified.
13. During interviews, the Science Teacher was asked to describe how science assignments were modified for the student. They explained, "I followed the IEP modifications and accommodations in conjunction with the case manager and my cooperating teacher as well." When asked about each specific accommodation or modification listed on the Student's IEP, the Science Teacher confirmed for each that it was either implemented as written, the Student chose not to use the support, or the support was not applicable to the class assignments. They could not recall a time when an accommodation or modification was not provided to the Student in their classroom.

    When asked how a student or parent would know if an assignment had been modified, the Science Teacher replied that it would have been noted in the Canvas platform. "I always had a regular assignment and then I had a modified assignment, and that was always communicated with the cooperating teacher, the case manager, the student, and if the parent ever asked, I would always volunteer that information."

When asked about receiving required trainings for the Student or for students with special needs, the Science Teacher confirmed they attended a District required meeting about that topic and then various meetings throughout the year. They confirmed meeting weekly with the Case Manager or other professionals specifically about the Student.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.320(a)(4) and K.A.R. 91-40-16(b)(3), the IEP must outline the specific services, aids, and program modifications that will enable the child to progress toward their goals, participate in the general education curriculum and extracurricular activities, and be educated alongside other children with and without disabilities. It also must list the projected start date, frequency, location, and duration of the services and modifications.

The Parent alleged the District failed to ensure correct implementation of the Student's IEP accommodations and modifications, particularly in their science class. Some of their primary concerns included the volume of work in the science class and modification of assignments. The Parent believed that the accommodation of "shortening assignments by 50%" should have been retroactively applied, but the District stated that as legally required, they began implementation on the date that parental consent was given. The Parent indicated that implementation of modifications and accommodations was more of a concern to them than how they were documented on the IEP.

The District asserted that they fulfilled all requirements in ensuring the Student's IEP was in effect and implemented as written and that all teachers received mandatory training regarding accommodations and modifications. The District also asserted that they responded to the Parent's specific concerns by holding meetings, reviewing the IEP and making necessary updates or adjustments.

Regarding IEP accommodations and modifications for the Student, the District records indicate IEP documentation of necessary supports, a staff training schedule, ongoing communication between the Parent and District staff, multiple meetings about the Student, including with the Science Teacher, and related IEP changes as determined by the IEP Team. The District further asserted that the Student completed the Science class requirements with the IEP Team's support.

Based on the foregoing, according to IDEA and Kansas special education regulations it ***is not substantiated*** that the District failed to implement accommodations and modifications for the Student during their science class.

Issue Five

USD #512, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide an accurate PWN to the Parent and did not provide a PWN regarding the Parent's request for a neutral third-party note taker. K.S.A. 72-3430; K.S.A. 72-3432; K.A.R. 91-40-26.

Positions of the Parties

The Parent alleged that the PWNs provided by the School "have consistently included biased and inaccurate information that do not reflect the discussions during the IEP meetings. Our requests for neutral third-party note-taker were ignored, further undermining our trust in the process and hindering our ability to advocate for [the Student] effectively."

The District responded that the Parent's allegation "does not concern any circumstance in which the District would be required to issue a PWN. With regard to this allegation, the District did not propose or refuse to take action with regard to the Student's educational plan. [The] Parent requested that the District cover the expense of a third[-]party notetaker selected by [the] Parent to take notes at IEP team meetings. This request did not relate in any way to the Student's disabilities or accommodations or to the Student's IEP. Further, there is no requirement in the IDEA, or in state or federal regulations, which requires a school district to meet a Parent's request for a third-party notetaker at IEP meetings." Additionally, the District asserted there was no requirement per the State Process Handbook for them to issue a PWN in regard to this request.

Finally, the District stated that the Parent took notes during the IEP meetings using an artificial intelligence (AI) platform and requested for those notes to be included in the Student's special education records, which the District honored each time these notes were received. The District also noted that they were originally attaching the Parent notes to the end of the Student's IEP due to length and as an attempt to reduce confusion within the IEP document, but when the Parent requested their notes be included within the IEP rather than attached to the end, the District honored this request by placing the Parent's notes in the 'Parental Input' section of the IEP. The District communicated this change to the Parent via email on January 17, 2024. Additionally, the District noted that they and the Parent were audio recording each IEP meeting and these recordings would have been made available to the Parent if requested.

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. During interviews, the Parent stated, "I'm not saying there's any inaccuracy of the timing or delivery of PWNs. I am talking specifically to the notes that are being now included in a PWN document." The Parent further explained that they were asking

for their version of the notes to be added to the District's version of the notes, so that anyone reading them would understand the Parent point of view. The Parent asserted that their versions of the notes were more "comprehensive" and included next steps. The District confirmed that since receiving notice that the Parent requested their AI version of notes to be included in the IEP, the notes were dated when received from the Parent and then copied and pasted directly into the parent portion of the IEP. Additionally, if the Parent believed there were submissions missing from the Student's record and provided dates of these materials, the Chief of Special Education stated they would work with the records clerks to ensure accuracy.

2. A PWN dated October 9, 2023 showed that no changes were being proposed or refused, but that the document contained notes taken during an IEP meeting on October 6, 2023. On October 10, 2023, the School Psychologist emailed the Parent including an attachment of this PWN and stated that its purpose was not to propose or refuse any changes, but to serve as notes documentation from the October 6, 2023 meeting.
3. On October 15, 2023, the Parent emailed the Chief of Special Education a list of notes they wanted added to the PWN regarding the October 6, 2023 meeting. These notes included topics of the Parent's primary concerns and complaints, occupational therapy, speech therapy, communication with teachers, careers class, counseling services, and general IEP meeting communication. The PWN dated October 9, 2023 references these topics from the meeting, but does not include the Parent's notes verbatim.
4. On November 26, 2023, the Parent emailed the District Team stating they did not receive a reply to have their notes regarding the October 6, 2023 meeting added to the PWN and requested an updated PWN from that date to include their notes as outlined in their document attached to the email.
5. On December 1, 2023, the School Psychologist replied via email to the Parent, "Your request on 10/15/2023 to have your parent concerns added was received and your notes were added to [the Student's] educational record. The PWN document is used to capture what is discussed; it documents the proposals and refusals of actions from the school team from the IEP meeting. The PWN is not appropriate for documentation of parent concerns but attaching your concerns to [their] educational record is the appropriate action, which the school team has done." The Parent replied, "You state the PWN is not the appropriate documentation for Parent Concerns. Our request was to add our meeting notes in addition to the meeting notes you added to the PWN. We never framed it as parental concerns."
6. On December 20, 2023, the Chief of Special Education emailed the Parent and included PWN attachments stating that one was to serve as meeting notes.

   The Parent replied to the Chief of Special Education via email January 3, 2024 alleging, "The notes provided on the PWN were very biased and did not accurately reflect what was said during our meeting. This is now the second time this has

happened. The first time [the School Psychologist] added biased notes to the PWN, we requested our notes be added in addition to accurately represent what was covered at that meeting. That request was denied. We have since asked to record the meetings as a source of truth. Going forward we are now requesting that a 3rd party attend the meetings to serve as the non-biased note-taker for future PWNs."

7. On March 2, 2024, the Parent emailed the Deputy Superintendent requesting a meeting to discuss concerns and alleged inaccuracies on a "proposed" PWN dated March 1, 2024. In this same email, the Parent clarified they did not agree with what the Team had proposed on the PWN in regards to providing outside services based on the IEE recommendations via telehealth rather than in-person. The Parent emailed the Chief of Special Education on March 6, 2024 and outlined their concerns and stated their disagreement with the proposal. The District's records indicated IEP meetings on March 29, 2024, April 5, 2024, and May 14, 2024 to continue discussing concerns and proposals for the IEP. Additionally, a PWN dated May 22, 2024 and signed by the Parent May 23, 2024 outlined the proposed actions from March 1, 2024 and the updated actions the Team agreed to May 2024.
8. On April 12, 2024 and April 20, 2024, the Parent emailed the District about their concerns that the PWNs were not accurate or inclusive of the Parent input.
9. A PWN dated May 14, 2024, indicated that no IEP changes were being proposed or refused and the document contained notes from annual IEP review meetings of January 29, 2024, February 13, 2024, February 27, 2024, March 29, 2024, April 5, 2024, and May 14, 2024.
10. An email on May 21, 2024 from the Chief of Special Education to the Parent included an attached PWN with updated notes and items requiring parental consent on a separate PWN. Additionally, it was indicated that the notes provided by the Parent on May 14, 2024 were added to the parent portion of the IEP. The amended IEP dated May 14, 2024 shows inclusion of the Parent's notes received via email on the same date and those also received on February 12, 2024.
11. During interviews, the Chief of Special Education explained that their PWN procedure is "multifaceted." Sometimes there would be more than one PWN for a meeting based on the number of action proposals or refusals, requests for parental consent, or the volume of information. Based on recent legal guidance, the District began using PWNs to "outline meeting notes, to outline all of the components that are covered, even if the action isn't required … ." They stated that each PWN and its purpose was explained to the Parent and that the Parent was told that their notes could be added to the Student's record either by way of attachment to the IEP or in the parental concerns/input section of the IEP document itself.

Applicable Regulations and Conclusions

The parents of a child with a disability must receive prior written notice before any proposed or refused changes regarding their child's identification, evaluation, educational placement, or a FAPE. The notice must clearly describe the action, the reasons behind it, other options

considered, reasons those options were rejected, any supporting documentation, and available procedural safeguards. *34 C.F.R. 300.503; K.S.A. 72-3430(b)(2); K.S.A. 72-3432; K.A.R. 91-40-26*

Additionally, in Kansas, school districts must obtain written parental consent before making a change of 25% or more of a special education service. *K.S.A. 72- 3430(b)(6).*

The Parent specified that their concern was that the notes being documented in PWNs only showed the District's perspective and did not fully capture the contents of the IEP meetings. They wanted their notes to be added to the District's notes so that the Parent's perspective was also documented and they believed their notes were more comprehensive. The District explained they utilized PWNs for multiple purposes and recently began documenting meeting notes on PWNs separate from any other proposals or refusals of action. The District acknowledged that their prior practice was to attach the Parent's notes to the end of the IEP, but upon request for the notes to be added within the IEP document instead, the District began documenting the Parent's notes, once received, within the parental input portion of the IEP. The District explained to the Parent that this was the process for including their notes in the Student's record instead of adding them to the PWNs. The Parent and District did not agree on this.

The District's records indicated multiple interactions between the Parent and the District about this subject. The District's records also indicated that the Parent's notes that were received in February and April 2024, were added to the parental input section of the IEP. The District's records indicated that the Parent's notes were not added to the PWNs with the District's notes.

The Parent also alleged that the District did not respond to their request for a third-party notetaker to help ensure accurate and nonbiased notes. The District asserted that there is no legal or procedural requirement for them to meet the Parent's request for a third-party notetaker. They also asserted that this was not a circumstance that required a PWN, because it wasn't related to a proposal or refusal of action regarding the Student's IEP.

The Investigator agrees with the district analysis. A PWN is required when the District makes a proposal, or refuses a proposal, to make changes to any matter related to identification, evaluation, placement, or the provision of FAPE. The use of a PWN for any other purpose is at the discretion of the District and is not regulated by law.

Based on the foregoing, according to IDEA and Kansas special education regulations it ***is not substantiated*** that the District failed to meet the PWN requirements.

Issue Six

USD #512, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to review the results of an IEE and revise the IEP, as appropriate, in a timely manner. K.S.A. 72-3429(f)(2)(B).

Positions of the Parties

The Parent alleged that "[w]hile the team ultimately acted on the Independent Educational Evaluation (IEE) data, it took the entire year to accomplish, and the process was not conducted as a team effort. This further hindered [the Student's] ability to maximize [their] education during that year. The delay in acting on the IEE findings resulted in a significant loss of time and educational opportunity for [the Student], which should have been addressed much sooner."

The District responded that they "fully complied" with all regulations regarding timely review and revision of the Student's IEP to address the results of the IEE.

The District reported they were alerted by the Parent on December 29, 2023 that the report was finished. The District was closed for winter break from December 21, 2023 through January 3, 2024. The District stated that they received the IEE report on January 4, 2024. The District contacted the Parent via phone on January 3, 2024 and January 7, 2024 to schedule a time to review the IEE and to schedule an IEP meeting. An IEP meeting was scheduled for January 29, 2024. The Parent requested a pre-meeting to only include some members of the IEP Team in order to review the IEE prior to the IEP meeting due to the Parent's concern that one scheduled meeting would not be enough time to review the IEE and review and revise the annual IEP. Members of the team honored this request and met with the Parent to review the IEE on January 19, 2024.

The District further explained that they "met multiple times to review the IEE and to develop an updated IEP. The District developed and provided a crosswalk of information connecting the IEE to the draft IEP developed by the District." Additionally, the District asserted that they "proposed additional supplemental services for the Student" in response to the Parent's concerns about the Student's progress. The District noted they also "offered to provide the Student private tutoring during the school day. The Parent rejected this request (the original offering was March 1, 2024). The District agreed to contract services to provide tutoring during the summer for the [S]tudent. [The] Parent consented to this on May 23, 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 October 11, 2023, the Chief of Special Education sent a letter to the Parent notifying them of receipt of their request for an IEE and agreement for the District to cover the cost up to a designated amount. It was also noted that the results would be considered

by the District once received and that "[U]nless notified to further discuss an extension, the IEE results need to be received by the school district by Friday February 23, 2024."

2. On December 11, 2023, the Parent emailed the Chief of Special Education asking what out-of-school options or resources could be brought into the School based on the IEE report. The Chief of Special Education emailed the Parent and their advocate stating, "This will be an IEP team decision based on data obtained from the IEE at [the Outside Agency]. This could look like independent services being contracted through outside agencies who have a specialty in deficit areas identified within the IEE. For your reference, I have pulled the excerpt of the process for an IEE as it is outlined in the [Kansas] process handbook and embedded below. The team will meet and follow requirements outlined below."
3. The IEE report dated December 20, 2023 contained a section called "Recommendations," and it included subsections titled: "Medication Reevaluation," "General Considerations for the School," "Instruction & Learning Strategies," "Accommodations & Supports," "Academic Skill Building," "Reading Interventions & Strategies," "Writing Interventions & Strategies," "Math Interventions & Strategies," "Home Interventions for Academics," "Improving Productivity," "Structure and Routine," "Visual Cues and Reminders," "Heath and Nutrition," "Regular Exercise," and "Social and Emotional Support."
4. The Parent emailed the Chief of Special Education on January 3, 2024, proposing a meeting to review the IEE prior to the annual IEP. The Parent said they would like the meeting to include the Parent, the Chief of Special Education, the Case Manager, and the Parent's Advocate.
5. On January 4, 2024, a psychologist from the agency that conducted the IEE emailed the IEE report to the Chief of Special Education and the School Psychologist and noted that the Parent had also received a copy.
6. On January 11, 2024, an IEP meeting was scheduled for January 29, 2024 to review the results of the evaluation and develop the annual IEP.
7. On January 18, 2024, the Parent confirmed via email to the Deputy Superintendent and Chief of Special Education that they were meeting with the Case Manager on January 19, 2024 to review the IEE prior to the IEP meeting scheduled for January 29, 2024. They also noted that it was not an IEP meeting, and that the Chief of Special Education's attendance, along with anyone else, was optional.
8. On January 19, 2024, the Parent emailed the Chief of Special Education stating that they had been informed that only the Case Manager and School Psychologist planned to attend the meeting to review the IEE later that day, but they also wanted the Chief of Special Education to participate in the meeting. The Chief of Special Education confirmed they would not attend the meeting due to other commitments. The Parent said they would send a meeting link anyway so the Chief of Special Education could attend remotely because they thought it was important for them to attend. The Parent also requested additional time for the IEP meeting on January 29, 2024 in order to thoroughly review the IEE and IEP.

9. During interviews, the Parent stated, "When we requested to come back together and review [the IEE] as a team, the [Chief of Special Education] and team refused to." The Parent said that after multiple phone calls and emails, they showed up to the School to review the IEE and only two people from the IEP Team joined them in doing so. The Parent stated that they asked the Team members for feedback about the report, but the Team "refused to speak about it." The Parent stated that further discussions occurred in IEP meetings making sure goals and other IEP areas were "correlating correctly."
10. On January 22, 2024, the Parent emailed the Chief of Special Education an attached recording of the IEE review meeting and asked that all appropriate team members read the IEE and listen to the recording prior to the annual IEP meeting.
11. On January 26, 2024, the Chief of Special Education emailed the Parent confirming a meeting on January 29, 2024 to draft an IEP and discuss recommendations from the IEE. They indicated the Team had prepared a "crosswalk document" linking the IEE and draft IEP and attached the document to the email. A PWN dated April 2024 contained notes from the January 29, 2024 meeting indicating this discussion had occurred.
12. On January 29, 2024, February 13, 2024, February 27, 2024, March 29, 2024, and April 5, 2024, IEP meetings occurred to continue reviewing the IEE and to continue reviewing and revising the annual IEP.
13. The IEP dated April 5, 2024 and amended April 25, 2024 contained an "IEE Synopsis" under the "Student's Current Level of Performance" section that listed diagnoses from the IEE report and explained some of the evaluation findings.
14. A PWN dated May 14, 2024 referenced a "crosswalk document" linking the IEP and the IEE. The document listed the recommendations from the IEE, how the District addressed those recommendations in the Student's current IEP, and IEP proposals. The sections covered include: "Instruction & Learning Strategies," "Accommodations & Supports," "Reading Interventions & Strategies," "Writing Interventions & Support," and "Math Interventions & Strategies."
15. During interviews, the Parent stated that the District's "crosswalk" document was created after an escalated Parent complaint. The Parent stated that they told the District they wanted to know how the IEE was being utilized and explained that the document was not collaborative, but "dictated," and that it included outdated information that was not in the actual IEE.
16. A PWN dated May 22, 2024 showed documentation of:
    a. "Material Change in Services (Parental Consent Required)";
    b. A May 23, 2024 updated proposal: "Parent requested the district determine if the proposed services outlined below (and included in a PWN dated 3/1/24) could be provided in person. Services will be able to be provided in person 1 time per week for 6 weeks (June-August). Services will be 45minutes per session. No sessions will occur the week of July 8th due to the office being closed. … The services will target the language deficits identified in the IEE received from [Outside Agency]."

"[The School] is proposing [the Student] receive supplemental services to provide specific instruction targeting [their] language deficits. These services would be delivered via telehealth from a licensed provider with expertise in language disorders for 6-8 weeks (beginning March 5, 2024) based on the student's response to the specially designed instruction. [The District] staff will attend sessions that occur ranging from 1 time per week for up to 45 minutes to 3 times per week for up to 45 minutes per session. The outside provider and [the District] staff will provide parents with an update every two weeks regarding the areas targeted during the service as well as the student response";

c. An explanation of: "The IEP team is proposing [the Student] access private services from a licensed provider with expertise in language disorders. This specific instruction will target [the Student's] identified needs in the area of Application-Based Learning as identified in the IEE from [Outside Agency]. Regular communication with the parent providing updates and sharing the specific components being targeted and the student response is proposed to allow the parent to be fully informed regarding the supplemental services occurring"; and

d. Parent signature and date of May 23, 2024.

Applicable Regulations and Conclusions

The school must review the child's IEP at least annually to assess progress toward goals. Revisions should address any lack of progress, reevaluation results, new information from parents, anticipated needs, or other relevant matters. Schools are required to review the information from the IEE, if it meets the agency's criteria, to make decisions regarding the provision of FAPE to the child. 34 C.F.R. 300.324(b), 34 C.F.R 503(c)(1), and K.S.A. 72-3429(f)(2)(B)

On October 11 2023, the District agreed to pay for an IEE. On December 9, 2024 the Parent notified the District that the IEE was complete and a report was forthcoming. Following the District's winter break closure, on January 4, 2024, the District received the IEE report. The District contacted the Parent on January 3, 2024 and January 7, 2024 to schedule a meeting to review the annual IEP. The IEP meeting was scheduled for January 29, 2024.

The Parent requested a pre-meeting to review the IEE prior to the scheduled IEP meeting. It was held January 19, 2024 between the Parent and select IEP Team members. It was noted by the Parent that this meeting was not an IEP meeting and that attendance of certain staff members was optional.

On January 22, 2204, the Parent sent the District a copy of the recording of the IEE review meeting and requested other IEP Team members review it. Following this meeting, the Parent alleged that school staff "refused" to participate in discussion about the IEE or give feedback.

On January 26, 2024, the District confirmed that the IEE recommendations would be a topic of discussion at the January 29, 2024 IEP meeting and that the District had created a crosswalk document linking the IEE and the IEP. The Parent claimed the IEE crosswalk was not a collaborative effort and contained outdated information.

Six IEP meetings were held from January 29, 2024 through May 14, 2024 to continue reviewing the IEE and revising the annual IEP. Finalized District records from April 2024 and May 2024 document multiple discussions about, and references to, the IEE and related updates to the IEP. Additionally, the Parent and District agreed to outside tutoring sessions based on IEE recommendations at the District's expense. The Parent acknowledged that the District "ultimately acted on the IEE data," but alleged that it took "an entire year to accomplish."

Based on the foregoing, according to IDEA and Kansas special education regulations it ***is not substantiated*** that the district failed to review the results of an IEE and revise the IEP, as appropriate, in a timely manner.

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 #383, MANHATTAN/OGDEN PUBLIC SCHOOLS
ON SEPTEMBER 20, 2024

DATE OF REPORT: OCTOBER 22, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #383 Manhattan/Ogden 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 "the mother." The complaint is against USD #383 Manhattan/Ogden Public Schools. In the remainder of the report, USD #383 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 September 20, 2024 and the 30-day timeline ended on October 20, 2024. The investigator subsequently requested a two day extension, so the timeline ended on October 22, 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 parent. The evidence listed below was used in consideration of the investigation. Some of the evidence reviewed was dated prior to 12 months from the date of the investigation but was included to better understand the issue.

The Investigator contacted the district and parent several times by phone and email to clarify issues, evidence and conduct interviews. The Investigator emailed with the mother between September 22, 2024 and October 6, 2024 to understand the issue and clarify specific points. The investigator interviewed the parent and aunt who provides home schooling on October 6, 2024. The Investigator clarified issues and evidence with the district throughout the investigation and later interviewed Dr. Jessica Nelson, Director of Special Education, Caroline Holt, Secondary Special Education Coordinator, and Jennifer Young, High School, School Psychologist by phone on September 30, 2024. The following documentation and information were used in consideration of the issues:

1. IEP dated March 8, 2018
2. District Calendar 2023-2024

3. Independent Neuropsychological Evaluation dated April 19, 2024
4. Email exchange between parent and transition coordinator dated April 23, 2024 between 1:23 p.m. and 2:12 p.m.
5. Email exchange between parent and transition coordinator dated April 23, 2024 at 12:10 p.m. and April 24, 2024 at 11:04 a.m.
6. Email from parent to transition coordinator dated April 25, 2024 at 3:46 p.m.
7. Email exchange among transition coordinator to school psychologist, school psychologist 2, special education teacher 2 and special education teacher 3 dated April 30, 2024 at 7:48 a.m. and 9:06 a.m.
8. Email from parent to transition coordinator dated May 8, 2024 at 1:04 p.m.
9. Email from parent to transition coordinator and school psychologist 2 dated May 14, 2024 between 8:26 a.m. and 8:39 a.m.
10. Email from school psychologist 2 to parent dated May 15, 2024 at 9:26 a.m.
11. Request for Consent for Special Education Action dated May 16, 2024 parent signed consent on May 25, 2024
12. Envelope from parent to district offices postmarked June 4, 2024
13. Email exchange between parent and principal's secretary dated July 18, 2024 between 4:28 p.m. and July 19, 2024 at 2:12 p.m.
14. Email exchange between parent and transition coordinator dated July 31, 2024 between 1:18 p.m. and 2:13 p.m.
15. Email exchange between parent and principal's secretary dated August 5, 2024 between 12:19 p.m. and 1:23 p.m.
16. Email exchange among parent, transition coordinator, and principal's secretary dated between August 5, 2024 at 12:19 and August 6, 2024 at 4:35 p.m.
17. Email exchange between mother and special education teacher dated August 19, 2024 at 4:47 p.m. and August 20, 2024 at 1:21 p.m.
18. Part-time Enrollment Checklist signed by parent dated August 7, 2024, signed by principal dated August 31, 2024
19. Email exchange among parent, school psychologist, and coordinator of secondary special education dated September 9, 2024 between 7:18 a.m. and 3:24 p.m.
20. Email exchange between parent and school psychologist between September 8, 2024 at 10 p.m. and September 10, 2024 at 3:54 p.m.
21. Email from parent to coordinator of secondary special education, transition coordinator, special education teacher, assistant principal, school psychologist and student's aunt dated September 10, 2024 at 9:32 a.m.
22. Email from school psychologist to parent dated September 10, 2024 at 11:23 a.m.
23. Notice of Meeting dated September 10, 2024
24. Email exchange between parent and school psychologist dated September 11, 2024 between 7:59 a.m. and 9:39 a.m.

25. Email exchange among parent, coordinator of secondary special education, transition coordinator, special education teacher, assistant principal, psychologist and student's aunt dated between September 17, 2024 at 10:57 p.m. and September 19, 2024 at 9:41 a.m.
26. Email from parent to investigator dated September 21, 2024 at 3:03 p.m.
27. Email from parent to investigator dated September 22, 2024 at 7:08 p.m.
28. Email from coordinator of secondary special education to director of special education dated September 23, 2024 at 4:42 p.m.
29. Reevaluation/Continued Eligibility Report dated September 24, 2024
30. Draft IEP dated September 25, 2024
31. Staffing Summary dated September 25, 2024
32. Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated September 25, 2024
33. Email between school psychologist and parent dated September 26, 2024 at 10:02 a.m. and October 1, 2024 at 11:52 a.m.
34. Email from the director of special education to the investigator dated October 11, 2024 at 9:47 a.m.
35. District provided timeline dated from April 23, 2024 through September 25, 2024
36. 2024-2025 189 Day Work Teacher Assignment Teachers Calendar
37. 2024-2025 Student Schedule
38. District Part-Time Enrollment Guidelines

Background Information

This complaint addressed a ninth-grade student who is enrolled part-time in the district. A special education evaluation to determine eligibility and special education services was being conducted at the beginning of the 2024-2025 school year with a meeting to review the results of the evaluation scheduled for September 25, 2024. The student had an IEP dated March 8, 2018 from another district but was not dismissed from special education services. Between grades 3-8 the student was homeschooled and during that time the student moved to another school district. In the spring of the 2023-2024 school year the parent reached out to the new Kansas school district to consider returning part or full time to school and obtain post-secondary transition services. The parent provided an outside psychological evaluation and requested special education services for the student.

Issue Investigated

Issue One

Did the district appropriately respond to a parent request for an IEP for a child with a disability?

Applicable Law

Federal regulations at § 300.323(a) and state regulations at K.A.R. § 91-40-16(b)(1)-(3) state that at the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP as defined in § 300.320.

Letter to Siegel, 74 IDELR 23 (OSEP, February 19, 2019) is a guidance letter written by the United States Department of Education's Office of Special Education Programs (OSEP) in response to a series of questions regarding a child with a disability who transferred to a new local educational agency (LEA) during the summer. The letter explains that IDEA does not specifically address this situation. However, "IDEA requires that at the beginning of each school year, each LEA, State educational agency, or other State agency, must have in effect, for each child with a disability in the agency's jurisdiction, an IEP. 20 U.S.C. § 1414(d)(2)(A) and 34 C.F.R. § 300.323. Therefore, public agencies must ensure that an IEP is in effect at the beginning of the school year for children who move into a new public agency during the summer. How a public agency meets this requirement is a matter to be decided by each individual new public agency. If the parent requests that the new public agency convene the IEP Team prior to the start of the school year and the public agency refuses to do so, the agency must provide written notice to the parent of the refusal. The prior written notice must include, among other content, an explanation of why the agency determined that conducting the meeting is not necessary to ensure the provision of appropriate services to the student. 20 U.S.C. §§ 1415(b)(3) - (4) and 1415(c)(1); and 34 C.F.R. § 300.503."

Eagle Mountain-Saginaw Independent School District, is a Texas special education due process decision that reiterates that public agencies must ensure that an IEP is in effect at the beginning of the school year for children who move into a new public agency during the summer, but did not require the district develop a new IEP for the first day of school. How a public agency meets this requirement is a matter to be decided by each individual new public agency. (60 IDELR 178 (SEA TX 2012)).

Analysis: Findings of Fact

The Parent alleged that the family had been in contact with the special education department of the district since last spring about enrolling the student with a disability and an IEP from March 8, 2018 and it was not until Day 20 that any type of special education assistance was provided even though the student was visibly struggling and even then, the support was

inadequate. The parent stated that she had been trying to get the school to put something in place to assist the student until the new IEP is finalized.

The district responded that following a spring meeting with the student and family, they followed their procedures for enrolling a part-time student and conducted an initial special education evaluation to determine whether the child is a child with an exceptionality and the educational needs of the child. They stated that they were aware the student had a disability, but they were not aware the student had an IEP until receiving it from the parent. They further stated they provided comparable services during the special education evaluation as they listened to the parent input. They assert they expedited the evaluation and met with the family on September 25,

The IEP dated April 8, 2018 documented that the student was eligible for special education as a child with other health impairments and provided services for special education and social work. It included accommodations for the use of graphic organizers, use of fidgets, quiet settings or small groups, and stress breaks. The IEP documented that the student received direct special education services as needed for breaks, behavior, and assistance with accommodations for testing. A daily check-in each morning and check-out was provided by special education staff on a daily basis, each day of the week for 15 minutes each morning and afternoon.

An email exchange among the parent, secondary special education coordinator and transition coordinator between April 23 and 24, 2024 documented the parent arranged for a tour of the high school, explained the student's history, disabilities, and shared the April 19, 2024 neuropsychology evaluation.

An email from the district office to the transition coordinator on April 23, 2024 at 12:10 p.m. documents that the parent sent an email to the district describing that the student has ASD (moderately on the spectrum), dyslexia/dysgraphia and ADHD. The parent further stated that school testing was recently completed for IEP purposes.

A neuropsychology report dated April 19, 2024 from a private evaluation center recorded the student had diagnoses of ASD Level 2, Dyslexia, dysgraphia, and ADHD.

An email from the parent to the transition coordinator on May 8, 2024 documented that the parent intended to enroll the student part-time in the district beginning during the 2024-2025 school year and the student would need special education services.

The parent and aunt stated during an interview with the investigator on October 6, 2024 that they offered to provide a copy of the student's IEP during the interactions with the district between April 23, 2024 and the end of the school year, but the district declined stating they would obtain the last IEP directly from the district.

The Request to Evaluate consent form dated May 16, 2024 documented that the district notified the parent that the student would be evaluated for special education services in

response to receiving the March 2024 neuropsychology evaluation and parent information. The Request to Evaluate form documented that the parent signed consent for a special education evaluation on May 25, 2024.

Email exchanges between July 18, 2024 and August 6, 2024 between the parent and principal's secretary show that the student's enrollment and transition to the high school were discussed.

An Email from the mother to the transition coordinator documented that on August 6, 2024 a request was made for the student to walk the building and discuss credits/schedule and student needs. The parent asked for meetings to discuss special education services and implementation of the accommodations when the student began the school year. The transition coordinator proposed August 8 to meet to go over evaluation paperwork, half-time enrollment, and credits.

The student schedule showed that the student was enrolled for attendance for three courses, biology, drama, and physical education. Interview with the district revealed that the student received 1:1 para support during the school start up to aid in observation for the special education evaluation. The district reported during the interview that observation noted that the student was easily redirected with unfamiliar school routines. The student was provided a laminated "break" pass to show to teachers when he needed a break. The parent stated that the student did not understand how or when to use the pass and as a result did not use it when it was truly needed.

An email on August 19, 2024 to the parent provided the name of the student's case manager. An email on August 20, 2024 at 12:51 p.m. from a special education teacher to the parent clarified an error, "[student] is listed as a potential student on [teacher's] caseload but is still 'in referral'." To which the parent responded, "[student] should already be considered eligible for SpEd, if that is the eligibility you're talking about."

On September 8, 2024 at 10:00 p.m. the parent emailed the district checking in on obtaining supports for the student and inquiring how the student's needs are communicated with the classroom teachers. On September 9, 2024, the school psychologist emailed the mother that, "We have been in the process of completing the transition portion of the evaluation. The school has 60 school days to complete any evaluation. The transition has now been completed." The mother replied that the student transferred into this district with a Kansas IEP so expected that something would be in place at the start of the school year, even as additional evaluation was occurring.

On September 9, 2024 at 8:23 a.m. the school psychologist wrote the mother, "This is the first I have heard of an existing IEP. There was no mention during our in person meeting prior to school starting nor have I seen this IEP. It is my understanding that he has been homeschooled and this is the first [student] has been in public school for quite some time…If there is a current IEP, please forward immediately."

On September 9, 2024 at 2:53 p.m. the school psychologist wrote in an email to the parent, "The IEP from 2018 is no longer current and [student's] present level of performance and needs would likely not be that same. That is why time is needed to obtain data to determine needs." The parent responded, "I understand it's an old IEP, but when he is gone for a whole class period or, like today, the principal calls me telling me that a [classmate] complained that [student]s put [student] hands on [classmate] I expect you to move quicker to get some sort of oversight in place. I started this process in April to avoid this."

An email from the mother to the district on September 10, 2024 at 9:32 a.m. documented, "Please find attached [student] IEP from [previous district]. Though it is old, it is not expired and I believe there are things that could have been put in place on the first day of school. It is now Day 19, which is an unreasonable time to have lapsed, especially when [student] is struggling and has since Day 4. I don't know if you attempted to get any records from [previous district], but you have had the academic testing done by [outside agency] evaluation since last spring."

The Reevaluation/Continued Eligibility Report dated September 24, 2024 and discussed on September 25, 2024 concluded that the student qualifies for special education and related services as a student with autism and specific disability with dyslexia. As well the student has dyslexia.

A draft IEP was reviewed and discussed during the evaluation meeting and full-time enrollment was recommended. The prior written notice dated September 25, 2024 documented the purpose of the meeting was to determine "whether your child was eligible for special education, special education and related services needed by your child and the appropriate educational placement to provide special education and related services identified in your child's Individualized Education Program (IEP)." A description of the action proposed was that the student "qualifies for having an exceptionality and needs special education services.

Conclusion

In summary the district and parent agreed the student had a disability, but the district proceeded with this student's enrollment in the district by determining eligibility and appropriate services, either assuming the 2018 IEP was no longer current or in effect due to the lengthy period of homeschooling or not being aware that the student had an IEP. The parent believed she was enrolling the student as a transfer student with an IEP as demonstrated by contacting the special education department, describing the disability, providing current outside evaluation for IEP purposes, and requesting a meeting prior to the start of the school year to determine services. As well, she referred to the student as a transfer student from another Kansas district.

The regulations are not clear as to how this situation should be addressed, but a number of courts have found that the appropriate regulation is §34 C.F.R. 300.323(a) which says, "At the

beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP as defined in §34 C.F.R. 300.320." Eagle Mountain-Saginaw Independent School District. 60 IDELR 178 (SEA TX 2012) further clarified that a new IEP does not need to occur prior to the school year, but the prior IEP does need to be implemented.

The investigator considered whether federal regulations at §34 C.F.R. 300.323(e) regarding treatment of a transfer student applied, however the student in this case did not move in during the school year in which the IEP was operating, and Letter to Siegel, 74 IDELR 23, (OSEP 2019) clarified that when a student does not move in "within the same school year," § 300.323(e) does not apply. Thus, when a student does not move "within the same school year," the student should not be treated as a transfer student.

Finally, the investigator considered whether child find federal regulations at §34 C.F.R. 300.111(a) and Kansas Regulations at K.A.R. § 91-40-7(a) applied, however the student was already identified as eligible in the previous district and no action had occurred to dismiss the student from services.

Therefore, according to §34 C.F.R. 300.323(a), this is a student with an IEP who lived within the jurisdiction of the district since 2018 and was homeschooled during those years. When the parent enrolled that child in public schools the district had an obligation to ensure that an IEP was in effect at the beginning of the school year for the student by implementing the last agreed upon IEP, which would include any revisions made by the student's new IEP Team (if any). The district had an obligation to request and receive a copy the previous IEP (§ 300.320(g)(1). It is acknowledged that the district implemented many of accommodations from the previous IEP to provide comparable service during the evaluation. It is found that the parents requests to discuss the students supports while the evaluation was occurring should have triggered an IEP Team meeting prior to the start of the school year. No prior written notices or other special education actions document the request or refusal of such request.

Therefore, it is found that USD #383 did not appropriately respond to a parent request for an IEP for a child with a disability by implementing an IEP to the student from the start of the 2024-2025 school year until the district conducted an IEP meeting on September 25, 2024.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. §34 C.F.R. 300.323(a) was found, based on the facts above. Corrective action is required.
    A. CORRECTIVE ACTION:
        i. By November 22, 2024, USD #383 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations 34 C.F.R. 300.323(a) which require that at the beginning of each school year, the school

district must have in effect, for each child with a disability within its jurisdiction, an IEP.

ii. By November 22, 2024, or as soon as practicable convene the IEP team to implement the March 8, 2018 IEP and consider revisions to the IEP. This IEP meeting will be documented by a prior written notice. *This correction action step need not be completed if, prior to November 22, 2024, the continuing eligibility decision has been completed and a new IEP is developed for the student.

iii. By November 22, 2024, the IEP team will reconvene to offer compensatory services for the number of days between the start of the school year and the implementation of the March 8, 2018 IEP as ordered in 1(a)I or new IEP is written, whichever occurs first.

iv. By December 8, the district will provide evidence of completion of 1(a)i, 1(a)ii and 1(a)iii 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)

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 383,
Manhattan-Ogden Public Schools: 25FC383-001

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on September 20, 2025, by ------- on behalf of her child, -------. 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 allegations, was issued on October 22, 2025. That Complaint Report concluded that there was a violation of special education statutes and regulations

Thereafter, the school district filed an appeal of the Complaint Report. Upon receipt of this appeal, an appeal committee was appointed, and it reviewed the original complaint, the Complaint Report, the district's notice of appeal, and the parent's response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

Preliminary Matters

A copy of the regulation regarding the filing of an appeal [K.A.R. 91-40-51(f)] was attached to the Complaint Report. That regulation states, in part, that: "Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect." Accordingly, the burden for supplying a sufficient basis for appeal is on the party submitting the appeal. When a party submits an appeal and makes statements in the notice of appeal without support, the Committee does not attempt to locate the missing support.

The appeal process is a review of the Complaint Report. The Appeal Committee does not conduct a separate investigation. The appeal committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report.

Discussion of Issues on Appeal from Complainant

The report identified one allegation:

Did the district appropriately respond to a parent request for an IEP for a child with a disability?

The investigator concluded that, pursuant to 34 C.F.R. 300.323(a), "this is a student with an IEP who lived within the jurisdiction of the district since 2018 and was homeschooled during those years. When the parent enrolled that child in public schools the district had an obligation to ensure that an IEP was in effect at the beginning of the school year for the student by implementing the last agreed upon IEP…" Report, p 10-11.

In its appeal, the district states that it was not obligated to have an IEP in place on the first day of school for this student because it was unaware of the existing IEP until September 10, 2024, and was in the process of conducting an initial evaluation. The district made this information available to the investigator (Report, p. 6). The Appeal Committee agrees with the district and, for the reasons specified herein, reverses the conclusion in the investigation report.

The investigator acknowledged that there is some ambiguity with regard to the application of 34 C.F.R. 300.323(a) to the situation where a district is uninformed that a resident of the district has an IEP developed by another Kansas district (Report, p. 10). However, the investigator concluded that the district had adequate notice that this student was a child with a disability with an active IEP. That conclusion was based on the following:

- "An email exchange among the parent, secondary special education coordinator and transition coordinator between April 23 and 24, 2024 documented the parent arranged for a tour of the high school, explained the student's history, disabilities, and shared the April 19, 2024 neuropsychology evaluation (Report p. 6)."
- "An email from the district office to the transition coordinator on April 23, 2024 at 12:10 p.m. documents that the parent sent an email to the district describing that the student has ASD (moderately on the spectrum), dyslexia/dysgraphia and ADHD. The parent further stated that school testing was recently completed for IEP purposes (Report p. 6-7)."
- A neuropsychology report dated April 19, 2024 from a private evaluation center recorded the student had diagnoses of ASD Level 2, Dyslexia, dysgraphia, and ADHD (Report p. 7).
- An email from the parent to the transition coordinator on May 8, 2024 documented that the parent intended to enroll the student part-time in the district beginning during the 2024-2025 school year and the student would need special education services (Report p. 7).
- An Email from the mother to the transition coordinator documented that on August 6, 2024 a request was made for the student to walk the building and discuss credits/schedule and student needs. The parent asked for meetings to discuss special education services and implementation of the accommodations when the student began the school year (Report p. 7-8).
- An email on August 20, 2024 at 12:51 p.m. from a special education teacher to the parent clarified an error, "[student] is listed as a potential student on [teacher's] caseload but is still 'in referral'." To which the parent responded, "[student] should already be considered eligible for SpEd, if that is the eligibility you're talking about (Report p. 8)."

The complaint report (p. 8-9) noted that the school psychologist was unaware that the student had an IEP on the first day of school, stating, "*September 9, 2024 at 8:23 a.m. the school psychologist wrote the mother, 'this is the first I have heard of an existing IEP. There was no mention during our in person meeting prior to school starting nor have I seen this IEP. It is my understanding that he has been homeschooled and this is the first [student] has been in public school for quite some time…If there is a current IEP, please forward immediately."*

The complaint report (p. 9), adds:

On September 9, 2024 at 2:53 p.m. the school psychologist wrote in an email to the parent, stating, *"The IEP from 2018 is no longer current and [student's] present level of performance and needs would likely not be that same. That is why time is needed to obtain data to determine needs." The parent responded, "I understand it's an old IEP, but when he is gone for a whole class period or, like today, the principal calls me telling me that a [classmate] complained that [student] put [student's] hands on [classmate] I expect you to move quicker to get some sort of oversight in place. I started this process in April to avoid this."*

An email from the parent to the district on September 10, 2024 at 9:32 a.m. documented, *"Please find attached [student's] IEP from [previous district]. Though it is old, it is not expired and I believe there are things that could have been put in place on the first day of school. It is now Day 19, which is an unreasonable time to have lapsed, especially when [student] is struggling and has since Day 4. I don't know if you attempted to get any records from [previous district], but you have had the academic testing done by [outside agency] evaluation since last spring."*

This record documents that the parent first told school officials that the student had a previous IEP on September 9, 2024, and first gave school personnel a copy of her child's IEP on September 10, 2024. That is something that, if done in April of 2024 or at any time through the summer months, may have avoided the very delay that prompted this complaint. The information that actually was provided by the parent was sufficient to trigger the child find obligation of the district to conduct an initial evaluation. The district met this obligation by: (a) issuing a prior written notice proposing an initial evaluation; (b) obtaining parent consent for an initial evaluation; and (c) completing the initial evaluation within an expedited timeline.

What the record does not document is that the parent notified the district that the student had an IEP at any time during this long process. Instead, beginning in late April of 2024, and extending into the second week of September 2024, the parent notified the district that the student would be enrolling the following school year, had frequent conversations with school personnel, toured the district's high school, and told the district that the student had various disabilities and should receive special education services. in all of the frequent communications between the parent and school officials between April and mid-September there is no verified instance in which the parent notified the district that the student had an existing IEP. By withholding disclosure of this vital information of a student who has not attended any public school for approximately five years, and

has never attended school in this district, the Appeal Committee finds the district was without the requisite knowledge to have a legal duty to have an IEP in place on the first day of school for this student.

*In her response to the district's appeal, the parent states: *"On July 15, 2024, I submitted (student's) school registration. I responded "yes" to the question, "Has this student ever received any special education services." I also responded "yes" to the question, "Has this student previously been enrolled in a Kansas school?"* However, the parent provided no evidence to support this assertion and the investigator reported to the committee that she had not been informed of any such information. As stated in the "Preliminary Matters" portion of this decision, the appeal process is not a separate investigation. When the Committee is provided with unsupported information in an appeal, the Committee does attempt to locate the missing support.

Conclusion

For the reasons stated herein, the conclusion in the Complaint Report of a violation of 34 C.F.R. 300.323(a) is overturned. The Appeal Committee concludes that there is no failure to comply with the law that requires a school district to have an IEP in place on the first day of school. All corrective action required in the report is rescinded.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued on the 18th day of November, 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 #416, LOUISBURG PUBLIC SCHOOLS
ON SEPTEMBER 17, 2024

DATE OF REPORT: OCTOBER 28, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #416 Louisburg 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 "the mother."

The complaint is against USD #416 Louisburg Public Schools. In the remainder of the report, USD #416 will be referred to as "the district." The East Central Kansas Special Education Cooperative (ECKSEC) provides special education services to the district. It is noted that ECKSEC provides special education services for the USD #416 under an interlocal agreement. In the remainder of the report," the "school, and" the "district" shall refer only to USD #416 and is recognized as the responsible agency.

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 17, 2024 and the 30-day timeline ended on October 17, 2024. The investigator requested an additional time to complete the investigation, and the new timeline ended October 28, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator Dr. Donna Wickham reviewed all evidence and documentation provided by the district and the parent. Some evidence was older than twelve months and used for context rather than investigation of the issues.

The following documentation and information were used in consideration of the issues:

- Multidisciplinary Team Report Initial Evaluation and staffing summary, dated May 13, 2021
- IEP and staffing summary, dated April 27, 2023
- Communication log between teacher and parent dated September 22, 2023 and September 9, 2024
- Communication log between speech and language therapist teacher and parent dated September 26, 2023 and May 21, 2024
- Office visit by student for incident, dated October 31, 2023 at 10:11 a.m.

- Emails among bus company, psychologist of sending district, and parent dated January 8, 2024 between 2:19 p.m. and 3:22 p.m.
- Progress report dated May 10, 2023, October 12, 2023, December 14, 2023, March 8, 2024
- Office visit by student for incident dated March 29, 2024
- Screenshot of email exchange between special education teacher and parent dated March 29, 2024 between 8:43 a.m. and 9:21 a.m.
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated April 17, 2024 , parent signed consent April 22, 2024
- Evaluation/Eligibility Team Report (Reevaluation) dated April 17, 2024
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement and/or Request for Consent dated April 19, 2024, parent signed consent April 26, 2024
- Re-Evaluation Not Needed Agreement Waiver Request, dated April 22, 2024, signed consent by parent on April 22, 2024
- Consideration of Special Education Reevaluation (All Eligibility Categories) dated April 22, 2024
- IEP dated April 22, 2024
- Student attendance dated between August 13, 2024 through September 24, 2024
- IEP amendment dated August 14, 2024
- Video of August 29, 2024 student fall
- Urgent Care Provider Note (Aftercare Visit Summary) dated August 29, 2024
- Email between parent and principal dated August 30, 2024 between 8:32 a.m. and 10:09 a.m.
- Screenshot of email from principal to parent sent August 30, 2024, no time specified
- Screenshot of email from mother to principal sent September 4, 2024, no time specified
- Parent complaint to KSDE dated September 17, 2024
- Email from investigator to parent dated October 21, 2024 at 10:32
- Text from parent to district undated, regarding fall
- Corkscrew climber image from playground, undated

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 September 17, 2024 and by email on several occasions to clarify specific points. The investigator later interviewed the mother on October 21, 2024 by phone. The Investigator interacted with the district and cooperative by email to clarify evidence and a phone interview occurred on October 7, 2024 with Kris Holt, Director of Special Education; Janniel Crader, Principal; Emily Maize, School Nurse; Jennifer Wilson, Speech Language Pathologist; Melissa Rodgers, School Psychologist; and Traci Kenner, Physical Therapist. The student's teacher was not available due to a previous obligation but provided clarifications by email.

Background Information

The student was a five-year-old kindergartener during the 2023-2024 school year and was eligible for special education and related services under the category of Developmental Delay based on the most current reevaluation dated May 13, 2021. He remains in the district as a first grader during the 2024-2025 school year. The student's placement is at the elementary school that is not the student's home school placement. Due to the student's needs the IEP team determined that the student's needs were better met at an elementary school in a different district, but within the same cooperative. During the past twelve months the student had two IEPs in effect. The student received special education and related services for speech and language and occupational therapy services. This complaint addresses developing and implementing an IEP that meets the safety needs of the student and implementing the student's service minutes during the past twelve months due to transportation.

Issues Investigated

1. Did the student's IEP include the appropriate special education and related services and supplementary aids and supports to supervise the student's safety written during the past 12 months?
2. Did the district follow the student's IEP during the past 12 months to provide the special education and related services and supplementary aids and supports written into the IEP to supervise the student's safety?
3. Did the district follow the student's IEP during the past 12 months to provide the special education and related service minutes written into the IEP?

Issue One

Did the student's IEP include the appropriate special education and related services and supplementary aids and supports to supervise the student's safety written during the past 12 months?

Applicable Law

Federal regulations at 34 C.F.R. §300.324(b) mandates that the IEP team must review the IEP periodically, but not less than annually, to ensure that it is effective in addressing the student's needs. If the IEP is not working, the team is required to revise it to address: 1) any lack of expected progress toward the annual goals; 2) the results of any reevaluation; 3) information about the child provided to, or by, the parents; and 4) the child's anticipated needs.

Analysis: Findings of Fact

The Parent alleged that the student was repeatedly injured during the past twelve months due to lack of appropriate supervision of the student and other students. Specifically, during the 2023-2024 school year the student was not properly supervised while he was toileted and fell off the toilet, cutting open the back of his head. Later in the school year the student was not

properly supervised, and another student hit and pushed the student resulting in his receiving a bloody nose and scratches on his neck. This school year the student was not properly supervised while on the playground, in spite of four staff being present on the playground, and the student fell approximately six feet off a piece of playground equipment and broke his arm. Given the student's disabilities and history of injuries during this short period of time, the mother alleges that the IEP clearly does not have enough support or supervision to keep the student safe.

The District responded that a safe learning environment for all students is a priority. They stated they believe that the student's IEP includes the appropriate special education and related services and supplementary aids and supports to supervise the student's safety.

The IEP dated April 27, 2023 noted fine, gross, and visual motor delays that impacted the student's ability to participate in developmentally appropriate activities. He received adaptive physical education and had a goal for 25% assists with safe playground activities. He additionally had a goal to show improvement in his balance in mobility by transitioning and sitting in a circle sit position during circle time in preschool.

A student office report, communication log with the parent and emails exchanges between the parent and school staff document that the student was injured on the October 31, 2023 while toileting. The parent claimed during the October 21, 2024 interview with the investigator that she was told the student fell off the toilet to the floor. The district described the incident during the October 7, 2024 interview as the student was placed on the toilet and as he was adjusting himself on the toilet, he thrust his head backward striking hit his head on the toilet's handle.

The parent reported that she was contacted by the district nurse and told he may need stitches, but it turned out he needed the laceration to be glued. The parent and district reported that no meetings to discuss changes to his toileting routine were made following the incident. Emails between the school and parent on November 23, 2023 documented that the school explained that the size of the toilet contributed to the student's injury.

The communication log documented that the student was scratched on the neck by another student on November 15, 2023 and that the parent was notified by the teacher and the teacher apologized for injury. The staff reported during her October 7, 2024 interview with the investigator that the other child's parent was notified about hurting the student and the staff were notified to take precautions for safeguarding children.

Emails between the parent and teacher and the communication log explained that the student was injured on March 29, 2024 when a classmate pushed the student in the lunchroom resulting in the student getting a nosebleed and half dollar size red mark on the student's forehead. It was documented in an office report that the student was examined by the school nurse and given ice. The parent emailed the school stating she was not happy that he continues to get hurt and concerned that para coverage is not keeping this from occurring. She stated that when the student started at the school the parent had ABA support available,

but the district declined that support, assuring the parent they had plenty of help. No meetings or changes to the IEP were found.

The school staff stated during their October 7, 2024 interview that when the student transitioned from preschool to kindergarten the student developed more motor skills and improved from needing hands on assistance walking in the hallways to being independent. Additionally, during his kindergarten year, the student became much more independent on the school playground.

The student's progress reports that the student is independently climbing stairs, crossing steppingstones, and going down slides. He still requires full adult support for climbing ladders, swinging and teeter totter. The progress report documents that the student continues to be independent and needs occasional cues to try new things.

The prior written notice dated April 17, 2024 requested consent to reevaluate the student to consider dismissing physical therapy services. The mother signed consent for the reevaluation on April 26, 2024.

Using existing data, the reevaluation report dated April 17, 2024 summarized that the physical therapy goals were met, and dismissal was appropriate.

The IEP team met on April 19, 2024 to review the results of the reevaluation and an April 19, 2024 prior written notice proposed a dismissal of physical therapy as the goals have been met, with the parent signing consent on April 26, 2024.

The IEP dated April 22, 2024 did not include specially designed adaptive physical education and described the student as independent and safe in his mobility throughout the school and that he plays safely on the playground with his peers. Delays with motor imitation and coordinator skills impact his ability to access and participate in the general education setting. No accommodations, or supports for school personnel are included. It described the student as being dependent on staff to carry out tasks throughout the day. The student's current communication skills have a significant impact on the student's ability to get needs and wants met along with participating in developmentally appropriate activities.

The parent stated during her interview on October 21, 2024 that she did not agree that all of his physical therapy needs were met but agreed that he had improved. She stated that the student continues to have a limp. Although the family has pursued this through private medical professionals his walking is still not good, and he needs supervision.

A video of the fall on the playground, incident report, interviews with both the parent and school staff and emails document that the student fractured his right proximal humerus falling from a cork toy on the playground August 29, 2024. The office visit note, dated 8/29, 2024 at 2:23 p.m. documented the student came to the nurse's office upset and crying. He was observed to have a small scrape on his bottom lip, right elbow had a small scrape, his upper right arm/shoulder were swollen. 5ml of Tylenol were administered and the parent was called to pick up.

The urgent care report shows that the student had a fracture of the proximal humerus, and a shoulder immobilizer was recommended. Orthopedic follow-up was recommended. The doctor ordered a 1:1 para for the student at school since the injury was not casted. The parent and district both report that the 1:1 para was provided by the district while the student was in the immobilizer.

An email/text on August 30, 2024 showed that the mother contacted the school requesting to see the video of the incident and asking for a meeting. The mother made an email request to see the video again on September 4, 2024. A request was made for the father to have availability to view the video. The mother reported that the father did not view the video.

The IEP amendment not requiring a full meeting, dated August 14, 2024 proposed a material change of services to change speech therapy to 30 minutes one time every week and documented that the student does not require specially designed adaptive physical therapy, and is independent and safe with mobility throughout the school. He plays safely on the playground with his peers. This IEP amendment was refused by the parent and is not being implemented.

Conclusion

In this case a student was injured four times in the space of a year during kindergarten and in the first grade. The parent's allegation was that the district should have met with the IEP team to amend the IEP to ensure safety by providing 1:1 para support and reinstating physical therapy services.

The evidence shows that after each injury the parent was contacted in a timely manner and according to district procedures. In none of the incidents where the student was injured did the IEP team meet and discuss if the student's IEP needed to change. The district did not call an IEP meeting and the parent did not request an IEP meeting. In all instances the district followed their procedures and in their communications with the parent and documentation of the incidents no mention was made that the student's IEP services or supports needed to change.

Therefore, ***it is not substantiated*** that USD #416 that the student's IEP did not include the appropriate special education and related services and supplementary aids and supports to supervise the student's safety written during the past 12 months.

During the course of the investigation, evidence was provided showing that a procedural error occurred that impacted the student's services; dismissal of physical therapy services, which the parent stated contributed to the student's fall on the playground. The parent signed consent for conducting the reevaluation of the student's physical therapy services on the same date she signed consent for dismissing the services. According to K.S.A. 72-3428(b); K.S.A. 72-3430; 34 C.F.R. 300.304(a) 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 prior to conducting the reevaluation. The parent signed consent after the evaluation was conducted so ***prior notice was not adequately provided***.

Issue Two

Did the district follow the student's IEP during the past 12 months to provide the special education and related services and supplementary aids and supports written into the IEP to supervise the student's safety?

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 Parent alleged that the student's IEP was not implemented to keep her child safe. The student has disabilities that required that the student have supports and supervision to be safe and those were not implemented resulting in the student ending up with several significant injuries.

The District responded that they followed the student's IEP providing the special education and related services and supplementary aids and supports that were written into the IEP to supervise the student's safety. Further, the student has multiple staff members throughout the day supervising him.

The IEP dated April 27, 2023 included goals 1) using signs/pictures/icons/speech to communicate needs and wants; 2) touching named items from an array of 3 photos/icons/pictures when give a verbal directive to indicate receptive knowledge; 3) imitate 5 functional play actions of an adult or peer; 4) respond to student's name within 5 seconds of being called; 5) complete three tasks/activities and indicate "all done" by sign/icon/verbalization; and 6) need (use) 25% assist on the playground for safety and access to equipment.

The student received 180 minutes of special education service 3 days every week; 160 minutes 1 day every week and 12 minutes 1 day every week. The student received 20 minutes of speech services 2 days every week and 20 minutes each of occupational therapy and physical therapy services 1 day every week and 30 minutes of extracurricular services 1 day every week. The student did not receive accommodations or supports for staff and did receive special education transportation services.

The IEP dated April 22, 2024 and IEP amended August 14, 2024 states that the student requires a Health care plan due to visiting the nurse twice daily for tube feedings. His IEP goals include: 1) manage items when presented with bilateral coordination and grip strength self

care and too management skills; 2) maintain shared attention for 5 minutes by following one step simple directions; 3) use functional communication to protest, greet, request want and needs; 4) count as many as 10 objects and represent the quantity with the corresponding numeral; 5) identify student's own name by touch in an array of multiple student names.

The student received 120 minutes of speech services 4 days every week and 15 minutes of occupational therapy 1 day every week. The student did not receive accommodations or supports for staff and did receive special education transportation services 60 minutes 5 days every week.

The district stated during the October 7, 2024 interview that the student's class was comprised of 8 students supported by 5 to 6 staff in the classroom at all times.

The district stated during their October 7, 2024 interview that they followed the doctor orders and assigned a 1:1 para to the student while in the arm sling to assist with safety.

The district stated during the October 7, 2024 interview that while in the past the student's IEP present levels stated a need for adult support in walking in the hallways and on stairs he has progressed, and he is safe to walk in the hallway alone. He just needs guidance to not wander and remain focused on where he is going. Additionally, the use of an adaptive seat worked in the same way. It was not for motor or trunk stability, but to encourage him to remain seated with the class.

Progress notes show that the student was learning to use a communication system to express needs and wants.

Conclusion

The IEP does not contain special education, related services, or goals for physical safety due to health or medical conditions. Instead, the district staff and parent described the safety concerns were related to the student not having learned to use a communication system and consistently follow a one-step direction. The IEP contains services and goals to teach symbolic communication and follow one-step directions. Progress reports and interview with the staff documented that those services were provided and those goals taught. It is noted that the student was assigned a paraeducator on a temporary basis following his broken arm at the order of the student's medical doctor and the district followed that order.

As there were no specific services, supplementary aids or supports or goals directed specific to student safety and goals and services were directed to teaching safety skills ***it is not substantiated*** that USD #416 failed to follow the student's IEP during the past 12 months to provide the special education and related services and supplementary aids and supports written into the IEP to supervise the student's safety.

Issue Three

Did the district follow the student's IEP during the past 12 months to provide the special education and related service minutes written into the IEP?

Applicable Law

Transportation is a related service when it is needed in order for the child to benefit from special education. If the IEP team determines that a child will not be able to access special education services without transportation being provided by the school district, the IEP team needs to add transportation to the IEP as a related service, even if the need for transportation is not related to the disability. (Kansas Special Education Handbook)

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.

South Washington County Indep. Sch. Dist. #833, 114 LRP 34477 (SEA MN 04/24/14) and Baltimore County Pub. Schs., 119 LRP 14587 (SEA MD 12/28/18) found that a district's failure to remedy consistent delays in a student's transportation may lead to a denial of FAPE requiring compensatory services.

Special Sch. Dist. (MO) of St. Louis County, 23 IDELR 1189 (OCR 1995), and Hood River County (OR) Sch. Dist., 16 IDELR 314 (OCR 1989) found that service interruptions that lasted a day or two did not likely amount to a finding that denied FAPE. However, even occasional, brief interruptions can violate a student's right in this regard when they occur frequently and repeatedly throughout the course of the school year.

Analysis: Findings of Fact

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

The Parent alleged that during the last school year when the weather was becoming inclement during the school day and the student's school van was called to the school by the district and staff loaded the student into the van and transported him home approximately an hour before dismissal. While the weather was a concern the district did not dismiss early so the student was mistakenly sent home. Of more concern was that the parent or family members were not notified the student was returning home early and no one was at home to meet the student when he arrived at home.

The District responded that they follow the student's IEP providing the special education and related services minutes. The student is in a special day program and due to miscommunication with transportation during a winter storm the student left early in the district van when school was not dismissed early. This is not a routine situation. The principal

stated that following this incident the school principal contacted each district to ensure all of the districts in the cooperative have more unified procedures in case of inclement weather.

The IEPs dated April 27, 2023 and April 22, 2024 include special transportation as a service.

The district shared during the interview on October 7, 2024 that the student rides in a district van between the home and school daily almost 2 hours daily roundtrip. They stated that the driver that picked up the student early on January 8, 2024 is no longer working in the district and the student has a new driver.

The district stated during the interview with the investigator on October 7, 2024 that the weather was becoming more inclement, and the student's van arrived, so the staff took the student out to meet the van as is their general practice. Since the van had arrived early, they assumed the student's home district was closing schools, and the student would follow the home district's weather closing procedures. The teacher then contacted the parent through email to let the mother know he had not eaten yet.

An email exchange on January 8, 2024 documented that the district notified the mother at 1:40 p.m. that transportation came early to transport him due to road conditions. The parent replied that the bus company had not notified her, and she was making arrangements to be home to meet the bus.

An email from the mother to the bus company documented that neither the bus company nor van driver notified the mother of bringing him home early. The parent stated during an interview with the investigator on September 17, 2024 that on January 8, 2024 there was a chance of winter mix at some point during the day and that she was called by the teacher about midday to let her know that the van had arrived and picked up her child without being tube fed. The mother spoke with the principal at the end of the day and in response to the mother describing the situation stated, "he has eaten by now, right, sometimes these times need to happen to find out where the gaps are."

The principal of the student's school contacted all of the districts in the coop to ensure that everyone's dismissal protocols were the same according to a communication log with the mother on January 8, 2024 at 3:30 p.m.

Attendance records show the student was absent 3.5 days during the 2024-2025 school year and the communication log documented that the teachers do not count the student tardy when the bus delays the student's arrival in the morning.

Communication logs show that van transportation was approximately 30 minutes late on October 5, 2023, did not show up on October 30, 2023, and was approximately 15 minutes late on November 28, 2023, January 5, 2024.

In an email exchange with the investigator on October 21, 2024 the parent wrote that the van has shown up every day and there have been no early pick-ups; the only time the bus returned the student home late is when there is a substitute driver.

Conclusion

The student receives special education transportation services as indicated on the IEPs of record and this related service is needed for the student to receive FAPE. While the January 8, 2024 incident when the student was brought home early for inclement weather without notification to the parent was the impetus for the mother's complaint, the student additionally missed approximately four total hours of service during the past twelve months due to late pick ups or not showing up. In reviewing court findings this situation did not constitute an ongoing consistent pattern of late arrivals or early dismissals. Further, the school principal reached out to the other districts to resolve the early dismissal and have replaced the van driver who was involved in the late pickups and not showing up one day.

Therefore, it *is not substantiated* that USD #416 failed to follow the student's IEP during the past 12 months to provide the special education and related service minutes written into the IEP in regard to early dismissals or late pickups of the student who had transportation as a related service.

Summary of Conclusions/Corrective Action

ISSUE ONE: A violation of 34 C.F.R. §300.324(b) was not found, based on the facts above. Corrective action is not required.

A violation of 34 C.F.R. 300.304(a) was found and the following corrective action is ordered.

CORRECTIVE ACTION:

A. By November 24, 2024, USD #416 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations 34 C.F.R. 300.304(a) which require that 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 prior to conducting the reevaluation. The parent signed consent after the evaluation was conducted so prior notice was not adequately provided.

   i. The student's physical therapy services will be reinstated as written in the April 27, 2023 IEP until a new reevaluation of physical therapy is completed and a new IEP meeting is held to discuss the evaluation findings and the IEP team determines any IEP changes.

   ii. By November 24, 2024, USD #416 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations 34 C.F.R. 300.304(a) which require that 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 prior to conducting the reevaluation. The parent signed consent after the evaluation was conducted so prior notice was not adequately provided.

iii. By November 24, 2024, the school will review written procedures for the reevaluation process to ensure family involvement and prior notice steps are followed.

iv. By November 24, 2024, the school will participate in training on the reevaluation process. The school will provide SETS a sign in sheet of the participants and a copy of the training materials.

v. By December 10, the district will provide evidence of completion of 1(a)i, 1(a)ii and 1(a)iii to SETS.

ISSUE TWO: A violation of 34 C.F.R. §300.323(c)(2) was not found, based on the facts above. Corrective action is not required.

ISSUE THREE: A violation of 34 C.F.R. §300.323(c)(2) was not found, based on the 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 #266, MAIZE PUBLIC SCHOOLS
ON OCTOBER 7, 2024

DATE OF REPORT:NOVEMBER 12, 204

This report is in response to a complaint filed with the Kansas State Department of Education against USD #266 (Maize Public Schools) on behalf of --------- by his mother--------- and stepfather ---------. In the remainder of the report, --------- will be referred to as "the student", --------- will be referred to as "the complainant", "the parent", or as "the mother." --------- will be referred to as "the complainant" or "the stepfather". --------- is the student's father and will be referred to as "the father". The mother, stepfather and father as a group will be referred to as "The parents".

The complaint is against USD #266 (Maize Public Schools). In the remainder of the report, USD #266 will be referred to as "the district." The student attends Maize South High School which will be referred to as the "high school" in the remainder of the report. Maize South Middle School will be referred to as the "middle school" and the Maize special education cooperative will be referred to as the "special education cooperative". Sarah Loquist is the general counsel for the Special Education Coop and will be referred to as the "general counsel".

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 7, 2024. The timeline for the investigation was extended for one week to allow the district to provide additional documentation for review.

Evidence Reviewed

USD #266 made the following staff available for interviews on October 24, 2024 as part of this investigation. These staff will be referred to as follows in the remainder of this report:

- Bryan Wilson is the director of special services and will be referred to as "the director of special services"
- Janna Fahrenholtz is a psychologist and will be referred to as "the psychologist".
- Jennifer Faus is the social worker and will be referred to as "the social worker".
- Sara Rivers is the occupational therapist and will be referred to as "the OT"
- Michael Boykinds is the high school principal and will be referred to as "the high school principal"

- Maggie Purvis Rapp is the high school assistant principal and will be referred to as "the high school assistant principal"
- Donnel Clay is an instructional coach at the high school and will be referred to as "the instructional coach".
- Ashley Willmott is the speech-language pathologist at the high school and will be referred to as "the SLP".
- Alison Charboneau was the middle school special education teacher and will be referred to as the "middle school special education teacher".
- Aundrea Tinkler is the special education teacher for English language arts (ELA) and math and will be referred to as "the special education teacher".
- Jeremy Stefan is the special education health, life skills and physical education (P.E) teacher and will be referred to as "the health, life skills and P.E. teacher".

During the investigation, the Complaint Investigator, Nikki Crawford, reviewed all evidence and documentation provided by both the district and the parents. Additionally, the complaint investigator contacted the district and parents on October 8, 9, 10, 11, 12, 13, 17, 18, 21, 23, 24, 25, 27, 28, 30 and November 4, and 7, 2024 by phone and email to clarify evidence and documentation.

The following documentation and information were used in consideration of the issues:

1. Special Education Eligibility Determination Team Report dated December 15, 2021
2. Psychological Evaluation Report dated December 15, 2021
3. Assistive Technology Report dated December 15, 2021
4. Occupational Therapy Evaluation Report, December 15, 2021
5. Parent Questionnaire Reevaluation dated December 15, 2021
6. List of board approved curriculum utilized in the Functional Applied Academics (FAA) program dated May 8, 2023
7. Read Write Consent August 31, 2023
8. IEP Goal Progress Report dated November 6, 2023
9. Notice of Meeting for annual IEP sent to mother dated November 1, 2023
10. Notice of Meeting for annual IEP sent to father dated November 2, 2023
11. Notice of Meeting Acknowledgment dated November 2, 2023
12. Prior Written Notice (PWN) sent to mother and father dated December 12, 2023
13. IEP meeting minutes December 12, 2023

14. Annual IEP dated December 12, 2023
15. IEP Goal Progress Report March 7, 2024
16. IEP Team Meeting notes dated May 20, 2024
17. PWN dated May 20, 2024 for an IEP amendment made without a meeting
18. IEPAmendment IEP dated May 20, 2024 to the December 12, 2023 Annual IEP
19. IEP Goal Progress Report dated May 20, 2024
20. An August 21, 2024 training outline with sign in sheet to review student behavior plans
21. An August 21, 2024 training outline with sign in sheet to review student use of communication device
22. A spreadsheet of the student's behavioral data from August 21 to October 8, 2024 created by the instructional coach
23. An August 23, 2024 summary of the student's BIP issues and those teachers in attendance
24. Notice of Meeting for annual IEP sent to both the mother and the father dated September 10, 2024
25. Agenda and records request dated September 13, 2024
26. Behavior Intervention Plan dated September 13, 2024
27. Consent to Communicate September 13, 2024
28. IEP Amendment dated September 13, 2024
29. Current draft IEP dated September 13, 2024
30. Notice of Meeting for IEP continuation meeting scheduled September 27, 2024 sent to the mother and father on September 24, 2024
31. A record of training topics related to implementation of the student's BIP along with teacher attendance, dated September 25, 2024
32. An outline of information shared with staff related to use of the student's communication device and spreadsheet of teachers attending on September 25, 2024
33. Consent for Revaluation September 27, 2024
34. Notice of continuation of IEP meeting sent to the mother and father on September 27, 2024
35. IEP/Emergency Safety Intervention (ESI) meeting agenda dated September 27, 2024
36. Audio recording of IEP meeting held on September 27, 2024
37. Audio recording of related services conversation held on September 27, 2024

38. October 2, 2024 spreadsheet of teachers trained on LAMP (Language Acquisition through Motor Planning) Words for Life vocabulary training and accompanying handout
39. PWN describing the IEP Amendment dated September 27, 2024 sent to the mother and father dated October 4, 2024
40. Email dated October 5, 2024 from mother to psychologist and special education director indicating mother will not sign PWN.
41. Phone call between the investigator and the mother on October 8, 2024
42. LEA Response to PWN Refusal from the assistant principal to the mother, dated October 9, 2024
43. Audio recording of IEP continuation meeting held on October 9, 2024
44. IEP meeting agenda dated October 9, 2024
45. Student activity report from the Unique Curriculum dated September 19 through October 9, 2024
46. Phone call between the investigator and the general counsel on October 9, 2024
47. Corrected PWN Amended IEP meetings on September 13 & 27, 2024 sent to the mother and father, sent October 15, 2024
48. PWN describing the IEP Amendment made on October 15, 2024 sent to the mother and father on October 16, 2024
49. IEP Goal progress report dated October 16, 2024
50. October 16, 2024 spreadsheet of teachers attending training for student's BIP, with no outline or agenda
51. October 16, 2024 outline from instructional coach who was available to answer teacher's questions about student's communication and the corresponding attendance spreadsheet
52. Email on October 18, 2024 from stepfather to the investigator sharing daily communication logs dated 16-19, 23-26, October 1 and 8, 2024., the template of which was created by the mother and completed by school staff.
53. The district shared daily communication logs dated September 17-20, 23-25 and October 4, 8, 9, 15 and 17, 2024
54. Daily communication logs September 17-20, 23-25 and October 4, 8, 9, 15 and 17, 2024 kept by USD #266
55. Examples of the student's current modified lessons provided by USD #266

56. USD #266's response to the allegations dated October 21, 2024 written by the general counsel.
57. Teacher Information Page (TIP) for the student dated October 24, 2024
58. Email from the health, life skills and P.E. special education teacher to investigator dated October 25, 2024
59. Email from the middle school special education teacher to investigator dated October 25, 2024
60. Email written by the mother to the investigator to clarify concerns dated October 27, 2024
61. Email from instructional coach to investigator dated October 28, 2024 with screenshot of the student's Unique Curriculum dashboard
62. Email from the instructional coach to investigator with a summary of behavior data dated October 28, 2024
63. Email dated October 29, 2024 from Mark Ward, Special Education and Title Services Attorney, to the investigator clarifying KSDE guidance on the issue of lack of instructional minutes specified in the IEP.

Background Information

The subject of this complaint is a 14-year young man enrolled in the 9th grade at the high school during the 2024-2025 school year. He lives with both his mother/stepfather and father/stepmother who share custody and are actively involved in his education. The only language spoken in the home is English.

The student has medical diagnoses of Rubinstein-Taybi syndrome, Eosinophilic Esophagitis, and Asthma. He participated in early intervention services, birth to three years, via an Individualized Family Service Plan (IFSP). The student attended an Early Childhood Special Education Classroom beginning at age three until kindergarten. He entered kindergarten with an Individualized Education Program (IEP) and has had a Behavior Intervention Plan (BIP) since first grade. Prior to enrollment in the high school, he attended a district middle school. The local special education cooperative has provided services to the student from 4th grade to current. The student's qualifying exceptionalities include intellectual disability and speech language impairments. His most recent reevaluation was conducted in December of 2021 and the district is currently in the process of conducting a reevaluation with additional assessments including a Functional Behavioral Assessment (FBA) and an Occupational Therapy (OT) assessment for sensory needs.

Issues Investigated

Based on the written complaint and an interview with the complainant, four issues were identified and investigated.

Issue One

Did USD #266 appropriately implement the student's IEP during the past 12 months?

Parent Position

The parent reported that the district has failed to provide the required special education and related services to the student because the IEP does not include any specific service minutes. The parent also indicated the special education teachers do not engage the student meaningfully during the school day and fail to provide necessary accommodations and modifications. The parent complained that the student does not have access to curriculum approved by the school board and does not have regular and consistent access to his augmentative communication device throughout the school day. The parent believes USD #266 has denied the student access to extracurricular activities by not allowing him the same opportunities as other students. Finally, the parent reports the IEP was updated on September 13, 2024 to require daily communication with parents; however, this was not done in a timely manner.

For clarity, please note that each of these specific allegations will be investigated separately with a finding of facts, the applicable law, and a conclusion under Issue One.

It is also noted that the district response dated October 21, 2024 shared that a project specialist was hired by the district on October 9, 2024 to work with the student's team to assist the special education personnel in the development and implementation of effective teaching techniques, service delivery, classroom management skills, data collection, materials, and equipment to help each student in the FAA classroom to achieve their IEP goals and objectives.

Allegation

- Failure to include a specific amount of special education services in the student's IEP.

Applicable Law

Federal regulations at 34 C.F.R. 300.320(a)(7) require the IEP to include the projected date for the beginning of the special education and related services as well as the anticipated frequency, location, and duration of each of those services.

Analysis: Findings of Fact

1. In the parent complaint dated October 7, 2024 and in a phone interview on October 8, 2024, the mother expressed concern that the instructional minutes in the student's IEP are not specific.
2. The current IEP dated September 13, 2024, under Special Education and Related Services states the student will receive special education services for all core academic instruction in English Language Arts (ELA), Math, Science and Social Studies, "in a special

education classroom," "per enrolled schedule" and "for the same amount of time that peers receive instruction".

3. Although the current IEP does not specify the number of days per week or the minutes/hours required for specialized instruction, it does so for related services such as speech, occupational therapy, adaptive physical education and social work.

4. In the district interview on October 24, 2024 the general counsel for the special education cooperative shared that the cooperative had been advised by Kansas State Department of Education that it was not necessary to specifically state the number of days per week or the minutes/hours the student is to receive core academic instruction.

5. The district shared the student's Teacher Information Page (TIP) dated October 24, 2024 which specifies the service, setting, number of minutes of provision, days per week, start and stop dates and frequency of services including instruction.

6. An October 29, 2024 email from the Special Education and Title Services Attorney responded to the lack of instructional minutes specified in the IEP. The attorney shared that based on a guidance letter from Office of Special Education Programs (OSEP), "with regard to frequency and duration of services, the IEP must include sufficient information about the amount of services that will be provided so that the level of the agency's commitment of resources will be clear. But, that does not require that duration of services be stated in minutes per session. And, the duration of services may vary due to the needs of the student as long as adequately described in the IEP".

Conclusion

Based on a review of the IEP, the document includes the number of times per week and number of minutes for the frequency and duration of related services such as OT social work, adaptive PE, and Speech/Language Therapy. For core academic classes such as English, Math, Science and Social Studies the frequency is "per enrolled schedule" and duration, "for the same amount of time that peers receive instruction".

The district shared the student's Teacher Information Page dated October 24, 2024 which specifies the service, setting, number of minutes of provision, days per week, start/stop dates and frequency of services including instruction. However, parents typically do not have access to this information unless it is included in the IEP.

It is important to note that the IEP is not required to specifically state the duration of services in minutes per session, but should include enough information to convey the level of services offered. Based on the foregoing, the district is found ***IN compliance*** with IDEA which does not require that duration of services be stated in minutes per session.

Allegation

- Failure to provide appropriate special education services and program modifications which meaningfully engage the student during the school day.

Applicable Law

Federal regulations at 34 C.F.R. 300.320(a)(3) require the IEP to include a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children.

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. 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

1. In the parent interview on October 8, 2024 the mother shared that she does not see instructional planning or modifications happening and that her son reports that his work is too hard.

2. The current IEP dated September 13, 2024, under Program Modifications, states the student will participate utilizing a modified curriculum for core academic areas and participate in elective classes using modifications as necessary to participate.

3. The current IEP dated September 13, 2024, under Special Education and Related Services states the student will receive special education services for all core academic instruction in ELA, Math, Science and Social Studies.

4. An October 4, 2024 PWN added, "clarifying language to Special Education Service record 1, to read "[student] will receive special education services for all core academic instruction in ELA, math, science, and socials studies in alignment with board-adopted modified curriculum"

5. The current IEP dated September 13, 2024, states that the student uses his iPad with Words for Life (LAMP) to communicate in structured activities. The student also uses a communication device provided by the parents. Additional examples of modifications noted in his IEP include: accessing digital books through the Unique Curriculum, TarHeel Reader, epic!, and Storylineonline for reading. He also uses a Chromebook to access most of his written language tasks including typing slides, an online typing game

as well as computer to text speech. For math he uses a number line, touch points on numbers, manipulatives, a calculator and counts out objects.

6. In audio recordings of IEP meetings on September 27 and October 9, 2024 the team discussed the use of instructional modifications to support the student's learning.
7. In the October 24, 2024 district interview two of the student's special education teachers (ELA/math and health, life skills, P.E.) described strategies used to ensure specialized instruction for the student. Strategies included; re-teaching, breaking down the task to one step at a time, use of manipulatives, use of video to support the content, utilizing errorless practice, and providing hands-on support. These teachers also shared that along with the SLP who is embedded in the classroom, they model these behaviors and offer on-the-spot training for the paraprofessionals.
8. The district shared a folder which includes examples of lessons and aids including multi-modes of delivery including video, powerpoints, schedule boards, written words, photos and pictorial representation. There were also examples of modified curriculum lessons from the Unique Curriculum.

Conclusion

In this case, the current IEP dated September 13, 2024, under Program Modifications, states the student will participate utilizing a modified curriculum for core academic areas and participate in elective classes using modifications as necessary to participate. An October 4, 2024 PWN added, "clarifying language to Special Education Service record 1, to read, "[student] will receive special education services for all core academic instruction in ELA, math, science, and socials studies in alignment with board-adopted modified curriculum"

The current IEP dated September 13, 2024 includes several modifications including Words for Life (LAMP), a communication device provided by the parents, digital books through the Unique Learning System curriculum, TarHeel Reader, epic!, and Storylineonline for reading, a Chromebook to access most of his written language tasks, including typing slides, and an online typing game as well as computer to text speech. For math he uses a number line, touch points on numbers, manipulatives, a calculator and counts out objects.

In the October 24, 2024 district interview two of the student's special education teachers (ELA/math and health, life skills, P.E.) described strategies used to ensure specialized instruction for the student. Strategies included; re-teaching, breaking down the task to one step at a time, use of manipulatives, use of video to support the content, utilizing errorless practice, or providing hands-on support. These teachers also shared that along with the SLP who is embedded in the classroom, they model these behaviors and offer on-the-spot training for the paraprofessionals.

The district shared a folder which includes examples of lessons and aids including multi-modes of delivery including video, powerpoints, schedule boards, written words, photos, pictorial representation. There were also examples of modified curriculum lessons from the Unique

Curriculum. The IEP document, IEP meeting audio recordings, and district staff interviews reflect the use of many different modifications utilized to provide specialized instruction for this student.

The district reported that at times the student will put his head down in an effort to self-regulate. The district and parents both shared that the student has had medication changes this summer, began wearing glasses and at times has not felt well. The district also shared that the transition from middle school to high school includes a big change in his environment including more students and staff in his classrooms and in the building as well as a change in his schedule.

The district and family continue to problem solve ways to help the student engage academically as evidenced by IEP audio recordings on September 27 and October 9, 2024 when the team discussed the nuances of when to offer the student a break and when to try and re-engage him in work. The team also discussed that the instructional coach will share through the daily communication log the number of minutes the student is off schedule.

Based on the foregoing, USD #226 is found to be ***IN compliance*** with the requirement to provide program modifications or supports for school personnel which will be provided to enable the child to advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children.

Allegation

- Failure to provide the student with access to the Unique Learning System curriculum.

Applicable Law

Federal regulations at 34 C.F.R. 300.320(a)(3) require the IEP to include a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children.

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. 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

1. In the parent complaint dated October 7, 2024 the mother stated that, "Based on daily sheets home the Unique curriculum is not being used across [student's] day".
2. The current IEP dated September 13, 2024 states the student utilizes the Unique Curriculum for reading.
3. A PWN dated October 4, 2024 added, "clarifying language to Special Education Service record 1, to read "[student] will receive special education services for all core academic instruction in ELA, math, science, and social studies in alignment with board-adopted modified curriculum".
4. The district response dated October 21, 2024 includes a list of board approved curriculum utilized in the FAA program where the student engages in instruction. On this list is the Unique Learning System curriculum for 7th-12th grade students.
5. Unique Learning System Curriculum Transition Passport was used for the student's transition assessment dated December 4, 2023.
6. A review of 12 daily communication logs dated between September 16 and October 17, 2024 provided by the district mentions the use of the Unique Learning System curriculum twice. The logs vary in the specificity of information provided.
7. The headers on the daily communication logs state, "activity", the logs do not prompt the name of the curriculum being used for the activity.
8. The district shared documentation from the instructional coach that she worked with the staff on the use of the Unique Learning System curriculum on October 7 and 16, 2024.
9. The district shared the student's activity report from the Unique Learning System curriculum dated September 19 through October 9, 2024.
10. In the district interview on October 24, 2024 the ELA/math and the health, life skills and P.E. teacher shared that the student utilizes the Unique Learning System curriculum for expressive communication, math, and reading. The staff also uses embedded assessment elements in the Unique Learning System curriculum.
11. The district shared a folder which includes several examples of modified curriculum lessons for the student utilizing the Unique Curriculum.
12. On October 28, 2024 the instructional coach shared a screenshot of the Unique Curriculum dashboard which the coach uses to monitor the number of Unique Learning System curriculum activities the student completes each day.

Conclusion

In this case, the current IEP dated September 13, 2024, under Program Modifications, states the student will participate utilizing a modified curriculum for core academic areas and participate in elective classes using modifications as necessary to participate. An October 4, 2024 PWN added, "clarifying language to Special Education Service record 1, to read "[student] will receive special education services for all core academic instruction in ELA, math, science, and socials studies in alignment with board-adopted modified curriculum"

The current IEP dated September 13, 2024 states the student utilizes the Unique Learning System curriculum for reading. Interviews and documentation support a finding that USD #266 is *IN compliance* with the requirement for providing the student access to the Unique Learning System curriculum as stated in the student's IEP.

Allegation

- Failure to provide the student with access to his augmentative communication system throughout the school day.

Applicable Law

Federal regulations at 34 C.F.R. 300.324(a)(2)(iv - v) requires IEP teams to consider the communication needs of the child and consider whether the child needs assistive technology devices and services.

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. 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

1. In the parent complaint dated October 7, 2024 the mother stated that, this fall "During multiple observations, [the student] has not had access to his device." Also, "During multiple observations, across many hours the stepfather, father and mother have not seen any staff engage with [student] using his augmentative and alternative communication (AAC) device."
2. The current IEP dated September 13, 2024 states the student will carry his communication device, daily, in all school settings, for the duration of the school day.
3. The district response dated October 21, 2024 notes that the SLP is full-time at the student's high school and primarily works in the FAA program where the student spends his instructional time. The duties of the SLP include, but are not limited to:

a. "Tailored Support: The SLP provides personalized interventions, collaborating with teachers, related service providers, and paraprofessionals to align strategies with each student's unique communication abilities and challenges.

b. Collaborative Strategies: She works closely with the educational team to develop and implement communication strategies that enhance student engagement across various subjects, helping them participate more fully in classroom activities.

c. Peer Interaction: The SLP facilitates opportunities for nonverbal students to communicate with their peers, promoting social interaction and inclusion through group activities and collaborative learning experiences.

d. Training and Resources: She equips teachers, related service providers, and paraprofessionals with tools and training to support augmentative communication methods, such as speech-generating devices or picture exchange systems, fostering a more supportive environment.

e. Monitoring Progress: The SLP continuously monitors students' communication progress, working with the team to make necessary adjustments to interventions and ensure effective communication skills are developed."

4. In the district interview on October 24, 2024 the SLP shared that staff prompt use of multimodal communication in addition to the student's device. The communication device, which is from home, is always with the student, at his desk or with the paraprofessional who is supporting the student. The student also has a backup pocket communication device.

5. The SLP noted that at times the student may throw his communication device if he does not want to use it. She also stated that they are now working with the student to use a backpack in which the student can carry the device with him at all times.

6. The current IEP dated September 13, 2024 states that staff working with the student will be trained on the use of his communication device/program on an annual basis and there will be monthly check-in meetings with providers, general and special education teachers and paraprofessionals to discuss the student's communication device.

7. The district shared training outlines and sign-in sheets documenting staff training on the student's use of the communication device on August 21 and September 25, 2024.

8. Staff were trained on October 2, 2024 on LAMP (Language Acquisition through Motor Planning) Words for Life vocabulary which the student utilizes.

9. An October 16, 2024 outline shared that the instructional coach was available to answer teacher's questions about student's communication and corresponding attendance spreadsheet

10. Communication concerns and updates were discussed at least monthly at his September 13, 2024, September 27, 2024 and October 9, 2024 IEP meetings. Documentation shared by the district reflects that several staff, including the SLP and at least one of his special education teachers was in attendance at these meetings.

Conclusion

The IEP states the student should carry the device with him daily, in all school settings and for the duration of the school day. The parents report that on multiple occasions they observed that the student did not have his communication device with him and that staff were not prompting use.

The district provided documentation that the SLP and the instructional coach support the student and staff in using the communication device. The SLP emphasized in the district interview on October 24, 2024 the staff actively works with the student to ensure possession and use of the communication device. The district also provided a number of documents which reflect several instances of training in the classroom related to the communication device.

It is acknowledged that the parent observations took place early in the school year, in a new school, a new classroom, and with new staff. It is further noted that USD #266 responded appropriately to the parent concerns related to access and use of the augmentative communication device by meeting to discuss these concerns, collaborating with the parents, and changing practices in relationship to the access and use of the augmentative communication device. Based on the foregoing, USD #266 is *IN compliance* for implementing the student's IEP, specifically related to use of the augmentative communication device.

Allegation

- Failure to provide access to extracurricular activities by not allowing him to have the same interaction opportunities as other students.

Applicable Law

Federal regulations at 34 C.F.R. 300.42 and 300.107 requires school districts to provide aids, services, and other support 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.

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, including any accommodations or modifications described in the BIP, are made available to the child in accordance with the child's IEP.

Analysis: Findings of Fact

1. The complaint dated October 7, 2024 states, "School staff are discriminating towards [student] by not allowing him the same opportunities as other students in his

classroom, and has indicated he is sad and does not want to go to school due to not being allowed opportunities."

2. In the district interview on October 24, 2024 and in review of records provided by the district it was clear that the student has access to a typical variety of extracurricular opportunities and is not restricted or limited in his attendance. The student is a member of the Circle of Friends club, attended the Homecoming pep rally and dance, enjoys bowling, and attends sporting events at the school.

3. In an October 27, 2024 email to clarify the concern with the mother, she stated that this concern was not based on extracurricular opportunities but rather, "...the segregation that [student] was experiencing, which we note has already significantly changed based on our observations. Even outside of the "break room" he was segregated within classrooms and sat away from peers." Further she clarified that he is less segregated now than he was at the beginning of the school year.

4. The current BIP dated September 13, 2024 states that, "Sometimes he chooses to sit alone for a while, take deep breaths (adults will model this with [student]), lie down, or have quiet time." It also adds, "He will have a safe space that can have a large pillow or a bean bag for a break in a quiet space."

5. In the October 9, 2024 IEP audio recording the team discussed that they are supporting the student to engage in alternative ways to calm himself rather than leaving the instructional setting, while continuing to offer the quiet spaces if needed.

6. In the October 9, 2024 IEP audio recording the mother also stated that she is happier that he is now spending so much less time out of the classroom.

Conclusion

Interviews and documentation found the student engages in a rich array of extracurricular activities in USD #266. The Investigator then clarified the parent concern to be "...the segregation that [student] was experiencing, which we note has already significantly changed based on our observations. Even outside of the 'break room' he was segregated within classrooms and sat away from peers."

The student's IEP and BIP include the option of time alone in a safe, quiet space when the student is feeling upset. Again, it is noted that the student experienced a significant change in educational programming when he transitioned between the middle school and high school buildings at the beginning of the 2024-25 school year. And again, it appears that the district responded appropriately to the parent concerns by meeting to discuss these concerns and collaborating with the parents. In the October 9, 2024 IEP recording, the IEP team discussed this concern and the mother indicated that she is happier that he is now spending so much less time out of the classroom.

Based on the foregoing, USD #266 *is IN compliance* for providing the student with access to extracurricular activities and for implementing the student's BIP by allowing the student the option of time alone in a safe, quiet space when the student is feeling upset.

Allegation

- Failure to provide daily communication logs to the parent required by the student's IEP.

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, including any accommodations or modifications described in the BIP, are made available to the child in accordance with the child's IEP.

Analysis: Findings of Fact

1. On August 27, 2024 the parents requested regular daily communication including specifics on what the student does in class, what curriculum is being used, and any adjustments made to the work during the student's day.
2. The current IEP was developed on Friday, September 13, 2024 and states there will be daily communication home to parents regarding daily activities, when the student is not participating in his schedule or is not with his peers.
3. The first day the daily communication log was shared with parents was on September 16, 2024.
4. The stepfather shared daily communication logs, the template of which was created by the mother and completed by school staff. These logs are dated September 16-19, 23-26, October 1 and 8, 2024.
5. The district shared daily communication logs dated September 17-20, 23-25 and October 4, 8, 9, 15, 16 and 17, 2024.
6. Daily communication logs are missing for September 27 and 30 as well as October 2, and 7, 2024. These are days when the student was in attendance.
7. As evidenced by the October 9, 2024 IEP meeting recording the special education teacher expressed concern that the log may not get put in the student's backpack if she is not present at the end of the school day.
8. As evidenced by the October 9, 2024 IEP meeting recording the district and parents continue to work together to create a daily communication log that has all of the information the parents requested and is accessible to the parents every day.

Conclusion

In this case, On August 27, 2024 the parents requested regular daily communication including specifics on what the student does in class, what curriculum is being used, and any

adjustments made to the work during the student's day. The district responded to the parent request and held an IEP team on September 13, 2024.

The current IEP dated September 13, 2024 states there will be daily communication home to parents regarding daily activities, when not participating in his schedule or not with peers. The first daily communication log came home with the student on Monday, September 16, 2024.

Documentation and interview found USD #266 provided the daily communication logs to the parents all but four days when the student was in attendance. The district is aware of the missing logs and is making a good faith effort to remedy the issue as evidenced in the October 9, 2024 IEP meeting recording.

As evidenced by the October 9, 2024 IEP meeting recording the district and parents continue to work together to create a daily communication log that contains all of the information to meet the parents needs.

Based on the foregoing, USD #266 *is IN compliance* for implementing the student's IEP, specifically related to provision of daily communication with parents when not participating in his schedule or not with peers.

Issue Two

Did USD #266 appropriately implement the student's IEP, specifically the Behavior Intervention Plan (BIP), by providing access to calming tools and support during behavioral incidents and appropriately addressing increases in behaviors during the last 12 months?

Parent Position

The parents report that USD #266 has failed to consistently implement the student's BIP during the 2024-25 school year based upon their observations. USD #266 has not conducted training with school staff regarding the implementation of the BIP nor held at least monthly meetings to review data related to the student's behavior.

Failing to provide this training and staff support this school year has resulted in the student experiencing more frequent behavioral difficulties. When these behavioral difficulties occur, the parent indicates the student is isolated in room J114b; however, he does not have access to the required calming materials and tools in that location which has then resulted in an increase of the duration of inappropriate behavior in the school setting.

The parent believes the student has not made progress on either the BIP or the behavioral goals included in the IEP during the past 12 months and USD #266 has failed to respond appropriately to the increases in the frequency and duration of the student's behavioral difficulties and lack of progress.

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.

Federal regulations at 34 C.F.R. 300.324(a)(2)(i) requires IEP teams to consider the use of positive behavioral interventions and supports and other strategies to address the behavior of a child whose behavior impedes that child's learning or the learning of others.

Federal regulations at 34 C.F.R. 300.324(b)(1)(ii) requires that the IEP team revises the IEP as appropriate to address the lack of expected progress toward the annual goals.

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 following finding of facts is based upon a review of the documentation noted previously and interviews with both parties.

Required Training and Meetings

1. The current IEP dated September 13, 2024 states staff working with the student will be trained on his behavior plan and instructional control scale on an annual basis, and there will be monthly meetings with providers, general and special education teachers and paraprofessionals to discuss the student's behavior plan and data sheets.
2. The district shared an August 21, 2024 training outline with a sign in sheet documenting school staff reviewed the student's behavior plan.
3. The district provided a summary of the student's BIP issues discussed with all pertinent staff on August 23, 2024.
4. The district provided a record of training topics related to implementation of the student's BIP along with teacher attendance, dated September 25, 2024.
5. The district provided a spreadsheet of teachers attending the October 16, 2024 training for student's BIP, but no outline or agenda.
6. The student's behavior plan and data sheets were also discussed at his IEP meetings on September 13, 27 and October 9, 2024. Documentation shared by the district reflects that several staff and at least one of his special education teachers were in attendance at these meetings.
7. The special education teacher, who attended all three of the fall 2024 IEP meetings mentioned above, reported in the October 24, 2023 district interview that after each

IEP meeting she shared relevant updates about the student's BIP and data sheets with the paraprofessionals.

8. October 9, 2024 the district hired a project specialist to work with the student's team to support them with classroom management skills as well as refine data collection and analysis.

Access to the calming kit or calming strategies.

1. The current IEP dated September 13, 2024 states the student will have access to a break/safe space in each work/learning location and have access to a calming kit or calming strategies.
2. In the district interview on October 24, the OT shared specific examples of the items the student has access to which help him become calmer when he is having difficulty staying calm. These items are now kept in his backpack so that he will have them with him in all locations throughout the school day; however, this was not the case at the beginning of the school year.
3. The special education teacher shared in the October 24, 2024 district interview that staff regularly prompt the student to use agreed upon calming strategies which include; deep breathing, counting, muscle tension and release, imagining calm places, using a Zones of Regulation visual and matching strategy, using a thumbs up/thumbs down to respond to choices, and preferred pictures kept in his folder.

Respond appropriately to Increases in behaviors

1. The Progress Reports dated November 6, 2023, March 7, 2024 and May 20, 2024 indicate the student made progress on his behavior goal. The Progress report dated October 21, 2024 indicates the student is maintaining progress on his behavioral goal.
2. A PWN dated September 13, 2024 states that the team "updated information to the BIP clarifying the use of a token economy" at the September 13, 2024 IEP meeting as a strategy to better support the student.
3. The behavior goal in the student's current IEP dated September 13, 2024 states, "By the next annual IEP, during a transition or non-preferred activity, [student] will show instructional control (for example but not limited to quiet voice, ready hands, and safe feet) and/or use his self-regulation skills (by using deep-breathing, taking a break, etc.) to get back to demonstrating instructional control 8 out of 10 times with 4 or less prompts."
4. The most recent Progress Report dated October 16, 2024 states that the student maintained progress over the first quarter and "showed tremendous growth starting with week 6 to the end of the first term! He was able to show instructional control 70% of the time which is a wonderful progression for him."

5. Behavioral data provided by the district ranging from August 26, 2024 to October 8, 2024 reflect instances of physical aggression toward peers, toward staff or property destruction 28 times.

6. The district hired a Project Specialist on October 9, 2024 to work with the student's team including these areas of focus:

    a. Classroom Management Skills: Support special education personnel in developing and maintaining a positive classroom environment. This includes creating behavior management plans, implementing positive reinforcement strategies, and fostering social-emotional learning among students.

    b. Data Collection and Analysis: Aid in the systematic collection of data on student performance and behavior. This includes using tools and methods to track progress toward IEP goals, ensuring that data is accurate, relevant, and used to inform instructional decisions.

7. The district response dated October 21, 2024 states that the father requested assistance from Kansas Technical Assistance System Network (TASN) and the district agreed on September 26, 2024.

8. In the district interview on October 24, 2024, the social worker shared that a behavioral flowchart was created with the mother to specify the student's behaviors more clearly.

9. In the district interview on October 24, 2024 the director of special services added that the TASN visit includes a Functional Behavioral Assessment (FBA) which is scheduled November 4, 2024. The visit consists of a morning observation and afternoon team meeting, including the parents, to discuss results and possible strategies.

10. In the district interview on October 24, 2024 the special education teacher stated that in the classroom they actively document behaviors including the antecedent, behavior and consequence to better understand the function of the student's behaviors.

11. In an email from the instructional coach on October 28, 2024 she shared that the number of instances of target behaviors has been declining since mid-September. She also shared that mid-September is when the amount of time out of schedule, per incident, also decreased.

Conclusion

In this case, there were three IEPs in effect during the 2024-25 school year. The IEP team met on September 13, September 27 and October 9, 2024 and made amendments to the December 12, 2023 annual IEP. None of these meetings resulted in any changes to the personnel training requirements, monthly check in meetings or the use of the calming kit and strategies.

Interviews and documentation showed school staff were trained on the student's BIP on August 21, 2024 and USD #266 followed up by providing a summary of the BIP issues to staff

on August 23, 2024. Interviews and documentation also support the fact that meetings to review student data were held in August, September, and October during the 2024-25 school year and concerns were identified and strategies developed to address these concerns.

It is unclear if the student had access to his calming kit in all environments throughout the school day at the beginning of the 2024-25 school year; however, documentation and interview showed the district addressed this concern through the use of the backpack of calming tools strategy during one of the monthly meetings. Based on IEP goal progress reports and interviews with staff, the student has made progress towards his IEP goals despite a potential error in consistent implementation of the IEP in regards to the calming tools.

Finally, the Progress Reports from the past 12 months indicate the student is making or maintaining progress on his behavioral goal. However, it is noted that from August 26, 2024 to October 8, 2024 the student exhibited instances of physical aggression toward peers, toward staff or property destruction 28 times, which may account for the parent's concerns that the student's behaviors are increasing. However, due to the way behavioral data is being collected for the IEP goal, "...demonstrating instructional control 8 out of 10 times with 4 or less prompts.", the student is progressing according to his IEP goal yet still exhibiting instances of serious behaviors.

In an email from the instructional coach on October 28, 2024 she shared that the number of instances of target behaviors has been declining since mid-September. She also shared that mid-September is when the amount of time out of schedule, per incident, also decreased.

The collaboration with TASN and addition of a program specialist to support the student's classroom reflects the capacity of the family and district to work together and the district's willingness to address the family's concerns even though there was not an increase in behaviors as measured and reported by the BIP goal.

Based on the foregoing, USD #266 is found to be ***IN compliance*** for implementing the student's IEP, specifically related to addressing increases in behaviors. In addition, there is evidence to support a finding of compliance with the requirement that school staff received training on the student's BIP and held at least monthly meetings to review data. It is noted that USD #266 proactively sought out additional support to address the student's behavioral issues by hiring a project specialist to help train and facilitate the student's IEP team for implementing the student's IEP and BIP with fidelity.

Finally, it is unclear if the student had access to the calming objects at the very beginning of the school year when the student was taking a break or placed in the safe space. However, interviews and documentation shows the IEP team implemented the backpack strategy during the first quarter of the 204-25 school year to ensure the student had access to his calming kit at all times and in all locations throughout the school day. Additionally, interviews show that the calming strategies were used by the staff even if the calming objects are not available. IEP goal progress reports reflect the student was making progress towards achieving his annual IEP goals.

Based on the foregoing, USD #266 is found to be IN compliance with IDEA regulations to implement the IEP as written and address lack of progress during the 2024-25 school year.

Issue Three

Did USD #266 ensure instruction was planned and delivered by appropriately certified staff during the past 12 months?

Parent Position

The parent believes the student is receiving specialized instruction from classroom paraprofessionals rather than the special education teacher.

Applicable Law

Federal regulations at 34 C.F.R. 300.156 requires that 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.

In Kansas, paraeducators must meet the requirements outlined in the "Special Education Reimbursement Guide State Categorical Aid". Paraeducator duties are allowed to include providing instructional or related services under the supervision of a licensed or certified special educational professional in both special education and general education settings. If the paraeducator provides instructional services under the supervision of a qualified special education teacher, the time will be counted as student contact hours for the purposes of reimbursement. However, paraeducators must not be responsible for selecting, programming, or prescribing educational activities or materials for the students without the supervision and guidance of the special teacher or be solely responsible for preparing lesson plans or initiating original concept instruction. Paraeducators must not be assigned to implement the IEP for students with exceptionalities without direct supervision and involvement from the professional and may not be hired in lieu of appropriately certified special education teachers.

Analysis: Findings of Fact

The following facts are based upon a review of the documentation noted previously and interviews with both parties.

1. In the parent complaint dated October 7, 2024 the mother stated, "[student] is not gaining access to direct instruction from teachers daily." "In observing the classroom we have seen that [student] will be taught by one para for an entire activity/class period."
2. The current IEP dated September 13, 2024 states the student will need special education support daily, in all school settings.

3. In the district interview on October 24, 2024, school staff acknowledged that paraprofessionals regularly work with the student to review, practice, and reinforce skills and concepts under the supervision of the special education teacher.

4. In the district interview on October 24, 2024 the special education teacher stated that she designs all new instruction after which she has the paraprofessionals observe her while she introduces or reintroduces the lesson to the student. She stated that the paraprofessional's role is to review and practice the concept with the student; they may use a variety of activities to teach the content, but the content is always first introduced by the teacher.

5. In an email provided by the district on October 25, 2024 the health, life skills and P.E. teacher stated that he plans and introduces new instruction for the student.

6. In an email provided by the district on October 25, 2024, the special education teacher from the 2023-2024 school year stated that, "either [special educator] or I would sit with him, provide direct instruction for an assignment, get him started, and often a para would switch out to provide support for him to complete the task(s). We also had an area with tasks /concepts that [student] had been previously instructed in, and a para could grab anything to work with him on during either down-time, or to supplement curricular activities."

Conclusion

Federal regulations at 34 C.F.R. 300.156 require school districts to ensure that special education teachers, related services personnel and paraeducators who implement student IEPs must have the content knowledge and training to provide the special education and related services to each student.

In Kansas, paraeducator duties may include providing instructional or related services under the supervision of a licensed or certified special educational professional in both special education and general education settings. However, paraeducators must not be responsible for selecting, programming, or prescribing educational activities or materials for the students without the supervision and guidance of the special teacher or be solely responsible for preparing lesson plans or initiating original concept instruction. Paraeducators must not be assigned to implement the IEP for students with exceptionalities without direct supervision and involvement from the professional and may not be hired in lieu of an appropriately certified special education teacher.

In this case, interviews and documentation found the district's procedures and practices consisted of an instructional model where the special education teacher designs and provides initial instruction of concepts and uses paraprofessionals to regularly review, practice, and reinforce skill and concept acquisition with students.

Based on the foregoing, USD #266 is found to be ***IN compliance*** with IDEA regulations and Kansas requirements that allow for paraprofessionals to provide specialized instruction to

review, practice, and reinforce skills and concepts under the supervision of appropriately certified staff during the past 12 months.

Issue Four

Did USD #266 appropriately report progress toward IEP goals to the parents during the past 12 months?

Parent Position

In the parent complaint dated September 7, 2024 the parents stated there has been no data shared to indicate the student's IEP is being followed or that he is making progress on his IEP goals.

Applicable Law

Federal regulations at 34 C.F.R. 300.320(a)(3) require the IEP 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 meeting the annual goals will be provided, e.g quarterly or other periodic reports, concurrent with the issuance of report cards.

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 current IEP dated September 13, 2024 states that, "Parents will receive progress reports at the same time intervals as general education parents. For this student, this will be through written reports and/or conferences."
2. In the past 12 months, the district shared IEP progress reports with the student's parents on November 6, 2023, March 7, 2024, May 20, 2024 and October 21, 2024.
3. The progress reports include how the student is performing based on the IEP goal as well as a narrative description of performance under the Progress Report Comments header.
4. In addition to the progress reports, the district shared documentation of meetings to discuss student progress held in the past 12 months which include; December 12, 2023 IEP meeting, May 20, 2024 meeting to discuss transition to the high school, September 13, 2024 IEP meeting, September 27, 2024 IEP meeting and October 9, 2024 IEP meeting.
5. The district shared agendas, minutes, and/or audio recordings for each of the above meetings which all include discussions of the student's progress on his IEP goals.

Conclusion

The district reported student progress on IEP goals to the family periodically, and at least quarterly as required by the student's IEP. IEP Goal Progress Reports were shared with the family on November 6, 2023, March 7, 2024, May 20, 2024 and October 21, 2024. These progress reports reflected where the student's performance was in relationship to his IEP goals and included a description of the student's progress.

Also, there have been several team meetings in the past 12 months to discuss the student's IEP goals: December 12, 2023 IEP meeting; May 20, 2024 meeting to discuss transition to the high school; September 13, 2024 IEP meeting; September 27, 2024 IEP meeting; and October 9, 2024 IEP meeting. In each of these meetings progress toward IEP goals was discussed according to meeting agendas, meeting notes, and meeting audio recordings.

Based on the foregoing, USD #266 is found to be *IN compliance* with the requirement to appropriately report progress toward IEP goals to the parents during the past 12 months.

Summary of Conclusions/Corrective Action

1. ISSUE ONE:

   ALLEGATION: Failure to include a specific amount of special education services in the student's IEP. A violation of 34 C.F.R. 300.320(a)(7) is not found based on the lack of IDEA requirement for duration of services to be stated in minutes per session. Corrective action is not required.

   ALLEGATION: Failure to provide appropriate special education services and program modifications which meaningfully engage the student during the school day. A violation of 34 C.F.R. 300.320(a)(3), 34 C.F.R. 300.323(c)(2) and 34 C.F.R. 300.17 is not found based on provision of program modifications and specialized instruction as written in the IEP. Corrective action is not required.

   ALLEGATION: Failure to provide the student with access to the Unique Learning System curriculum. A violation of 34 C.F.R. 300.320(a)(3), 34 C.F.R. 300.323(c)(2) and 34 C.F.R. 300.17 is not found based on provision of the Unique Learning System curriculum as written in the IEP. Corrective action is not required.

   ALLEGATION: Failure to provide the student with access to his augmentative communication system throughout the school day. A violation of 34 C.F.R. 300.324(a)(2)(iv - v), 34 C.F.R. 300.323(c)(2) and 34 C.F.R. 300.17 is not found based on the provision and prompted use of the student's augmentative communication system as written in the IEP. Corrective action is not required.

   ALLEGATION: Failure to provide access to extracurricular activities by not allowing him to have the same interaction opportunities as other students. A violation of 34 C.F.R. 300.42, 34 C.F.R. 300.323(c)(2) and 300.107 is not found based on provision of

extracurricular activities and reduction in the amount of time the student is away from his peers due to behavioral concerns. Corrective action is not required.

ALLEGATION: Failure to provide the daily communication logs to the parents as required by the student's IEP. A violation of 34 C.F.R. 300.323(c)(2) is not found based on provision of daily communication logs with parents when the student is not participating in his schedule or not with peers. Corrective action is not required.

2. ISSUE TWO: A violation of 34 C.F.R. 300.323(c)(2), 34 C.F.R. 300.324(a)(2)(i), 34 C.F.R. 300.324(b)(1)(ii) and 34 C.F.R. 300.17 was not found based on implementation of the IEP as written and progress on the BIP goal as noted in the IEP Progress Reports in the past 12 months. Corrective action is not required.
3. ISSUE THREE: A violation of 34 C.F.R. 300.156 was not found based on the fact that paraeducators are allowed to provide instructional or related services under the supervision of a licensed or certified special educational professional. Corrective action is not required.
4. ISSUE FOUR: A violation of 34 C.F.R. Federal regulations at 300.320(a)(3) was not found based on the provision of timely IEP goal progress to the parents. 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 #231, GARDNER PUBLIC SCHOOLS
ON OCTOBER 16, 2024

DATE OF REPORT: NOVEMBER 14, 2024

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

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 student attends Moonlight Elementary. 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 October 16, 2024 and the 30-day timeline ends on November 14, 2024.

Evidence Reviewed

A group interview was conducted with Mackenzie Scholtz, classroom teacher, Katie Beach, principal, Mackenzie Jones, speech and language pathologist, Pshyra Bedell, special education coordinator, Christi Whitter, director of elementary education, Jody Marshall, assistant superintendent and Shay Carter, director of special education on October 31, 2024. The investigator spoke with the complainant on October 17, 2024, October 20, 2024, and November 2, 2024. During the investigation, the Investigator Donna Wickham reviewed all evidence and documentation, which was provided by both the district and the parent. The following documentation and information were used in consideration of the issues:

1. IEP dated December 7, 2023
2. Email between parent and principal dated August 23, 2024 between 12:32 p.m. and 1:24 p.m.
3. Speech and language pathologist log dated between August 26, 2024 and November 1, 2024
4. Email from the principal to the parent dated September 11, 2024 at 2:59 p.m. and 5:03 p.m.

5. Email between parent and superintendent dated September 12, 2024 between 9:09 a.m. and 9:30 a.m.
6. Email from the superintendent to parent, director of elementary education and assistant superintendent dated September 12, 2024 at 9:30 a.m.
7. Email between superintendent and director of elementary education dated September 12, 2024 between 9:31 a.m. and 9:37 a.m.
8. Email from parent to superintendent dated September 12, 2024 at 4:00 p.m.
9. Email exchange between SRO officer and director of elementary education dated September 13, 2024 between 9:53 a.m. and 9:58 a.m.
10. Text exchange between mother and classroom teacher dated September 13, 2024 between 9:47 and 10:05 a.m.
11. Email exchange between parent and superintendent dated September 13, 2024 between 2:56 p.m. and 5:37 p.m.
12. Email from superintendent to director of elementary education and assistant superintendent dated September 13, 2024 at 3:21 p.m.
13. Memo from director of elementary education to assistant superintendent and superintendent dated September 16, 2024
14. Prior written notice for evaluation or reevaluation and request for consent dated September 18, 2024, with parent consent obtained on September 24, 2024
15. Prior written notice for identification and request for consent dated September 18, 2024
16. Notice of Meeting dated September 24, 2024, signed by parent September 27, 2024
17. Email exchanges between parent and speech and language pathologist dated between September 24, 2024 at 3:48 p.m. and September 26, 2024 at 9:23 a.m.
18. Email from previous speech and language pathologist to current speech and language pathologist dated September 30, 2024 at 4:31 p.m.
19. Evaluation Team Report-3-Year Reevaluation dated October 8, 2024
20. IEP meeting notes, dated October 8, 2024
21. Progress report dated October 8, 2024
22. Email exchange between parent and speech and language pathologist dated October 8, 2024 between 8:00 a.m. and 4:18 p.m.
23. Email exchange between principal and parent dated October 8, 2024 between 1:36 p.m. and 1:48 p.m.

24. Email exchange between counselor and parent dated between October 9, 2024 at 10:08 a.m. and October 14, 2024 at 10:27 a.m.
25. Email from parent to director of elementary education dated October 11, 2024 at 11:29 a.m.
26. Email exchange between special education coordinator and director of elementary education dated October 14, 2024 between 8:33 a.m. and 8:37 a.m.
27. Email from principal to special education coordinator and director of elementary education dated October 14, 2024 at 8:34 a.m.
28. Email exchange between superintendent and director of elementary education between October 14, 2024 at 8:57 p.m. and October 15, 2024 at 7:20 a.m.
29. Email between SRO and parent dated October 15, 2024 between 10:31 a.m. and 2:24 p.m.
30. Email between special education coordinator and director of elementary education dated October 15, 2024 between 5:33 p.m. and 5:36 p.m.
31. Email between special education coordinator and parent dated October 15, 2024 between 3:30 p.m. and 5:33 p.m.
32. Email from director of elementary education to assistant superintendent and superintendent dated October 15, 2024 at 5:40 p.m.
33. Prior written notice for identification and request for consent dated
34. District response dated October 28, 2024
35. Written statement of bus caller regarding the September 11, 2024 incident submitted as part of district response dated October 28, 2024.
36. Email from the assistant superintendent to the investigator dated November 4, 2024 at 10:28 a.m.

Background Information

The student is a second grader at the elementary school where he is eligible for special education and related services under the category of developmental delay. The student has been receiving special education interventions in the area of articulation since he was in preschool. He has a medically diagnosed skin condition, and the IEP includes a health care plan and accommodations for that condition. He receives 20 minutes of speech services two days every week to work on two IEP goals regarding articulation. He has met criteria for those two goals.

Issues Investigated

1. ISSUE ONE: Did the district develop an IEP to meet the student's need for adequate supervision to not leave the school premises during the 2024-2025 school year?
2. ISSUE TWO: Did the district follow correct procedures to discontinue special education services from the student services during the 2024-2025 school year?

Issue One

Did the district develop an IEP to meet the student's need for adequate supervision to not leave the school premises during the 2024-2025 school year?

Applicable Law

Federal regulations at 34 C.F.R. §300.324, Development, review and revision of IEP state In developing each child's IEP, the IEP Team must consider—1) The strengths of the child; 2) The concerns of the parents for enhancing the education of their child; 3) The results of the initial or most recent evaluation of the child; and 4) The academic, developmental, and functional needs of the child.

Analysis: Findings of Fact

The parent alleged that the student was wrongly sent home as a walker to an intersection that is very busy and dangerous, and he could have lost his life. He was allowed to leave school premises multiple times by the principal's reckless authority, but the principal blamed the parent instead. The parent stated that the teacher and multiple staff members knew he was not a walker and begged for him not to leave as a walker, but the principal told him to leave.

The district responded in their October 28, 2024 response that no members of the IEP team, including the mother, have previously raised concerns about the student's supervision. No concerns were ever raised that he was a risk for elopement from the school building or that the dismissal procedures, if followed, would not work for him. The incident on September 11th was the result of a serious mistake, but it is not an IEP issue. The district took responsibility for the mistake, quickly and deeply examined and improved internal procedures. The district quickly and thoroughly addressed the personnel aspects of the incident. Finally, the district staff have repeatedly and sincerely apologized to the parent and genuinely want to regain her trust.

The IEP dated December 12, 2023 does not include any services, goals or supplementary aids and supports for the student's safety in leaving the building. The IEP does not list a need for special transportation. Present levels of performance and parent concerns do not document a need for safety in leaving the building.

The classroom teacher wrote as part of the October 28, 2024 district response, "There was no concern that [student] would need additional supervision to not leave school premises, such as elopement or trouble getting on and off the bus. [Student] is always a bus rider and I have

had no instances where he could not handle getting to and from the bus by himself or any troubles on the bus."

The principal reported in the district response dated October 28, 2024 that, "The IEP team did not identify any concerns of [student] needing any additional supervision when leaving the school premises. This has never come up by school personnel or by [student's] parents. There was no recommendation from SPED coordinators or the district office to develop an IEP to meet any needs for supervision of [student] at dismissal. There would be no need for any accommodations for dismissal supervision. He has always been a very responsible and trustworthy student." Further, "As soon as we realized [student] walked home instead of riding the bus on 9/11/24, I immediately tried calling [student's] mother. I repeatedly tried calling that afternoon and also sent an email apologizing and trying to check in to verify [student] had safely made it home." "Mom emailed me the same afternoon (9/11/24) saying she had no reason to talk to me, she refused to visit with me." "In an in-person conversation I had later that week with [director of elementary education] later that same week I let [director of elementary education] know I was not having any luck getting Mom to answer her phone or talk to me. She told me at this point it was okay for me to stop calling."

During the October 31, 2024 interview with the district staff they stated there were no discussions about safety in leaving the building. The staffing notes from the October 8, 2024 Reevaluation and IEP meeting did not document any discussion or decisions about safety of the student leaving the building.

During the October 31, 2024 interview with the district staff they stated there were no other instances during the 2024-2025 school year where the student's safety when leaving the building occurred.

The parent stated during the November 2, 2024 interview that she was never given a good explanation of how and why the mistake was made and that many staff persons tried to stop the mistake from happening. She stated that this lack of full transparency and any accountability on the behalf of the principal makes it difficult for her to trust the district with her student.

Conclusion

After reviewing the student's IEP and interview with the parent and district it is found that a significant safety incident occurred with this student and IDEA regulations do not apply in this particular situation. There were no safety concerns identified in the student's IEPs or reevaluation document. The student did not have a history of leaving or needing additional monitoring. The incident put a student's safety in jeopardy, but it was a breakdown of district procedures, not a result of the student's IEP not being appropriately developed or the services not being implemented. Based on the foregoing, ***it is not substantiated*** that USD #231 developed an IEP that did not meet the student's need for adequate supervision to not leave the school premises during the 2024-2025 school year.

Issue Two

Did the district follow correct procedures to discontinue special education services from the student services during the 2024-2025 school year?

Applicable Law

Federal regulations at 34 C.F.R. §300.305(e)(1) provides that a public agency must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.

Federal regulations at 34 C.F.R. §300.503 state that written notice must be given to parents before the district proposes to 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 findings of Issue One are incorporated herein by reference.

The parent alleged that the district withheld the truth of the events resulting in the student being wrongly sent home as a walker putting the student's safety in jeopardy. She alleged that shortly thereafter the district concluded that the student's special services were no longer needed and finds the timing suspicious, especially after she was told that the student's speech services would not start until late August or early September.

The district responded in their October 28, 2024 response that they followed IDEA procedures in determining if dismissal from speech/language services were warranted following an evaluation. In fact, the district continues to follow procedures by continuing to provide speech/language services since the mother has not provided consent for dismissal.

The IEP dated December 7, 2023 documents the student is eligible for special education and related services as a child with developmental disabilities. The student receives 20 minutes of pull out speech services for articulation twice a week. No supplementary aids or supports are included. This IEP further documents "[student] has a diagnosis of [name of diagnosis] which causes [describes results of condition]. [Student's] needs will be met through a healthcare plan and accommodations."

The IEP dated December 7, 2023 documented that the next reevaluation was due December 12, 2025.

The speech and language pathologist stated during the October 31, 2024 interview with the investigator that the reevaluation was indicated for two reasons, 1) the student was on track to meet the two IEP goals early in the school year, and 2) the speech and language pathologist mistakenly thought the reevaluation was due in 2024 after the IEP tracking system was changed at the beginning of the school year.

Documentation shows that a prior written notice for evaluation or reevaluation and request for consent was provided to the parent on September 18, 2024 and the parent signed consent to

reevaluate on September 24, 2024. The reevaluation plan listed new testing for communication and the use of existing data for hearing, vision, academic performance and communication. Considerations in conducting the evaluation included, "not conducting an evaluation but this option was rejected because the IEP Team feels that more information is needed in order to determine [student's] current level of functioning in the area of speech sound production and language skills."

A notice of meeting dated September 24, 2024 was provided to the mother for a planned October 8, 2024 meeting to discuss 1) your child's academic achievement, functional performance, and educational needs; 2) whether your child has or continues to have an exceptionality; and 3) whether your child needs special education and related services. The parent waived her rights to a 10-day prior written notice to develop, review or revise the IEP for the student on September 27, 2024.

The Progress Report dated October 8, 2024 documents that both IEP goals were met. The speech and language pathologist logs show that the student worked with the student between August 30 and October 8, 2024.

The October 8, 2024 reevaluation report, titled, Evaluation Team Report▪3-Year Reevaluation documented that "A reevaluation is needed to determine if [student] continues to qualify and or demonstrate a need for direct speech/language therapy." The report included existing documentation for vision, hearing, academic performance and communication. Speech and language reevaluation information was gathered using standardized assessments, therapy sessions and classroom data and input from the student's teacher. The Summary and Conclusions of the report is, "Based on the re-evaluation information, [student] demonstrates developmentally appropriate articulation skills when compared to same age peers. [Student] also demonstrate developmentally appropriate voice/fluency skills and language skills at this time. [Student] no longer demonstrates a need for speech services to support [student] in the area of articulation skills in order to effectively participate in the general education classroom. It is proposed to dismiss [student] from speech services at this time."

The principal reported in the October 28, 2024 district response that "During [student's] IEP meeting on 10/8/24, Mom attended via speaker phone. She asked the team questions about having [student] evaluated for a 504 Plan. I let her know that our school counselor facilitates all 504 evaluations and I would have our counselor reach out to Mom. I did share with her that [student] would likely be a good candidate for a 504 plan since he currently has an IHP for his [condition]. I asked mom what would be the best way for the counselor to get in touch with her. Mom requested email communication. An hour later after the IEP meeting had ended, Mom emailed me asking for the counselor's contact info. I emailed her back, sharing the counselor's email and phone number."

The staffing summary (IEP meeting notes) from the October 8, 2024 meeting record, "The results of the articulation testing that was completed with [student] were shared. [Student] scores fell in the average range in this testing. Testing around [student] voice and fluency was

also completed and no concerns found in these areas. [Student language was screened. [Student] used age-appropriate grammar and language and no concerns were found. [Student] progress on [student] two current articulation goals was shared. [Student] had met both of these goals and is no longer showing a delay in articulation. [Student] no longer needs specialized training in these areas. The team recommends dismissal from [student] IEP. Mom will be sent a hard copy of the dismissal paperwork to sign. Mom is wanting a 504 plan due to [student] health needs. [Student] currently has an Individualized Health Plan to consider. The school counselor facilitates all 504 requests. The counselor will email Mom with more info on the 504 evaluation process."

The prior written notice for identification and request for consent dated September 18, 2024 stated, "On October 8, 2024 we met to review the evaluation/assessment data on your child." The PWN recorded three decisions, 1. "Special education services are not necessary to enable your child to receive educational benefits in accordance with his/her abilities or capabilities." 2. "… 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 and or a service specified on your child's IEP." 3. "…we are proposing a change in placement that results in the movement of more than 25% of your child's school day from a less restrictive environment to a more restrictive environment, or from a more restrictive environment to a less restrictive environment." The description of the proposed action is that the student be dismissed from speech/language services. As speech/language goals are met and recent reevaluation information indicated speech and language skills within normal limits. The speech and language pathologists acknowledged that the date of the PWN recording the decisions of the October 8, 2024 meeting is incorrect and the PWN should be dated October 8, 2024.

The mother stated during a phone conversation with the investigator that she spoke with Families Together about concerns with the student not having an IEP and concerns that it was in retaliation to the mother's actions to discover the truth about the student being dismissed as a walker when staff tried to overrule the principal insisting the student was a walker and to consequences for this incident that put her child's life in jeopardy. The mother stated that after talking with Families Together she decided to not sign consent to dismiss special education services.

The principal reported in the October 28, 2024 district response that "On 10/14/24 the school counselor let know that Mom had contacted her saying she no longer wanted to pursue a 504 plan. Counselor forwarded me the email conversation that she and mom had."

The district and parent report that the PWN dated September 18, 2024 regarding the October 8, 2024 meeting was not signed by the parent for consent.

The district and parent agree that the student continues to receive the services from the December 7, 2023 IEP and that IEP continues to be in effect.

Conclusion

When a district or parent suspect that a child is no longer eligible for special education and related services a reevaluation must be conducted. If the IEP team, then determines, using that reevaluation that the child is no longer a child with a disability the district must provide the parent prior written notice of the decision to discontinue services and obtain parental consent before discontinuing services. It is found that the district completed all of these steps. In this case parental consent was not obtained in response to the prior written notice and therefore the services continue. Both the parent and district agree that the services are continuing. Therefore, ***it is not substantiated*** that USD #231 failed to follow correct procedures to discontinue special education services from the student services during the 2024-2025 school year.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. §300.324 was not found, based on documentation and interview with parent and district staff. Corrective action is not required.
2. ISSUE TWO: A violation of 34 C.F.R. §300.503 was not found, based on documentation and interview with parent and 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.

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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 #501
ON OCTOBER 16, 2024

DATE OF REPORT: NOVEMBER 15, 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 #501, Topeka Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #501.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint. 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 October 16, 2024, and the 30-day timeline ended on November 15, 2024.

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video call on November 4, 2024. The following District staff were interviewed on November 4, 2024: Special Education Director, Principal, Case Manager, Special Education Consulting Teacher, and Math Teacher.

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:

1. Individualized Education Program (IEP), dated September 18, 2023
2. IEP At a Glance from the September 18, 2023 IEP
3. IEP, dated September 16, 2024
4. Student Grade Book Snapshot, no date
5. Email from Math Teacher to Special Education Consulting Teacher, dated October 11, 2024, at 11:06 a.m.
6. Email from Case Manager to the Parent, dated October 16, 2024 at 12:09 p.m.
7. Email from the Parent to the Case Manager, dated October 15, 2024, at 5:11 p.m.

8. Acknowledgment of Special Education Services, Accommodations, and Modifications, unsigned, no date
9. Case Review Meeting Notes, dated October 24, 2024
10. Math Teacher's Written Responses to Interview Questions, no date
11. Prior Written Notice, dated November 1, 2024

Background Information

This investigation involved an eighth-grade student enrolled in the District. The Student is currently receiving services as a child with a Specific Learning Disability per the Individuals with Disabilities Education Act (IDEA).

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 September 18, 2023 Individualized Education Program (IEP), active at the beginning of the 2024-25 school year, indicated the following:
    a. "[The Student's] reading abilities are below [their] typical developing peers, special education services and accommodations are recommended… ."
    b. "[The Student's] parents are concerned that [they] are not receiving the proper services or accommodations to provide [them] with the ability to be successful. [They have] been struggling and feeling overwhelmed in specific classes where the environment is chaotic or loud."
    c. Goals in math, reading, and written language.
    d. "Special Education Services" provided by "Case Manager" with "[d]irect services in [the] general education setting, 120 minutes 5 times per week" for September 18, 2023 through May 23, 2024 and August 8, 2024 through September 17, 2024.
    e. The following accommodations to begin September 18, 2023 within the location of the general education classroom:
        i. "Text read aloud via human or electronic reader, for all testing and assessments, for the length of the test or assessment."
        ii. "Clarification of directions, whenever oral directions are given. [The Student] will be given initial directions with all students, and then asked for understanding. If [they do] not understand, directions will be restated for [them] individually until content is understood."

iii. "Extended time to complete assessments, for all testing and assessments, for the length of the test or assessment."

iv. "Quiet setting, for all testing and assessments, for the length of the test or assessment."

v. "Access to fidgets, whenever [they are] asked to work at [their] desk, for the length of time that [they are] asked to work at [their] desk."

f. "School Setting: [The Student] will fully participate in the general education curriculum during the school day except for 120 minutes daily for five days a week, where [the Student] will receive indirect services for ELA (30min), math (30 min), science (30 min), and social studies (30 min)."

2. A September 18, 2023 "IEP at a Glance" listed the Student's demographic information, IEP review date, case manager, primary disability, classroom accommodations and modifications, goals, and service time. A "[d]escription of Specially Designed Instruction and Related Service" explained, "[the Student] needs to have directions clarified so that [they] can begin [their] work in a timely manner and have assessments read to [them] so that [their] reading deficit does not impede [their] ability to understand what is being asked."

3. Pertinent staff attended these District trainings from July 22, 2024 through October 14, 2024:

    a. District professional development (PD) on special education

        i. Principal, Assistant Principal, Special Education Consulting Teacher

    b. Special education [Consulting Teacher] "CT" PD

    c. School-based PD on " Tier 1" staff expectations

        i. Principal, Assistant Principal, Special Education Consulting Teacher, Case Manager, Math Teacher, Paraprofessional

    d. School-based PD on certified expectations

        i. Principal, Assistant Principal, Special Education Consulting Teacher, Case Manager, Math Teacher

    e. School-based PD on classified expectations

        i. Paraprofessional

    f. Emergency safety intervention

        i. Principal, Assistant Principal, Special Education Consulting Teacher, Case Manager

g. School-based PD on " Tier 1 Behavior and Reactive Plan"

    i. Principal, Case Manager, Math Teacher

h. School-based PD on tiered instruction and tier 2 and 3 interventions for academics and behavior

    i. Principal, Case Manager

i. School-based PD on small group instruction

    i. Principal, Case Manager

j. School-based PD on student behavior and tier 1 staff expectations "to include a few slides regarding [special education] (Continuum, MDR, Data Collection, Suspensions)"

    i. Principal, Assistant Principal, Special Education Consulting Teacher, Case Manager, Math Teacher, Paraprofessional

4. During interviews with the Complaint Investigator, the Principal confirmed the staff training was all "laid out in an effort to build capacity of [the] special education department." The trainings were intended to make implementing accommodations and modifications "as impactful as possible." The Special Education Consulting Teacher confirmed they led teachers through pre-service training about accessing IEPs and who to contact with questions. However, they provided no other direct training or consultation to staff or paraprofessionals working with the Student except by providing the Math Teacher with a copy of the Student's IEP information on October 16, 2024.

   The Case Manager confirmed that the Paraprofessional assigned to the Student's classes for the 2024-25 school year was the same as last year and they met at the beginning of the year to discuss the Student's IEP information and needs.

5. During interviews, the Principal also explained that teachers access special education information through Synergy, the student information system, or from the case manager or consulting special education teacher. Long-term substitutes have access to Synergy for this information, but short-term substitutes do not and typically receive special education notes from the absent teacher. The Case Manager also stated that they will inform long-term substitutes about specific IEP information for students in their classes but cannot for short-term substitutes.

   The Principal and Case Manager further stated that the Student did not experience a long-term substitute but multiple instances of a "daily substitute as needed" in their math class. The Principal also noted that the same paraprofessional was assigned to three of the Student's classes and was familiar with the Student's accommodations. As of November 4, 2024, the math teacher had reportedly missed twenty-five of the

Student's math classes, and the same substitute covered all but two of those days. The Paraprofessional was also absent on four of those twenty-five days.

6. A September 16, 2024 IEP indicated the following:
    a. "[The Student] is a hard worker in [their] math and reading classes. [The Student] always tries [their] best and asks for help when [they] need it. [The Student's] math and reading teachers both state that [the Student] can work at grade level with support or reassurance. [The Student] is sometimes slower at completing more difficult work in reading and math. When [the Student] is asked to complete reading assignments, [the Student] sometimes misses some components and needs to work with an adult 1:1 to understand the concept and redo [their] work which [they] do without complaint."
    b. "[The Parent] has not stated any concerns this year with [the Student's] academic progress."
    c. Goals in math and reading.
    d. Special education and related services for September 16, 2024 through May 22, 2025 listed as follows:
        i. "Special Education Services" provided by the "Case Manager" as "Direct Services in Special Education setting" for "10 minutes 1 time every week. Weekly check[-]in for up to 10 minutes with the case manager or consulting teacher to check on grades and an email will be sent to [the Parent] once a week."
        ii. "Special Education Services" provided by the "Case Manager" as "Direct Service in [the] general education setting" for "30 minutes daily for three days a week for [subject] that is taught by a general education teacher with assistance from a special education paraprofessional with support through accommodations." This was listed for science and social science.
        iii. "Special Education Services" provided by the "Case Manager" as "Direct Service in [the] general education setting" for "30 minutes daily for five days a week for [subject] that is taught by a general education teacher with assistance from a special education paraprofessional with support through accommodations." This was listed for math and English language arts.
    e. Accommodations and modifications beginning September 16, 2024 listed as:
        i. "Text read aloud via human or electronic reader, for all testing and assessments, for the length of the test or assessment."

ii. "Separate quiet setting, for all testing and assessments. [The Student] will receive a time extension of the next day to complete the assessments if not completed on time."

iii. "Clarification of directions, whenever oral directions are given. [The Student] will be given initial directions with all students, and then asked for understanding. If [they do] not understand, directions will be restated for [them] individually until content is understood."

iv. "Extended time to complete assignments, for all testing and assessments. [The Student] will receive a time extension of the next day to complete assessments if not completed on time."

v. "Access to fidgets, whenever [they are] asked to work at [their] desk, for the length of time that [they are] asked to work at [their] desk."

7. During interviews with the Complaint Investigator, the Case Manager explained that the Student receives IEP services via paraprofessional support within their core general education classes but prefers to avoid being identified as needing support. Hence, the Paraprofessional keeps a distance and interacts with the Student when they ask for help. The Special Education Director corroborated this and added that based on attendance logs, they know the Paraprofessional has been present in the Student's classes and is aware of their accommodations and modifications. However, because of the Student's hesitancy to "draw attention to [themself] and the Paraprofessional not being more insistent, they couldn't say the School had been "maximizing what [the Student] needed to have that help."

8. During an interview with the Complaint Investigator, the Parent stated that during the September 16, 2024 IEP meeting, they expressed concerns about the Student's experience in math class because the Student was telling the Parent they did not understand the material. The Parent said they asked the IEP Team what resources were available to help. The Case Manager then asked for time to find available resource options and reconnect with the Parent. During interviews with the Complaint Investigator, the Case Manager and Principal confirmed these statements. The Parent stated that until filing this complaint, they received no follow-up about math resources or a copy of the IEP to sign.

9. A 2024-2025 "Middle School Grade Report" indicated the Student's grades for the first quarter as follows:

    a. Language Arts: C

    b. Math: C

    c. Science: B

d. US History: F

During interviews with the Complaint Investigator, the Case Manager and the Special Education Consulting Teacher mentioned that the Student's math grade had been changed (to C) sometime some time after the Parent raised concerns about the math grade and the Math Teacher received a copy of the IEP At a Glance

10. An October 11, 2024 email from the Math Teacher to the Special Education Consulting Teacher stated, "Apparently, [the Student] has an IEP according to the list attendance. However, I cannot get to [their] accommodations from that list and [they] are not pictured in [the] Synergy seating chart for me to click on. Who is [their] PI so I can get this info? I have not been following [the] IEP since I cannot access it and didn't realize [the Student] was SPED [sic]."

    During interviews with the Complaint Investigator, the Principal and Special Education Consulting Teacher confirmed the statement made by the Math Teacher that due to student information system issues, the Student's IEP had not been implemented in the math class for the 2024-25 school year until they received a copy of the IEP information and accommodations on October 16, 2024.

11. In a written statement, the Math Teacher reported that they began implementing the IEP once they received a copy of the "IEP At a Glance," wrote this information into their sub plans, and reviewed it with the Paraprofessional.

12. An October 15, 2024 email from the Parent to the Case Manager stated the Parent's concern with the Student's math grade. The Parent also said the Student had told them several times they didn't understand the material being taught in class and that the Case Manager had not gotten back to the Parent with different resources or tools the Student could utilize to improve their grade as discussed at the September 16, 2024 IEP meeting. The Parent also stated they had shared their concerns with the Student's teacher and did not like the teacher's response. The Parent said, "I am highly concerned [the Student's] IEP is not being followed accordingly. … There is a disconnect somewhere here and I would like to get this resolved before taking any action necessary to make sure [the Student's] IEP is being followed … ."

    The Parent also said they still had not received the newest IEP to sign.

13. In an October 16, 2024 email, the Case Manager notified the Parent about recently discovered issues and proposed a call to discuss solutions. During an interview with the Complaint Investigator, the Case Manager clarified that these issues were with the student information system, which had hindered the implementation of the Student's IEP in math class.

The Case Manager and the Parent agreed they had spoken via phone later that same day about options for the Student to receive more help in math. They disagreed on the content of that conversation, and both stated no solutions had been decided.

14. During an interview with the Complaint Investigator, the Parent stated they believed the Student was not receiving the designated IEP support in any of their core classes, especially in math and history. The Parent also did not believe that the accommodation of reading instructions to the Student and ensuring they understood was being implemented.

15. On October 16, 2024, the Parent filed this complaint.

16. On October 24, 2024, the Special Education Director facilitated a "Case Review" meeting via Zoom. It included the Parent, Principal, Case Manager, Social Studies Teacher, Special Education Consulting Teacher, and Lead Consulting Teacher. It was noted that the meeting was in response to the Parent's concerns regarding the IEP and their belief that the Student was not receiving services in the general education setting.

17. A Prior Written Notice (PWN) dated November 1, 2024 documented proposals from the October 24, 2024 meeting. These included:

    a. The District "offered tutoring services virtually outside of [the Student's] IEP for 20 minutes two times per week" for backfilling, frontloading, and receiving assistance with current work. "The use of tutoring will be reviewed throughout the school year to determine if [the Student] continues to need extra help."

    b. The Student "will have general education intervention in reading and math as determined by the general education teacher in collaboration with [the] IEP case manager."

    c. "[The Student] will have services of 10 minutes weekly for check-ins with the case manager or consulting teacher and then email [the Parent] of progress or of work that needs [to be] done."

    d. "Teachers and paras to sign off that they have read and understand [the Student's] services, accommodations and modifications they are responsible for providing to [the Student]."

    e. "[The Student] will have special education support in the general education setting. This support could result in [the Student] feeling self-conscious and refusing services. The team has discussed ways to provide accommodations that will help [the Student] be more comfortable asking for and/or accepting assistance."

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP since the beginning of the 2024-25 school year. K.A.R. 91-40-16(b)(3-4).

According to 34 CFR §300.323(a) and K.A.R. 91-40-16(b)(3-4), an IEP must be in effect for each exceptional child at the beginning of each school year and be accessible to each teacher and provider who is responsible for its implementation.

The Parent alleged that the District did not implement the Student's IEP from the beginning of the 2024-25 school year. The Parent claimed that the Student was failing math and history, did not understand the presented material, and was not receiving the accommodation of having things read aloud and ensuring the Student's understanding. The Parent also questioned the Paraprofessional support being provided in the classroom. They began contacting the School staff for an explanation. They alleged that the Case Manager "verbally expressed" that they were unsure how to implement the IEP with long-term substitutes who have "no training" and asked the Parent for solutions.

The District responded that the "building level staff at [the] School have implemented the Student's IEP since the beginning of the 2024-25 school year" and "[t]he [S]tudent's required special education support has been and is being provided for 30 minutes in each of [their] core academic classes." The District claimed discrepancies in the reported conversation between the Parent and the Case Manager. The District acknowledged that the Math Teacher reported on October 11, 2024 that they could not view the Student's IEP on their computer. The District claimed the Special Education Consulting Teacher made corrections for the Math Teacher on October 15 or 16, 2024.

Analysis & Conclusion

The Student had two IEPs in effect for the 2024-25 school year. The September 18, 2023 IEP documented special education services and accommodations for the Student due to reading abilities below their peers and related parental concerns.

The IEP outlined goals in math, reading, and written language, provided 120 minutes of direct services in the general education setting five times per week divided evenly between four core subjects, and included accommodations such as text read aloud, clarification of directions, extended time, a quiet setting for assessments, and access to fidgets.

The September 16, 2024 IEP outlined goals in math and reading, direct service in the special education setting for 10 minutes one time per week, and direct service in the general education setting with a paraprofessional for 30 minutes three times per week for science and social science and 30 minutes five times per week for math and reading. No parental concerns

were noted, and accommodations were similar to the previous IEP. The Parent stated that they did express concerns at this IEP meeting, particularly about the Student's experience in math class, and asked for available resources to help. No solutions were determined at that time. A month later, the Parent's concerns persisted and remained unresolved at the time of the complaint. School staff corroborated these statements.

School and District staff also acknowledged that although a paraprofessional had been present in the Student's classes to provide IEP services, the support may have been limited due to the Student's desire to avoid attention and the Paraprofessional's passive approach. This has led to concerns about the effectiveness of the support and discussions to improve it. On October 11, 2024, it was discovered that due to technical issues with the student information system, the Student's IEP was not implemented in their math class until October 16, 2024. The Parent and all interviewed School and District staff acknowledged this.

Due to ongoing concerns about the Student's declining math grades, the Student's persistent reports of not understanding the material or feeling unable to ask for help, and a perceived lack of adequate response from the school staff to address these issues, the Parent believed the Student's IEP was not being implemented and filed this complaint.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is substantiated*** that the District failed to implement the Student's IEP from the beginning of the 2024-25 school year in the Student's math class.

Issue Two

USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to inform each teacher and provider of their specific responsibilities to implement the Student's IEP. K.A.R. 91-40-16(b)(5).

According to 34 CFR §300.323(d) and K.A.R. 91-40-16(b)(5), Regardless of whether a person attends the IEP meeting, every teacher and service provider responsible for carrying out the IEP must be informed about their specific responsibilities. This includes understanding the accommodations, modifications, and support that must be provided according to the IEP.

The Parent alleged that some of the Student's teachers were unaware of the IEP until October 16, 2024, ten weeks after school started.

The District responded that each teacher and special education provider was informed of their specific responsibilities for implementing the IEP. A new student information system was implemented in the District in July 2024. The District claimed that the Student's IEP was accessible to regular education and special education teachers and other team members responsible for implementing the IEP.

The District also claimed that the Special Education Consulting Teacher provided preservice training for the 2024-25 school year to show teachers how to independently access each student's IEP and print "IEPs At a Glance" for their use.

Analysis & Conclusion

The Special Education Consulting Teacher confirmed that teachers were shown how to access IEP information via the new student information system at the beginning of the year. The Case Manager confirmed informing paraprofessionals assigned to the Student's classes of the Student's service times and accommodations.

According to interview information, while long-term substitutes can access student IEP information through the student information system or the Case Manager, short-term substitutes rely on the absent teacher's notes. Despite the frequent absences of the Math Teacher, the District reported that the Student primarily had the same substitute teacher. However, that substitute was not considered long-term with access to the student information system. The Math Teacher confirmed they were unaware of the Student's IEP and did not add the Student's IEP information to their substitute plans/notes until October 16, 2024.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is substantiated*** that the District failed to inform each teacher and provider of their specific responsibilities to implement the Student's IEP. District records and interview information indicates that IEP information is accessible to School staff and related generalized training is provided. However, according to interview information, due to the Math Teacher's inability to access IEP information, their frequent substitute, who did not have long-term access, was also unaware of the IEP information until October 16, 2024.

Issue Three

> USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to ensure that all personnel necessary to carry out the requirements of IDEA for the Student are appropriately and adequately prepared and trained. 34 C.F.R. §300.156 and 34.C.F.R. §300.207; K.A.R. 91-40-43(e).

According to 34 C.F.R. §§300.156 and 300.207, each school district must ensure that all personnel necessary to carry out the IDEA requirements 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.

The Parent asserted that school staff should have been proactively trained to recognize and address the Student's needs based on their IEP, rather than relying primarily on the Student to request assistance. Furthermore, the Parent emphasized the need for substitute teachers to be knowledgeable about IEPs and equipped to implement them effectively, ensuring continuity of support even in the teacher's absence.

The District responded that the School staff had been "appropriately and adequately prepared and trained to provide special education services to students."

Analysis & Conclusion

District records indicated adequate, valid licensure for all teachers working with the Student. The District also provided ten trainings between July 22, 2024 and October 14, 2024 to build general capacity amongst certified and classified staff regarding

delivering special education services, accommodations, and modifications. No other direct consultation or training specifically related to this Student was reported.

According to interview information, to support the Student's learning during frequent absences of their math teacher, the School staff assigned a paraprofessional already familiar with the Student and their IEP to three of their four core classes.

Based on the foregoing, according to the IDEA and Kansas special education regulations, ***it is not substantiated*** that the District failed to ensure that all personnel necessary to carry out the IDEA requirements for the Student are appropriately and adequately prepared and trained. District records and interview information indicate that the District meets federal requirements for personnel qualifications.

Issue Four

USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the Student with a free appropriate public education (FAPE). K.A.R. 91-40-1(z).

According to 34 CFR §300.17 and K.A.R. 91-40-1(z), a “free appropriate public education" and "FAPE" means special education and related services that meet the following criteria:

a. Are provided at public expense, under public supervision and direction, and without charge;

b. Meet the standards of the state board;

c. Include an appropriate preschool, elementary, or secondary school education; and

d. Are provided in conformity with an individualized education program.

The Parent alleged that the Student was being denied an appropriate education as defined by their IEP, citing the Student's lack of comprehension, declining grades, and inconsistent implementation of IEP services and accommodations. Despite raising these concerns with various school staff members, the Parent felt their complaints were not adequately addressed, leaving them with the impression that the School was either not equipped to support the Student or expected the Student to initiate requests for assistance. While acknowledging the District's recent offer of new resources, the Parent wanted assurance that these resources would be consistently implemented and effectively address the Student's needs.

The District responded that all teachers received notification and training on accessing IEP information through the new student information system, with additional support offered by the Special Education Consulting Teacher.

Acknowledging the intermittent absences of the Student's Math Teacher, the District explained that the Student was intentionally scheduled with a familiar paraprofessional across multiple classes to ensure continuity of learning and support. The District also noted that the Case Manager had discussed alternative support options with the Parent to address concerns about the Student's workload and collaboration with the Paraprofessional.

Analysis & Conclusion

District records and interview information indicated that the Student was enrolled in an appropriate public education program, and there was no evidence of cost to the Parent. However, District records and interview information indicated that the Student's education was not provided in conformity with the IEP for the Student's

math class prior to October 16, 2024. The IEP also indicated direct special education services by paraprofessionals in the general education setting for the Student's four core classes. Interview information indicated a reliance on the Student asking for help instead of receiving it directly and consistently, which may have minimized the effectiveness of the support.

Following the filing of this complaint, School and District staff scheduled a meeting with the Parent to review the IEP, discuss concerns, and generate actionable solutions. A PWN from this meeting indicated proposals for the IEP that included District-sponsored virtual tutoring outside of school hours, general education intervention for reading and math, weekly check-ins with Special Education staff followed by home communication, and a requirement for teachers and paraprofessionals to sign a statement indicating that they read and understood the Student's IEP services, accommodations, and modifications.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is substantiated*** that the District failed to provide the Student with FAPE. District records and interview information indicate the Student did not receive education in conformity with the IEP in their math class from the beginning of the school year until October 16, 2024. Although the Student's grade was changed from an F to a C, it is unclear if this change was due to the Parent's concerns about the grade or if the Student actually met the standards needed to achieve the grade. The Student also received an F in History. It should also be noted that during this investigation, clerical errors and discrepancies in the IEP document were noticed that may impact the interpretation or implementation of required services. Furthermore, the interview information indicated the IEP Team's acknowledgment of concerns regarding the effectiveness and consistency of the IEP services provided by the Paraprofessional.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. A violation occurred in the following areas:

A. Federal regulations 34 CFR §300.323(a) and K.A.R. 91-40-16(b)(3-4) specify that an IEP must be in effect for each exceptional child at the beginning of each school year.

   In this case, the evidence supports the finding that USD #501 did not implement that Student's IEP during the Student's math class from the beginning of the 2024-25 school year through October 16, 2024.

B. Federal regulations 34 CFR §300.323(d) and K.A.R. 91-40-16(b)(5) specify that every teacher and service provider responsible for carrying out the IEP must be informed about their specific responsibilities. This includes understanding the accommodations, modifications, and support that must be provided according to the IEP.

   In this case, the evidence supports the finding that USD #501 did not inform the Student's Math Teacher sufficiently about how to access the Student's IEP, which resulted in the teacher not understanding their role in implementing the Student's IEP.

C. Federal regulations 34 CFR §300.17 and K.A.R. 91-40-1(z) specify that districts must provide a FAPE to the Student.

   In this case, the evidence supports the finding that USD #501 did not provide the Student with a FAPE when it failed to provide special education services in conformity with the Student's IEP.

Based on the foregoing, USD #501 is directed to take the following actions:

1. Within 10 calendar days of the date of this report, USD #501 shall submit to Special Education and Title Services (SETS), documentation of the corrective actions developed on October 24, 2024. The documentation shall address how the proposals in the (PWN) dated November 1, 2024, appropriately address the issues related to implementing the Student's IEP in math class and developing a system for informing staff implementing IEPs in the District of their responsibilities.

2. Further, within 15 calendar days of the date of this report, USD #501 will convene an IEP meeting to determine how to implement schedule up to 30 hours of compensatory services to be delivered within the current school year. One calendar year. The Parent may accept all, a portion of, or none of the offered compensatory services, by notifying the district in writing within 15 school days of the date the offer is delivered to the parents. The District shall provide copies of the amended IEP and a schedule of when the compensatory services will be provided to SETS.

3. Within 90 calendar days of the date of this report, USD #501 shall develop and implement a written procedure to ensure that the requirements of 34 C.F.R.300.323(d) are met by (1) making IEPs accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; (2) informing each teacher and provider described above of his or her 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.
4. Within 80 calendar days of the date of this report, USD #501 shall submit a copy of the procedure developed in accordance with corrective action 3 (above) to SETS.
5. Within 15 calendar days of this report, provide to SETS a written statement of assurance that the district will comply with: (a) 34 CFR §300.323(d) and K.A.R. 91-40-16(b)(5), requiring that every teacher and service provider responsible for carrying out the IEP must be informed about their specific responsibilities, including the accommodations, modifications, and support that must be provided according to the IEP; (b) 34 C.F.R. §§300.156 and 300.207, requiring that each school district must ensure that all personnel necessary to carry out the IDEA requirements 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; and (c) 34 CFR §300.323(a) and K.A.R. 91-40-16(b)(3-4), requiring that an IEP must be in effect for each exceptional child at the beginning of each school year.

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 #290, OTTAWA PUBLIC SCHOOLS
ON OCTOBER 30, 2024

DATE OF REPORT: NOVEMBER 29, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #290 (Ottawa Public Schools) on behalf of ----- by her mother, -----. In the remainder of the report, ----- will be referred to as "the student" and ----- will be referred to as "the complainant", "the parent", or as "the mother."

The complaint is against USD #290 (Ottawa Public Schools). In the remainder of the report, USD #290 will be referred to as "the district." In the remainder of this report, district staff will be referred to as follows:

- Joseph Vitt, Assistant Superintendent / Director of Special Education
- Lark Lund, Assistant Director of Special Education
- Casey Bass, Speech/Language Pathologist (SLP), at Sunflower Elementary School
- Christine Schrepel, Occupational Therapist (OT) at Sunflower Elementary School
- Kristie Butler, Preschool/Early Childhood Special Education (ECSE) Teacher at Sunflower Elementary School
- Emili Sessions, Paraprofessional #1 at Sunflower Elementary School
- Kianna Harold, Paraprofessional #2 at Sunflower Elementary 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 30, 2024 and the 30-day investigation timeline ended on November 29, 2024.

Evidence Reviewed

The mother was interviewed on November 15, 2024 as part of the investigation. In addition, the parent provided written consent for the investigator to interview Paraprofessional #1 who worked with the student in the preschool classroom at Sunflower Elementary School. This interview was conducted on November 18, 2024.

USD #290 was given the opportunity to schedule an interview with relevant school staff but chose to only provide written documentation to be considered during the investigation.

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation provided by both the district and the parent. The following documentation was used in consideration of the issues:

1. Team Evaluation Eligibility/Identification Report dated March 5, 2024
2. Staffing Record dated March 5, 2024
3. Individualized Education Program (IEP) dated March 5, 2024
4. Teacher Information Page dated March 5, 2024
5. Prior Written Notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Change of Services, Change of Placement, and/or Request for Consent dated March 5, 2024
6. Potty Log dated between August 14 and September 19, 2024
7. Speech/Language Pathologist (SLP) Service Logs dated between August 14 and September 30, 2024
8. Handwritten anecdotal log written by the mother dated between August 14 and October 22, 2024
9. Occupational Therapy (OT) Services Logs dated between August 15 through October 12, 2024
10. Early Childhood Special Education (ECSE) Data Sheets dated between August 19 and September 26, 2024
11. Daily Communication Logs dated between August 21 and September 26, 2024
12. Notes from the August 23, 2024 phone call between the parent and the Assistant Director of Special Education
13. Copies of Google voice messages between the parent and the Assistant Superintendent / Director of Special Education dated between August 27 and October 10, 2024
14. Class Dojo messages dated September 5 and September 6, 2024
15. Transfer Request dated September 26, 2024
16. Emails dated between September 27 and October 10, 2024 between the parent and the Assistant Superintendent / Director of Special Education
17. Response to the Allegations dated November 13, 2024 written by the Assistant Superintendent / Director of Special Education
18. Student's Daily Class Schedule at Sunflower Elementary School
19. Preschool/ECSE Daily Class Schedule at Sunflower Elementary School
20. USD #290 Preschool Calendar for the 2024-25 school year
21. USD #290 School District Calendar for the 2024-25 school year
22. Photo of the student at a Lego station in the classroom

23. Photo of alternate seating
24. Photo of fidget tubs
25. Photo of independent work tubs
26. Photo of visual schedule

Background Information

The subject of this complaint is a four year-old girl who lives with her mother in USD #290. She has a medical diagnosis of Autism spectrum disorder and additional diagnoses of Mixed Receptive and Expressive Language Disorder and lack of coordination. Records show that the student was initially identified and received early intervention services in Iowa through an Individualized Family Support Plan (IFSP). The family moved into USD #290 in November 2023 and the student was enrolled in the preschool program at Sunflower Elementary School.

Her initial special education evaluation was completed on March 5, 2024 when the student was determined eligible for special education and related services under the exceptionality category of Autism. An IEP was developed and the student received the required special education and related services in the preschool program located in Sunflower Elementary School for the remainder of the 23-24 school year and during the summer 2024 extended school year (ESY). The student began the 2024-25 school year in the preschool program at Sunflower Elementary School but the parent requested a transfer to the preschool program at Lincoln Elementary School on September 26, 2024. This transfer request was approved on September 27, 2024 and the student began attending preschool at Lincoln Elementary School on October 4, 2024.

Issues Investigated

Based on the written complaint and an interview with the complainant, two issues were identified and investigated.

Issue One

USD #290, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by not providing the required special education and related services at the beginning of the 2024-25 school year.

Parent Position

The parent reported that the student is supposed to receive 15 minutes of speech/language therapy and 15 minutes of OT twice per week in addition to 60 minutes per day of specialized instruction according to the IEP. After the first week of school, she requested to know what was being done during the therapy but was told by the Preschool/ECSE Teacher that the IEP services would not start until the following week. She also reported being informed that the

specialized instruction would be provided by the Preschool/ECSE Teacher in the classroom "*as often as she [the Preschool/ECSE Teacher] thought the student needed it to meet her goals*".

The mother stated that she provides the student's diapers for classroom use and that the student is allergic to LUVs diapers. The mother indicated that this allergy is written in the student's IEP; however, the student was sent home in a LUV's diaper on the second day of school which resulted in an allergic rash. The mother stated, "*The Preschool/ECSE Teacher blamed it on a para and said they were unable to find the student's diapers that I brought when the student met the Preschool/ECSE Teacher*". The parent believes that the school staff working with the student were unaware of her IEP and failed to provide the required IEP services beginning on the first day of the 2024-25 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.320(a)(7) require the IEP to include the projected date for the beginning of the special education and related services as well as the anticipated frequency, location, and duration of each of those services.

Federal regulations at 34 C.F.R. 300.323(a) require that school districts have an IEP in effect at the beginning of each school year.

In addition, 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.

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 (FAPE).

Finally, 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 *Special Education Reimbursement Guide: State Categorical Aid* and allows paraprofessionals to provide direct instruction to students with disabilities under the supervision of an appropriately certified teacher.

Findings of Fact

Based upon a review of documentation and interviews, the following are a finding of the facts related to this allegation:

1. USD #290 has a 2024-25 School Year Calendar and a separate 2024-25 Preschool ONLY School Year Calendar.
2. The first day of the 2024-25 school year for the student was on August 14, 2024.
3. The IEP in effect on the first day of the 2024-25 school year is dated March 5, 2024 and requires OT for 15 minutes twice per week; speech/language therapy for 15

minutes twice per week; and 60 minutes per day of specialized instruction five times per week. All of these services are to be provided in the Early Childhood setting beginning on March 5, 2024 and ending on March 4, 2025.

4. The present level of academic and functional performance in the March 5, 2024 IEP states. "*According to the school nurse, the student has food sensitivities to grape juice, carrots, and dairy*".

5. Under the Participation with Nondisabled Peers section of the March 5, 2024 IEP, the following three clarifications are made:

   a. *"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 calendar".*

   b. *"The IEP team has determined 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 field trips, assemblies, special events for the general education classroom or school, state- or district-wide assessments, and other activities".*

   c. *"At the beginning of each school year, elementary students receiving services under an IEP may remain in the general education classroom in order to establish an understanding of classroom procedures and routines and to facilitate participation in general education classroom/building activities. Special Education pull-out services will commence no later than 5 (five) school days following the first full day of the school year.*

6. Documentation shows the SLP provided services to the student on August 14, 15, and 16, 2024 by pushing into the student's classroom. No services were provided to the student during the week of August 19 - 23, 2024. The student also received speech/language therapy services on September 4, 9, 11, 16 and 25, 2024. The records note that the student was absent on September 18 and 23, 2024.

7. Documentation shows the OT provided services to the student on August 15, 16, 19, 22, 26, and 28, 2024 as well as on September 4, 9, 11, 16, 23, and 25, 2024. The records note that the OT was unavailable to provide services on September 30 and the student was absent on October 1, 2024.

8. Documentation shows that data was collected on the student's IEP goals in the classroom setting during the weeks of August 19 and 26 as well as September 2, 9, 16, and 23, 2024.

9. The Daily Communication Logs support the provision of services reported on the OT and SLP Logs and the IEP goal data collection sheets.
10. The student's Daily Schedule shows classroom instruction occurring from 12:45 PM to 2:50 PM each school day. Documentation support that the student is being supervised 100% of the time by a school staff member e.g. ECSE teacher, OT, SLP, and/or one of the paraprofessionals.
11. Documentation found the parent requested a transfer to the preschool program at Lincoln Elementary School on September 26 and this request was granted on September 27, 2024. Due to staffing, the student was not allowed to transfer to the new school until October 4, 2024 and the parent chose to keep the student home in the interim.
12. The parent reports that since that time, the student is happy to go to preschool at Lincoln Elementary School and that the student is making progress towards achieving her IEP goals.

Analysis / Conclusion

In this case, the parent had three concerns. The first concern was that the related services of OT and speech/language therapy required by the student's IEP were not being provided when school started on August 14, 2024. Documentation and interviews found that speech/language and OT services began during the first week of the school year. However, the documentation shows the student was not offered the required 30 minutes per week of speech/language therapy during the week of September 9 - 13, 2024 and, thus, USD #290 failed to implement the IEP as written during that time period. Subsequently, the student was transferred at parent request from the preschool program at Sunflower Elementary School to the preschool program at Lincoln Elementary School where the parent reports the IEP being implemented and the student making progress towards her IEP goals.

Based on the foregoing, USD #290 is found ***OUT of compliance*** with 34 C.F.R. 300.323(c)(2) because the IEP was not implemented as required for the provision of the speech/language services during the week of August 19 - 23, 2024. However, while USD #290 did not implement the student's IEP as written for one week at the beginning of the school year, USD #290 did provide the student with a free appropriate public education during the 2024-25 school year to date as the student is making progress towards her IEP goals despite missing the 30 minutes of required speech/language therapy.

In addition, the parent was worried that the 60 minutes per day of specialized instruction was not being provided by the special education teacher. However, the IEP requires the 60 minutes per day of specialized instruction to be provided in the early childhood setting, which in this case is the preschool classroom taught by the Preschool/ECSE Teacher with the support of two classroom paraprofessionals and the related services staff. The student's schedule shows the student is receiving instruction between 12:45 and 2:50 PM each day from the classroom teacher, related services providers, and/or one of the paraprofessionals. Based on

the foregoing, USD #290 is found ***IN compliance*** with the requirement to implement the IEP as written and to provide the student with FAPE.

Finally, the parent was concerned that the mistake that was made in regards to the use of the appropriate diapers was a result of the Preschool/ECSE Teacher not being aware of what was included in the student's IEP. Documentation found that the allergy to LUV's diapers is not included in the student's March 5, 2024 IEP. While the student's teacher and classroom staff should be aware of any allergies or medical conditions which may impact the student in the school setting, the LUV's allergy is not included in the student's current IEP and, as such, the district was not required to know and implement this information under the IDEA. Therefore, in this particular case, USD #290 is found to be ***IN compliance*** with the requirement to implement the IEP as written.

In the future, the parent may want to have this information documented in the Legal Educational Decision-Maker Input and Concerns section of the student's IEP if she believes it is relevant to providing the student with FAPE.

In addition, USD #290 is cautioned to review and revise the three clarification statements in the Participation with Non-Disabled Peers section of the IEP which describes the district's procedures and practices regarding the implementation of an IEP which directly affects when compensatory services must be considered for student's missing specialized instruction and/or related services during specific periods of time during the school year as well as directly affecting when a student who receives "pull out" minutes will start to receive their required IEP services when school begins.

The first two clarification statements unilaterally deny the need for any compensatory services due to situations in which the district is unable to provide the required specialized instruction or related services due to a variety of reasons.

The third clarification statement is not individualized for each student with the wording of "***may*** *remain in the general regulation classroom*" as well as "*Special Education pull-out services will commence* ***no later than 5*** *(five) school days following the first full day of the school year*". This subjective language makes it unclear to the parent and does not pass "the stranger test" for making the IEP clear to all parties.

It is noted that the first two clarification statements do not apply to the student who is the subject of this investigation because that particular student did not miss any services due to any of the specific situations described. The third clarification statement also does not apply to this particular student because the student is placed 100% of the time in the general education preschool setting and receives no "pull out" services.

However, these statements appear to unilaterally make a predetermination that compensatory services are not necessary and usurps the IEP team's authority to determine whether a student was denied educational benefit because of a disruption in educational services which

may have impacted the provision of FAPE. Please refer to the *Office of Special Education Programs (OSEP) Dear Colleague Letter to Wolfrum* dated January 10, 2022 which states,

> *. . . Generally, 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 individualized education program (IEP) Team in accordance with the requirements in 34 C.F.R. 300.320 - 300.324.*

Issue Two

USD #290, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by not providing the required paraprofessional support on September 5, 2024.

Parent Position

The parent reported that USD #290 failed to provide the required paraprofessional support for the student on September 5, 2024 which resulted in the child suffering an injury leaving a bite mark/bruise on the child's arm. The parent communicated with the Preschool/ECSE Teacher regarding her concern and was told that the injury did not occur at school because the student is always supervised by a paraprofessional. The parent was later told that the paraprofessionals were not with the student at all times on September 5, 2024.

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.

Findings of Fact

Based upon a review of documentation and interviews, the following are a finding of the facts related to this allegation:

1. On September 6, 2024, the parent sent a Class Dojo message to the Preschool/ECSE Teacher reporting a bite mark on the student's arm and questioning what had happened the previous school day.
2. The Preschool/ECSE Teacher responded to the parent in Class Dojo that same day stating, *"She is with a para all day and was not in close contact with any other child in her class and none of us saw her fall or hit her elbow/arm at any time during school."*
3. The parent reported she was told by Paraprofessional #1 that neither para was with the student the whole day on September 5, 2024 because the Preschool/ECSE Teacher stayed in the classroom with the student while the two paraprofessionals assigned to the classroom took the rest of the class to the lunchroom.

4. USD #290 stated in the Response to the Allegations that *"The Preschool/ECSE Teacher was conveying the fact the student was never alone and no one saw her get hurt. The student is supervised 100% of the time she is on school property. That does not mean it is always by a paraprofessional. On the day in question, the student may have stayed in the classroom with the Preschool/ECSE Teacher while the paras took the other students to the lunchroom. She was, however, supervised."*

5. The IEP in effect on September 5, 2024 was developed on March 5, 2024.

6. The March 5, 2024 IEP requires 30 minutes per week of OT; 30 minutes per week of speech/language therapy; and 60 minutes per day of specialized instruction in the early childhood setting. No supplementary aids or services are included in the IEP and the IEP specifically does not require access to paraprofessional support throughout the school day.

7. During an interview with Paraprofessional #1, it was reported that the student remained in the classroom with the Preschool/ECSE Teacher on September 5, 2024 while the two paraprofessionals accompanied the rest of the class to the lunchroom.

Analysis / Conclusion

In this case, the parent was concerned that the student came home from school with a bite mark/bruise on September 5, 2024. The parent was told the injury did not occur at school because the student is supervised 100% of her school day. The parent believes this supervision is required by the student's IEP and is being provided by either one of the two paraprofessionals assigned to the student's classroom.

However, the IEP in effect on September 5, 2024 is dated March 5, 2024 and only requires 30 minutes per week of OT; 30 minutes per week of speech/language therapy; and 60 minutes per day of specialized instruction in the early childhood setting. The IEP does not include any supplementary aids or services and the IEP specifically does not require access to paraprofessional support throughout the school day. Regardless, USD #290 did report that the student is supervised 100% of the time she is on school property and interview and documentation found this supervision was provided through a combination of the two classroom paraprofessionals and the Preschool/ECSE Teacher on September 5, 2024.

Based on the foregoing, USD #290 is found to be ***IN compliance*** with the requirement to implement the student's IEP as written.

Summary of Conclusions/Corrective Action

ISSUE ONE: Interviews and documentation support a finding that USD #290 did have an IEP in effect for the student at the beginning of the 2024-25 school year as required by federal regulations at 34 C.F.R. 300.323(a) . However, USD #290 is found OUT of compliance with the requirements of federal regulations at 34 C.F.R. 300.323(c)(2) because the IEP was not implemented as required for the provision of the speech/language services during the week of August 19 - 23, 2024.

The following corrective action is ordered:

1. No later than January 15, 2025, USD #290 will provide the KSDE with an assurance statement that it will meet the requirements of federal regulations at 34 C.F.R. 300.323(c)(2) and ensure that the IEPs of all students are being implemented as written.

2. While noncompliance is identified because the district failed to provide the required speech therapy services during the week of August 19 - 23, 2024, the student's subsequent progress towards achieving her IEP goals indicates this noncompliance did not impact the provision of FAPE to the student. As such, no compensatory services are ordered.

ISSUE TWO: Interviews and documentation support a finding that USD #290 in IN compliance with 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. In this case, the student's current IEP does not require any supplementary aids or services, specifically paraprofessional support services. As such, no corrective action is ordered.

It should be noted that while the current IEP does not require any paraprofessional services, there is evidence that the student is supervised 100% of the school day due to behaviors associated with her exceptionality of Autism. USD #290 provides this level of support through the structure of the district's preschool program.

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. 290
Ottawa Public Schools: 25FC290-001

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on October 30, 2025, by --------, on behalf of her child, --------. In the remainder of this decision, -------- will be referred to as "the complainant," and -------- will be referred to as "the student." An investigation of the complaint was undertaken by a complaint investigator on behalf of the Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, a Complaint Report, addressing the allegations, was issued on November 29, 2024. That Complaint Report concluded that there were violations of special education statutes and regulations

Thereafter, the complainant filed an appeal of the Complaint Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the original complaint, the Complaint Report, the complainant's notice of appeal, and the district's response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

Preliminary Matters

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.

Discussion of Issues On Appeal From Complainant

The report identified two issues:

ISSUE ONE: USD #290, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by not providing the required special education and related services at the beginning of the 2024-25 school year.

ISSUE TWO: USD #290, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by not providing the required paraprofessional support on September 5, 2024.

The complainant appealed the conclusions of the investigator in two separate emails, both dated November 30, 2024. The first email stated in its entirety:

> *"Good morning. I'd like to appeal the decision about (the student's) case with USD 290. I'll be printing off pictures of conversations and sending them."*

This communication did not identify what issue was being appealed, or why the complainant believed any fact or conclusion in the report to be incorrect

The complainant also asked for a copy of a photo showing the student at a Lego station. That picture was sent to the complainant by the investigator.

In the separate email, also dated November 30, 2024, the complainant sent a screen shot of undated face book messages and undated personal notes made by the complainant. This email did not identify what issue was being addressed nor how these messages and notes demonstrated an error in the findings and conclusions in the report.

Both issue one and issue two in the report alleged that the district failed to implement the student's IEP. Nothing in this appeal identifies or describes a failure to implement the student's IEP. Even if the student was briefly unsupervised on September 5, 2024, which is not supported by the preponderance of the evidence, that does not support a finding of a failure to implement the IEP because the IEP did not require paraprofessional support throughout the school day (See Report, p. 12).

The Appeal Committee has already noted, above, that Kansas regulations specify minimum requirements for appeal of a complaint report, namely: "Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect."

Again, the burden for supplying a sufficient basis for appeal is on the party submitting the appeal. The appeal process is a review of the Complaint Report. The Appeal Committee's function is to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report.

With regard to this appeal, the Appeal Committee has reviewed all of the material submitted in this appeal, and has identified no basis to overturn any portion of the report. Therefore, the Appeal Committee finds that there is sufficient evidence to support the findings and conclusions related to Issues one and two in the report.

The Appeal Committee received an additional notice of appeal from the parent on December 12, 2024. The original complaint report was issued on November 29. The time in which to submit an appeal expired on December 10. Therefore, the Appeal Committee is prohibited by state regulation to consider this additional notice of appeal. However, the Appeal Committee notes that the additional notice of appeal contained nothing that would have altered the decision in this appeal because it did not comply with the state regulation, requiring each notice of appeal to include a: "detailed statement of the basis for alleging that the report is incorrect."

The additional notice of appeal listed two grounds for appeal. The Appeal Committee has provided a brief statement explaining why this additional notice of appeal would have been found to be insufficient for each of the stated grounds for appeal:

1. *Factual Inaccuracies - The investigation report contains multiple misrepresentations of events - Statements attributed to parties are demonstrably incorrect - Critical context and evidence have been omitted or mischaracterized .* The Appeal Committee notes that this "ground for appeal" does not state what statements in the report are incorrect, omitted or mis-characterized, nor how such alleged statements make any finding in the report incorrect.
2. *Procedural Concerns - Failure to conduct a comprehensive and impartial investigation - Apparent bias in fact-finding process - Lack of due diligence in verifying submitted statements*
   The Appeal Committee notes that this "ground for appeal" does not state how there was a failure to conduct a comprehensive and impartial investigation, what bias was used in the fact-finding process, nor what in the report supports the contention that there was a "Lack of due diligence in verifying submitted statements."

This decision does not mean the complainant has no remedy for the concerns expressed in this appeal. The complainant, for example, can request an IEP meeting and ask for the team to amend the student's IEP to include specific supports for which the investigator concluded were not addressed in the student's IEP, for example: use of appropriate diapers due to the student's allergy to LUVs diapers (Report, p. 9) and with regard to a bruise possibly occurring at an unsupervised time, but which the investigator found that "the IEP specifically does not require access to paraprofessional support throughout the school day." (Report, p. 12).

Conclusion

For the reasons stated herein, the Complaint Report is sustained in full.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 19th day of December, 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 #229, BLUE VALLEY SCHOOLS
ON OCTOBER 25, 2024

DATE OF REPORT: DECEMBER 1, 2024

This report is in response to a systemic and child complaint filed with the Kansas State Department of Education by -----, a paraprofessional employed in the social emotional classroom at Cottonwood Point Elementary School. In the remainder of this report ----- will be referred to as "the complainant."

The systemic complaint is on behalf of all students in this classroom (Issue 1). Evidence for a student, ----- was provided by the complainant on behalf of the systemic complaint and this student will be referred to as "student A." A total of six students were named in the complaint.

The individual child complaint is on behalf of -----, a student in this classroom (Issues 2 and 3). In the remainder of the report, ----- will be referred to as "the student."

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" and the Social Emotional Resource (SER) room will be referred to as "the resource room".

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 25, 2024 and the 30-day timeline ends on November 24, 2024. The investigator requested a one-week extension to complete the investigation. It was granted and the revised timeline ends on December 1, 2024.

Evidence Reviewed

The investigator spoke with the complainant on October 28, 2024 and emailed several times to clarify the complaint, determine which issues were systemic and which were directed to a specific child. The scope of the investigation was revised one time after further clarifying the letter of complaint with the complainant.

The investigator spoke with the staff at the district on the October 29 and October 30, 2024 to clarify the complaint. The investigator interviewed Katie Burrow, Building Principal, Katie Schwiebert, teacher in the classroom and Amanda Newell-Green, social worker in the classroom on November 18, 2024.

During the investigation, the Investigator Donna Wickham 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. Notice of Meeting dated August 19, 2024
2. Student Evaluation report dated September 4, 2024
3. Student Individual Education Program (IEP), dated September 4, 2024
4. Student Meeting notes from September 4, 2024 IEP
5. Student Behavior Graph excel spreadsheet dated between September 4, 2024 – October 31, 2024
6. Amended Student IEP, dated October 2, 2024
7. Student Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent (PWN), dated October 2, 2024
8. IEP Progress Report, dated October 11, 2024
9. District Response dated November 13, 2024
10. Email from the director of special education to investigator dated November 18, 2024 at 1:29 p.m.
11. Summary of a Contact with an Employee (complainant) dated October 15, 2024
12. District Paraeducator Handbook, 2023-2024
13. Student Behavior Data sheet, undated
14. Student Reinforcement Plan, undated
15. Data Sheet for Student A on a clipboard dated October 29, 2024
16. AC Behavior Cheat Sheet on a clipboard
17. Student a Token Board with photos of Student a and staff on a clipboard
18. Photo of open 3 ring binder showing Student a Behavior Intervention Plan opened in notebook
19. Opened clipboard case showing student schedule, Behavior Intervention Plan, and iPad plan for Student a
20. District Policy Manual – Student Records, Code 3810, last revised January 13, 2020
21. District Policy Manual – Access To and Release Of Student Records, Code 3811, last revised April 13, 2015

22. Administrative Guidelines, 3000 Students, Directory Information Records Administrative Guidelines Code 3820 AG

23. District Policy Manual - Students Title Directory Information Records Code 3820, Last Revised September 8, 2014

24. District Paraprofessionals (SPED) Training Courses (Paraeducator Handbook, Paraeducator Orientation, Paraeducator Confidentiality & Communication, Paraprofessional Behavior Basics)

Background Information

This complaint addressed a systemic issue regarding student information in a resource room not being protected by the staff and a child complaint regarding IEP implementation and producing progress notes using accurate data collection for an eight-year-old third grader in the resource room. The student in the child complaint is eligible for special education and related services under the category of emotional disability. The student is in a classroom for students with social emotional needs and is staffed by a certified teacher, social worker and paraeducators. As well, this student received special education services from an occupational therapist and the behavior intervention plan is monitored and revised by a board certified behavior analyst (BCBA).

Issues Investigated

1. ISSUE ONE: Did the district protect personally identifying information (PII) of the students in the resource room during the 2024-2025 school year?

2. ISSUE TWO: Did the district use accurate data to complete IEP progress reports for the first quarter of the 2024-2025 school year for the student?

3. ISSUE THREE: Did the district implement the IEP of the student, specific to services during the 2024-2025?

Issue One

Did the district protect personally identifying information (PII) of the students in the resource room during the 2024-2025 school year?

Applicable Law

Federal regulations at 34 C.F.R. §§300.610 through 300.626 identify the confidentiality requirements that apply to children under Part B of the IDEA. They protect the personally identifiable information (PII) in education records collected, maintained, or used under Part B of the IDEA.34 C.F.R §300.32 defines PII as 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 of student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Federal regulations at 300.623(a) and (c) state that each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages and all persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.123 and 34 CFR part 99.

Under 34 CFR § 300.622(a) of the IDEA Part B regulations, parental consent must be obtained before PII is disclosed to parties, other than officials of participating agencies. Under IDEA Part B and pursuant to the FERPA regulations at 34 CFR § 99.31(a)(1), prior written consent is not required to disclose PII from student education records to school officials, including teachers, within the educational agency or institution, whom the agency or institution has determined to have legitimate educational interests. 34 CFR § 99.31(a)(1)(i)(A).

Unless the district has parent consent, or a FERPA exception applies, a district must prevent the disclosure to any unauthorized person of personally identifiable information from student records. Disclosure is the release, transfer or other communication of records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic.

Analysis: Findings of Fact

The complainant alleged that clipboards containing student data tracking sheets, visual schedules and detailed behavior intervention programs that were identified with the student's name were left lying around or had been misplaced for hours at a time. Further, confidential information regarding specific student's involvement with the District of Child and Family (DCF) and the student's family were discussed between staff members in a location where the students or peers could overhear.

The district responded that they take the confidentiality of students and IEP materials very seriously. All classified staff and paraprofessionals participate in training at the start of each school year regarding FERPA, confidentiality and protecting personally identifying information. The district states that the classroom teacher, social worker and paraprofessionals who support the students meet in the resource room to discuss information related to implementing the IEP and improving instruction for student progress following district policy and procedures. They state they utilize a clipboard case to store important IEP information (data collection sheets, student accommodations, BIP directions) for each student. This system allows the paraeducator to securely and confidentially carry the necessary documentation when accompanying the student to a general education class. While the clipboards initially contained the name of the students they now include the student's initials following the complainant talking with the principal about the names of student's being exposed on the data sheets.

Photo images of a student's clipboard and contents show that the student's behavioral data sheet contained the student's initials on October 29, 2024 in a clipboard case that is opened. The student's first name is contained on an undated behavior cheat sheet stored in a clipboard

case that is opened, The student's name and photos of the student on the student's token board in a notebook with a closing cover; a behavior intervention plan with the student's name and date of birth and parent's name is in an opened 3-ring notebook; student's schedule and the student's BIP and iPad plan with the student's initials are placed in an opened clipboard case.

The building principal and classroom teacher acknowledged during their November 18, 2024 interview that the complainant had spoken to each individually about concerns that student information could be exposed. The building principal stated that out of extra precaution the documents replaced the student's names with his or her initials. They stated that prior to the complaint speaking with the teacher and principal they already used a distinct color of clipboard case for each student, so the cases were not identifiable on the outside with any student. The building principal stated that this practice was to balance the need for privacy with all staff having convenient access to review and implement student behavior intervention plans and collect data wherever the student was in the building. The staff stated that at all times the clipboard cases were under the control of school staff and not left out or behind in unsecured parts of the building.

The building principal and classroom staff stated that token economy charts and visual schedules containing personally identifiable information are used directly by students during instruction whether in the resource room or general classroom. These teaching accommodations may include photos of the student to assist the student to transition to become a more symbolic communicator. Further the district staff stated that the students in some cases carried these accommodations since they used them for self-management.

The district staff stated during the November 18, 2024 interview that students are not in the general educational classes for academic instruction so the resource teacher and general education teacher schedule time to talk about the student as needed. Paraprofessionals implement the social, behavioral, management IEP goals using the materials contained in the clipboard cases. They further stated that when a conversation needs to occur about a student, they access the social worker's office and any phone conversations with parents or other staff, or agency can office in that office as well.

The District Policy Manual, Section 3000 Students, Directory Information Records Code 3820 defined the following as directory information "that is general in nature and is usually regarded as non-detrimental to the student, including the following: Name, address, e-mail address, telephone listing, date and place of birth, grade level, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, awards and honors received, and the most recent previous educational agency or institution attended by the student." The manual further stated, "Directory information may be released without authorization from the adult student, the student's parents, or the student's legal guardian." A parent may inform the district in writing that he or she does not want information about the student designated as directory information. The director of special education in an

email to the investigator confirmed that none of the parents in the classroom made this request.

Documentation provided by the district showed that all six paraeducators in the classroom completed a training on Confidentiality and Communication training as part of their orientation. In this training there is a training video with a review of FERPA and a statement, "Share student information only with staff responsible for the student." Another slide includes three bullets for student confidentiality, 1) protect student information from being disclosed, shared, released; 2) do not share student information regarding special education, exceptionality, characteristics; 3) protect student identities and special educaiton status. The para training video associated with the district SPED Paraeducator Orientation specified that the IEP at a Glance document contains confidential information. Further, on the slide titled, "Relationship with Students and Parents" it is listed that a role of the paraeducator is to "respect the dignity and privacy of all students and families." Additionally, spreadsheets for each paraprofessional documented the date each took the courses and additionally, the paraprofessionals had completed training in Student Privacy Rights (FERPA), Paraprofessional Behavior Basics, Autism, and ESI: What School Staff Need to Know.

Conclusion

Two issues were considered for the investigation. First, whether the personally identifiable information was safeguarded and second, whether the district only allowed authorized persons with legitimate educational need to access the personally identifiable information.

Federal regulations at 34 C.F.R. §§300.610 through 300.626 protects the personally identifiable information (PII) in education records collected, maintained, or used under Part B of the IDEA. IDEA and FERPA define PII as: 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 of student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. In this case it is found that the district safeguarded the student's PII by storing student data sheets and IEP documents in closing clipboard cases as described in the findings. Any materials that showed the image of a student were determined to be an instructional accommodation that the student used for self-management and was regularly carried by the student. Further, the classroom had secure locations and time allocated after school to discuss student information related to the student's IEP or instructional plan. Evidence was not found that the staff discussed personal student information in front of students or staff.

The second part of this investigation addressed FERPA and IDEA regulation 34 C.F.R. 99.31(a)(1)(i)(A) which permits disclosure of PII to school officials who the district has determined to have legitimate educational interests. A school official has a legitimate educational interest if the school official needs to review an education record in order to fulfill his or her professional responsibility

There is one exception. IDEA regulations 34 C.F.R. 300.622(b)(1) adds that parent consent is not needed when PII is released to school officials for the purpose of meeting the requirements of the IDEA. However, that does not mean PII can be given to all school officials when only one needs the information for the purpose of meeting the requirements of the IDEA. This regulation means that the release of information may be made to school officials who need the information for the purpose of meeting the requirements of the IDEA. When PII is released to school officials who do not need that information to fulfill his or her professional responsibility or to otherwise meet the requirements of the IDEA, a violation of both FERPA and IDEA results.

In this case it is found that PII was shared only with those with a professional responsibility for the student's education. The district created behavior cheat sheets so that those with a need to know had access by storing it in the clipboard cases which were transported by the staff. The paraprofessional staff training that occurred was inclusive of the responsibilities for guarding PII. As a part of the para training, they are instructed, "Share student information only with staff responsible for the student." This statement is defined as any staff member who is the teacher or supervising the student for any part of the school day could be considered "responsible for the student."

Based on the foregoing, it is found that USD #229 protected personally identifying information (PII) of the students in the resource room during the 2024-2025 school year and no violation occurred.

Issue Two

Did the district use accurate data to complete IEP progress reports for the first quarter of the 2024-2025 school year for the student?

Applicable Law

Federal regulations at 34 C.F.R. §300.320(a)(3)(i) states that a description of how the child's progress toward meeting the annual goals will be measured will be provided to the parents.

Analysis: Findings of Fact

The findings of Issue One are incorporated herein by reference.

The complainant alleged in the complaint that "data tracking is not done with fidelity. The operant definition for the trackable behavior is disregarded by staff based on their opinions. Other paras have expressed that they think the expectations put in place by the special education team and the student's father were too rigid and would prevent him from earning a reward. As a result, the student began receiving zero tallies."

The district responded that paras are trained, and the data is collected with fidelity, under the oversight of a district BCBA. The data collection sheets, and graphing of the collected data are used to accurately report progress to parents.

The IEP dated September 4, 2024 indicated that progress on goals will be reported with the same frequency as general education report cards. Three goals were identified with measurable goals

a. By the end of the IEP year, given modeling, direct instruction and practice in social skills, [student] will demonstrate increased cooperative interactions with peers in a small group activity as measured by achievement of an 83% on a related rubric across 3 consecutive trials. Baseline = 8%, 17%, 8% across 3 consecutive trials

b. By September 2025, when rated on the Replacement Behavior Rubric, [student] will score an average of 12/15 or (80%). Currently [student] scores 4/15 (27% overall); 1/5 on emotional dysregulation, 1/5 on time to regulate, 2/5 using a replacement behavior.

c. By the end of the IEP year, given direct specialized instruction and opportunities to participate in problem solving practice, [student] will demonstrate an improved capacity to self-advocate and communicate about the factors that are making it difficult to for him to maintain emotional regulation at school as measured by achievement of 88% on a related rubric across four consecutive measured instances Baseline: Currently when triggered, [student] will elope from the area and hide. When approached by an adult, [student] becomes physically aggressive (hitting and kicking, throwing objects, and breaking items). On the related rubric, [student] scored 25%, 31%, 25%, 25%

The Progress Report dated October 11, 2024 used data collected on the behavior excel spreadsheet

The behavior graph and excel spreadsheet corroborated the scores reported on the Progress Reports.

Conclusion

The complainant's concern was that the student's data were not accurately collected due to those collecting data not being appropriately or adequately trained and not agreeing with the student's expectations. IDEA does not expressly provide regulation or guidance about accurate data collection. Instead, accurate data collection is paramount for reporting accurate progress to the parent and IEP team at regular intervals to ensure the student is making progress.

The Kansas Process Manual states: Once the IEP team has developed measurable annual goals for a child, the team must include a description of how the child's progress toward meeting the annual goals will be measured. This measure of progress will enable parents, children, and educators to monitor progress during the year, and, if appropriate, to revise the IEP to be consistent with the child's instructional needs. The idea is to use progress monitoring information in a formative way, to help with decision-making about instructional changes that may be needed. If a measurable annual goal is written correctly with the 4 components (behavior, criteria, condition, and timeframe) the requirement of how progress toward the goal

is measured is contained within the goal and no additional information is required. … 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."

Each of the IEP goals contain the behavior, criteria, condition, and timeframe. Interview with the district staff described strategies for ensuring data were collected with fidelity. Progress Reports were written based on data entered into the excel spreadsheet. Initial training was provided by the district and ongoing training was described by the district staff.

Therefore, it is found that USD #229 used accurate data to complete IEP progress reports for the first quarter of the 2024-2025 school year for the student.

Issue Three

Did the district implement the IEP of student, specific to services during the 2024-2025 school year?

Applicable Law

According to Federal Regulations at 34 C.F.R. 300.323(c)(2) as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP and State Regulations at (K.A.R. 91-40-16(b)(2) further define implementation as "once the IEP has been developed services are to be initiated within 10 school days after written parent consent is granted."

Analysis: Findings of Fact

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

The complainant alleged that paras expressed that they thought the behavioral expectations of the student were too rigid and would prevent the student from earning rewards and from that point on the student received zero tallies. The complainant alleged that eight weeks into the school year the student had not been doing the same schoolwork as every other third grader despite earning rewards and receiving zero tallies as if the student had participated. The complainant wrote in the complaint that the staff did not strictly follow the behavior plan, track data, implement token boards and had not received adequate training to implement the IEP with fidelity. Finally, the complainant alleged that the student had told the social worker that he does not do work and that he hadn't completed phonics or mathematics since the first few weeks of school.

The district responded that they implemented the student's IEP with fidelity. They stated in their November 13, 2024 response that they have daily schedules and service logs documenting that service minutes were provided and that progress reports show the student's progress on each of the student's goals.

The IEP dated September 4, 2024 developed based on the September 4, 2024 Evaluation Report includes a behavior intervention plan, three goals and nine accommodations. The student received service minutes for special education, social work and occupational therapy. This IEP was revised on October 2, 2024 to revise placement to a more restrictive setting and decrease social work services while equally increasing special education minutes the same amount.

The student's daily schedule showed times in which the goals were taught, and that phonics and mathematics were taught. The behavior excel spreadsheet and reinforcement plan showed that data were collected on the behavior goal. The Progress Report dated October 11, 2024 reported progress to demonstrate that IEP goals and behavior intervention plan were implemented. Interview with the staff and student work showed that the accommodations were used.

Conclusion

It is found that the data, student work, progress notes support that the amended IEP dated October 2, 2024 was implemented. Interview with the district staff demonstrated that they were able to describe the evidence provided. Therefore, it is found that USD #229 implemented the IEP of the student, specific to services during the 2024-2025 school year.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of §§300.610 through 300.626; 34 C.F.R §300.32; C.F.R. 300.623(a) and (c); 34 C.F.R §300.123; 34 CFR § 300.622(a); and 34 CFR § 99.31(a)(1)was not found, based on documentation and interview with parent and district staff. Corrective action is not required.

2. ISSUE TWO: A violation of 34 C.F.R. §300.320(a)(3)(i) was not found, based on documentation and interview with parent and district staff. Corrective action is not required.

3. ISSUE THREE: A violation of 34 C.F.R. §300.323(c)(2) was not found, based on documentation and interview with parent and district staff. Corrective action is not required.
   34 C.F.R.

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 NOVEMBER 1, 2024

DATE OF REPORT:DECEMBER 2, 2024

This report is in response to a complaint ---------- filed with our office, on behalf of their child, ---------- For the remainder of this report ---------- will be referred to as "the student." ---------- will be referred to as "the parent." USD 231 will be referred to as "the district."

Investigation of Complaint

The parent filed a complaint on November 1 and an amended complaint on November 4. Because the amended complaint was filed early enough in the investigation to give the opportunity for the complaint investigator to investigate the additional issues and the district to respond to all issues, the investigator combined all issues from the initial and amended complaints into this investigation. 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 parent through a November 4 phone call, gathering additional information and verifying the specific allegations to be investigated. Laura Jurgensen provided the specific allegations to be investigated to the parent and the district via email on November 7. The parent did not dispute how the complaint investigator framed the issues to be investigated by the date the complaint investigator set and so the complaint investigator provided the issues to be investigated to the district on November 11. The parent and investigator also exchanged multiple emails. The district provided the investigator with a response to the issues the investigator identified, as well as all documentation the investigator requested. On November 20, the investigator interviewed the district special education director, school psychologist, IEP case manager, special education coordinator, assistant principal, and attorney for the district.

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 November 1, 2023, except for the indicated purpose. The parent's initial and amended complaints included allegations that occurred prior to November 1, 2023, and this complaint investigator did not investigate those allegations as they did not meet the requirements of K.A.R. § 91-40-51(b)(1).

Additionally, the parent alleged a violation of 34 C.F.R. § 300.324(a)(1), indicating the district changed the student's draft IEP between the November and December 2023 meetings without parent consent. The investigator informed the parent in the November 11 email identifying the issues to be investigated that this is not an allegation of a violation of special education law as there is no requirement for a district to obtain parent consent when revising draft documents.

In completing this investigation, the complaint investigator reviewed all information the parties provided to determine its relevance to the issues being investigated. The investigator relied on the following information in analyzing the issues in this complaint investigation:

- Draft Evaluation Team Report, Oct. 23, 2023. (Reviewed and questioned parties as part of determining the date of the determination that the student needed special education and related services.)
- Email Exchange Between Parent and District School Psychologist, Oct. 24–Nov. 15, 2023. (Emails reviewed prior to Nov. 1, 2023, only to gain context into ongoing events.)
- Notice of Nov. 15, 2023, Meeting from District to Parents, Nov. 3, 2023.
- Email Exchange Between District and Parent Regarding November 15, 2023, IEP Team Meeting to Develop Student's IEP, Nov. 3–7, 2023.
- Email Exchange Between Parent and District School Psychologist, Nov. 10–Dec. 25, 2023.
- Evaluation Team Report, Nov. 15, 2023.
- Prior Written Notice and Request for Consent, Nov. 15, 2023.
- Evaluation, Eligibility, and IEP Team Meeting Notes, Nov. 15, 2023.
- Email Exchange Between Parent and School Psychologist, Nov. 20, 2023.
- Notice of Dec. 8, 2023, Meeting from District to Parent, Dec. 5, 2023.
- IEP Agenda, Dec. 8, 2023.
- IEP Team Considerations, Dec. 8, 2023.
- IEP, Dec. 8, 2023.
- IEP Meeting Notes, Dec. 8, 2023.
- Prior Written Notice and Request for Consent for the Initial Provision of Special Education Services, Dec. 8, 2023.
- IEP Team Meeting Notes, Dec. 8, 2023.
- Email from District Case Manager to Parent with Draft IEP, Notice of Meeting, Excusal from Attendance, Parent Consent for Release of Information and Medicaid Reimbursement, and Prior Written Notice and Request for Consent for the Initial Provision of Special Education Services, Dec. 12, 2023.
- Email from IEP Case Manager to Parent, Dec. 14, 2023.
- Emails from IEP Case Manager to Parent, Jan. 5 and 11, 2024.

- Email from Special Education Coordinator to Parent, Jan. 23, 2024.
- Letter from Parent to District Request Neuropsychological Evaluation of Student, Jan. 25, 2024.
- Email from IEP Case Manager to Special Education Coordinator and Special Education Director with Attached Letter from Parent to District Requesting Neuropsychological Evaluation of Student, Jan. 25, 2024.
- Email from District Special Education Director to Parent Responding to Parent's Request for a Neuropsychological Evaluation of the Student, Jan. 25, 2024.
- Email from District to Special Education Director to Parent Confirming Feb. 1 Meeting to Discuss Parent's Request for Additional Testing, Jan. 29, 2024.
- Email Exchange Between Special Education Director and Parent Regarding Parent's Jan. 25, 2024, Letter, Feb. 6–10, 2024.
- Notice of Mar. 4, 2024, Meeting from District to Parents, Feb. 22, 2024.
- Email Exchange Between District Special Education Director and Parent Regarding District's Request to Mediate, Feb. 29–Mar. 2, 2024.
- Notice of Mar. 7, 2024, Meeting from District to Parents, Mar. 7, 2024.
- Meeting Notes, Mar. 7, 2024.
- Email from Parent to District Special Education Director, Mar. 19, 2024.
- Letter from District to Parent Granting Parent's Request for an Independent Educational Evaluation, Mar. 22, 2024.
- Email Exchange Between Parent and District Special Education Director Regarding Parent's Request for a Neuropsychological Assessment, Apr. 2, 2024.
- Notice of May 9, 2024, Meeting from District to Parents, Apr. 29, 2024.
- Email Exchange Between Parent and District Special Education Director Regarding Student's 2024–25 Enrollment and Consent for Initial Provision of Special Education and Related Services, May 20–Oct. 14, 2024.
- Email Exchange Between Parent and District Special Education Director Regarding Evaluation Request, Consent for the Initial Provision of Special Education Services, Mediation, and Due Process, May 17–22, 2024.
- Prior Written Notice to Parent Denying Request for Neurological Evaluation, June 10, 2024.
- Email Exchange Between District Special Education Director and Parent, Jul. 16– 29, 2024.
- Email Exchange Between District Staff Tracking Whether Student Had Enrolled for the 2024–25 School Year, July 27–Sept. 1, 2024.
- Automatic PowerSchool Email from District to Parent with Student's Aug. 15 and 16, 2024, Attendance, Aug. 19, 2024.
- Email Exchange Between Principal and Parent, Sept. 5–Oct. 28, 2024.

- Email Exchange Between Parent and Special Education Director Regarding Parent's Request for IEP Team Meeting, Sept. 26–30, 2024.
- Parent's Complaint, Nov. 1, 2024.
- Screenshot of Student's 2024–25 Registration Status, Nov. 1, 2024.
- Parent's Amended Complaint, Nov. 4, 2024.
- District's Response to the Complaint, Nov. 18, 2024.
- Emails from District's Attorney to Complaint Investigator, Nov. 25 and 29, 2024.

Background Information

This complaint focuses on a student in the tenth grade during the 2023–24 school year, the main period covered by this complaint investigation. The period for this complaint investigation began toward the end of the initial evaluation of the student.

Issues

Through the complaint, the amended complaint, and the complaint investigator's discussion with the parent, the parent alleges eight issues upon which this investigation will focus:

Issue One: Whether the district properly obtained informed consent from the parent before the initial provision of special education and related services to the student. 34 C.F.R. §§ 300.9, .300(b)(1); K.A.R. §§ 91-40-1, -27(a)(2), (f)(4).

Issue Two: Whether the district held a meeting to develop an IEP for the student within 30 days of the determination that the student needed special education and related services. 34 C.F.R. § 300.323(c); K.A.R. § 91-40-8(f)(2).

Issue Three: Whether the district obtained informed parental consent, in accordance with 34 C.F.R. § 300.300(a)(1), prior to conducting a December 2023 reevaluation of the student. 34 C.F.R. § 300.300(c); K.A.R. § 91-40-27(a)(1).

Issue Four: Whether the IEP Team and other qualified professionals, as appropriate, reviewed existing evaluation data on the student, as part of the December 2023 reevaluation. 34 C.F.R. § 300.305(a)(1); K.A.R. § 91-40-8(c)(1).

Issue Five: Whether the district accurately provided the purpose of the December 2023 meeting in the notice of meeting. 34 C.F.R. § 300.322(b)(1)(i); K.A.R. § 91-40-17(b)(1).

Issue Six: Whether the district responded to the parent's request for a neuropsychological evaluation of the student with a prior written notice in a reasonable time. 34 C.F.R. § 300.503(a); K.S.A. § 72-3430(b)(2).

Issue Seven: Whether the district used the parent's refusal to consent to the district's offer of special education and related services to the student to deny the student's enrollment in the district for the 2024–25 school year. 34 C.F.R. § 300.300(d)(3); K.A.R. § 91-40-27(h).

Issue Eight: Whether the district's alleged failure to develop an IEP for the student within 30 days of the determination that the student needs special education and related services denied the student a free appropriate public education (FAPE). 34 C.F.R. § 300.101(a); K.S.A. § 72-3410(a)(2); K.A.R. § 91-40-2(a)(1), (e).

Issue One

Parent Consent for the Initial Provision of Special Education Services Applicable Law

The regulations implementing the Individuals with Disabilities Education Act (IDEA) define consent as, "(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication; (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time." (34 C.F.R. 300.9(a)–(c)(1).) The regulations implementing the IDEA also require, "A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child." (34 C.F.R. § 300.300(b)(1).)

Analysis: Findings of Fact

The beginning of the timeline for this complaint investigation coincides with the end of the student's initial evaluation. On October 23, 2023, the student's evaluation and eligibility team met to review the draft Evaluation Team Report. This occurred prior to the timeline for this complaint investigation, but the complaint investigator reviewed this as part of determining the date of the evaluation and eligibility team's determination that the student needed special education and related services. The parent requested that district staff gather additional information as part of the initial evaluation and so the district agreed to gather the information and meet again. (Email Exchange Between Parent and District School Psychologist, Oct. 24–Nov. 15, 2023.)

On November 15, 2023, the student's evaluation and eligibility team, including the parent, met to review the evaluation report and determine whether the student had a disability and needed special education services. (Notice of Nov. 15, 2023, Meeting from District to Parents, Nov. 3, 2023; Evaluation Team Report, Nov. 15, 2023; Prior Written Notice and Request for Consent, Nov. 15, 2023; and Evaluation, Eligibility, and IEP Team Meeting Notes, Nov. 15, 2023.) All evaluation and eligibility team members, including the parent, signed that they agreed that the student is eligible for special education services. (Evaluation Team Report, Nov. 15, 2023.)

The district explained, both in its response to the complaint and in the interview with the complaint investigator, that the district provides a Prior Written Notice to the parent regarding student eligibility and seeks parent consent, despite this not being required by federal or state special education law. In the Prior Written Notice the district gave to the parent to request the parent's consent for eligibility for services, district staff checked the box for the "IDENTIFICATION/ELIGIBILITY" section and indicated in that section that the student is eligible for special education. (Prior Written Notice and Request for Consent, Nov. 15, 2023.) The district also checked the "INITIAL SERVICES & PLACEMENT" section and indicated, "As explained below, an Individualized Education Program (IEP) proposing appropriate Special Education and

related services and an appropriate instructional environment for delivering special education and related services was written for your child." (Prior Written Notice and Request for Consent, Nov. 15, 2023.) There is not any explanation below regarding an IEP. (Prior Written Notice and Request for Consent, Nov. 15, 2023.) All explanation in this Prior Written Notice focused on eligibility. (Prior Written Notice and Request for Consent, Nov. 15, 2023.) Again, despite parent consent not being required for eligibility, the district sought and obtained parent consent on the November 15, 2023, Prior Written Notice that mostly referenced the student's eligibility with one statement, and no explanation, of the initial provision of special education services to the student. (Prior

Written Notice and Request for Consent, Nov. 15, 2023.) District staff acknowledged during the investigation that the box next to the "INITIAL SERVICES & PLACEMENT" section should not have been checked as the district did not intend for this Prior Written Notice and Request for Consent to request the parent's consent for the initial provision of services and did not include any information on the initial provision of services. (Email from District's Attorney to Complaint Investigator, Nov. 25, 2024.) Because district staff checked this box by mistake, district staff did not treat the parent's consent for eligibility as consent for the initial provision of special education services and made clear in nearly all communication to the parent from December 2023 through October 2024 the parent had not consented to the initial provision of special education services.

The team could not come to consensus on the content of the student's IEP and so the team ended the November 2023 meeting and scheduled a December 2023 meeting. (Initial Discussion with the Parent, Nov. 4, 2024; Interview with District Staff, Nov. 20, 2024; Notice of Dec. 8, 2023, Meeting from District to Parent, Dec. 5, 2023.) Between the November and December 2023 meetings, the district incorporated all items the parent requested into the draft IEP that the district provided for discussion at the December 2023 meeting. (Email Exchange Between District Special Education Director and Parent, July 16–18, 2024.) The notes from the December IEP Team meeting indicate that the team reviewed the draft IEP, and the team could not come to consensus as the parent had multiple concerns. (IEP Team Meeting Notes, Dec. 8, 2023.) Following the December 8, 2023, IEP Team meeting, the district provided the parent with a Prior Written Notice for the initial provision of special education services which delineated the services discussed at the December 8, 2023, IEP Team meeting, a Request for Consent, and the draft IEP the IEP Team discussed at the December 8, 2023, IEP Team meeting. (Email from IEP Case Manager to Parent, Dec. 14, 2023.) This investigation did not come across any evidence that the parent ever signed this request for consent for the initial provision of special education services for the student or that the district provided the student with special education services.

Following its offer for the initial provision of special education services for the student, the district made numerous efforts from January through October 2024 to obtain the parent's consent for the initial provision of special education services. Nearly every communication referenced in the Investigation of Complaint section of this report from the district to the

parent during this period included a reminder of and encouragement to consent to the district's offer of the initial provision of special education services. The district held additional meetings with the parent in March and May 2024 to continue to listen to the parent's concerns and encourage the parent to consent to the initial provision of special education services. (District's Response to the Complaint, Nov. 18, 2024.) On multiple occasions, the district also provided the parent with information on the parent's right to request special education mediation or file for a due process hearing to come on the initial provision of special education services to the student. (Email Exchange Between District Special Education Director and Parent Regarding District's Request to Mediate, Feb. 29–Mar. 2, 2024; Email Exchange Between Parent and District Special Education Director Regarding Consent for the Initial Provision of Special Education Services, Mediation, and Due Process, May 17–21, 2024; Email Exchange Between District Special Education Director and Parent, Jul. 16– 29, 2024.)

Sometime in the summer of 2024, despite the district's consistent communication that the parent had not consented to the initial provision of services, the parent seemed to get the impression that the parent had at least partially consented to the initial provision of services, including pointing to the errant checkmark in the November 2023 Prior Written Notice. The district special education director's response to the parent is very clear that a parent may not provide partial consent to the initial provision of special education services and that the parent had not provided consent to the initial provision of special education services, as those services are described in the December 2023 Prior Written Notice. (Email Exchange Between District Special Education Director and Parent, July 16–18, 2024.)

Conclusion

District staff inadvertently checking the box next to the "INITIAL SERVICES & PLACEMENT" section in the November 2023 Prior Written Notice was unfortunate and confusing to the parent but does not represent properly obtained consent for the initial provision of special education services. To obtain proper consent, the Prior Written Notice must, ". . . fully [inform the parent] of all information relevant to the activity for which consent is sought " The November 2023 Prior Written Notice does not provide any information at all on the initial provision of special education services and, therefore, must not be interpreted as a proper method of obtaining consent for the initial provision of special education services.

The December 2023 Prior Written Notice fully explains the district's offer of the initial provision of special education services to the student. The district requested the parent's consent in writing through the IEP case manager's December 14, 2023, email to the parent and numerous following instances. Neither party provided any documentation to show that the parent consented to the initial provision of special education services. Because the November 2023 Prior Written Notice was not a proper method of obtaining consent for the initial provision of special education services, the parent's consent on this Prior Written Notice does not constitute consent for the initial provision of special education services. The December 2023 Prior Written Notice fully informed the parent of all information relevant to the initial provision of special education services and the parent never consented. Therefore, this investigation

concludes that the district ***did not violate*** its obligation to ensure that it obtained parent consent prior to the initial provision of special education services under 34 C.F.R. § 300.300(b)(1). As there is no violation, no corrective action is needed.

Issue Two

Meeting to Develop IEP Within 30 Days of Eligibility Determination

Applicable Law

The regulations implementing IDEA require each public agency to ensure that, "A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and [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).)

Analysis: Findings of Fact

The relevant findings from Issue One are incorporated here by reference. On November 15, 2023, the student's evaluation and eligibility team, including the parent, met to review the evaluation report and determine whether the student had a disability and needed special education services. (Notice of Nov. 15, 2023, Meeting from District to Parents, Nov. 3, 2023; Evaluation Team Report, Nov. 15, 2023; Prior Written Notice and Request for Consent, Nov. 15, 2023; and Evaluation, Eligibility, and IEP Team Meeting Notes, Nov. 15, 2023.) All evaluation and eligibility team members, including the parent, signed that they agreed that the student is eligible for special education services. (Evaluation Team Report, Nov. 15, 2023.) The district then had 30 days from the date of the determination that the student needed special education and related services to develop an IEP for the student. For this student, the district was required to develop an IEP by December 15, 2023.

The team could not come to consent on the content of the student's IEP at the November 2023 meeting and so the team ended the meeting and scheduled a December 2023 meeting. (Initial Discussion with the Parent, Nov. 4, 2024; Interview with District Staff, Nov. 20, 2024; Notice of Dec. 8, 2023, Meeting from District to Parent, Dec. 5, 2023.) Between the November and December 2023 meetings, the district incorporated all the items the parent requested into the draft IEP that the district provided for discussion at the December 2023 meeting. (Email Exchange

Between District Special Education Director and Parent, July 16–18, 2024.) The notes from the December IEP Team meeting indicate that the IEP Team reviewed the draft IEP and could not come to consensus as the parent had multiple concerns. (IEP Team Meeting Notes, Dec. 8, 2023.) Following the December 8, 2023, IEP Team meeting, the district provided the parent with a Prior Written Notice for the initial provision of special education services which delineated the services discussed at the December 8, 2023, IEP Team meeting, a Request for Consent, and the draft IEP the IEP Team discussed at the December 8, 2023, IEP Team meeting. (Email from IEP Case Manager to Parent, Dec. 14, 2023.)

Conclusion

The student's evaluation and eligibility team found the student eligible for special education at its November 15, 2023, meeting. At the November and December 8, 2023, meetings, the IEP Team reviewed and discussed the student's draft IEP. On December 14, 2023, the district provided the parent with a Prior Written Notice outlining its proposal for the initial provision of special education and related services to the student, within 30 days from the date of the determination that the student needed special education and related services. Therefore, this investigation concludes that the district *did not violate* the requirement to develop an IEP for this student within 30 days from the date of the determination that the student needed special education and related services under 34 C.F.R. § 300.323(c) and K.A.R. § 91-40-8(f)(2). As there is no violation, no corrective action is needed.

Issue Three

Parent Consent for Reevaluation

Applicable Law

The regulations implementing IDEA require that a public agency meet the following requirements for parental consent for reevaluations. "(1) Subject to paragraph (c)(2) of this section, each public agency—(i) Must obtain informed parental consent, in accordance with §300.300(a)(1), prior to conducting any reevaluation of a child with a disability. (ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section. (iii) The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation or reevaluation. (2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that—(i) It made reasonable efforts to obtain such consent; and (ii) The child's parent has failed to respond." (34 C.F.R. § 300.300(c).)

Analysis: Findings of Fact

In the parent's amended complaint, it is alleged that in December 2023, the district reevaluated the student without the parent's consent. In the complaint investigator's initial discussion with the parent, the parent explained their understanding of the events as the student's initial evaluation concluded in November 2023 with a meeting of the evaluation and eligibility team. The team came to consensus on the student's eligibility but could not come to consensus on the content of the student's IEP, so the team ended the November meeting and scheduled a December 2023 meeting. Based on the information the parent said the district shared at the December 2023 meeting, the parent believed that the district reevaluated the student without parent consent. In the initial discussion with the parent, the parent indicated the documentation from the November and December 2023 meetings would support the assertion that the district reevaluated the student without parent consent. The parent submitted a great deal of information during the investigation. This complaint investigator

reviewed all of it and none of the information supported that the district conducted a December 2023 reevaluation.

In the district's response the district asserts that it "did not conduct a reevaluation of Student in December 2023." During the complaint investigator's district staff interview, district staff explained that the district did not complete further evaluation of the student after the team agreed in November 2023 that the student was eligible for special education services. District staff indicated that they made some changes to the student's draft IEP based on the parent's requests at the November 2023 meeting.

Review of the information associated with the November and December 2023 meetings does not show any indication that the district reevaluated the student in December 2023.

Conclusion

Because the parent could not provide any documentation to support the assertation that the district reevaluated the student in December 2023 and the documentation both parties submitted showed no indication of a December 2023 reevaluation, this investigation concludes that the district ***did not violate*** its obligation to ensure that it obtained parent consent prior to conducting a reevaluation under 34 C.F.R. § 300.300(c) and K.A.R. § 91-40-27(a)(1). As there is no violation, no corrective action is needed.

Issue Four

Reviewed Existing Evaluation Data As Part of Reevaluation

Applicable Law

The regulations implementing IDEA require, "As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—(1) Review existing evaluation data on the child, including—(i) Evaluations and information provided by the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and (iii) Observations by teachers and related services providers." (34 C.F.R. § 300.305(a)(1).)

Analysis: Findings of Fact

The findings from Issue Three are incorporated here by reference. As the investigation showed that the district did not conduct a December 2023 reevaluation, there can be no violation of the regulations applicable to this allegation.

Conclusion

Because the parent could not provide any documentation to support the assertation that the district reevaluated the student in December 2023 and the documentation both parties submitted showed no indication of a December 2023 reevaluation, this investigation concludes that the district ***did not violate*** its obligation under 34 C.F.R. § 300.305(a)(1) and K.A.R. § 91-40-8(c)(1). As there is no violation, no corrective action is needed.

Issue Five

Whether Purpose Was Included in December 2023 Notice of Meeting

Applicable Law

The regulations implementing IDEA require that the notice for an IEP Team meeting, "[i]ndicate the purpose, time, and location of the meeting and who will be in attendance." (34 C.F.R. § 300.322(b)(1)(i).)

Analysis: Findings of Fact

In the parent's amended complaint and the initial discussion with the complaint investigator, the parent alleged that the district misrepresented the purpose of the December 8, 2023, IEP Team meeting. The parent claimed that the request for the December 8, 2023, IEP Team meeting was to discuss the parent's confusion with the November 15, 2023, IEP Team meeting. The parent claimed this request was clear to the district at the November 15, 2023, meeting and again in emails following the meeting. The parent indicated that based on the Notice of Meeting for the December 8, 2023, meeting the parent believed that the IEP team would discuss the parent's confusion from the November 2023 meeting, but then the parent claimed that the December 8, 2023, meeting did not include any discussion of the parent's questions.

The Notice of Meeting for the December 8, 2023, meeting indicated that the purpose of the meeting was to "develop an individualized education program (IEP) for your child and determine the appropriate placement." The district provided an agenda from the December 8, 2023, meeting that included the following items: "Introductions, Review draft IEP, General Education Teachers Comments, Questions/Concerns for Gen. Ed.

Teachers from parents/guardians, Sign forms, present copy of parental rights." The district also provided a document from the December 8, 2023, meeting titled IEP Team Considerations that included the following concerns from the parent, "Mom expressed concern with [the student's] overall attitude toward school. [The student] has struggled significantly academically the past year, Reading and Math are both areas that [the student] would like to see addressed. [The parent] would also like to see [the student] improve [their] self-advocacy." The December 8, 2023, meeting notes provide several examples of the parent expressing concerns.

Conclusion

In the Notice of Meeting for the December 8, 2023, meeting the district's provided purpose of developing the student's IEP logically followed the conclusion of the November 2023 meeting that ended when the IEP Team could not come to consensus on the initial provision of services for the student. The December 8, 2023, IEP Team meeting agenda provided an opportunity for the parent to express concerns. The December 8, 2023, meeting notes and documentation of IEP Team considerations include multiple instances of the parent expressing concerns. Along with expressing concern, the parent could have raised questions on any items of confusion from the November 2023 meeting. The parent did not provide any documentation that

showed the district prevented the parent from raising questions on the November 2023 meeting. The evidence showed that the district followed the next step in the process for a student determined eligible for special education, to convene the IEP Team to develop an IEP for the student. The district's documentation shows ample opportunity for the parent to raise questions on the November 2023 meeting. Because the parent could not provide any documentation to support the assertation that the district misrepresented the purpose of the December 2023 IEP Team meeting and the district documentation showed it provided the parent with the opportunity to ask questions about the November 2023 IEP Team meeting, this investigation concludes that the district ***did not violate*** its obligation under 34 C.F.R. § 300.322(b)(1)(i) and K.A.R. § 91- 40-17(b)(1). As there is no violation, no corrective action is needed.

Issue Six

Response to Parent's Request for a Neuropsychological Evaluation

Applicable Law

When a parent requests an independent educational evaluation, the regulations implementing IDEA require that the public agency must provide the parent with "information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in 34 C.F.R. § 300.502(e)." (34 C.F.R. § 300.502(a)(2).) When a parent makes a request regarding initiating or changing the identification, evaluation, or educational placement of the child or the provision of FAPE to the child, the public agency must respond with a notice that meets the requirements of 34 C.F.R. § 300.503(b). (34 C.F.R. § 300.503(a).) The regulations implementing IDEA define evaluation as, "procedures used in accordance with [34 C.F.R.] §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs." "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." (KSDE Memo, 'Reasonable Time' to respond to parent request for evaluation, January 8, 2002, at https://www.ksde.org/Portals/0/SES/legal/forms/ReasonableTimeMemo-20020108.pdf.)

Analysis: Findings of Fact

The parent wrote a January 22, 2024, letter that the IEP case manager indicated the student dropped off at the very end of the day on January 24, 2024. (Letter from Parent to District Request Neuropsychological Evaluation of Student, Jan. 22, 2024; Email from IEP Case Manager to Special Education Coordinator and Special Education Director with Attached Letter from Parent to District Requesting Neuropsychological Evaluation of Student, Jan. 25, 2024.) The letter requested "*a psycho-neurological educational evaluation be conducted for*" the student. On January 25, 2024, the IEP case manager emailed the parent's letter to the district special education coordinator and special education director. That same day the special education

director emailed the parent stating, "We are a bit confused by your request for another educational evaluation since you signed that you were in agreement with the results of our evaluation. I am happy to meet with you to discuss this request and to ensure you are aware of and understand your procedural rights." The parent and special education director agreed to meet on February 1. The special education director emailed the parent on January 29 to confirm the meeting and stated, "*The purpose of this meeting is to go over your parent rights, discuss your options, discuss your request for additional testing and to explain the districts [sic] response to your request. This is not an IEP meeting and no educational decisions will be made*." The district's attorney indicated that on February 1 the parent, special education director, and school psychologist met and reviewed the parent's rights, district staff referred the parent to Families Together to obtain additional assistance on understanding parent rights, and to clarify the parent's request from the January 25, 2024, letter. (Email from District's Attorney to Complaint Investigator, Nov. 29, 2024.) District staff concluded that meeting believing that the parent agreed with the district's evaluation, did not have a request for another initial evaluation or an independent educational evaluation, and the next step was to schedule another IEP Team meeting. (Email Exchange Between Special Education Director and Parent Regarding Parent's Jan. 25, 2024, Letter, Feb. 6– 10, 2024; Email from District's Attorney to Complaint Investigator, Nov. 29, 2024.) The district memorialized its understanding of the parent's January 25, 2024, letter and February 1, 2024, meeting with the parent in an email to the parent on February 6, 2024, stating, in part, "As we stated last week, you agreed with our evaluation and the determination that [the student] is eligible for special education. You signed that you agree, what seems to be the hold up is that you do not agree on the recommended services. We have invited you back to the table to continue discussion on the services to be provided to [the student] We want to provide services to [the student]. What do you want the district to do at this time?" The parent responded to this email on February 10, 2024, but did not clarify the January 25, 2024, request or correct the district's understanding that the next step was to schedule another IEP Team meeting.

The district then made multiple efforts to schedule an IEP Team meeting. (Email from District's Attorney to Complaint Investigator, Nov. 29, 2024.) These efforts culminated in a March 7, 2024, IEP Team meeting. (Email from District's Attorney to Complaint Investigator, Nov. 29, 2024.) The March 7, 2024, IEP Team meeting notes reference multiple requests from the parent for additional testing. In response to these requests, the district sent a March 22, 2024, letter that granted the parent's request for an independent educational evaluation and provided the parent with information on how to obtain one. On April 2, 2024, the parent emailed the district special education director and stated:

> *The requests that I made for an evaluation was in the form of a letter and was hand delivered at my child's school . . . and the request was not for an the comprehension [sic] educational evaluation that you are referring to. I was told that [the student] had already received that from the evaluations conducted by the school. The problem here is that they have not been able to identify [the student's] specific areas of need and can not [sic] be used alone to do so. My child requires a more in depth thorough evaluation conducted by a*

> *neuropsychologist that is experienced in the educational field and can identify specific areas of need and provide recommendations and tailored supports fot [sic] those specific identified areas. I believe it's called a neuropsychological assessment by a neuropsychologist who has experience in the education field and can provide insight and recommendation [sic] specific to my child's learning processes and abilities.*

The special education director responded the same day and stated, "*We have offered you a IEE for a comprehensive educational evaluation*."

On May 17, 2024, the parent emailed the district special education director and stated, "I recommend . . ." *a "[n]europsychological evaluation could provide valuable data on cognitive profile and appropriate eligibility category." On May 22, 2024, the parent again emailed the district special education director and requested that the district, "provide and fund a neuropsychological evaluation for [the student] to collect data that will identify [the student's] areas of need and provide recommendations that are tailored to [the student's] individual needs, abilitues, [sic] and learning style, specifically targeted to meet [the student] where [the student] is at*." The parent's change in language from "recommend" in the May 17, 2024, email to "provide and fund" in the May 22, 2024, email led the district to respond with a June 10, 2024, Prior Written Notice that stated, "The [LEA] refuses to conduct an initial evaluation." As explanation for this refusal the Prior Written Notice stated:

> *[The district] is refusing to conduct another initial evaluation of [the student]. The District conducted an initial evaluation of [the student] in the Fall of 2023, and [the student] was determined to be eligible for special education services. Parent agreed with that evaluation but has declined to provide consent to initiate services despite numerous attempts by the District. Parent informed [the district] [the student's] doctor has recommended that [the student] be referred to a neurologist and has requested the District to pay for a neurological assessment. Parent previously requested an independent educational evaluation. The District granted the request for an IEE but, to date, the parent has not obtained one. Parent continues to request that [the district] authorize and fund a neuropsychological evaluation. To the extent that the parent's request is for the District to conduct another initial evaluation of [the student], that request is being refused.*

Conclusion

The district indicated in writing to the parent that district staff were unclear on the parent's January 22, 2024, request. The district met with the parent to clarify the request on February 1, 2024, and believed the parent agreed with the district's evaluation. District staff memorialized this understanding in writing to the parent on February 6, 2024. During this investigation, the parent did not provide any documentation that showed the parent disagreed with district staff's understanding and the parent's response to the district does not show that the parent corrected district staff's understanding regarding the parent's January 22, 2024, request. Based on the definition of evaluation in the regulations implementing IDEA, district staff could have interpreted the parent's January 22, 2024, request as a request that required a response with a

Prior Written Notice, but district staff were clear in writing to the parent that district staff did not fully understand the parent's request and wanted to meet to discuss. Following that meeting, district staff again clarified in writing what they believed the parent's request to be (i.e., not an evaluation request, but an IEP Team meeting request) and the parent did not dispute district staff's understanding. Based on the correspondence between the parties, this investigation determines that the parent's January 22, 2024, request, as clarified at the February 1, 2024, meeting and February 6, 2024, email was not a request regarding evaluation that required the district to respond with a Prior Written Notice.

The March 7, 2024, IEP Team meeting notes include multiple instances of the parent requesting further assessment and the district responded with a March 22, 2024, letter granting the parent's request for an independent educational evaluation. The regulations implementing IDEA require that when a parent requests an independent educational evaluation that the district provide the parent with information on obtaining one and the district's criteria and the district does that in its March 22, 2024, letter. The district's response came 15 calendar days following the parent's request.

These 15 calendar days included four weekend days, meaning the district's response was within the 15-school day timeline KSDE has established as reasonable for such requests.

The parent's May 17, 2024, email included the word "recommend," which is not a clear request regarding evaluation. The parent's May 22, 2024, email included the words "provide and fund," a clearer request regarding evaluation and the district responded with a June 22, 2024, Prior Written Notice refusing the parent's request. The district's response came 19 calendar days following the parent's request. These 19 calendar days included six weekend days and one holiday, meaning the district's response was within 12 business days. The 2023–24 school year likely ended within this timeline.

KSDE has indicated that "unless there is some unusual circumstance, a reasonable time in which to provide such notice to the parents is 15 school days." (KSDE Memo, 'Reasonable Time' to respond to parent request for evaluation, January 8, 2002, at https://www.ksde.org/Portals/0/SES/legal/forms/ReasonableTimeMemo-20020108.pdf.) The district waiting to respond until the next school year would not have been reasonable and so the district understandably responded within a reasonable time of receiving the parent's request.

Because the parent's January 22 and May 17, 2024, requests were not requests for an evaluation, the district was not required to respond with a Prior Written Notice. The parent's March 7, 2024, request was for an independent educational evaluation and the district responded appropriately, within a reasonable time. The parent's May 22, 2024, request was a request for an evaluation and the district responded with a Prior Written Notice, within a reasonable time. Therefore, this investigation concludes that the district ***did not violate i***ts obligation under 34 C.F.R. § 300.503(a) and K.S.A. § 72- 3430(b)(2). As there is no violation, no corrective action is needed.

Issue Seven

Student's 2024–25 Enrollment

Applicable Law

The regulations implementing IDEA require that a public agency "not use a parent's refusal to consent to one service or activity under [34 C.F.R. § 300.300](a), (b), (c), or (d)(2) . . . to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part." (34 C.F.R. § 300.300(d)(3).)

Analysis: Findings of Fact

The parent's amended complaint included the allegation that the district placed conditions on the student's 2024–25 enrollment. In the initial discussion with the parent, the parent indicated that they had completed the district's online enrollment requirements and received several automatic emails from the district's student information system regarding the student's 2024–25 absences and grades. The parent provided the automatic emails from the district's student information system regarding the student's 2024–25 absences and grades but did not provide any documentation showing that the district prevented the student's 2024–25 enrollment.

The district indicated that each school year it requires students continuing into the next school year to enroll. (District Response to Complaint, Nov. 18, 2024.) On July 17, 2024, the special education director emailed the parent to ask if the parent planned to enroll the student for the 2024–25 school year. (Email Exchange Between District Special Education Director and Parent, July 16–18, 2024.) From late July through early September, district staff exchanged emails about whether the student had enrolled.

This email exchange did not indicate the district was preventing enrollment. The special education director, registrar, and special education data clerk communicated regarding the student's lack of enrollment and attendance and attempted and successful communication with the parent regarding student's enrollment.

On September 5, 2024, the principal emailed the parent and outlined that the: (1) district registrar called the parent multiple times about the student's enrollment; (2) clearly informed the parent that the student was not enrolled and encouraged the parent to enroll the student; and (3) informed the parent that if the student enrolled in another district to contact this district so district staff could facilitate a records transfer. The parent and principal continued to exchange emails through October 28, 2024, in which the principal navigated multiple parent questions and consistently encouraged the parent to enroll the student. As part of the district's response to the complaint, district staff provided a November 1, 2024, screenshot of the student's 2024–25 enrollment which showed the status as "In Progress," started on August 14, 2024, by the parent and the same date, also by the parent, for the most recent activity. During the complaint investigator's district staff interview, the complaint investigator asked why the parent received automatic emails from the district's student information system if the student was not enrolled. District staff explained that there were some issues with the rollover of the

student information system from the 2023–24 to 2024– 25 school year and thought the automatic email feature may have been turned on for students who attended in the 2023–24 school year even if those students had not enrolled for the 2024–25 school year.

Conclusion

The parent had not provided consent to the district's offer of the initial provision of services under 34 C.F.R. § 300.300(b). 34 C.F.R. § 300.300(d)(3), which prevents the district from using the parent's refusal to consent to the initial provision of special education services to deny the student any other district service, benefit, or activity, such as enrollment. Because the parent did not provide any information showing the district denied the student's 2024–25 enrollment and the district provided multiple internal communications and communications with the parent that showed no evidence of supporting this student's 2024–25 enrollment, this investigation concludes that the district did not violate its obligation under 34 C.F.R. § 300.300(d)(3); K.A.R. § 91- 40-27(h). As there is no violation, no corrective action is needed.

Issue Eight

Free Appropriate Public Education

Applicable Law

For students with a disability determined to be eligible for special education services and whose parent has consented to the initial provision of special education services, the regulations implementing IDEA require that the public agency make available a free appropriate public education. (34 C.F.R. § 300.101(a).) However, 34 C.F.R. 300.300(b)(3) clarifies that when parents have not provided consent for the initial provision of special education services, a district's failure to provide services in an offered IEP is not a failure to provide a free appropriate public education.

Analysis: Findings of Fact

The findings from Issue One are incorporated here by reference. As the investigation showed that the parent did not consent to the initial provision of special education services, there can be no violation of the regulations applicable to this allegation as the district has no obligation to provide the student with a free appropriate education without parent consent.

Conclusion

Because the investigation into Issue One determined that the parent did not consent to the initial provision of special education services, this investigation concludes that the district ***did not violate*** its obligation to provide a free appropriate education under 34 C.F.R. § 300.101(a), K.S.A. § 72-3410(a)(2), and K.A.R. § 91-40-2(a)(1), (e). As there is no violation, no corrective action is needed.

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)

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 231
Gardner-Edgerton Public Schools: 25FC231-002

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on November 1, 2024,, by -------, on behalf of her child, -------. 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 allegations, was issued on December 2, 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, the Complaint Report, and the complainant's notice of 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.

Discussion of Issues on Appeal from Complainant

The complaint report identified eight separate issues. The appeal did not identify which issue(s) were being appealed. The appeal consisted entirely of two e-mails.

One e-mail, dated December 4, 2024, consisted entirely of this statement:

> *"clearly states that the November meeting was intended for finishing writing my child's IEP not for eligibility. This is one account of record that I have regarding the November partial consent."*

The second is a copy of an email sent by a teacher to the parent, saying:

> *"I have scheduled a meeting on Wednesday, November 15, at 8:15 AM. This meeting will be to make sure we have addressed your concerns and finish writing your daughters individual education program (IEP). If you are planning to attend, please check the box, sign and date, and then return the form to me. If this date and time will not work for you, please let me know right away."*

The Appeal Committee presumes this appeal is aimed at the decision in Issue 1. In that issue, the parent alleged that the district issued a prior written notice requesting consent for initiating an initial IEP before the initial IEP was developed by the IEP team. With regard to that issue, the investigator found that the district inadvertently checked the box next to the "Initial Services and Placement" section of the Prior Written Notice (PWN). The investigator justified this finding that the checked box was inadvertent because that PWN said the meeting was for considering the initial evaluation and there was nothing in that PWN that dealt with initial services (Report, p. 8). The provision of initial services, and request for consent for initial services, was first addressed in a PWN dated December 14, 2024 (Report, p. 8).

With these findings, the investigator concluded that the district held the November 15, 2024, meeting only to review the evaluation report and to determine initial eligibility, and not to request parent consent for initial services (Report p. 6). Nothing presented in this appeal provides any basis for concluding otherwise.

The Appeal Committee finds there is sufficient evidence to support the investigator's conclusions on this issue.

The Appeal Committee received an additional documents from the parent by e-mail on December 18, 2024. The original complaint report was issued on December 2, 2024. The time in which to submit an appeal expired on December 12. Therefore, the Appeal Committee is prohibited by state regulation to consider this additional notice of appeal. However, the Appeal Committee notes that the additional notice of appeal contained nothing that would have altered the decision in this appeal because it did not describe how the complaint report was incorrect, and so did not comply with the state regulation, requiring each notice of appeal to include a: "detailed statement of the basis for alleging that the report is incorrect."

The additional appeal information consisted of fifteen separate e-mails, none of which included any statement in them explaining to the Appeal Committee why the complaint report is incorrect.

Conclusion

For the reasons stated herein, the Complaint Report is sustained in full.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 19th day of December, 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 #230 SPRING HILL PUBLIC SCHOOLS
ON NOVEMBER 5, 2024

DATE OF REPORT: DECEMBER 5, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ------- by her parent -------. 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 230, Spring Hill Public Schools. In the remainder of the report, USD 230 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 5, 2024, and the 30-day timeline ends on December 5, 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 parent was interviewed to clarify the issues of the complaint on November 15, 2024. The district provided the following staff for interviews, which were held on November 25, 2024: Ashley Marrs (Life Skills Teacher and Case Manager), Laurie Brueckner (Spring Hill High School Nurse), Kyle Kost (Spring Hill High School Assistant Principal), Kim Hanson (School Psychologist), and Cindy Dziadosz (Special Education Director). Emails with follow up questions and document requests were exchanged with the district from November 15, 2024, to December 2, 2024.

Additional documentation was provided by the district and reviewed by the complaint investigator. The following documentation and information were used in consideration of the issue(s).

Provided by the parent:

1. IEP for the student dated February 8, 2023
2. PWN dated February 8, 2023, Initial Services, Placement, Change in Services/Placement and Request for Consent with a material change in services and substantial change in placement due to a shortened school day, signed by the parent giving consent on the same date.
3. Text exchange between mother and unknown party, dated September 24, 2024, at 8:29 p.m. and October 23, 2024 at 11:44 a.m.

4. Email chain between the parent, the school nurse, and the special education teacher beginning October 25, 2024, at 2:00 p.m. and ending on October 25, 2024, at 3:26 p.m.

Provided by the district:

5. Food Allergy and Anaphylaxis Emergency Care Plan, signed by the physician on January 9, 2023
6. Individual Health Care Plan for the student for allergies and asthma dated January 27, 2023
7. Medical Statement to Request School Meal Modification, signed by family nurse practitioner on February 13, 2023
8. Medication Administration Record, 2023-24
9. Kansas Asthma Action plan, signed by the physician on January 8, 2024
10. IEP for the student dated January 25, 2024, and IEP signature page for the same
11. Meeting Notes dated January 25, 2024
12. Positive Behavior Intervention and Supports for the student dated January 25, 2024
13. Prior Written Notice to change special education services with a material change in services dated January 25, 2024, provided to the parent on January 25, 2024, and signed with consent by parent on February 2, 2024
14. IEP Meeting Notes dated April 30, 2024
15. Prior Written Notice to review evaluation and make changes to the IEP dated April 24, 2024, provided to the parent on the same date and unsigned by parent
16. Individual Health Care Plan for the student for allergies dated August 9, 2024
17. Prior Written Notice to change services and placement with a material change in services and substantial change in placement dated August 13, 2024, provided to the parent on the same date, signed by the parent giving consent on August 20, 2024.
18. IEP Amendment dated August 14, 2024, signed by the parent on August 21, 2024, with consent for the IEP Amendment and requesting an IEP meeting
19. Kansas Asthma Action Plan, signed by the physician on August 20, 2024
20. Medication Administration Record, 2024-25
21. Email from the school nurse to the parent dated August 19, 2024, at 8:37 a.m. and the parent's reply at 8:59 a.m.
22. Food Allergy and Anaphylaxis Emergency Care Plan, signed by the physician on August 20, 2024
23. Email from the school nurse to the parent dated September 9, 2024, at 2:31 p.m.
24. Email from the parent to the school nurse dated September 12, 2024, at 8:33 a.m. and the nurse's reply at 8:47 a.m.
25. Email from the teacher to the parent dated September 24, 2024, at 10:24 a.m.

26. Documentation of Student Behavior with entries dated September 25, 2024, October 3, 2024, October 8, 2024, October 23, 2024, November 4, 2024, November 5, 2024, and November 12, 2024 (2 entries).
27. Email from Lisa Howell (Families Together Education Advocate Coordinator) to the teacher and the parent dated October 4, 2024, at 11:30 a.m. and the teacher's reply the same day at 2:02 p.m.
28. Email from the assistant principal to Lisa Howell dated October 4, 2024, at 2:11 p.m. and her reply the same day at 2:55 p.m.
29. Email from the teacher to the parent dated October 10, 2024, at 9:35 a.m.
30. Email exchange between the teacher and the parent beginning October 21, 2024, at 9:03 a.m. and ending October 23, 2024, at 3:04 p.m.
31. Email from the nurse to the parent and the teacher dated October 24, 2024, at 2:00 p.m., and the parent's reply on October 25, 2024, at 3:26 p.m.
32. Email from the teacher to the parent dated October 28, 2024, at 11:24 a.m. and the parent's reply to the teacher and the nurse dated October 29, 2024, at 9:06 a.m.
33. IEP Amendment dated October 28, 2024
34. Prior written notice to change services dated October 28, 2024, and provided to the parent on October 28, 2024 with consent given by the parent signed on November 1, 2024 at 7:02 a.m.
35. Email exchange between the nurse, the teacher and the parent beginning on October 29, 2024, at 3:03 p.m. and ending at 4:05 p.m.
36. Doctor's order photocopy printed November 14, 2024, at 12:49 p.m.
37. Email chain beginning with an email from the parent to the school nurse dated November 14, 2024 at 1:53 p.m., the school nurse's reply to the parent and the teacher dated November 14, 2024 at 3:35 p.m., email exchange between the teacher and nurse dated November 14, 2024 at 3:37 and 3:38 p.m., email from the parent to the nurse dated November 14, 2024 at 3:41 p.m., and ending with email exchange between the school nurse and the teacher dated November 14, 2024 at 3:42 and 3:43 p.m.
38. Individual Health Care Plan (asthma) for the student dated November 18, 2024
39. Email from school nurse to parent dated November 19, 2024, at 8:52 a.m.,
40. Student Schedule and Support, dated November 18, 2024
41. Middle School Nurses Manual, undated excerpt
42. High School Nurses Manual, undated excerpt
43. Emergency Safety Intervention Documentation Form and Letter to Parent dated October 3, 2024
44. [Student Name] Notes with entries from January, 2021, to November 20, 2024
45. District response to the complaint

Background Information

The student is 14 years of age and attends the high school in USD 230, primarily receiving her education in life skills with attendance in special classes and physical education in a general education setting with special education support. The student was previously identified as a student with emotional disturbance and other health impairment and currently is served as a student with intellectual disability as primary. The parent identified the following additional health conditions: asthma, food allergies, trauma, and bipolar disorder. According to the parent, the student was placed in a Psychiatric Residential Treatment Facility (PRTF) during part of the 2023-24 school year, and she was not retained in middle school over the objection of the parent.

Issues Investigated

- ISSUE ONE: Did the district update the student's health considerations and follow the IEP's provisions accordingly during the 2024-25 school year?
- ISSUE TWO: Did the district consider the student's need for special education or related services during extracurricular activities in the IEP?
- ISSUE THREE: Did the district follow the student's placement in general and special education during the 2024-25 school year, specifically by not removing the student from the school settings in her schedule?

Issue One

Did the district update the student's health considerations and follow the IEP's provisions accordingly during the 2024-25 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 34 C.F.R. 300.618 state: "(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information. (b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. (c) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under Sec. 300.619."

Analysis: Findings of Fact

The parent alleged that she had regularly provided health care reports to the district, but the district failed to update the student's IEP and the student's health plan. The parent alleged that the district unduly restricted the student's movements and participation in school settings and activities such as snacks, resulting in behavioral problems. The parent alleged that the student was not given snacks like other students and made to sit by herself in the second hour. The parent alleged that the student reported to the physician that the school was not providing access to the inhaler as required by the IEP.

The district replied that the parent had not provided or communicated (a) "consistently accurate information to the school and IEP team," (b) "updated documentation of medical diagnosis to the school and IEP team," (c) "updated documentation of medications for the child, as there have been many changes over the course of time" or(d) consent signature for "Interagency Release Forms to support open communication between various agencies that serve the child." The district replied that "Despite these challenges, USD 230 and its staff have worked hard to accommodate and support [the student] to make adequate progress and also provide meaningful participation for the parent in the IEP process."

Two IEPs were in place during the 12-month period preceding the date of the complaint. First, the IEP dated February 8, 2023 included the following special education services: (a) special education support in general education settings for special classes and PE for 135 minutes 5 days a week; (b) special education support in general education settings for transitions for 25 minutes a day 5 days a week; (c) special education in special education settings for math/ELA for 90 minutes 5 days a week; (d) special education in special education settings for MTSS time for 25 minutes 5 days a week; (e) special education in special education settings for lunch for 30 minutes 5 days a week; and (f) special education in special education settings for life skills instruction for 45 minutes 5 days a week. One related service was required: indirect occupational therapy for 15 minutes every 9 weeks. Accommodations listed on this IEP were: guided notes, technology alternatives to fully handwritten assignments, writing tools, allow frequent breaks, Alternate/quiet/separate setting, read aloud to self, read aloud to student, repeated/restated directions, shortened assignments, use of manipulatives, number line or fact sheet, dictation or scribe, graphic organizers or outlines, and reinforcement system.

The student's IEP team including the parent met on January 25, 2024, for the annual IEP meeting. The IEP dated January 25, 2024 included the following special education and related services through the end of the student's middle school year (2023-24) (a) special education support in general education settings for special classes and PE for 135 minutes 5 days a week; (b) special education support in general education settings for transitions for 40 minutes a day 5 days a week; (c) special education in special education settings for math/ELA for 90 minutes 5 days a week; (d) special education in special education settings for lunch for 30 minutes 5 days a week; (e) special education in special education setting for science, 45 minutes 5 days a week, (f) special education in special education setting for social studies, 45 minutes 5 days a week, and (g) special education in special education settings for MTSS time for 25 minutes 5 days a

week, with indirect OT services one time for 15 minutes each 9 week period. The parent signed the PWN giving consent for the IEP services on February 4, 2024.

The IEP dated January 25, 2024, also included services for the following 2024-25 school year. Special education and related services were similar in nature and included: (a) special education direct services in the regular setting for special classes and PE for 200 minutes 5 days a week; (b) special education direct services in the general education setting for in general education settings for transitions for 30 minutes a day 5 days a week; (c) special education in special education settings for math for 50 minutes 5 days a week; (d) special education in regular education setting for lunch for 30 minutes 5 days a week; (e) special education in regular education setting for social studies 50 minutes 5 days a week, (f) special education in regular education setting for advisory for 20 minutes 5 days a week, and (g) special education in special education setting for reading, 50 minutes 5 days a week, with continued indirect OT services one time for 15 minutes each 9 week period.

The IEP dated January 25, 2024, was amended as follows, based on IEP amendments and PWNs provided. On April 30, the IEP team met at a high school transition team meeting to align the minutes in the IEP to the current high school schedule, with no new services being added or current services being removed. On August 14, 2024, a PWN amended the IEP to adjust minutes and some services; it stated, "Increasing service minutes from 150 to 200 minutes per day of instructional support in electives, Separating English and Math and making each 50 minutes per day. Changing lunch support from direct to instructional support. No Science. Changing advisory from direct to instructional support. Changing Social studies from direct to instructional support. These changes will be in effect throughout the school year to reflect the high school schedule." The PWN dated August 14, 2024, was signed by the parent giving consent on August 20, 2024. On October 29, 2024, the IEP was amended to update the general health section, at the parent's request.

Health care and the IEPs

The IEP dated February 8, 2023 included the following present level of performance (general health) : "[The student] has healthcare plans on file in the nurse's office for mood disorder, food allergies, and asthma. [The student] often elopes and struggles with mental health concerns. She needs a paraprofessional with her at all times."

In an email to the investigator dated December 2, 2024, the district reported that, "In regards to the Individual Health Care Plans created by the school nurses, these are not updated at the same time as the IEP unless there is a need or new information that the parent has shared or is willing to share." Health care plans and physician's orders in the nurse's office at the time of the IEP dated February 8, 2023 were: Food Allergy and Anaphylaxis Emergency Care Plan, signed by the physician on January 9, 2023 and Individual Health Care Plans for the student for both allergies and asthma dated January 27, 2023. The student's medication record for the 2023-24 school year showed zero administration of medications.

The Medical Statement to Request School Meal Modification dated February 13, 2023, for the student was put into place and implemented, according to interviews with school staff. This document directed a meal modification to omit tree nuts, peanuts and peanut butter and for a "heart healthy diet." According to interviews with the school nurse and special education director, the policy is that this document is updated when the parent provides new information, and this is the current documentation of meal modification. Interviews said cafeteria food would be heart healthy and that no further restrictions regarding the meals were made for cafeteria food. This is considered the current meal requirement by the school.

In the "general health" section, the IEP dated January 25, 2024, stated: "[The student] has a peanut/tree nut, shellfish, and tomato allergy, ADD, emotional/mood concerns. bipolar mood disorder other. Asthma -Inhaler is in Nurse's office. Epi-Pen in nurse office. [The student] is suicidal and is a runner. [The student] needs a para near at all times. No added sugar diet/diabetic diet." The IEP dated January 25, 2024, addressed the student's behavior with a goal to "identify expected and unexpected behaviors in self" rather than a BIP. According to the parent, the student was temporarily placed in a PRTF during the 2023-24 school year.

Kansas Asthma Action plan, signed by the physician on January 8, 2024, was in the nurse's office at this time. The student's individual health care plan dated August 9, 2024, for allergies to peanuts, all tree nuts, shellfish, and tomatoes described symptoms and interventions. According to the special education director, the Food allergy plan dated August 9, 2024, was in place on January 25, 2024; "the date would have changed with the new medical orders on August 9, 2024, because it is the same calendar year" (email dated December 2, 2024, to the investigator). The director further reported: "The same would have been true for the Asthma plan currently dated 11/18/24 - It would have had a prior 2024 date - the date would then be changed when new information/orders was updated in this calendar year."

According to an interview with the school nurse and special education director, the physician orders that direct medication associated with student health care plans are updated at the beginning of each school year for the period of that year or at the time when a need to use medication emerges. At the outset of the 2024-25 school year, physician's orders given to the school and in place with the school nurse were: (a) Kansas Asthma Action Plan, signed by the physician on August 20, 2024, and(b) Food Allergy and Anaphylaxis Emergency Care Plan, signed by the physician on August 20, 2024. The student's medication record for the 2024-25 school year showed zero administration of medications.

The district reported that the staff were made aware of student health care plans and emergency information in the district's "Skyward Student Information system. The district reported that in this case, the Skyward would also state that the student has an IEP. It is an expectation that teachers review each student's health care plan yearly, and the school nurse alerts staff to any changes or updates provided by the parents. Teachers also use the Skyward system gradebook and attendance. Students' names are in red text if they have emergency plans.

As noted above, the IEP dated January 25, 2024, was updated on October 28, 2024 at the parent's request to alter the information on the present levels of performance, general health section. The PWN dated October 28, 2024 stated: "The team proposes updating the general health section of present levels to reflect the current medical and health standing of[the student]. The general health section will be updated as follows: [the student] has several health concerns, including allergies to peanuts, tree nuts, shellfish, and tomatoes, as well as Attention Deficit Disorder (ADD) and bipolar mood disorder. She also has asthma, with her inhaler and Epi-Pen located in the nurse's office for emergency use. The following was taken off the IEP as a request from [the parent], who stated that the records were outdated and were from years past. [The school nurse] found the records that displayed the outdated information were from 2017 and found newer orders from 2023 that did not reflect the 2017 orders. There have not been records from 2024 given to the school nurse this year. The following was also taken off per [parental] request: She is suicidal and is a runner. She needs a para near at all times. No added sugar diet/diabetic diet."

Student Behavior

The IEPs for the student for the past 12 months do not include behavioral intervention plans. The IEP dated February 8, 2023, included a goal on self-regulation, and the IEP dated January 25, 2024 included a goal on social skills to identify expected and unexpected behaviors in herself and in scenarios.

The student's teacher, in an interview, stated that she was very aware of the student's food allergies and asthma, including the availability of the plans in the nurse's office, the location of the inhaler, and the specific foods identified as severe allergens. The teacher stated that the exchange of food among students caused her to contact the parent. In an email with the parent dated October 10, 2024 , the teacher clarified the type and timing snacks that the student could have in the life skills classroom In an email exchange with the parent dated October 21, 2024 to October 23, 2024, the teacher asked the parent to talk with the student about allowable food, as the students sometimes trade or barter for food and the teacher was concerned that the food may have nuts or other allergens. In the email exchanged, the teacher asked for the parent's input and stated that the student had become increasingly focused on food at school.

The behavior notes for the 2024-25 school year provided by the school showed that the student had an incident of "bossy" behavior in the lunchroom on September 25, 2024. The student also had an Emergency Safety Intervention (ESI) on October 3, 2024, which began during the afternoon snack in the life skills classroom, during which the student left the classroom, went to the office and began exhibiting self-harm behavior, for which she was briefly restrained. An email to the parent dated October 4, 2024, showed that the administrator called the parent on that day to provide transportation separately from another student involved in the incident, and the parent arrived to take the student home 6 minutes before the regular dismissal time.

Conclusion

In this case, the student's IEP did not include any related services for nursing. Instead, the IEP referred to individual health records maintained by the school nurse and disseminated to staff in the typical ways for students without disabilities. These health records were regularly updated and showed no lapse during the school year. The life skills teacher in an interview was knowledgeable about the student's health requirements and the teacher had email exchanges with the parent to clarify dietary restrictions and to inform the parent about the student's food related behavior. The district demonstrated that it had systems available to disseminate health and IEP information to staff who interacted daily with the student information system.

The parent had the right per 34 C.F.R. 300.618 to ask for records to be corrected, and the district complied with the IEP amendment and PWN dated October 28, 2024 which updated the health section of the IEP at the parent's request.

Based on the foregoing, ***it is not substantiated*** that USD #230 failed to update health records in violation of the provisions of IDEA.

Issue Two

Did the district consider the student's need for special education or related services during extracurricular activities in the IEP?

Applicable Law

According to K.A.R. 91-40-3 (ancillary FAPE requirements) "(a) Each agency shall ensure that children with disabilities have available to them the same variety of educational programs and services that are available to nondisabled children served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education. (b) (1) 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."

According to the Kansas Special Education Procedural Handbook, "The IEP team must determine whether the child requires supplementary aids and services, that are appropriate and necessary, to afford the child an equal opportunity for participation in nonacademic and extracurricular services and activities. These are nonacademic and extracurricular activities that are school sponsored during the regular school year. Nonacademic and extracurricular services may include counseling services, athletics, transportation, health services, recreational activities, referrals to agencies that provide assistance to individuals with exceptionalities, and employment of students, including employment by the school (K.A.R. 91-40-3(b)(2); 34 C.F.R. 300.107)."

Analysis: Findings of Fact

The parent alleged that the district did not provide services for the student to attend extracurricular activities such as a football game. The parent alleged that when she allowed the student to attend the football game, the school would not allow her to attend independently, reporting the parent to child protection authorities. The parent alleged that either the child is capable to attend the game or she is in need of support for extracurricular participation.

The district responded that "Over the course of [the student's] time while in USD 230 [the student] has had challenges with self-regulation, managing emotions, attention and elopement. [The student] has been hospitalized for short and long term care (PRTF) multiple times (at least 9) by [the parent]. [The parent] reports these hospitalizations have been for suicidal attempts and aggression." The district further responded: "USD 230 and its employees are mandated reporters required by law to report any suspected or known abuse or neglect of vulnerable populations to authorities." The district further responded: "Parent has not requested changes to the IEP, however, the IEP team has reached out and is always willing to meet to make changes to the IEP.

The findings of Issue One are hereby incorporated by reference.

During the time period of the investigation the parent attended two IEP meetings (February 8, 2023, and January 25, 2024) and provided consent for the PWNs associated with each meeting. According to the IEP meeting notes, the parent (virtual attendance) and the school met on April 30, 2024, for a transition to high school meeting during which the IEP services were amended to match the high school schedule. The district provided PWN to the parent dated April 24, 2024. The IEP was amended without a meeting on August 14, 2024, and the parent signed providing consent for the changes on August 21, 2024.

According to interviews with the teacher and special education director, the teacher notifies students and parents of upcoming events such as the Homecoming game and dance. In an email dated September 24, 2024, the teacher informed the parent that while special education staff would be present at the Homecoming game, their responsibilities were to support other students who were sports participants and that no special education support would be provided to the student for the game. In an email dated October 4, 2024, the teacher informed the parent and an educational advocate that the student did attend the Homecoming dance on September 27, 2024 and that the assistant principal familiar with the student was the contact person for that dance as a school sponsored event. In an interview with the assistant principal, he stated that the student is one of his administratively assigned students.

Conclusion

In this case, the parent alleged that the school district should have provided special education support for the student to attend the Homecoming game in addition to the Homecoming dance. Special education or related services needed for the student to participate in athletics

were not present in the student's IEP, although the parent attended the student's IEP meetings and the IEP was amended at a transition to high school meeting in April, 2024, before the 24-25 school year began in August, 2024, and again to amend the health considerations section in October, 2024. The student attended the school dance which was made available to the student in a manner that allowed the opportunity to participate, as is required by K.A.R. 91-40-3 (b)(1).

Based on the foregoing, ***it is not substantiated*** that USD 230 failed to consider the student's need for special education or related services during extracurricular activities in violation of the provisions of IDEA.

Issue Three

Did the district follow the student's placement in general and special education during the 2024-25 school year, specifically by not removing the student from the school settings in her schedule?

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 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.

According to guidance by the Office of Special Education Programs, (2022): "Frequent use of short-term disciplinary removals or informal removals of children with disabilities may indicate that the child's IEP does not appropriately address their behavioral needs, which may result in a denial of FAPE."

Analysis: Findings of Fact

The parent alleged that the school was pulling the student out of lunch and that she was isolated from the cafeteria and school functions.

The district responded: "USD 230 denies all allegations in Parent's Request unless specifically admitted herein. To the extent Parent's Request alleges any substantive or procedural violations of the IDEA, USD 230 denies any such allegations, and further denies that any procedural violations, whether alleged or proven, impeded [the student's] right to a free appropriate public education, her parent's right to participate in the decision-making process regarding the provision of a free appropriate education to [the student] or caused deprivation of educational benefits to [the student]..

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

When asked in an interview if the student was isolated at lunch, the teacher stated that the life skills class went to the lunchroom a few minutes before or after the school passing periods to avoid hall crowding and confusions. The teacher and special education administrator stated that a paraprofessional attended the lunch period with the students. In the interview, the teacher stated that she has witnessed the paraprofessional's interactions with students at lunch and other times and characterized the paraprofessional as gentle in her interactions with the students.

When asked in interviews, the teacher and assistant principal stated that the student had not been removed from any classes or activities. According to the assistant principal, the student had not been suspended or required to leave school early due to disciplinary action. Behavior logs provided by the school do not show any disciplinary action that removed the student from her placement.

As previously noted, on October 3, 2024, an incident that resulted in ESI occurred with the student. According to the ESI report, at about 1:20 p.m., the student and another student had a disagreement about snack time, after which the teacher urged the student to use the calming methods available in the classroom. According to the ESI report, the student left the classroom in search of an administrator and became increasingly disregulated when she reached the office, "screaming, crying, shouting" and trying to hit her head while hitting and kicking staff members. The ESI occurred from 2:10-2:12 p.m., after which she laid on the floor and the parent was called. The parent talked to the student on the phone and came to pick up the student. An interview with the assistant principal and an email dated October 4, 2024 stated that the parent was asked to take the student home to prevent interaction with the other student who took the same school vehicle home. The ESI report and the email stated that the student left with the parent about 5-6 minutes before her regular dismissal time.

Conclusion

In this case, the student followed the schedule as set by the life skills classroom to lunch, avoiding regular passing periods. The student was not removed from the school for disciplinary actions such as suspensions or repeated early removals. Based on the foregoing, ***it is not substantiated*** that USD 230 failed to follow the student's placement in general and special education during the 2024-25 school year, specifically by not removing the student from the school settings in her schedule, in violation of the provisions of IDEA.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. 300.323(c)(2) and 34 C.F.R. 300.618 was not found based on the facts above, that special education or related services provided by the nurse were not included in the IEP and the parent asked for and the district provided an IEP amendment to correct errors on the student's health information included in the IEP. Corrective action is not required.

2. ISSUE TWO: A violation of K.A.R. 91-40-3 and 4 C.F.R. 300.107 was not found, based on the facts above. Corrective action is not required.
3. ISSUE THREE: A violation of 34 C.F.R. 300.323(c)(2) and K.A.R. 91-40-27(a)(3) 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 #274
ON NOVEMBER 5, 2024

DATE OF REPORT: DECEMBER 3, 2024

This report is in response to a complaint filed with our office on behalf of two students, ------- and ------- by their parent, -------. In the remainder of the report, the students will be referred to as "Student 1, Student 2 or the Students" and the parent as "the Parent."

The Complaint is against USD # 274 Oakley Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #274.

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 November 5, 2024, and the 30-day timeline ended on December 5, 2024.

Allegations

The following issue will be investigated:

Issue One

USD #274, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to educate the two Students in the least restrictive environment, including extra-curricular activities since the beginning of the 2024-25 school year. K.A.R. 91-40-1.

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by telephone on November 15, 2024. The following District staff were interviewed on November 25, 2024: the football coach, the Principal, two paraprofessionals, and the Special Education Teacher.

The Complaint Investigator also reviewed emails from the Parent and the District between October 7, 2024 and October 30, 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:

From the Parent:

1. Complaint Letter, 10/07/24
2. Email, re: locker room supervision, 10/08-10/30/24

From the District:

1. Letter from Staff, 10/30/24
2. Letter from Staff, 10/29/24
3. Letter from Staff, 10/29/24
4. Letter from Staff, 10/29/24
5. Letter from Staff, 10/29/24
6. Hand Written Note from Staff, 10/29-10/30/24
7. Complaint, 10/07/24
8. Staff Time Sheet, 08/05-10/31/24
9. Staff Time Sheet, 08/05-10/31/24
10. Email, re: locker room supervision for [students], 10/08-10/30/24

Student 1 Materials:

1. Prior Written Notice (PWN), 02/08/24, 03/08/24
2. PWN, 04/10/24, 04/17/24
3. Team Meeting Record, 03/19/24
4. IEP and Progress Reports, 02/07/24, 03/19/24, 05/16/24, 10/28/24
5. Email, re: [student's] 2024 annual and progress reports, 10/29/24

Student 2 Materials:

1. Team Meeting Record, 04/17/24
2. IEP and Progress Reports, 10/04/23, 10/18/23, 12/19/23, 03/19/24
3. IEP and Progress Reports, 04/16/24, 05/16/24, 10/28/24

Background Information

This investigation involved two students in grade 10 enrolled at Oakley High School in USD #274. The Students are eligible for special education services under the category of Autism Spectrum Disorder. The Students are receiving special education or related services as children with a disability per the Individuals with Disabilities Education Act (IDEA). On October 29, 2024, the Parent observed all coaches on the football field with a few students. The remainder of the team was in the locker room after practice. The Parent observed no coaches

or male adults supervising the locker room. The Students have female paraprofessionals. The Parents have asked that a football coach be present as a safety protocol for their non-verbal Students. The Parents alleged the School offered exclusion rather than 1:1 support for their Students.

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. Student 1 and Student 2 are students at a high school in the District who experience Autism Spectrum Disorder. The Parent described the students as "primarily non-verbal and non-communicative." (P1)

Student 1: (Connor Dinkel)

2. An IEP Special Education and Related Services record dated February 8, 2024, indicated, "Record:8 extra curricular activities-fb, bb, track, & games:"
    a. "Frequency is 5 days a week during practices and while [the Student] is preparing to play and playing in games or participating in track."
    b. "Duration is 150 minutes for the duration of practice, or preparing/playing in game or participating in track."
    c. "Start date, 02/08/2024 and end date, 02/07/2025." (S1,176)
3. According to a 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 February 8, 2024, the IEP team met to review "The appropriate educational placement to provide special education and related services identified in the student's Individualized Educational Program (IEP)." A description of the action proposed was, "[Student 1] will receive special education support for extracurricular activities for 150 minutes/5 days a week for 34 instructional weeks."
    a. "Extra curricular activities will require one-on-one special service support in order to meet requirements for student success for most activities. Activities include: concerts, sports practices, as well as participation in games."
    b. "*Parents agree that no 1-on-1 support is needed for away games. Special education support staff will be present*." (S1,1-S1,3)
    c. "Parents agree that no 1-on-1 support is needed for away & home games," which was a change indicated on the February 8, 2024 IEP. (S1, 96)
4. A Team Meeting Record dated March 19, 2024, indicated the Parents wanted to keep paraprofessional support of one paraprofessional at away sporting events, and the Parents wanted 1:1 paraprofessional supervision at sporting practices. (S1, 33)
5. According to a PWN dated April 10, 2024, the Parents agreed that no 1:1 support was needed for Student 1 during away games. Special education support staff would be present. (S1,9) An explanation of why the action proposed was, "[Student

1's] multiple disabilities, including Autism and Speech/Language, adversely impacts [Student 1's] educational performance in the areas of academics, communication, social skills, adaptive behavior skills and sensory skills. The educational concerns for [Student 1] include [their] ability to understand spoken language and use spoken language to communicate [their] wants and needs, appropriately communicate and interact with adults and peers, ability to communicate in verbal and written forms and maintain appropriate cognitive and academic skills." (S1,10)

Student 2: (Quinn Dinkel)

6. According to an amended IEP impact of exceptionality on progress in general education curriculum, dated October 2, 2023, "[Student 2] will participate in community-based activities with special education support as follows: Extra curricular activities will require one-on-one special service support in order to meet requirements for student success. (FAPE, IDEA). Activities include: concerts, field trips, sports practices and activities, as well as participation in games. (Not 1-on-1 for the first two away games to be reevaluated to see needs.)" (S2,54)
7. According to an IEP Accommodation and Modification section, amended on October 2, 2023, "[Student 2] will participate in the general education PE daily and in extracurricular activities such as sports (football, basketball, wrestling and track)." (S2,62) Special Education and Related Services indicated:
    a. "Service Setting, special education extracurricular, after school ff, bb, track."
    b. "Minutes-150 minutes a week."
    c. "Start date-8/23/2023 and end date, 5/17/2024."
    d. "Frequency - every week." (S2,64)
8. An IEP Supplementary Aids Services and Supports for School Personnel with an amended date of October 4, 2024, indicated:
    a. "[Student 2] will have special education support personnel throughout [their] school to assist with academic, communication and social skills. [Student 2] will also have special education support while [they participate] in school activities like band practice, football practice and basketball practice."
    b. "Special education support during [Student 2's] school day will be throughout [their] school day. It is important to note that during lunch, bathroom breaks, changing clothes for activities, and passing periods, and bus trips and away games, [Student 2] does not need a one-on-one support."
    c. "Location-throughout the day including all classes, during school activities like band, football, track practices and weight training."
    d. "[Student 2] will have special education support available for the duration of this IEP."
    e. "The start date - 10/02/2023 and end date - 05/21/2024." (S2,68)

9. A Draft IEP dated April 17, 2024, regarding the identificational impact of exceptionality on educational progress, Student 2 needed, "Extra curricular activities will require one-on-one special service support in order to meet requirements for student success for most activities. Activities include: concerts, some sports practices, as well as participation in games." (S2, 86)
10. According to a Team Meeting Record dated April 17, 2024, the Parent noted the following student strengths: "[The Student] likes to vacuum out the van and clean windows. … is very meticulous. … liked the activities around food service but not necessarily working with the food." (S2,7)
11. A Team Meeting Record dated April 17, 2024, stated, "[Student 2] will receive special education support for extra curricular activities for 150 minutes/5 days a week for 34 instructional weeks:"
    a. "Extra curricular activities will require special service support in order to meet requirements for student success for most activities. Activities include: concerts, sports practices, as well as participation in games."
    b. "*Parents agree that no 1-on-1 support is needed for away games. A special education support staff will be present to away games*." (S2,5)
    c. "Record 9: extracurricular activities - fb,bb, track practices and games/practices. The setting is in the gyms, tracks, football fields in school settings starting 04/17/2024 and ending 04/16/2025." (S2,110)
12. On October 7, 2024, the Parent wrote to the School Board to share their concerns about photos and video that were taken in the locker room of Student 1 and Student 2 and may have been distributed to other students. (D12-D13,P1)
13. On October 8, 2024, and October 9, 2024, the Parent and the Superintendent exchanged emails regarding a meeting they had on October 8, 2024. The Parent wrote, "To recap our meeting this afternoon, we wanted to clarify that [the Superintendent] has allocated [Coach 1] as the competent individual responsible for [the] supervision of both [Student 1] and [Student 2] while in the locker room for the duration of the fall sport [sic] season." (D4, P8) The Superintendent confirmed on October 9, 2024 that "… [Coach 1] will be in the locker room for the remainder of the season to supervise all of the athletes." (D4, P7)
14. According to a Timesheet Week Detail form, Paraprofessional 1 and Paraprofessional 2 were both 1:1 assistants for Student 1 and Student 2 during football practice from 10/28/24 through 10/31/24. (D90, D103)
15. In a written statement dated October 29, 2024, Paraprofessional 2 stated, "After the October 29th football practice, I walked back with [Student 1 and Student 2] to the locker room from the football field. While [Student 1 and Student 2] entered the locker room, I stood outside right by the end of the concession stand where I could hear in the locker room. Many of the football players that entered the locker room left quickly after practice without showering … [Coach 1] did enter the locker room after practice when [Student 1 and Student 2] were in the locker room." (D7)

16. In a written statement dated October 29, 2024, the Principal indicated that they had received an email from the Parent regarding paraprofessional supervision in the locker room on October 29, 2024 after football practice. The Principal watched video footage of the incident. The Principal stated the following:
    a. "5:51 pm [sic] All football players and coaches were on the East [sic] side of the football field in a large huddle."
    b. "5:56 pm [sic] A large group of football players entered the locker room, and other players were still on the field for extra conditioning. [Student 1 and Student 2] were among the large group entering the locker room. Paraprofessionals can be seen by the concessions [sic] stand waiting on [Student 1 and Student 2] to leave the locker room."
    c. "5:57 pm [sic] [Coach 1] enters the locker room. This is less than 2 minutes after [Student 1 and Student 2] enter."
    d. "5:58 pm [sic] [The Parent] is shown on camera driving [their] pick up and parking in the senior parking lot."
    e. "Paraprofessionals stated that [the Parent] was parked behind the guest stadium during most of the practice on 10/29/24." (D8)
17. Coach 2 indicated, "On Tuesday, 10/29/24, practice had finished and the coaches were standing around talking about how practice went. I was conditioning other athletes by running for discipline due to school issues. Once conditioning started, [Coach 1] headed to the locker room to supervise [Student 1 and Student 2]. Basically there was a 30 sec [sic] to a minute that transpired from when the kids left to go to the locker room and when [Coach 1] went into the locker room." (D9)
18. According to the Special Education Teacher regarding emails between the District and the Parent pertaining to the October 29, 2024 football practice event, "No where [sic] in the IEP does it state, like [the Parent] is referring to in the correspondence on 10/30/2024 about 1:1 paraprofessional support in the locker room. From part of the 10/30/2024 email from [the Parent], 'The IEP states that [Student 1 and Student 2] receive 1:1 paraprofessional support for practice. This also includes the locker room.' Two female paraprofessionals were right outside the locker room." (D11)
19. On October 30, 2024, the Parent emailed the Principal, "I was able to observe the end of practice last night (10/29/24) and noticed that all coaches [Coaches 1-5] remained on the field while most of the players went to the locker room and dressed. Could you provide me with the name of the adult who supervised the locker room after practice? I would also like to request the archival of footage from the camera stationed on the south side by the west entry of [a Teacher's] classroom for the time period dating 10/29/2024 between the times of 5:40 pm and 6:30pm [sic]. I understand, due to privacy, that I may not be able to view the footage, but [I] would like to have proof of the identity and when the adult supervisor went into the locker room. If there is another way to confirm this request I would greatly appreciate that information as well." (D2, P4)

20. On October 30, 2024, the Principal emailed the Parent, "From watching the cameras, I see [Student 1] and [Student 2] are both at the beginning of the line when entering the locker room. Both paraprofessionals were right outside the locker room when they entered. [Coach 1] started students running for after-practice conditioning. [Coach 1] followed the players to the locker room as soon as [Coach 2] started conditioning. When [Coach 1] arrived at the locker room, all of the athletes, including [Student 1] and [Student 2], were still in their practice uniforms." We do not allow parents to watch video footage of students, as it would also show other students on video, which, as you know, is a privacy issue."

    "We came up with some ideas that may alleviate this in the future. Most days, all the football boys meet in the weight room to group and watch the film before going to the football practice field. 1) We can have [Student 1] and [Student 2] get dressed in the bathroom/locker room on the East side of the weight room before practice.

    Paraprofessionals can be outside in the weight room when they are dressing. Changing in the weight room would be the new routine, before practice and after practice. 2) We can have [Student 1] and [Student 2] get dressed for practice in the locker by the stadium first before other students get in the locker room. Then, after practice, they can also get changed before other students are in the locker room. 3) If you have another option in mind, please let us know so we can consider it." (D3,P3) The Parent responded the same day, indicating a disagreement with the proposed solutions, "We do not agree that the simplest solution is to exclude [Student 1] and [Student 2] from the team activities as it is presented. The whole point of inclusion is the opportunity to safely participate in every aspect of the team activities. When we met with [Teacher 2] and [the Superintendent] the directive later confirmed by email stated that a coach would be in the locker room to supervise the athletes while dressing. The IEP states that [Student 1] and [Student 2] receive 1:1 paraprofessional support for practices. This also includes the locker room. We understand that female paraprofessionals are not allowed in the male locker room, but that does not relinquish responsibility to facilitate the provision set forth in the IEP's. All that we ask is that the promise kept of a coach, which there are 5 on the football team, supervises the locker room while athletes are in there respectively." (P5)

21. On October 30, 2024, Paraprofessional 1 indicated that they walked directly behind Student 1 and Student 2 while they walked into the locker room after practice on October 29, 2024. Paraprofessional 1 stated, "I stood with [Paraprofessional 2] by the end of the concession stand where I could see into the locker room hallway and hear the football boys. [Coach 1] did go into the locker room after talking with some football players on the field within a short amount of time. The remaining coaches stayed on the field." (D6)

22. On [October] 30, 2024, Coach 1 wrote a statement in which Coach 1 received an email from the Parent which stated that the Parent had observed practice and at the end of the practice, the Parent had observed that none of the coaches "beat athletes to the locker room to be in there while changing. However [,] I walked in

about 2 minutes after athletes to be present while they all changed & [sic] grabbed belongings. I wasn't the first in due to punishing students for low grades and being disruptive in class. My staff didn't go to the lockerroom [sic] as they were discussing plans for practice and leave [sic] for our trip to Blue Rapids for our playoff game." (D10)

23. Coach 1 is a physical education teacher and football coach at the School, and said the Students were on the football team. (Coach 1 Interview, P1, 00:39)
24. Coach 1 explained the Students had paraprofessionals with them at football practice to help them dress and offer support. Coach 1 said the paraprofessionals had been with the Students since they started high school football practice, and that each Student had their own paraprofessional. (Coach Interview, P1, 01:11) Coach 1 said this was the Students second year playing football. (Coach 1 Interview, P1, 01:55)
25. Coach 1 explained they never had to help the Students "dress down" and that the Students had always dressed themselves. (Coach 1 Interview, P1, 01:59) Coach 1 said, "And I had their IEP with them before they were freshmen. I asked their parents if they needed help, getting, dressed, showered, anything like that. And [the Parent] told me they did not, they could do all of that themselves." (Coach 1 Interview, P2, 02:20)
26. Coach 1 stated since the paraprofessionals were females, they could not go into the locker room, and said, "So if they needed any help, they would come outside once dressed and they would help them from there." (Coach 1 Interview, P2, 03:11) When asked if there was ever a need for adult supervision for the Students in the locker room, Coach 1 said, "Not to my understanding." (Coach 1 Interview, P2, 03:26) Coach 1 indicated that a couple of days prior to October 29, 2024, School administration told them that there always needed to be a coach that was in the locker room and they would be the one that went in with the Students. (Coach 1 Interview, P2-3, 03:41) Coach 1 said they were instructed by their principal and superintendent to do this. (Coach 1 Interview, P3, 04:28)
27. Coach 1 explained they had a conversation with the administration because allegedly photos had been taken of the Students in the locker room. Coach 1 stated that nothing had been found, but they had to be in the locker room from then on. (Coach 1 Interview, P3, 04:34) Coach 1 said neither of the Parents approached them about the Students needing supervision in the locker room prior to their conversation with the School administration. (Coach 1 Interview, P3, 05:01)
28. Coach 1 described the events of October 29, 2024, and explained that before releasing practice, they spoke to some of the students about their grades and had others do extra conditioning. Coach 1 stated the students who did not stay after walked to the locker room, and Coach 1 followed them shortly after. Coach 1 stated they perceived about 1-3 minutes passed between the students walking to the locker room and Coach 1 following them. (Coach 1 Interview, P4, 05:49)
29. Coach 1 said they walked into the locker room and the students were changing clothes, and the Students had changed. Coach 1 said the Students exited the locker

room, Coach 1 waited for the rest of the kids to leave, then Coach 1 locked the door and left. (Coach 1 Interview, 4, 07:37) Coach 1 indicated they went into the locker room and supervised the Students on October 28, 2024 also. Coach 1 said, "I walked in right after I got done talking to the kids. I followed all the kids in and kids changed. We walked out. Same thing." (Coach 1 Interview, P4, 07:53)

30. Coach 1 said, "So [the Parent] didn't tell me anything. The only thing I see is an email that is sent to my staff to my administration and to me saying that [the Parent] observed that no ... coach walked in after. And I clearly walked in afterwards." (Coach 1 Interview, P5, 08:31)
31. The Principal explained that prior to October 29, 2024, their understanding was that the Students had one-on-one paraprofessional support with them during football practice and in the classroom. (Principal Interview, P1, 01:17)
32. When asked about their understanding as to the level of support the Students are to receive in the restrooms or locker rooms, the Principal said, "So their support is not on [sic] locker rooms or restrooms is not written in. ... during the school day [the Parent] has always been adamant that they go to the bathrooms by themselves, that they don't have a paraprofessional following them back and forth to the bath restrooms during class time. And so as far as locker room supervision, it's not written in the IEP." (Principal Interview, P1, 02:00)
33. When asked about how long it took Coach 1 to enter the locker room on October 29, 2024, the Principal described what they saw on a School surveillance video, "... but what you can tell is a large group's going in and then less than two minutes you can see [Coach 1] going in. ... But it's pretty obvious it was less than two minutes. When [Coach 1] did get in there, according to [Coach 1], ... no one had really even started changing yet. They were just getting to their area ... where they keep their bags and stuff." (Principal Interview, P2, 02:49)
34. Regarding what may have precipitated the request for more adult supervision in the locker room, the Principal explained the situation stemmed from an incident reported by the Parent, who claimed there was inappropriate behavior in the locker rooms, possibly involving photos of the Students being circulated. According to the Principal, no evidence of sexual misconduct or photos was found, and the matter was reported to the police, with the School cooperating fully. (Principal Interview, P2, 03:29)
35. Paraprofessional 2 stated they are a paraprofessional at the School and have worked with the Students for five months. (Paraprofessional 2 Interview, P1, 00:41) Paraprofessional 2 explained they helped the Students with their schoolwork, and participated with them in track and football practices. (Paraprofessional 2 Interview, P1, 01:00) Paraprofessional 2 believed they started participating in the football practices with the Students on August 16th. (Paraprofessional 2 Interview, P1, 01:25)
36. Paraprofessional 2 explained their instructions to help the Students during football practice was to make sure they were taken care of and help with any needs, such as going to the bathroom. (Paraprofessional 2 Interview, P1, 01:34) When asked if

there was any discussion about how or if the Students needed to be supervised in the locker room, Paraprofessional 2 said, "... since I'm a female I didn't feel like it was right to go into a locker room full of boys. I stood right outside the locker room. I could hear everything that was going on." (Paraprofessional 2 Interview, P1-2, 01:58) Paraprofessional 2 did not recall a plan that someone had to be in the locker room to supervise the Students. (Paraprofessional 2 Interview, P2, 02:25)

37. Paraprofessional 2 said, "[The Parent] had told us last year that ... the paraprofessionals, they got their stuff ready for 'em, but [the Parent] said this year they were doing great, that they didn't need to have help in the locker room." (Paraprofessional 2 Interview, P2, 03:03) Paraprofessional 2 stated this conversation with the Parent took place in the beginning of September. (Paraprofessional 2 Interview, P2, 03:50)

38. Paraprofessional 2 indicated they were supervising the Students during football practice on October 29, 2024. (Paraprofessional 2 Interview, P3, 04:15) Paraprofessional 2 said they remain on the sidelines while the Students practice, and after practice is dismissed, the Students are ready to leave and usually the first in the locker room. (Paraprofessional 2 Interview, P3, 04:33) Paraprofessional 2 explained that on October 29, 2024, the Students entered the locker room and their teammates followed. Paraprofessional 2 stated it was only about a minute where the Students were in the locker room with their teammates before Coach 1 entered the locker room. (Paraprofessional 2 Interview, P3, 6:10)

39. Paraprofessional 2 said they saw Coach 1 run to the locker room, but perceived they were running because they are "always running." (Paraprofessional 2 Interview, P4, 06:36) Paraprofessional 2 confirmed they saw Coach 1 enter the locker room on October 29, 2024 and that the Students were only without Coach 1 for about a minute. (Paraprofessional 2 Interview, P4, 07:13) Paraprofessional 2 believed the Students were in the locker room for about five minutes before exiting on October 29, 2024. (Paraprofessional 2 Interview, P4-5, 08:06)

40. Paraprofessional 2 stated they heard the students and coach talking in the locker room. Paraprofessional 2 said nothing transpired in the locker room that concerned them. (Paraprofessional 2 Interview, P5, 08:59)

41. Paraprofessional 1 stated they are a special education paraprofessional with the School and had been working with the Students since the beginning of April 2024. (Paraprofessional 1 Interview, P1, 00:44)

42. Paraprofessional 1 said their duties were to make sure the Students complete their academic work and offer general support. (Paraprofessional 1 Interview, P1, 01:13) Paraprofessional 1 confirmed they supervised the Students during football practice. (Paraprofessional 1 Interview, P1, 01:34) Paraprofessional 1 explained their duties were to meet the Students' needs while they are at football practice, and they started offering support during football practice around September 2024. (Paraprofessional 1 Interview, P1-2, 01:45)

43. In regards to providing support during football practice, Paraprofessional 1 said they were told to help the Students stay focused and stay on task. (Paraprofessional

1 Interview, P2, 02:27) Paraprofessional 1 said, "... but as a, as a woman ... we're not allowed to be in the, I felt like we're not allowed to go in the locker rooms while, especially with the rest of the team being in there." (Paraprofessional 1 Interview, P2, 02:45)

44. Paraprofessional 1 initially said they were not told by anyone not to enter the locker rooms. (Paraprofessional 1 Interview, P2, 03:17) Paraprofessional 1 did not recall when they were notified that there needed to be adult supervision in the locker room for the Students. (Paraprofessional 1 Interview, P2-3, 03:21) Paraprofessional 1 eventually stated they recalled either the Principal or the Students' special education teacher telling them they could not go into the locker room. (Paraprofessional 1 Interview, P3-4, 03:58)

45. According to Paraprofessional 1, on October 29, 2024, they were with Paraprofessional 2, followed the Students to the locker room, and then waited by the concession stand. (Paraprofessional 1 Interview, P4, 05:53) Paraprofessional 1 said they heard the football team talking inside the locker room. Paraprofessional 1 explained the locker room door was open but they could not see inside. (Paraprofessional 1 Interview, P5, 06:51) Paraprofessional 1 said they did not recall having football practice on October 30, 2024.

46. Paraprofessional 1 said they waited outside the locker room for about 5-10 minutes on October 29, 2024. (Paraprofessional 1 Interview, P5, 07:54) Paraprofessional 1 perceived it took Coach 1 about 3-4 minutes to enter the locker room after the Students had entered. (Paraprofessional 1 Interview, P5-6, 08:17)

47. The Students' Special Education Teacher indicated this was their second year working with the Students. (Special Education Teacher Interview, P1, 00:58) The Special Education Teacher described the Students as non-verbal, well-behaved, and eager to learn. (Special Education Teacher Interview, P1, 01:21)

48. The Special Education Teacher explained that the Students could get dressed by themselves, use their talkers, get to their lockers and classes on their own, and use the restroom by themselves. They said the Students did not require one-on-one support in various activities, such as art class and when working on community projects. (Special Education Teacher Interview, P2, 02:42)

49. The Special Education Teacher said, "Locker room was never discussed. That is not in the IEP." (Special Education Teacher Interview, P2, 04:21) The Special Education Teacher believed the Parent may have requested one-on-one paraprofessional support in the locker room after a specific incident occurred. (Special Education Teacher Interview, P2-3, 04:39) The Special Education Teacher said, "Evidently there was some allegations that [the Students] ... had a picture taken of them in the bathroom. There has been no evidence of this picture. I didn't find out until ... October 7th had I even heard of the incident. And because of that we went and had a ... meeting with the superintendent and I, and the coach, and we decided that the coach can go in there ... to supervise ... but it was not part of the IEP meeting or anything like that." (Special Education Teacher Interview, P3, 05:19) The Special Education Teacher said having one-on-one adult support in the locker room was

not discussed prior to October 7th or 8th and was not in the IEP. (Special Education Teacher Interview, P3, 06:19)

50. The Special Education Teacher explained they addressed the special education services in Student 1's IEP by having paraprofessionals with them at football practice, and these paraprofessionals stood outside the bathroom door, which stays open. They stated there had not been a discussion about the paraprofessionals going into the locker room. (Special Education Teacher Interview, P4-5, 09:13)

51. The Special Education Teacher said, "... the time that they were not supervised, it sounds like ... a minimal time, like 20 seconds, 30 seconds ... and that's just from walking from the football field into the locker room. And those paraprofessional pairs [sic] were right there. So I don't feel like they were unsupervised in the bathroom, per se, because all the kids were leaving for parent-teacher conferences." (Special Education Teacher Interview, P5, 10:26) The Special Education Teacher indicated the IEP had since been revised, stating a new provision that when there is a team in the bathroom, an adult male will be in the bathroom also. (Special Education Teacher Interview, P5-6, 12:15)

Positions of the Parties, Applicable Regulations, and Conclusions

ISSUE ONE: USD #274, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to educate the two Students in the least restrictive environment, including extra-curricular activities since the beginning of the 2024-25 school year. K.A.R. 91-40-1.

According to 34 CFR 300.320 and K.A.R. 91-40-1, each agency shall ensure that the children with disabilities served by the agency are educated in the least restrictive environment (LRE). The least restrictive environment means the educational placement in which, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, including extra-curricular activities. Children with disabilities are to be removed from the general education environment only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services or modifications cannot be achieved satisfactorily.

Parent Position: The Parent alleged that on October 29, 2024, the Parent observed all coaches on the football field with a few football players while the remainder of the team went to the locker room after practice. The Parent alleged they did not observe any coach or male adult enter the locker room for supervision. The Students have female paraprofessionals and the Parents had asked that a football coach be present as a safety protocol for their non-verbal Students. The Parents asked the School to review the process, and the School proposed dressing in their own locker room or at a different time than everybody else. The Parent alleged the School offered exclusion rather than the 1:1 support.

District Position: The District disputes the claims made in the Complaint. The District stated upon the knowledge of the less than 2-minute coach entry into the locker room,

after the District reviewed video footage of the football locker room entry by Student 1 and Student 2, the District was not in violation of the Complaint.

Conclusion

The IEP in effect for Student 1 on October 29, 2024 did not specify that adult support was required in the locker room. Student 2's IEP in effect on October 29, 2024, specifically noted that Student 2 did not require adult support in the locker room. The District's records and investigative interviews reflect that adult support in the restroom had not been the expectation of the Parent until October 27, 2024, at which time the Parent made the request for adult support to be provided in the restroom. The District agreed to this support and an adult started going into the locker room within 1-2 minutes after practice starting on October 28, 2024, and including October 29, 2024.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the District failed to educate the two Students in the least restrictive environment.

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 #259
ON NOVEMBER 4, 2024

DATE OF REPORT: DECEMBER 3, 2024

Background Information

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, Wichita Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #259.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint. 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 November 4, 2024, and the 30-day timeline ended on December 4, 2024.

Allegations

The following two issues will be investigated:

ISSUE ONE: Whether USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP during the 2024-25 school year. K.A.R. 91-40-16(b)(3).

ISSUE TWO: Whether USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to offer the appropriate IEP services and denied the Student a free appropriate public education. K.S.A. 72-3429; K.A.R. 91-40-18; K.A.R. 91-40-1(z).

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video on November 18, 2024. The Special Education Director, the IEP Manager, and the Speech-Language Pathologist (SLP) were interviewed on November 26, 2024.

In completing this investigation, the Complaint Investigator reviewed the materials provided by the District. The Parent did not provide any materials. Although additional documentation was provided and reviewed, the following materials were used as the basis of the findings and conclusions of the investigation:

1. Classroom Photos, no date
2. [Student] Implementations, no date
3. Behavior Log, 08/26/24-10/18/24
4. Service Log, 01/19/24-05/21/24
5. Text Messages, 09/20, no year
6. Example of IEP Implementation, 09/06/24-11/07/24
7. Emergency Safety Intervention Parent Notification and Documentation, 03/29/24, 04/03/24, and 04/09/24
8. Email, re: requesting an IEP, 09/20/24
9. Email, re: follow up, 09/26/24-09/27/24
10. Email, re: observation notes, 10/29/24
11. Email, re: [Student] FBA progress and [Agency] info, 11/04/24-11/05/24
12. Observation Notes, 10/07/24
13. Daily Notes, 03/18/24-05/21/24
14. Daily Attendance Profile, 2024-25
15. Goal Progress Notes, 08/23/24-11/08/24
16. Visit Summaries, 08/13/24-11/06/24
17. Contact Log, 08/25/22-11/08/24
18. IEP, 01/11/24
19. IEP and 504 Team Meeting Notes, 01/11/24
20. PWN Signature Page, 01/11/24
21. PWN, 01/11/24
22. IEP Amendment, 03/25/24
23. IEP Amendment Form with PWN, 03/25/24
24. Disciplinary Action Form, 09/20/24
25. Notification of Short-Term Suspension, 09/20/24
26. Notice of Meeting, 09/20/24
27. Meeting Notes, 09/26/24
28. PWN, 09/26/24
29. IEP Progress Report - Annual Goal, 10/16/24
30. Interval and Intensity Data Sheet, 10/24-11/01, no year
31. IEP, 09/26/24
32. Signature Page, IEP, 09/26/24

Background Information

This investigation involved a ninth-grade student enrolled in the District. The Student is currently receiving services as a child with Autism per the Individuals with Disabilities Education Act (IDEA).

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 IEP, dated January 11, 2024, included the following:
    a. The Student was in the 8th grade and attending a Special Education School in the District and was identified as a student with Autism.
    b. The reevaluation date was scheduled for January 10, 2027.
    c. The Summary of Present Levels of Academic Achievement and Functional Performance for Transition Services were described:
        i. The Student's "… disability affects [their] skills in all academic, social, and behavioral areas. [The Student] requires a modified curriculum in all areas, including math, reading, and science. [The Student] needs access to an alternate curriculum that focuses on early learning and basic language concepts. [The Student's] basic social skills are significantly delayed when compared to same-age peers."
        ii. The Student's strengths and needs were described.
        iii. The Student's postsecondary goals were described in the areas of Training/Education, Employment, and Independent Living Skills.
        iv. The Student was not on an alternative graduation plan.
        v. Transition services and the person responsible for implementation were listed in the areas of Instruction, Community Experience, Employment, Adult living and Post-School Training, and Daily Living.
    d. The Summary of Present Levels of Academic Achievement and Functional Performance and Needs was described in the areas of General Intelligence, Educational: reading, writing, math, social-emotional, health/physical, communication, and other.
    e. The Student required a Health Care Plan.
    f. The Parent indicated that "[The Student] can be quite combative and is physically aggressive towards adults as well as peers."
    g. The most recent evaluation results were considered.
    h. The Student's behavior impeded their learning, the learning of others, or their ability to access the general education curriculum. Physical aggression and elopement were listed as behaviors.
        i. "A Functional Behavioral Assessment is not warranted."

ii. "A Behavior Intervention Plan is warranted."

i. The IEP Team considered the communication needs of the Student.

j. The Student required assistive technology, a "Touch screen i[P]hone for [the classroom]."

k. Adapted Physical Education was not needed.

l. Parent concerns were addressed, "Behavior plan discussed to help mitigate the number and behaviors and the severity of the behaviors."

m. Special training was required for teachers and staff, "Staff is trained in de-escalation techniques."

n. The following Annual Goals were listed:

   i. Math: "By the next annual IEP [the Student] will show understanding of 1:1 correspondence to ten when related to counting tasks with 60% accuracy on 4 / 5 trials as measured by classroom data," with instruction provided by the special education teacher.

      1. "When presented with a set of up to 3 objects, [the Student] is able to match an equal set in 0 out of 2 opportunities."
      2. Four benchmarks were listed, each with increasing accuracy percentages.

   ii. Reading: "By the next annual IEP, [the Student] will identify and show the beginning letter of a 5[-]letter or less word with 60% accuracy on 4 / 5 trials as measured by classroom data," with instruction provided by the special education teacher.

      1. The score was listed as 20%, and four benchmarks were listed, each with an increasing accuracy percentage.

   iii. Communication: "By the next annual IEP, with [the Student's] communication book available to [them], [the Student] will use [their] communication book or device to indicate [their] wants and/or needs when in an escalated state without being accompanied by maladaptive behaviors on 8 out of 10 trial[s] as measured by classroom data," with instruction provided by the SLP.

      1. The score was listed as "1 / 10 trials when escalated and without being accompanied by maladaptive behaviors."
      2. The four benchmarks listed the same goal.

o. In the area of Special Education/Related Services, the following information was listed:

   i. "[The Student] will receive all of [their] educational services in a special day school."

   ii. "[The Student] will receive direct speech and language services 20 minutes per week, which will be provided in a group or individual setting."

iii. The Student required transportation as a related service.

iv. The Student required behavior accommodations and accommodations for unstructured/unsupervised situations.

v. "[The] Student cannot be left alone and must [receive] line-of-sight by a pre-approved designated individual."

vi. A harness and adult attendant care and supervision were listed as vehicle adaptations.

p. The following Supplementary Aids and Services were listed:

i. "Work clearly explains what [the Student] needs to complete to be done" to "help facilitate [the Student's] understanding of the work [the Student] needs to do," beginning on January 11, 2024, and occurring daily per the assigned attendance center calendar across all school settings for the duration of the school day.

ii. "Assignments and tests read aloud to [the Student]" because "[the Student] cannot read directions," beginning on January 11, 2024, as needed throughout the day at the assigned attendance center for the duration of the school day.

iii. "Specific feedback from staff" to "help [the Student] in [the] understanding of tasks/behavior expectations" beginning on January 11, 2024, to occur daily per the assigned attendance center calendar across all school settings for the duration of the school day."

iv. "Separate space for breaks/calming" because the Student "needs space when aggressive towards others," beginning on January 11, 2024, as needed throughout the day at the assigned attendance center for the duration of the school day.

v. "Opportunities to support sensory needs; walks, lights off, quiet time, wheelchair/wagon rides, bear hugs, close proximity to an adult, proprioceptive input" in order "to help maintain sensory regulation in order to maximize ability to participate in [their] school/classroom environment" beginning on January 11, 2024, as needed throughout the day across all school settings for the duration of the school day.

vi. "Access to visual supports" to help "[the Student] understand and organize [their environment]" beginning on January 11, 2024, occurring daily per the assigned attendance center calendar across all school settings for the duration of the school day.

vii. "Close adult proximity" to help "facilitate academic instruction, self-help skills, transitions and expressive communication" beginning January 11, 2024 occurring daily per the assigned attendance center calendar across all school settings for the duration of the school day.

viii. "Modeled expectations" to help "facilitate understanding of expectations" beginning January 11, 2024 occurring daily per the

assigned attendance center calendar across all school settings for the duration of the school day.

ix. "Access to communication device or book" to help the Student "communicate with staff [their] wants/needs" beginning on January 11, 2024, as needed throughout the school day at the assigned attendance center for the duration of the school day.

x. The Student was eligible for Extended School Year (ESY) services for regression on academic/education goals.

xi. The Student required assessment accommodations or modifications.

q. The Least Restrictive Environment (LRE) for the Student was described as "a special day school setting due to [their] need for increased structure and supports. [The Student] will not have access to general education peers. [The Student's] IEP Team is in agreement that this is [their] Least Restrictive Environment. This placement will be reviewed at least annually."

r. "[The Student] will not have the opportunity to participate with students who do not have exceptionalities. This includes extra-curricular and non-academic activities."

s. The potential harmful effects of the LRE were described.

t. The Student's Behavior Intervention Plan (BIP) listed the following behaviors: throwing, grabbing, pinching, biting, hitting, kicking, scratching, eloping, and screaming. Baseline data indicated the following:

i. Physical aggression, four times per week;

ii. Hitting, eight times per aggressive behavior;

iii. Kicking, ten times per aggressive behavior;

iv. Biting, two times per aggressive behavior;

v. Elopement, one to two times weekly; and

vi. Aggressive screaming, four times weekly.

u. These behaviors occurred to avoid non-preferred tasks or to gain access to a preferred item, person, or activity.

v. The following prevention strategies were listed:

i. "Communication book or device is always within reach."

ii. "Classroom rules and expectations posted around [the] room."

iii. "Use of schedule."

iv. "Reminding [the Student] [they] can use [their] words if [the Student] wants to be 'all done.'"

v. "Encouraging and praising positive behavior."

vi. "Social/Emotional Learning lessons."

vii. "Break card on desk."

w. The strategy to teach replacement behaviors was "continual practice on using [their] speech book so [the Student] can indicate [their] wants and needs." When the replacement behavior occurred, "Given immediate and specific praise [sic]."

x. When physical aggression occurred, the Student was:

i. "Required to use [their] words to indicate what [the Student] wants before leaving the task (Break)."

ii. "Taken to break area if too unsafe."

iii. "Return to the task [the Student] was at once [the Student] is safe again."

iv. "If [the Student] uses [their] words, [their] request should be honored immediately, or as soon as possible so [the Student] trusts that using [their] words will be effective for [them]."

v. In the break area:

1. "Staff should immediately tell [the Student], 'When you are ready, I will start your time.'"
2. "Once [the Student] is quiet and ready, staff should start a timer (5 minutes, example)."
3. "Keep [an] eye on [the Student] but give [them] little attention."
4. "Once [the] timer goes off, staff reads [a] social story to [the Student]."
5. "[The Student] returns to the activity [the Student] was doing at the time and get[s] back on schedule."
6. "Repeat as needed."

y. The IEP Manager was responsible for managing the BIP and collecting data, which was collected and analyzed quarterly.

z. The Parent signed and consented to the IEP. (D199-D218; D238)

2. The IEP Meeting Notes, dated January 11, 2024, described the areas of the IEP that were discussed and the outcomes/next steps. (D234-D235)
3. The Prior Written Notice (PWN), dated January 11, 2024, noted the change in services, the description and explanation of the actions proposed or refused, other options considered, a description of the data used to propose or refuse action, and other relevant factors. (D239-D241)
4. The following Service Log information was collected by the SLP for the Student:

a. Goal: Using the communication book or device to indicate wants/needs in an escalated state without the accompaniment of maladaptive behaviors on 8/10 trials as measured by classroom data.

i. 1/19/24, 20 minutes in the classroom.

ii. 2/2/24, 20 minutes in the classroom.

iii. 2/22/24, 20 minutes in the classroom.

iv. 2/23/24, 15 minutes of communication functions using "visuals and prompting to search for communication book for self-advocacy."

v. 2/28/24, a 20[-]minute observation "utilizing sensory break provided."

vi. 3/1/24, 29 minutes of self-expression of wants/needs using "gestures to point to preferred objects and words approximation of 'all done' to indicate disinterest." Notes indicated that "Staff provided a first/then statement with the noticed [Student] vocalizations and gestures changing in an activity. [The Student] responded well to the phrase and reminder to take a breath."

vii. vii. It was noted that the Student "indicated wants/needs in 1 out of 6 opportunities provided."

b. For the same goal, the following data was collected:

i. 3/22/24, 15 minutes of "Identifying emotions from a field of 2 with visuals." The notes indicated that the Student performed at "80% accuracy independently" and "used appropriate communication 0/1 to communicate wants/needs before escalation." Notes indicated that the session ended due to behaviors.

c. Notes indicated that the goal was amended, "When provided prompting, [the Student] will use communication/visual supports to communicate wants/needs such as a preferred sensory break, discontinuation of activities, and/or self-advocacy phrases in 6 out of 8 opportunities provided to support self-regulation skills as measured by SLP and classroom data." The baseline was listed as 2 out of 3 opportunities.

i. 3/29/24, 20 minutes of describing actions with "75% accuracy with models. Requested 2 sensory breaks independently. Remained calm during waiting period provided visuals."

ii. 4/5/24, 20 minutes of choice board. It was noted, "Discussed with staff choices for a choice board."

iii. 4/19/24, 25 minutes of group in which the data noted was "0/1 to communicate finished/upset; Communication book accessible on the table but [the Student] began using actions to communicate wants/needs."

iv. 5/3/24, 5 minutes of prompting for visuals. Notes indicated a "Discontinuation: 0/1 opportunities before pushing materials."

v. 5/8/24, 5 minutes of discontinuation of activities, "0/1 provided modeling."

vi. 5/21/24, 10 minutes of visuals in which the Student "Pointed to no to indicate no participation."

vii. The Student utilized communication/visual supports to communicate wants/needs for self-regulation in 1 out of 4 opportunities. (D15-D16)

5. An IEP Amendment dated March 25, 2024, included the following:

a. The Summary of Present Levels of Academic Achievement and Functional Performance indicated that in the area of communication:
    i. "When provided visual/communication supports, [the Student] can navigate these supports independently and or with rare prompting to express wants/needs regarding sensory breaks, preferred activities, etc. when in a regulated state in 2 out of 3 data sessions. When provided access to visual supports, [the Student] can navigate familiar and novel visual communication supports to enhance [their] communication with others prior to becoming escalated."
    ii. "[The Student] is provided encouragement and/or prompting to get [their] communication supports/visuals to communicate with others. [The Student] can become upset/escalated quickly which can impact [their] ability to consistently communicate in a safe way for [the Student] and others. When escalated, [the Student] can self-harm, hit, bite, and/or kick others."
b. The Description of Specially Designed Instruction and Related Service indicated that "[The Student] will receive all of [their] educational services in a special day school. *[The Student] will receive direct speech and language services 20 minutes every 4 weeks which will be provided in a group or individual setting." (D244-D263)
c. The Parent consented to the changes on March 25, 2024. (D269)

6. The IEP Amendment form dated March 25, 2024, indicated that the Student's "direct Speech/Language services will reduce from 20 minutes a week to 20 minutes a month." The document was signed electronically by the Parent. (D264)
7. A PWN dated March 25, 2024, noted the change in speech-language services. (D265-D268)
8. An Emergency Safety Intervention, restraint, was used on the Student on March 29, 2024, twice on April 3, 2024, and on April 9, 2024, for "behavior that presented a reasonable and immediate danger of physical harm to your child or others." The documentation indicated the Student had a BIP. (D24-D25; D32-D34; D36-D39; D40-D43)
9. Behavior data was collected on the Student from March 18, 2024 through May 21, 2024. Data was noted with a "-" indicating the behavior was not observed and a "+" indicating the behavior was observed. Tick marks were used to denote the frequency of a behavior.
    a. From March 18, 2024 through March 29, 2024, nine days of data was collected.
        i. On four out of eight days in which the data was collected, the Student came to school with a positive attitude and put their belongings away.
        ii. According to the data collected, the Student followed expectations in 29 out of the 45 time slots over the course of the month.
        iii. There were 47 instances of physical aggression, not including the day in which it was noted there were "too many" to count.

iv. No elopements were documented. There were two calls to Safety Support. (D74-D116)

b. From April 1, 2024 through April 30, 2024, 19 days of data was collected.
   i. On 7/19 days, the Student came to school with a positive attitude and put their belongings away.
   ii. There were 77 timeslots over the course of the month for the Student to follow expectations. According to the data, the Student followed expectations in 58 of those time slots.
   iii. There were 82 instances of physical aggression recorded for the month, not including the day in which it was noted that there were "too many" to count.
   iv. There were five elopements, nine calls to Safety Support, and five instances of property damage.

c. From May 1, 2024 through May 21, 2024, 14 days of data were collected.
   i. On 10/14 days, the Student came to school with a positive attitude and put their belongings away.
   ii. The data collected for the following expectations was collected each day during five different time slots, with a few exceptions. The Student followed expectations in three or more of the time slots on eight out of 14 days.
   iii. There were 50 instances of physical aggression during the 14 days. The largest number of instances recorded was 11, which occurred on three different days.
   iv. There were eight elopements and four calls to Safety Support.

10. In an interview with the Complaint Investigator, the Parent shared that the Student's "behaviors kind of escalated toward the end of the year … in the last semester, there were four to five [Emergency Safety Intervention] (ESI) reports on restraints where typically it had to do with that transition at dropoff was a problem and [the Student] would be having a behavior in the parking lot, and they would escort [the Student], get [them] to [their] feet and escort [them] physically to the classroom at which time they would let [the Student] be in [their] space and [the Student] would recoup [their] composure and move on with [their] day." (Parent Interview, P7, 25:43)
11. The Student's 2024-25 Daily Attendance Profile for the 2024-25 school year listed absences from August 26, 2024 through November 4, 2024. During that time, the Student was absent for five days for medical/dental care. The Student left early on one day and was suspended for one day. (D147)
12. From August 16, 2024 through November 5, 2024, the Nurse documented the dates and times they interacted with the Student. The Nurse documented witnessed behaviors, behavior-related injuries, medication management, and Parent communications. (D151-D193)

13. Communication with the Parent from August 21, 2024 through November 8, 2024 was documented in the Special Education Student Contact Log on topics related to the Student's behaviors, the iPad, the Student's hospitalization, staff interventions, and medication. (D195-D197)
14. Photos documented interactions with staff and the Student in a variety of activities from September 6, 2024 through November 4, 2024. Photos also documented the following visual supports for the Student:
    a. Posters depicting "Independent Work," "Voice Levels," and "When I Feel Angry, I Can" with photos and words.
    b. A poster with a check box and the word "Task" and a check box and the word "Break."
    c. A handwritten schedule on a whiteboard depicting the time, the activity, and photos representing the activities. (D8-D12; D20-D21)
15. During the first quarter of the 2024-25 school year, according to the service log, the SLP did not provide services to the Student on two occasions in September: September 13, 2024, and September 20, 2024. It was noted in the log that the Student experienced behaviors on September 27, 2024, and the SLP logged five minutes with the Student. There were no indications that Speech-Language services were provided in October 2024. (D148) In an interview with the Complaint Investigator, the SLP relayed that the Student did not receive all of their Speech service minutes in September. (SLP Interview, P3, 03:41)
16. Behavior data was collected on the Student from August 30, 2024 through October 18, 2024, and indicated the following:
    a. On-task behavior was collected on five occasions and indicated the Student was on task between 15% of the time and 58% of the time.
    b. Safe hands, feet, and object behaviors were collected on five occasions and indicated the Student was safe between 15% and 58% of the time.
    c. Staying in assigned area behavior was collected on five occasions and indicated that the Student stayed in their assigned area between 3% and 46% of the time. (D14)
17. The IEP Manager described in an interview with the Complaint Investigator that the behavior data collection program was new to the District, and there was a learning curve regarding its use. Regarding academic data, the IEP Manager shared, "I only had a couple [of] times where even after trying more than once that I could get [the Student] to actually work with me so I could get the data." According to the IEP Manager, the data collected was shared with the Parent via progress reports. (IEP Manager Interview, P3, 07:17)
18. In an interview with the Complaint Investigator, the IEP Manager indicated that the Student was able to utilize the crash pad as a calming space when the Student was escalated. The IEP Manager said that "the pictures … on the wall … some of them are some that we were trying to make [the Student] feel more welcome … and then some of [them], when [the Student's] upset, [the Student] can choose those activities on those pictures that are on … visuals that are permanent to the windows. And then the

schedule is one for so [the Student] can know when [they're] supposed to work, when [the Student] has breaks, when specials are, and when [the Student's] supposed to transition to the cafeteria." The IEP manager indicated that the visual supports started when the Student "moved into the room" and the crash pad came shortly thereafter. The IEP Manager described that the alphabet blocks were introduced after a meeting with the Agency. (IEP Manager Interview, P2, 02:23)

19. The IEP Manager shared in an interview that the Staff were trained on non-violent crisis intervention. The Student's main staff was trained in the use of Ukeru mats. According to the IEP Manager, the relevant staff were provided copies of the Student's IEP, goals, and BIP, and they reviewed the information with the IEP Manager. (IEP Manager Interview, P2, 04:16)
20. The District provided a document that described how the staff would respond to the Student in various situations. The document described a combination of de-escalation techniques, structured calm-down periods, and positive reinforcement used to manage the Student's behavior. (D13)
21. On September 20, 2024, a Disciplinary Action Form indicated the Student was suspended for one day for "Assault/Battery on Staff." The Student "hit kicked [sic] and bit staff and a small student." (D271) A suspension letter was sent to the Parent on the same day. (D272)
22. On September 20, 2024, the Parent emailed the District to request an IEP meeting to change the Student's behavior plan, indicating that they would like to meet "as soon as possible, but no later than October 4, 2024." (D51) A Notice of Meeting was generated for a meeting scheduled on September 26, 2024, to discuss possible changes in the IEP. (D293-D294) On that same date, the IEP Manager and the Parent exchanged texts regarding dates and times for an IEP meeting. The IEP Manager indicated they would send the consent to electronically communicate, a waiver of the 10-day notice, and paperwork to invite outside agencies. (D17-D18)
23. The IEP dated September 26, 2024, included the following:
    a. The Student was in 9th grade and attending a Special Education School. The Student's reevaluation was scheduled for January 10, 2027.
    b. The annual goal for communication was:
        i. "By the next annual IEP, when provided prompting to use visual supports/communication book, [the Student] will communicate [their] wants/needs such as a preferred choice of break, discontinuation of an activity, self-advocacy, etc. to improve self-regulation skills in 6 out of 8 opportunities provided as measured by SLP and classroom data."
            1. The score was listed as "2 out of 3 opportunities provided."
            2. There were four benchmarks, each with an increasing number of successful opportunities out of 8. The dates of the benchmarks were: 3/8/24, 5/23/25, 10/11/24, and 1/10/25. (D326)
    c. The Student's BIP listed the following target and peak behavior examples and non-examples:

i. "The target behaviors look like [the Student] walking up to others and biting, pinching, hitting, and or kicking them. It can also look like [the Student] throwing objects at them or the walls. The target behavior does not look like [the Student] working, sitting quietly, or following directions of staff."

ii. Peak behavior was listed as noncompliance, "Peak behavior can look like [the Student] being disregulated [sic], throwing things, headbutting others or windows and doors to gain escape from the activity. It can also look like [the Student] walking up to others and hitting, kicking, biting, or pinching them to try and escape the activity or safe area."

iii. The function of the target behavior was to "Avoid Tangible/Activities." The hypothesis was "to avoid/delay a non[-] preferred task or activity or to gain access to a preferred item, activity or person."

iv. The updated baseline was described as follows:

1. "Physical aggression - 4 times weekly";
2. "[H]itting - 8 times per aggressive behavior";
3. "[K]icking - 10 times per aggressive behavior";
4. "[B]iting - 2 times per aggressive behavior"; and
5. "Aggressive screaming - 6 times daily (in sync with physical aggression)."

v. The description of the replacement behavior was "using multi-modal communication to get [their] wants and needs met without the agreesion [sic] taking place."

vi. The procedure for addressing instances of peak non-compliance involved the following steps:

1. "Planned ignorong [sic] unless not safe."
2. "[R]eminder to use [their] words."
3. "Take away the audience if possible."
4. "Once regulated go back to the previous task for completion."
5. "If [the Student] uses [their] words then the communication must be honored unless unable to do so."

vii. The fidelity of the BIP was measured by classroom observations, which were reported to the Parent quarterly by the IEP Manager. (D316-D336)

viii. The Parent signed the September 26, 2024 IEP. (D337)

24. Meeting Notes dated September 26, 2024 listed the reason for the meeting as "[The Parent] requested an IEP Review." The Team discussed ignoring maladaptive behaviors, using a timer, adding a personal visual schedule, adding a work/task break schedule, minimizing verbal directives when dysregulated, and "suggestion of bringing the classroom or tasks to [the Student] so [the Student] has less opportunity to elope." The IEP Manager indicated that the "Classroom has a duct tape section in the room that is a

designated space for [the Student]." The Notes listed that "[The Parent] would like the classroom to have more structure for [the Student] to have set areas and to help [the Student] know [their] expectations. [The] Classroom currently has a visual schedule on the board. [The Parent] is requesting a specific schedule posted for [the Student]. Suggestions of 2 or 3 tasks, such as cards for [the Student] to know which task occurs at each time. A developed work system for [the Student] knows what is expected and how long [the Student] is required to be completing each task. [The Parent] suggested [the] use of a timer to provide a visual for [the Student] to see the time left." Additional notes included looking into switching the Student's communication device, adding a work/break schedule, limiting transitions to certain areas. The BIP was reviewed and they "will add a behavior goal after completing the new FBA [Functional Behavior Assessment]." It was noted that the social worker would get consent from the Parent to complete a new FBA. (D295-D296)

25. A PWN dated September 26, 2024, indicated the District proposed conducting a reevaluation, which included a social/emotional/behavioral assessment. Proposed actions were described and explained, and a description of the data used to make the proposal was included. The Parent consented. (D297-D302)
26. A PWN dated September 26, 2024, listed the changes in service:
    a. "Adding supplementary aides for reinforcement system including but not limited to Jigsaw puzzles, pictures, movie character, superhero's, kids school songs, photos, and positive praise."
    b. "Added supplementary aide of visual times."
    c. "Added supplementary aide of visual schedule."
    d. "Added supplementary aide of limiting verbal feedback."
    e. "Added supplementary aide of planned ignoring of maladaptive behaviors."
    f. "Added supplementary aide for limiting transitions to areas within the building that are enclosed and secured." (D328)
    g. "The team recognizes that [the Student's] behavior is changing and the team agrees that a new FBA may provide further information to guide the team in supporting [the Student] in finding success. Removed an accommodation for within the behavior plan."
    h. Other relevant factors indicated that the Student "may have some struggles in adapting to some of the new accommodations. However, the potential of [the Student] finding greater success and remaining safe in [their] school environment far outweighs the potential negative effects." (D305-D307;D338-D342)
    i. The PWN was signed by the Parent on November 18, 2024, consenting to the changes. (D342)
27. The Parent recalled that during the September 26, 2024 IEP meeting, some of the Student's accommodations were missing from the IEP. The Parent shared that the accommodations were added back in and that the District was "…very willing and supportive of doing that. We have met Friday and today and I don't know if it's just paperwork errors or some of those things did not make it to the final copy of the

September 26th meeting paperwork. I don't know if they were implemented and just not in the paperwork." (Parent Interview, P3, 07:31) The Parent was unsure as to whether the accommodations were provided after the September 26, 2024 meeting. (Parent Interview, P4, 09:42)

28. In an interview with the Complaint Investigator, the Parent was asked which sections of the Student's BIP were not implemented. The Parent replied, "[The Student] did not have a break card available to [the Student] on [their] desk. Then … is [the] use of a schedule, and I don't think [the Student] had a schedule available to [them] at that time. Again, the communication book or device is always within reach. … The response to behavior on this says, 'Take into break area if too unsafe.' And with their new regulations, they cannot put hands on a child unless the child is in [imminent danger to themself or others]. … I mean, like a black eye isn't even on the list. It's like broken bones, profuse bleeding is of imminent danger. And so a lot of what we're seeing is their failure to be able to back up their expectations with any kind of firm boundary with [the Student]." (Parent Interview, P5, 12:14) The Parent believed that the District needed to put "… some physical boundaries into place without hog tying. I'm not saying I want [the Student] hogtied or anything like that, but just some firm boundaries of 'This is where you need to be and you need to stay there.' … And these last two days are all initiated by me … 'Hey, we need different strategies, we need different supports, we need to be gathering different information to put something together' has not been happening." (Parent Interview, P6, 14:27)
29. The IEP Manager shared how the accommodations from the September 26th, 2024 IEP meeting were implemented, "… We do limit verbal feedback and do the planned ignoring that [the Parent] wanted whenever [the Student] starts getting escalated. We have limited [the Student's] transitions. If [the Student's] having a bad day, we do what [the Parent] asked, and we don't even offer the specials or the times out of the classroom. [The Student] does have a visual schedule that is posted in the room. … And then there's the visual timers that we use on the staff member's phone or on [the Student's] iPad. And then we also, it's a visual/audio timer that plays [the Student's] favorite song, 'You've got a friend in me,' so [the Student] knows that … is time to transition." (IEP Manager Interview, P4, 09:51)
30. The IEP Manager shared in an interview with the Complaint Investigator that the implementation of supports were impacted by the Student's behavior. The IEP manager indicated that "Planned ignoring takes a lot of time, and if we are supposed to be doing academics, the planned ignoring winds up being more of the hour than the teaching … because every time you bring up anything academic or anything that isn't related to [the Student's] iPad or something that [the Student] is requesting, the behavior start[s] all over again." (IEP Manager Interview, P6, 12:47)
31. In an interview with the Complaint Investigator, the Parent shared that they felt like the Student's individual needs (intellectual, developmental, sensory, and communication) were disregarded in the Student's special education plan. They argued that while restraints were not a long-term solution, they should be available as a last resort to prevent serious harm, particularly because the Student's sensory differences and

developmental level impair their ability to protect themself. The Parent wanted to ensure the Student's safety needs were met and to understand what alternatives existed. (Parent Interview, P6, 16:10)

The Parent described that their understanding was that "physical restraint could only be used in situations in which it is imminent. … And it includes situations such as physical disfigurement, broken bones. A concussion is imminent. … I was told that at the moment that [the Student] leaves the building, [the Student's] not in any imminent danger, and thus they cannot physically stop [the Student]. And, according to that definition, when [the Student] is soaking wet in the rain … 60 degrees isn't terribly cold. I totally know that. But when you're wet for a long time, it kind of is. [The Student's] not in imminent danger and imminent severe danger to [themself] or others. And so they cannot physically escort [the Student] against [their] will into a dry setting." (Parent Interview, P6, 18:51)

The Parent believed the District was providing supervision to the Student. (Parent Interview, P7, 21:40) The Parent shared that on one occasion, the Student was banging their head on the pavement in the parking lot. Staff were unable to restrain the Student or effectively protect the Student's head with mats due to training restrictions that prevent them from touching the Student once any part of the Student's body was on the ground. This policy, stemming from state regulations against prone or supine holds, left staff powerless to intervene even when the Student was harming themself. The Parent highlighted the conflict between safety and strict interpretation of the regulations. (Parent Interview, P7, 23:13)

32. The Special Education Director shared in an interview with the Complaint Investigator that the School followed a strict policy on physical restraint, using it only as a last resort when a student is a serious danger to themselves or others. The Special Education Director shared that the new Department of Justice (DOJ) requirements add an extra layer of scrutiny to ensure that restraints are used only when absolutely necessary and in accordance with the nonviolent crisis intervention model. Seclusion was also being phased out. The School emphasized that any physical intervention would be a last resort, used after all other options had been exhausted. (Special Education Director Interview, P2, 02:49) The Special Education Director described that before the DOJ requirements were in place, there were occasions in which the Student was physically restrained. (Special Education Director Interview, P3, 04:32)
33. In an interview with the Complaint Investigator, the IEP Manager expressed that the Student's behavior changed several weeks after the start of the school year. The IEP Manager described that initially, the Student seemed well-adjusted, using their iPad in their own space. However, the Student's behavior quickly escalated to include aggression towards staff and students, attempts to damage furniture, elopement from the building, and self-harm. The school responded by planned ignoring and attempts to de-escalate situations, which was in line with the new DOJ guidelines that restrict the use of restraints and seclusion. (IEP Manager Interview, P3, 04:58)

34. The Parent indicated in an interview with the Complaint Investigator that if the District did not "… have the skills and if FAPE cannot be achieved at this current setting, then they need to be offering the more restrictive setting … ." The Parent requested that the District look at a local boarding school to support the Student's needs, but the District had not yet responded to that request. (Parent Interview, P8, 26:38)
35. The IEP Manager indicated in an interview with the Complaint Investigator that additional supplementary aids and services discussed at the September 26, 2024, IEP meeting were added to the Student's services on the accommodations and modifications page. The IEP Manager described that there were several people working on the Student's IEP, and the document was not signed by the Parent because "… it just slipped through the cracks that none of us had gotten that signed, because when we had the actual meeting a PWNE was brought to the meeting and not the PWNP, and then we said that we would get it back to [the Parent], and I think it just slipped through the … cracks." (IEP Manager Interview, P7, 15:41)
36. On September 26, 2024, the Assistant Principal emailed the Parent to share that "[The Previous School] said they didn't require an FBA for a behavior plan at the time so there is not one for [the Student] so having an actual FBA done is a step in the right direction." (D52)
37. In an interview with the Complaint Investigator, the Parent shared, "One of the things that was brought to their attention and my attention back in September was that [the Student] did not always have a communication device, a nonverbal way to communicate [their] wants and needs with [the Student]. And I will be honest, I think it's hit and miss still at this point. Some of the reasoning … is because [the Student] uses [their] communication book as a weapon and throws it at people, which makes it difficult. Other things in place are visual schedules first. Then scheduling the things that [the Student] needs that help [them] to regulate and maintain [their] anxiety in the classroom." (Parent Interview, P1, 02:35)

    The Parent continued, "… in the beginning, [the Student] wasn't in a classroom at all. So I don't think [the Student] had it available really at all to [them]. And that was for the first seven weeks of school until they created a private classroom for [the Student] … which I think it's more often available to her. But if [the Student] is eloping and moving away from it, it's not always taken when [they're] in a new location." (Parent Interview, P2, 04:25) The Parent did not recall who told them the Student did not have access to the communication book. (Parent Interview, P2, 05:29)
38. The Board Certified Behavior Analyst (BCBA) described the following in their observation notes dated October 7, 2024:
    a. Staff provided access to a calming space.
    b. The Student engaged in preferred activities/reinforcers.
    c. Staff attempted to address sensory needs.
    d. Staff attempted to engage the Student with a puzzle/academics.

e. "[The Student's] staff were new and it appeared they were not trained on [the Student's] BIP or tasks … ."

f. "I did not observe [the Student] having access to [their] communication book. I checked [their] backpack and I only found a stack of family pictures in a ziplock bag. Does [the Student] have access to a communication book? What was offered was several poster sized communication boards for [the Student] to use. [The Student] did not approach the communication boards when [the Student] was in the classroom."

g. "I did not observe staff using First/Then being used [sic]."

h. "I did not observe anyone taking data during the school day. I too was unable to take frequency data throughout the day due to [the Student] engaging in dysregulated behavior most of the day." (D71-D73)

39. In an interview with the Complaint Investigator, the IEP Manager shared that the Student used an iPad and communication books. The books were usually kept in different places in the classroom, but sometimes another student took them. On the day of the BCBA observation, the books were out of sight, and the staff working with [the Student] that day were unfamiliar with their usual locations. As a result, they couldn't find the communication books. (IEP Manager Interview, P5, 11:51)

40. An IEP Progress Report dated October 16, 2024 indicated the following:

    a. Math: Progress was made toward 30% accuracy and 45% accuracy. For 50% accuracy, progress was not made "due to refusal and behaviors." The 60% accuracy, "… will be addressed in December."

    b. Reading: Progress was made toward 30% accuracy and 45% accuracy, but the annual goal may not be met. 50% accuracy was not met "due to refusal and behaviors."

    c. Communication: This goal was not "target[ed] this quarter" for 3 / 8 opportunities or 4 out of 8 opportunities and was not met in 5 out of 8 opportunities or 6 out of 8 opportunities. (D303-D311)

41. From October 24, 2024 through October 31, 2024, data was collected on the Student's rate of hitting, biting, kicking, and screaming. All of those behaviors occurred together on 16 different occasions over the course of six days. Biting did not occur on 17 other occasions in which the other behaviors occurred. (D312-D313)

42. On October 29, 2024, the Assistant Principal emailed District Personnel to describe that there was frequent communication with the Parent and that the Student struggled with getting on and off the bus. The Assistant Principal indicated that the Student's personalized space and consistent routine were contributing to the Student's progress. The Assistant Principal shared that an assistant provided valuable support for the Student and that the next step was to integrate more academics into the Student's day because they were currently practicing tasks and breaks. (D60)

43. On November 4, 2024, the Parent emailed the District to request an update on the FBA, "… it has been over 9 weeks this school year that [the Student] has been exhibiting these behaviors. I do not get daily or weekly updates as promised … ." That same day

the Assistant Principal responded via email, "We are in the middle of [the Student's] FBA. [The School Psychologist] or [the School Social Worker] will contact you to schedule the FBA meeting. [The IEP Manager] will be able to answer your data questions. Our district[-]wide behavior collection system has been down a few weeks which could be why you haven't seen it. [IEP Manager], can you make sure [the Parent] is getting data daily?" (D62-D64)

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP during the 2024-25 school year. K.A.R. 91-40-16(b)(3).

According to 34 CFR §300.323(a) and K.A.R. 91-40-16(b)(3), an IEP must be in effect for each exceptional child at the beginning of each school year and be accessible to each teacher and provider who is responsible for its implementation.

The Parent alleged that during the first twelve weeks of school, the Student had not been assigned to a classroom but spent the days either in the hallway refusing to move or in a private classroom. The Parent further alleged that the School failed to implement behavior supports and structure that kept the Student in the classroom. The Parent stated that the Student has "maladaptive behaviors to seek attention and gain control of [their] environment" and had "eloped from the building numerous times."

The District indicated that "… it was in violation of state and federal regulations implementing the IDEA in part in implementing the Student's IEP during the 2024- 2025 school year by not providing the student their anticipated services for the entirety of the student's total monthly speech/language service minutes for two months; the district has offered to [the] parent that it will make-up 40 minutes of speech/language. The school also made procedural and clerical errors and for which the school currently is working to correct and will be re-training staff." (D1)

"Accommodations provided to the student were per [the Student's] IEP, including those the team discussed and added at the 9-26-24 meeting. The school failed to present the parent with the PWNP at the conclusion of the 9-26-24 meeting but presented the parent with a PWNE at that time for the FBA to be conducted, which the team believed was necessary before reviewing and possibly revising the student's current BIP. While the team reached consensus about implementing the new accommodations, the school was in error not to provide the parent with a PWNP regarding the IEP amendment; the school has followed up by asking the parent for their consent to implement the accommodations per the 9-26-24 meeting (see email). Training will be provided to the staff so that they understand in the future to request consent for IEP items requiring consent before implementation, which is included in the Proposal to Resolve provided to KSDE." (D1)

The District believed that they implemented the Student's "… current IEP during the 2024-2025 school year with those exceptions to which the district has stipulated … and worked with the parent as a team to address the student's behavioral needs, including elopement. Altogether, the team has met and revised the IEP, consulted outside resources, and is in the middle of conducting an FBA to help inform the team as to the function(s) of specific behaviors and what they should include in the student's IEP to meet [their] needs in light of [their] circumstances. The school is committed to correcting any errors and/or making up any missed services. Staff training provided regarding procedural/clerical errors should lessen the chances of these types of errors occurring in the future." (D4)

The District described that "The meeting notice for that meeting sent on 12-13-23 contained a typographical error showing the meeting on 1-8-24, but everyone came to the meeting on 1-11-24 and no corrected [Notice of Meeting] (NOM) was found." (D5)

The IEP Amendment, dated March 25, 2024, stipulated a reduction in speech-language service minutes from 20 minutes per week to 20 minutes per month. However, service logs indicated the Student did not consistently receive these services, even at a reduced frequency. The SLP acknowledged that the Student did not receive all of their minutes in September 2024, and there was no record of speech-language services provided in October 2024. Additionally, the Student's communication book, which should have been "always within reach," was, at times, unavailable for the Student to use. The primary challenge in implementing the Student's BIP was the "planned ignoring," which impacted the School's ability to provide academic instruction.

There were procedural errors with Prior Written Notices (PWN) that were not properly signed by the Parent, and the September 26, 2024 IEP did not contain the additional supplementary aids and services documented in the PWN.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is substantiated*** that the District failed to consistently implement the Student's IEP.

Issue Two

Whether USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to offer the appropriate IEP services and denied the Student a free appropriate public education. K.S.A. 72-3429; K.A.R. 91-40-18; K.A.R. 91-40-1(z).

When creating or reviewing an IEP, the team must follow these guidelines:

a. Use state and district test results to inform the IEP.

b. Evaluate the student's needs in all areas, including behavior, assistive technology, and accommodations.

c. Include any needed support in the IEP to ensure the student receives a free appropriate public education (FAPE). K.S.A. 72-3429, K.A.R. 91-40-18, and 34 CFR §300.320

A "free appropriate public education" and "FAPE" means special education and related services that meet the following criteria:

a. Are provided at public expense, under public supervision and direction, and without charge;

b. Meet the standards of the state board;

c. Include an appropriate preschool, elementary, or secondary school education; and

d. Are provided in conformity with an individualized education program. 34 CFR §300.17 and K.A.R. 91-40-1(z)

The Parent alleged that the School was unable to maintain a safe and orderly learning environment for the Student and asserted that the situation impeded the Student's ability to receive an effective education. The Parent stated that the District should implement a behavior intervention plan (BIP) that will provide a FAPE, including the use of physical restraint and consider a more restrictive setting if needed.

During the 2023-24 school year, the District used physical restraint as an emergency safety intervention for the Student. Since then, the United States DOJ has issued a directive that prohibits the District from using physical restraint except for imminent risk of harm (Settlement Agreement between the United States of America and Wichita Public Schools, July 2, 2024). In this case, the Student did not engage in behaviors that constituted "risk of substantial physical harm." The use of physical restraint was not part of the Student's IEP during the complaint period and the District was not required nor authorized to implement this type of intervention for the Student.

The District indicated that "… it is in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) by failing to implement the Student's IEP speech and language services in their entirety, this [sic] denying the student [their] FAPE … but did not fail to offer the appropriate IEP services for the remainder of the time." (D5) The Student's progress report dated October 16, 2024, indicated that the communication "goal was not target[ed] this quarter" and the Student had not made progress toward the goal.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it substantiated*** that the District's failure to provide speech and language services denied the Student a Free Appropriate Public Education as required by law.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. A violation occurred in the following area:

A. Federal regulations at 34 CFR §300.323(a) and K.A.R. 91-40-16(b)(3) specify an IEP must be in effect for each exceptional child at the beginning of each school year.

In this case, the evidence supports the finding that USD # 259 did not provide 40 minutes of speech and language instruction to the Student.

Based on the foregoing, USD # 259 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD # 259 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 CFR §300.323(a) and K.A.R. 91-40-16(b)(3) and provide the required 40 minutes of missed speech and language instruction.
2. Within 15 calendar days of the date of this report, USD # 259 shall also submit the corrected Notice of Meeting(s) found in error during the District's internal investigation.
3. Further, by February 1, 2025 USD #259 shall submit a written statement of assurance to Special Education and Title Services (SETS) that the District's practices and procedures for IEP implementation have been reviewed and revised as appropriate to be responsive and compliant with evaluation procedures of the Individuals with Disabilities Education Act (IDEA) and the Kansas Special Education for Exceptional Children Act.

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 #259
ON NOVEMBER 8, 2024

DATE OF REPORT: DECEMBER 10, 2024

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." Individually, ------ will be referred to as "the student's father." ------ will be referred to as "the student's mother." USD #259 will be referred to as "the district."

Investigation of Complaint

On November 13 and 19, and December 3, 2024, the complaint investigator spoke via telephone with the Mediation/Due Process Supervisor for the district. On December 6, 2024, the investigator spoke via conference call with the social worker, school nurse, classroom teacher, building principal, the speech/ language pathologist, a Director of Special Education, and the Mediation/Due Process Supervisor.

The investigation of a formal complaint requires the investigator to contact the complainant in order to gather additional information and verify specific allegations of noncompliance that may be relevant to the investigation. To that end, the investigator spoke twice by telephone with the student's father on November 18, 2024 and later that same day spoke by telephone with the student's mother. On November 18, 2024, the investigator sent the parents an amended summary of their complaint issues for their review and approval. The student's mother responded with questions which the investigator answered by email that same day. On November 19, 2024, the student's father provided documents requested by the investigator.

The investigator and the student's father exchanged emails regarding additional documents on November 20 and 21, 2024. On November 22, 2024, the student's father sent the investigator an email regarding an email the parents had received from the district and asking for the investigator's thoughts regarding the district's request for an IEP team meeting, noting that the parents were "under the impression that [they] had a right to put the IEP meeting on hold, especially when there is an open complaint." The investigator sent an email response to the student's father on November 22, 2024 stating that she would call him on November 23, 2024. The student's father did not answer the investigator's first or second call on November 23, 2024, but the investigator left a message responding to the parents' question about the IEP team meeting.

The student's father called the investigator on December 3, 2024 to ask again about the district's proposal to conduct an IEP team meeting. The student's father stated that he had not received the previous voicemail message left by the investigator.

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

- Special Ed Student Contact Log covering the period of August 8, 2021 through November 14, 2024
- Evaluation or Reevaluation and Request for Consent dated January 22, 2024
- Evaluation or Reevaluation and Request for Consent dated February 2, 2024
- Section 504 Plan for the student dated February 8, 2024
- Notice of Meeting dated April 9, 2024
- Multidisciplinary Team Report dated April 17, 2024
- Multidisciplinary Evaluation Team Participants dated April 17, 2024
- IEP for the student dated April 16, 2024
- IEP signature page dated April 17, 2024
- IEP signature page containing the student's mother's signature dated April 20, 2024
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated April 17, 2024
- Email exchange dated August 14-19, 2024 between the student's mother and the classroom teacher
- Email dated August 21, 2024 from the student's mother to the classroom teacher
- Letter dated August 23, 2024 from the student's classroom teacher to all parents in her classroom
- Email exchange dated August 27, 2024 between the student's mother and the classroom teacher
- A second email exchange dated August 27, 2024 between the student's mother and the classroom teacher
- Email dated August 28, 2024 from the student's mother to the classroom teacher
- Email dated August 31, 2024 from the parent to the classroom teacher
- Skills Competency Training for Delegation - Oxygen Saturation Monitoring dated September 4, 2024
- Email dated September 4, 2024 from the student's mother to the classroom teacher
- Email dated September 17, 2024 from the student's mother to the classroom teacher
- Educational Occupational Therapy Referral for Observation/Screening dated September 18, 2024
- Email exchange dated September 25, 2024 between the student's mother and the building principal
- Email exchange dated September 27, 2024 between the student's mother and the school nurse
- Email dated October 4, 2024 from the student's father to the student's classroom teacher
- Email dated October 14, 2024 from the student's mother to the classroom teacher

- IEP Progress Report - Annual Goal dated October 18, 2024
- Email exchange dated October 22, 2024 between the student's mother and the social worker
- Email exchanges dated October 22 and 23, 2024 between the student's mother and the school nurse
- Sample communication pages covering the period of October 22 - 25, 2024
- Email dated October 24, 2024 from the student's mother to the social worker
- Email exchange dated October 24, 2024 between the student's mother and the speech/language pathologist
- Email dated October 24, 2024 from the student's mother to the social worker
- Email dated October 25, 2024 from the student's mother to the IEP case manager
- Communication sheet dated October 28, 2024
- Communication sheet dated October 29, 2024
- Communication sheet dated October 30, 2024
- Email exchange dated October 29-30, 2024 regarding an email sent by the student's mother on October 29, 2024
- Communication sheet dated October 31, 2024
- Communication sheet dated November 1, 2024
- Email exchange dated November 1, 2024 between the student's mother and the school nurse
- Email exchange dated November 4, 2024 between the student's father and school staff
- Email exchange dated November 5, 2024 between the student's father and the building principal (with the principal's response sent at 10:36 am)
- Email dated November 5, 2024 from the building principal to the student's father at 10:41 am
- Email dated November 5, 2024 from the building principal to the student's father at 4:17 pm
- Email dated November 7, 2024 from the security supervisor for the district to the building principal
- Email dated November 8, 2024 from the building principal to the student's father
- Email exchange dated November 8, 2024 between the building principal and the student's father
- Email dated November 12, 2024 from the building principal to the student's father
- School-wide Homework Policy for the student's school for the 2024-25 school year
- Homework folder sample items including a word list, color chart, shape chart, letter sound fluency chart, number chart, alphabet chart, upper case letter chart, and pencil grip illustration
- Written statement from the school nurse provided to the investigator on November 20, 2024
- Written statement regarding homework from the building principal provided to the investigator on November 20, 2024

- Written statement from the classroom teacher provided to the investigator on November 20, 2024 regarding an alleged incident on November 4, 2024
- Written statement from the classroom teacher provided to the investigator on November 20, 2024 regarding classroom breaks
- 2024-25 SLP Calendar covering the period of August 20 through November 11, 2024
- Skills Competency Training for Delegation for the administration of inhaler medication and oxygen saturation monitoring for the 2024-25 school year
- Medicaid treatment log for speech/language services covering the period of August 20 through September 26, 2024
- Medicaid treatment log for speech/language services covering the period of August 27 through October 22, 2024
- Medicaid treatment log for speech/language services covering the period of October 22 through November 7, 2024
- Elementary Progress Report for the student for the first quarter of the 2024-25 school year

Background Information

This investigation involves a 6-year old girl who is currently attending a performing arts and science magnate elementary school in the district. According to her current IEP dated April 15, 2024, the student demonstrates deficits in her cognitive and communication skills that meet the criteria for her to be identified as a special education student under the category of Developmental Delay. The IEP also states that she has chronic lung problems and asthma. According to the student's father, the student was delivered at 23 week's gestation and has experienced a number of medical issues due to her premature birth.

As reported by the student's father, the student has been diagnosed with Stage III IOP, a significant decline in vision due to advanced glaucoma, where the intraocular pressure (IOP) is significantly elevated, causing noticeable damage to the optic nerve and resulting in significant peripheral vision loss.

During the 2023-24 school year, the student participated in a half-day "PreK" classroom where she received special education support throughout the school day. On February 2, 2024, the parents provided written consent for evaluations to determine the student's eligibility for speech/language and other special education services. On February 8, 2024, a Section 504 Plan was implemented for the student which outlined a number of accommodations. Additionally, the student received 30 minutes of speech/language services each week.

For the 2024-25 school year, the student has been enrolled in a full-day general education kindergarten classroom. Her April 2024 IEP states that she would be provided 180 minutes of special education support in the general education classroom for ELA (English/Language Arts), math, and "other curriculum activities as determined by the special education team." She has continued to receive 30 minutes per week of speech/language services.

Medical issues have contributed to the student missing many days of school this year. School records show that she had missed all or part of 35 days of school by the time this complaint was received.

Issues

In their complaint, the parents identified 10 concerns. Following telephone calls with the parents on November 18, 2024, these concerns were - for the sake of clarity - reorganized into 5 issues.

Not every action taken by a school district with regard to a student who has been determined to be a student with an exceptionality is covered under special education law. Similarly, special education law does not address everything experienced by an exceptional student within a school setting. At K.A.R. 91-40-51, Kansas regulations state that, when filing a formal complaint, the complainant must allege that a violation of federal or state 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.

In their written complaint, the parents have presented some concerns 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)). Concerns focused on alleged bullying, for example, are not eligible for investigation through this process. Likewise, district homework policies are not covered by special education laws. This investigator does not, therefore, have the authority to resolve these concerns.

Issue One

The district has failed to properly implement the student's IEP.

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 parents contend that the district has failed to provide the student with six of the accommodations that are specified in the student's April 16, 2024 IEP. Each of these areas will be addressed separately below.

Communication Binder

Position of the Parents

The parents state that they made numerous requests via phone and email for the communication binder to be implemented. They assert that they met with the building

principal on September 27, 2024 and were assured that the communication binder would be implemented correctly. The parents contend that the binder was not sent home until October 28, 2024. According to the parents, the binder was subsequently provided on an inconsistent basis, was incomplete, and was managed by the IEP manager for the student rather than the classroom teacher.

Position of the District

The district stipulates that the accommodation of a communication binder was not implemented at the start of the school year on August 14, 2024.

Investigative Findings

The "Supplementary Aids and Services (Accommodations and Modifications)" section of the student's April 16, 2024 IEP includes the following statement:

> *"Communication book between parents and teacher regarding [the student's] school day, services that were provided that day and nutrition log...This will keep the family in the loop and knowledgeable about [the student's] nutrition intake at school to decipher what is needed to be given once she comes home."*

The IEP states that the book will be provided "every school day." According to the student's father, the book was completed daily and sent home approximately once a week during the 2023-24 school year.

For the 2024-25 school year, the communication book was not sent home to the parents until October 25, 2024. On that date, the parents received reports for the previous four days. The speech/language pathologist created a form for communication which reflected the student's day on a 4-point scale with room for comments. The form included a 3-point scale to describe how much of her lunch the student had eaten by mouth as well as a 4-point scale to describe her transitions. The form also showed what classes and services the student had during the day, what special education services she had received, and when she went to the bathroom.

The parents sent an email to the teacher on October 25, 2024 asking:

> *" What are these pages? Is this her 'communication binder?' Because it should be a daily binder coming home with her from school. Where are the other missing days? It needs to have on there also what school work she has worked on and what she needs to continue to work on, from her Teacher with all of the rest of the stuff that was on the paper."*

The investigator determined that the communication sheet has been completed on a daily basis since October 22, 2024. The information needed to complete the form has been given to the case manager by the classroom teacher, nurse, and speech/language pathologist.

The district has reached out to the parents to schedule an IEP team meeting to discuss the content and structure of the communication book. The parents had requested an IEP team meeting for the same purpose, though they subsequently notified the district that they wanted to have the IEP meeting put on hold. At the time this complaint was received, no IEP meeting

to address this concern had yet been conducted, but a meeting is scheduled for December 17, 2024.

The district is also working on creating an electronic version of the communication binder to share with the parents at the upcoming IEP meeting.

Summary and Conclusions

Because the accommodation calling for a communication book was not implemented until the end of October 2024, a violation of special education statutes and regulations ***is substantiated*** on this aspect of this issue.

Pulse Oximeter

Position of the Parents

According to the parents, the principal at the student's building confirmed on September 27, 2024 that a pulse oximeter was not being used to check the student's oxygen levels and staff had not yet been trained on the use of the pulse oximeter.

Investigative Findings

> *The "Supplementary Aids and Services (Accommodations and Modifications)" section of the student's April 16, 2024 IEP includes the following statement:*
>
> *"Pulse oximetry monitor in the room and staff have been trained on it...to ensure [the student's] oxygen is within normal limits and if not, she will need oxygen or a breathing treatment..."*

According to the "Health/Physical" portion of the "Summary of Present Levels of Academic Achievement and Functional Performance - Needs as They Affect Learning" section of the student's April 16, 2024 IEP,

> *"Due to her chronic lung disease, [the student] will be affected by respiratory infections worse than her peers. She may need oxygen and breathing treatments in the nurse's office."*

In a telephone conversation with the investigator on November 18, 2024, the student's father stated that, during the 2023-24 school year, the parents would notify classroom staff if the student had been experiencing breathing problems at home that might make it advisable to check her oxygen levels at school. If oxygen levels fell outside the normal range when checked, staff would notify the school nurse who would then determine what - if any - additional actions were needed. If staff observed the student to be breathing with difficulty, they would initiate a check on her oxygen levels and contact the nurse if levels warranted.

A nurse is assigned to the student's building of attendance on a full-time basis. The nurse sees the student every day she is in school to address her feeding-related needs. The school nurse and the student's mother communicated via email at least once regarding the student's O2 level (October 23, 2024).

According to a record provided by the district, the school nurse completed training on oxygen saturation monitoring for the social worker and the behavior specialist on September 4, 2024. The district provided the guidance document used for that training.

The nurse reports that no one in the general education classroom has been trained on the use of the pulse oximeter, and a pulse oximeter is not available in the classroom.

According to the nurse, she has not received any requests from the parents to check the student's O2 levels during this school year. In a conference call on December 6, 2024, the nurse stated that she had checked the student's O2 level once during this semester - on December 4, 2024 when the student came in after recess with a cough. The student was subsequently sent home "sick." The student used her inhaler while in the nurse's office on one separate occasion earlier in semester.

Summary and Conclusions

A pulse oximeter is not currently available in the student's Kindergarten classroom. Training on the use of the pulse oximeter for two other staff members was not completed until September 4, 2024. Because this accommodation is not being fully implemented as written in the student's April 16, 2024 IEP, a violation of special education statutes and regulations ***is substantiated*** on this aspect of this issue.

Documentation of Speech Therapy Services

Position of the Parents

The parents assert that the student's IEP requires the district to notify them of the "dates [and] times" when speech therapy services were provided to the student and to document the "objectives addressed." It is the position of the parents that they have not been provided with this information through the communication book. The parents contend that they have only received a "single general progress note," making it hard for the parents to "monitor her progress and confirm the consistent delivery of required speech therapy services."

Investigative Findings

The "Supplementary Aids and Services (Accommodations and Modifications)" section of the student's April 16, 2024 IEP includes the following statement:

> *"Communication book between parents and teacher regarding [the student's] school day, [including] services that were provided that day [emphasis added]..."*

The "Annual Goals and Benchmarks or Short Term Objectives" section of the student's April 2024 IEP also includes the following statement:

> *"A report of progress toward meeting annual goals will be provided to the parents in the same manner and frequency as general education report cards."*

According to the student's father, the district speech/language pathologist who provided services to the student during the 2023-24 school year communicated with the parents frequently on an informal basis.

On October 23, 2024, the student's mother sent an email to the speech/language pathologist (SLP) asking about services to the student, writing:

> *" I would like to get a copy of the data from [the student's] speech therapies, times, dates and progress notes please."*

The SLP responded in an email dated October 24, 2024, writing:

> *"I have attached the [IEP] progress note for you to review. Her service minutes are 15 minutes 2 times a week (30 minutes total) and I do my best to serve those when she is available to me here at school. I absolutely adore working with her and would love to get you guys in to talk further about her progress and more about what I do with her and go over her IEP and develop it to better serve her. Is there a time that works best for you? Please let me know. Hope this helps!"*

According to the progress report, the student's skills had been monitored on October 18, 2024. At that time, she was making adequate progress toward attaining the following goal:

> *"By the next annual IEP, given speech services, and with no more than 1-2 cues/prompts, [the student] will correctly produce phonemes /f/, /v/, and various /r/-blends and /l/ blends with 80% accuracy at the phrase level as measured by SLP data and observation."*

The progress report stated that the student was doing well "given verbal and visual cues by the SLP." The student had improved from a baseline level of 43% at the word level for the /f/ to a 70% level. For the /v/ sound, she had maintained 70% correct production.

The student's mother responded to the email from the SLP on October 24, 2024, writing :

> *"Thank you for the progress attachment. Do you have any date that shows what dates and times you've worked with her? I'm so glad you enjoy working with her. Thank you... Sorry I ment [sic] Data. Could we get data for the dates and times you've worked with her please."*

The SLP replied:

> *" I pull her from class on Tuesdays and Thursdays from 11:10-11:25."*

The student's mother wrote back:

> *" Thank you. Is there a log or any data or notes you have on the days you do speech with her?"*

The speech/language pathologist did not respond to the parent's last question and has not provided the parent with additional data.

Once the communication book was implemented in late October 2024, the SLP provided the classroom teacher with information regarding speech services for inclusion in the binder. The

parents subsequently told the SLP that they expected to receive more information, including the raw data which the SLP provides in aggregate form in quarterly IEP progress reports.

Medicaid treatment logs provided by the district reflect the provision of speech/language services to the student over the period of August 20 through November 7, 2024. A calendar of speech/language services for the student for the period of August 20, 2024 through November 11, 2024 was provided by the district. The document shows that the student received services on 12 days during this period and was absent 9 days.

Summary and Conclusions

Records provided by the district show that when the student was present at school, she was provided with the speech/language services called for in her April 16, 2024 IEP. As noted above, the communication book which was to convey information to the parents regarding what services were provided to the student each day was not implemented until the end of October 2024. Therefore, a violation of special education statutes and regulations *is substantiated* on this aspect of this issue.

To be clear, however, the accommodation as written in the student's April 16, 2024 IEP states only that the parents are to be notified of what services were provided on a given day. The IEP does not require that daily information regarding what specific skills were addressed during the therapy sessions be provided to the parents nor does the accommodation require that parents be given raw data collected during therapy sessions. If that information is maintained by the district, the parents may request access to those records under the requirements established by FERPA (Family Education Rights and Privacy Act).

Maintenance of a Nutrition Log and Provision of Assistance in Opening Food and Drink Items

Position of the Parents

The parents contend that they have not been provided with a nutrition log during this school year. If the student is observed to have eaten less than half of her lunch, she is to be given a tube feeding. The parents state that in the absence of a nutrition log, they cannot make informed decisions regarding her dietary needs.

The parents also allege that the classroom teacher is neither providing nor allowing the provision of assistance to the student in opening food and drink items in order to ensure adequate nutrition. According to their complaint, the classroom teacher discouraged them from assisting their daughter with opening food and juice containers when they attended the classroom Halloween party.

Position of the District

The district stipulates that it did not, at the start of the school year on August 14, 2024, implement the accommodation regarding the provision of a nutrition log.

Investigative Findings - Nutrition Log

The "Supplementary Aids and Services (Accommodations and Modifications)" section of the student's April 16, 2024 IEP includes the following statement:

> *"Communication book between parents and teacher regarding [the student's] school day, services that were provided that day a**nd nutrition log** [emphasis added]...This will keep the family in the loop and knowledgeable about [the student's] nutrition intake at school to decipher what is needed to be given once she comes home."*

The district provided a copy of a daily nutritional intake record that has been maintained by the school nurse. In that log, the nurse records when bolus feedings are given to the student and in what amount. The school nurse and the student's mother have communicated frequently about the student's nutritional intake since the start of the school year. Once the communication binder was implemented, the nurse provided information for inclusion in the binder. Any remainder from the student's daily lunch was also sent home so the parents could see what was left and supplement as needed.

The school nurse administers daily tube feedings each morning that the student is in school. Supplemental feedings are also administered by the nurse at lunch unless the student consumes more than 50% of her lunch. (The student has only eaten more than half of her lunch on two occasions this school year - when pizza was on the menu.) The school nurse also completes a water flush for the feeding tube at the end of each school day. The school nurse and the student's mother have communicated via email at least twice (September 27 and November 1, 2024) regarding tube feedings for the student.

On October 29, 2024, the student's mother sent an email to the student's classroom teacher and the school social worker stating "I will need to know what she is eating orally at lunch from now on." The building principal told her staff that she would contact the student's mother and ask her to "join us on a phone conference or in person to discuss all her questions."

Summary and Conclusions -Nutrition Log

While the school nurse has since the beginning of the school year maintained a record regarding the student's nutritional intake, that information was not for a period of several weeks provided to the parents through a communication log as required by the student's April 16, 2024 IEP. A violation of special education statutes and regulations *is substantiated* on this aspect of this issue.

Investigative Findings - Assistance in Opening Food and Drink Items

According to the "Health/Physical" portion of the "Summary of Present Levels of Academic Achievement and Functional Performance - Strength" section of the student's April 16, 2024 IEP,

> *"[The student] asks for help when needing a package opened or a milk carton during snacks."*

The "Needs as They Affect Learning" section of that same section states,

> *"[The student] is working on independently opening her snacks and milk."*

There is no requirement in the student's IEP for the student to be provided with assistance when opening food or drink items.

In a conference call with the investigator on December 6, 2024, the classroom teacher stated that it is her practice to ask this student - and her peers in the classroom - to try to manage food and drink containers on their own before offering assistance. According to the classroom teacher, the student has been increasing in her independence with this task but is provided with assistance if she is unable to access her food or drink on her own.

Summary and Conclusions - Assistance in Opening Food and Drink Items

The student's current IEP does not require the provision of assistance to the student in opening food and/or drink items. The classroom teacher's request that the parents not provide assistance to the student during the classroom Halloween party is not a violation of requirements of the student's IEP. A violation of special education statutes and regulations ***is not substantiated*** on this aspect of this issue.

Bathroom Access

Position of the Parents

The parents assert that the teacher has on at least two occasions refused to allow the student to use the restroom upon request. It is the position of the parents that the student should immediately be granted permission to use the restroom whenever she asks, since failing to allow the student to do so could result in her wetting herself.

Position of the District

It is the position of the district that the requirements of the student's IEP related to bathroom access have been implemented.

Investigative Findings

The "Supplementary Aids and Services (Accommodations and Modifications)" section of the student's April 16, 2024 IEP includes the following statement:

> *"[The student] will need a separate bathroom break with a visual checklist of bathroom steps. This will help [the student] successfully use the restroom and take care of her hygiene needs. This will also help with the growth of developing independence as time progresses due to the consistent use of the visual bathroom step checklist."*

In a statement provided to the investigator on November 20, 2024, the school nurse stated that the student has two daily tube feedings and a flush at 9 am, 12:20 pm, and 3 pm respectively.

"At each of those times, she is in the nurse's office with a private bathroom. She is offered a separate bathroom break at each of those feedings - connecting and disconnecting times. Disconnect times are around 9:25 am and 12:55 pm."

In a conference call with the investigator on December 6, 2024, the nurse reported that the student wears a lanyard with attached picture prompts to encourage her independence in toileting. According to the nurse, the student has toileted without assistance and has not had an accident in the school setting during the 2024-25 school year.

In the Kindergarten classroom, students are given multiple opportunities to use the bathroom and reminders to do so. Students have the opportunity to use the bathroom before instructional time and are encouraged to do so (since there are no bathroom breaks during instructional time). The class as a whole has a bathroom break after Alphabet Arcs and before lunch. The class also takes a bathroom break after first recess at noon, and breaks are taken before afternoon special classes.

In a conference call with the investigator on December 6, 2024, the classroom teacher stated that it was her general practice to allow the student to take a bathroom break if she asks. According to the classroom teacher, the student has rarely asked to use the restroom outside of the opportunities she is routinely provided.

Summary and Conclusions

The student is provided with three to five extra bathroom breaks throughout the school day in conjunction with tube feeding and flushing. While the parents want the student to be allowed to use the bathroom any time she makes a request, the student's April 16, 2024 IEP only requires that the student be provided "a" separate bathroom break daily. A violation of special education statutes and regulations *is not substantiated* on this aspect of this issue.

Preferential Seating

Position of the Parents

The parents report that they have personally observed and have been told by others that the student has been seated at the back of her classroom, well away from the blackboard where instructions are provided. The parents further assert that the student has been seated next to another student who has been reported to have bullied the student.

Investigative Findings

The "Supplementary Aids and Services (Accommodations and Modifications)" section of the student's April 16, 2024 IEP includes the following statement:

"Preferential seating near a staff member and the board as able. This will help [the student] see the materials and lessons being taught better and she will have an adult providing frequent redirects along with someone to further explain the information being taught for better comprehension."

The section of the student's April 16, 2024 IEP entitled "Statement of Special Education/Related Services" includes the following statement:

> *"For the 2024-25 school year, [the student] will start in full-day kindergarten. She will be served in a general education classroom with special education support. She will receive 180 minutes that will include ELA, math, and other curriculum activities as determined by the special education team."*

In a conference call with the investigator on December 6, 2024, the classroom teacher stated that while the student's assigned desk is in the back of the classroom, the student moves throughout the room for instruction. Little instruction is delivered by the teacher from the large classroom board, and when instruction is presented at the front of the room, the student and her group are moved to the front of the classroom. Similarly, the student is moved to the front row during classroom library time and circle time. If the student is working from her assigned desk, she is working with her own individual white board and is assisted by a Paraeducator who is seated between the student and a classroom peer. During this type of instruction, the teacher moves throughout the room using instructional materials placed at various locations around the classroom.

Summary and Conclusions

The classroom teacher is aware of the student's visual needs and provides flexible preferential seating near the teacher and/or a Paraeducator. A violation of special education statutes and regulations *is not substantiated* on this aspect of this issue.

Issue Two

> By failing to provide homework and other academic materials for the student when she was absent, the district has denied the student a free appropriate public education (FAPE).

Position of the Parents

The parents contend that the district has failed to provide any "makeup work and homework" necessary for the student to maintain academic progress consistent with her IEP and grade level. It is the position of the parents that the withholding of academic materials has limited the student's ability to engage with grade-appropriate curriculum and interferes with her right to FAPE. The parents assert that the classroom teacher has discriminated against the student by failing to recognize the student's disability and by stating that "all she does is scribble."

The parents state that the student has only been provided with homework on one occasion - on September 10, 2024 - following a specific request from the parents.

Applicable Statutes and Regulations

"FAPE" is defined 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)

Special education statutes and regulations do not establish any requirements for the provision of homework to a student unless failure to do so results in a failure to comply with the student's IEP. Districts and individual schools are free to establish their own policies and practices regarding the assignment of homework so long as those policies are applied consistently for students who are and are not determined eligible for special education services.

The investigation of a formal complaint is intended to determine whether, in the 12-month period prior to the receipt of the complaint, there has been a violation of special education statutes and regulations. If the parents believe that the district has - with regard to the implementation of its homework policy or through other actions - discriminated against the student because of her disability, these allegations must be presented to the Office of Civil Rights.

Investigative Findings

The student's April 16, 2024 IEP does not include any specific reference to the provision of homework.

Attendance records provided by the district show that the student had been absent for part or all of a total of 35 days during the 2024-25 school year at the time this complaint was received on November 8, 2024.

The district's "School-wide Homework Policy (24-25)" guidelines state:

1. *"1. All students will receive a minimum of the following as homework every night not to exceed 30 minutes:*
    a. *Reading-fluency practice from decoding routine or 6-minute solutions (20 minutes).*
    b. *Math-computation practice from Facts Strategies (10 minutes).*
2. *All parents are expected to read with or to their students and have discussions about what was read.*
3. *All parents are expected to ask students to share something about their day at school."*

In a letter dated August 23, 2024 to all parents of Kindergarten students, the student's classroom teacher wrote:

> *"Starting next week, I will send homework home on Tuesday. It's due back on Friday. Please help your student manage their time and complete their homework."*

In an email to the classroom teacher dated August 27, 2024, the student's mother wrote:

> *"[The student] said she left her homework under her desk. Can someone remind her before leaving to bring it home please? Thanks!*

The classroom teacher responded on August 27, 2024:

> *" If she brought her folder back today after she get her sticker, she would have put her homework in the folder and then in her backpack. There is never anything left under desk or the floor without being noticed. If she has her folder, she can trace her upper and lower case and her numbers. Hope this will help."*

The student's mother replied:

> *"That was helpful. I thought shed [sic] have more homework and didnt [sic] realize the folder she has all the sheets in to practise [sic] was her homework. Weve [sic] been working on those everyday [sic] after school and she did come home with stickers today. And we used her purple folder and white board to practice. Thank you!"*

On August 28, 2024, the student's mother sent an email to the classroom teacher asking the following:

> *"Is there any schoolwork/workbooks or anything I need to pick up to keep her on track with the rest of the classroom?"*

On September 4, 2024, after the student had missed school for a period of days due to illness, the student's mother wrote to the classroom teacher asking:

> *"Could you please send me homework for this week and any other things you've been working on with the kids so I can keep her up to speed with the class. I can also pick it up if need to be. Workbooks, papers etc. I don't want her grade to drop since she's missing so much school."*

In a written statement provided to the investigator on November 20, 2024, the building principal described a meeting with the parents on September 27, 2024 to discuss their concerns about homework:

> *I met with parents on September 27[,2024] to answer questions they had about [the student]. One of the topics discussed was homework. I explained the homework policy to the parents and also explained that Kindergarten students do not usually have homework. The bulk of what they are doing does not involve writing other than practicing handwriting. They said they were working on handwriting at home. I explained that since students are in early literacy and learning letters and sounds, they do a lot of oral activities like Heggerty. I went on to describe*

the Alphabet Arc that is used in class and they said they already had one that the teacher had given. [T]he classroom teacher was present and shared a homework folder that she had given all students containing activities (practice writing letters and numbers, alphabet arc and plastic letters) for parents to practice at home with their students if they chose. We went on to discuss how school is very different and how we prefer teachers to do the heavy lifting; especially with teaching the letter sounds and steps to reading. Reading with students is what we prefer parents to focus on. I explained that there aren't many worksheets or packets because that is not best practice and schools have really moved away from that. I offered both parents to visit the classroom to observe what is being taught so they would have a better understanding of what I was saying. They visited on October 31 for the Fall party."

In a conference call on December 6, 2024, the classroom teacher told the investigator that she had at the beginning of the year told all of her classroom parents that she would be sending homework home on Tuesday for return on Friday. The homework folder contained a number of pages that could be used by parents to work with their children on basic Kindergarten skills such as color and shape recognition, letter sounds, number and alphabet recognition, letter formation, and pencil grip. According to the teacher, she determined that only about 40% of her students were working on these activities with their parents, and she discontinued the practice of sending homework home on Tuesdays. When asked by classroom parents about what activities to work on with their children, the teacher encouraged them to review the skills covered under those initial pages. No other "homework" has been assigned.

Despite her many absences, the student is progressing through the Kindergarten curriculum. On a scale of 0 ("Even with help, student is not successful, or no evidence is shown") to 4, ("Advanced. Student demonstrates knowledge which exceeds grade level standards"), she demonstrates proficiency at a Level 2 ("Developing: Student demonstrates understanding of the foundational skills related to the grade level standard") or above in 23 of the 28 areas assessed according to her Elementary Progress Report. Her IEP Progress Report shows that she is making progress on attaining 3 of her 5 annual goals that should enable her to achieve those goals by the time of her annual review. She has made progress on the two remaining goals but may not attain them by the time of her annual review; there may be a need to review instructional strategies and supports in these areas (working independently and identifying sounds).

Summary and Conclusions

The student's April 16, 2024 IEP does not include any special requirements with regard to homework. At the present time, homework is not assigned to any student in the Kindergarten classroom. Despite her numerous absences, the student is making progress in both her general education and special education skills. Under these circumstances, a violation of special education statutes and regulations *is not substantiated* on this issue.

Nonetheless, the investigator strongly encourages the student's IEP team to take a close look at strategies for mitigating the potential impact of the student's chronic absenteeism on her future educational development.

Issue Three

The district has failed to provide the student with adult supervision during transitions.

Applicable Statutes and Regulations

As stated above under Issue One, federal regulations, at 34 C.F.R. 300.17, define a free appropriate public education (FAPE), in part, as special education and related services provided in conformity with an Individualized Education Program (IEP). In other words, a student's IEP must be implemented as written.

Position of the Parents

The parents contend that while the student's IEP requires adult supervision of the student during transitions within the school building, the student has in fact been assisted on multiple occasions by classmates. The parents allege that on one of those occasions, when the student was escorted to the restroom by a male peer, the student went into the boys' restroom.

Investigative Findings

The student's current April 16, 2024 IEP does not contain any mention of a requirement for adult supervision during transitions nor does that IEP prohibit the use of a peer to assist the student during transitions within the school environment.

In a written statement provided to the investigator on November 20, 2024, the building principal wrote:

> *"[The student] is one of our students that we believed through observations required hand to hand pass off during the school day. All adults in contact with her were made aware that she should not be left alone. She transitioned with her class in line to move from one location to the other, but when she was required to go somewhere without the entire class, she was guided by an adult or responsible student."*

Summary and Conclusions

Because the student's April 16, 2024 IEP contains no requirement for the student to have adult supervision for every transition, a violation of special education statutes and regulations ***is not substantiated*** on this issue.

Issue Four

The district has failed to promptly and effectively communicate with the parents on issues impacting the student's well-being and IEP compliance.

Applicable Statutes and Regulations

As stated in the Kansas Special Education Process Handbook:

> *"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)...Additionally, parents have a responsibility to participate and provide their input into their child's educational progress (K.A.R. 91-40-25(a); K.A.R. 91-40-17(a); 34 C.F.R. 300.501(b),(c))."*

Districts are required to attempt to schedule IEP Team meetings at a mutually agreed-upon time and place (K.A.R. 91-40-17(1)) and must make reasonable attempts to secure parent participation. Reasonable attempts are defined as at least two contacts by two different methods and documentation of such attempts should be kept including records of telephone calls, copies of written correspondence sent to the parents, and the response, if any, from parents. (See K.A.R. 91-40-27(g); K.A.R. 91-40-17(e)(2); 34 C.F.R. 300.322(d)(1)).

Position of the Parents

According to the parents, multiple emails to school staff have gone unanswered including an email request for an IEP meeting sent on October 4, 2024. The parents additionally assert that the district has not been responsive to their need for information regarding their identified concerns including an allegation of unsupervised outdoor exposure on November 4, 2024. The parents also contend that the district has failed to respond to their concerns about the bullying of the student and denial of access to the restroom. (See Issue One.)

IEP Meeting

Investigative Findings - IEP Meeting

On September 18, 2024, the school social worker called the student's mother to discuss the accommodations shown in the student's April 16, 2024 IEP as well as a possible referral of the student for an Occupational Therapy evaluation.

The student's father sent an email to the student's classroom teacher on October 4, 2024 writing:

> *"I am writing to request an IEP meeting for my daughter...to discuss adjustments to her plan that accommodate her medical needs and ensure a supportive learning environment. I would like to discuss a concern regarding [the student's] health management at school. As you may know, [the student] has several medical issues, including low blood sugars and oral aversion. Getting her to eat by mouth is a big step for her, even if it's just a small piece of candy. To help manage her condition, we've packed a couple of small chocolates in her backpack. She had one in her hand when she got off the bus yesterday. She mentioned that a teacher took the chocolate from her and threw it away, stating "no candy allowed." Could*

> *you please help me understand why it was necessary to throw it away instead of putting it back in her backpack? Additionally, [the student] has expressed concerns about an incident during math class yesterday, where the classmate sitting next to her pulled her hair. This is one of four similar incidents that have come to our attention. We are worried that these occurrences have not been formally addressed or communicated to us..."*

The classroom teacher forwarded the parent's message on to the social worker who has been designated by the building principal as having the responsibility of working with parents to schedule all IEP Team meetings except for annual review meetings.

The student's IEP case manager contacted the student's mother on October 11, 2024 to schedule an "amendment meeting" regarding the student's IEP and placed a follow-up call on October 14, 2024 leaving a message for the student's mother regarding that meeting. On October 22, 2024, the case manager again spoke with the student's mother about the parents' concerns and about scheduling an amendment IEP meeting.

On October 22, 2024, the social worker and the student's mother exchanged a series of emails. The social worker initiated the exchange, asking:

> *"I am just seeing if you have the ability to schedule your IEP review. I believe [the case manager] reached out to you regarding scheduling it, but I have not heard of a date that works for you. Please let me know as soon as possible. Thanks!"*

The student's mother responded:

> *"She did reach out with [the building principal]. We are looking at some more information and options and I let her know I'll reach out soon with a date. With [the student] being sick so much and trying to get our schedules to match also. I did let [the building principal] know to follow the current Iep because it hasn't been completely been followed since beginning of school, until we get the new iep meeting done. She said she just now today got the communication binder done."*

The social worker replied:

> *"For the more information and options you are looking into, is there anything I can help with? Just trying to meet the request that was made in a timely manner. Thanks again!"*

The student's mother wrote back:

> *"Do you know why [the case manager] is suddenly pushing this iep amendment? As you know we do want an iep meeting."*

The social worker responded:

> *"It's being scheduled because it was requested by [the student's father] in an email on 10/4/2024. We have an obligation to hold the meeting within a certain timeframe once it's requested."*

The student's mother then wrote:

> *"He did request it but didn't receive any response. Appreciate the explanation though. I'll reach out soon with some dates and see if it works for you guys."*

On October 24, 2024, the student's mother sent an email to the social worker and case manager, writing:

> *"[The student's father] and I have decided to put a hold on the IEP amendment meeting for now until we look through all our options. We will notified [sic] you when we would like to reopen it. For the parent teacher conference, a email with her progress and grades would be fine. If we are required to attend, then please have [the classroom teacher] reach out on what evening time and days might work."*

In a telephone conversation with the investigator on December 3, 2024, the student's father stated that the parents were open to holding an IEP team meeting but wanted the results of this investigation to be available to the parents before that meeting was held.

Summary and Conclusions - IEP Meeting

The district has provided ample evidence to show that a good faith effort was made to schedule an IEP Team meeting. The district first proposed an IEP Team meeting on September 18, 2024, well before such a meeting was requested by the student's father. The district followed up with the parents to find a mutually agreed-upon time for the meeting, but the parents subsequently withdrew their request for a meeting and declined the district's attempts to schedule such a meeting. Under these circumstances, a violation of special education statutes and regulations *is not substantiated* on this aspect of this issue.

Outdoor Exposure

Investigative Findings - Outdoor Exposure

The parents state that the principal told them that the student would never be in the hallway alone, but the student reported to them that she was left outside the building in the rain on November 4, 2024 until she was found by a teacher who brought her inside.

In response to the parents' expressed concerns, security camera footage from the date of the alleged incident was reviewed, and, according to the security supervisor for the district, the student was not seen outside of the building in the rain. The building principal notified the student's father of this finding via email on November 8, 2024.

The student's father wrote back to the building principal on November 8, with a series of follow-up questions to which the building principal responded on November 12, 2024. That exchange follows:

The student's father asks: *"Are you able to tell me which areas were checked by both security supervisors? Was it the playground, recess doors, or hallways leading up to either of those around lunch time? Of course give or take a little after lunch."*

The building principal responds: *"I had them check the recess doors leading out to the playground, and the playground itself because those are the locations you mentioned."*

Regarding the alleged incident of November 4, 2024, the classroom teacher gave the following written statement which was provided to the investigator on November 20, 2024:

> *"It has come to my attention that there is a misunderstanding about an incident on November 4, 2024, regarding a student being taken outside in the rain and left. I want to address this matter directly and assure you that this did not occur. On that date[, not]only my class but the entire school had indoor recess due to the rainy weather. The students [sic] in question spent the recess time playing with Barbies inside the classroom, along with her peers. I am responsible for supervising my entire class of 23 students and if we had gone outside, I would have had to take all of them with me. However, since it was raining, we remained indoors the entire time. As our policy prioritizes student safety and comfort[, w]e do not go outside for recess when it is raining, I hope this clears up any confusion."*

Summary and Conclusions - Outdoor Exposure

The district responded to the parents' expressed concerns by conducting an internal investigation and studying security footage from the day of the alleged incident. Evidence provided by the district documents responsiveness to the parents' concerns. A violation of special education statutes and regulations ***is not substantiated*** on this aspect of this issue.

Other Concerns

Investigative Findings and Conclusions - Other Concerns

At 8:36 m on Wednesday, September 25, 2024, the student's mother sent an email to the building principal writing:

> *"My Husband and I would like to schedule a meeting for the concerns we are having to hopefully resolve the issues. It's for our daughter [in the Kindergarten] class. What days/time work for you? I'm normally free after 330pm."*

The building principal responded by email at 8:50 am on September 25, 2024 writing:

> *"I am available Friday after 3:30. Does that work for you guys?"*

The meeting with the parents was held on September 27, 2024.

On October 28, 2024, the social worker sent an email to the parents, writing:

> *"We would like to schedule a phone conference with both of you to discuss what was missed during parent/teacher conferences. [The classroom teacher] has her plan time around 3 pm so we would like to meet around then. Please let me know dates that would work for you. If you would rather do it in person, we can do that too!"*

On November 4, 2024, the student's father and members of the school staff exchanged a series of emails. The student's father first wrote:

> *"[We] are available to have a parent teacher conference on Wednesday the 6th at 3:30. To be able to make it work, we would need to do it by phone. Please let us know if this time works for you all."*

The social worker confirmed the time and asked for a phone number to call at the designated time. The student's father responded with the number and wrote:

> *"Also, to confirm, this is only a parent-teacher conference, and not an IEP meeting, correct? Lastly, if I can just get a list of staff that will be on the call."*

After receiving a list of the meeting participants from the social worker, the student's father wrote:

> *"Are the people listed here involved in all parent-teacher conferences? I'm just a little confused as to why we need campus support, a psychologist, a nurse, the principal and the IEP manager when this call is only regarding he school grades. Were the listed indivduals [sic] also at the in-person parent-teacher confernces [sic] on Oct 15?"*

The social worker responded:

> *"Yes, we have all of those supporting positions available for parent teacher conferences. We are including those staff members due to the emails and concerns that have come up this year. We want to make the best of the time you are willing to give us to ensure communication is effective in helping [the student] be successful."*

The building principal added her comment to the exchange:

> *"I asked the team to sit in on the meeting for my benefit. I have been trying to keep up with the various emails and conversations between all of you, so this way if there are any questions or concerns that need attention, we can get immediate feedback. It helps me problem solve in a timely manner if I don't have to relay messages to everyone at different times. I hope this is ok with you guys."*

The student's father replied;

> *"Thank you both for the reply. Respectfully, [addressing the building principal], all the issues we have been emailing about are in regards to her IEP, which at the point we have on hold, because nothing was being taken care of and we are now going through our options. Also, how come all the emails are being referred to you and not the normal parent/teacher communication relationship that could have fixed most all of the issues like we have expressed to you before in our meeting. You had a conversation with [the student's mother] last week about scheduling a whole team meeting and we will be reaching backout to you in order to schedule that. At this time we would like to have just a normal parent-teacher*

conference about [the student's] grades. We would prefer this meeting to only be between us and [the classroom teacher]."

The building principal responded:

"Of course, you can hold a meeting with [the classroom teacher] for parent/teacher conference. Let me know when you would like to meet to address the IEP. Thank you."

At 10:07 am on November 5, 2024, the student's father sent an email to the building principal, writing:

"When you can, do you mind giving me a call to discuss an incident?"

The principal responded at 10:36 am that same date, writing:

"Yes, sir, I will call you in a few minutes. I am wrapping up a meeting."

At 10:41 am, the building principal sent an email to the student's father, writing:

"I just called and didn't get an answer. You can call me when you have a minute..."

At 4:17 pm on November 5, 2024, the building principal sent an email to the student's father, writing:

"I just tried calling you back again. I'll be here until about 5:00 if you would like to call me..."

In an email on November 8, 2024, the student's father posed a series of questions in an email response to a message from the building principal. The questions and the building principal's responses follow:

The student's father asks: *[C]an you tell me why [the student] is being sent to [the student's case manager's] office a lot? During the Halloween Party, she was sent to [the case manager] after we left and [the case manager] also brings her out to the bus at the end of the day. What exactly is she doing in there? We just didn't know and haven't been made aware of any classes she has in there. I know the Para...had mentioned during the party that she 'was not trained to handle' [the student], but [the case manager] is?*

The building principal responded: *"[The case manager] is the IEP manager for [the student] so she may service her at any time. She could have been filling in for the para because of an absence, checking progress, or collecting data for her reports."*

The student's father asks: *"A week or so ago, [the student] says [the classroom teacher] would not let her keep her jacket on during class and made her hang it up. Again yesterday the same thing happened. Is this normal? I'm just confused as to why [the student] wouldn't be allowed to keep her jacket on. The first time [the student] says she was 'shivering'."*

The building principal responded: *"[The classroom teacher] said she asks the students to take their jackets off when they go to PE because the students get hot in the gym. When they get hot, they take their jackets off in the gym and forget to bring the jackets back with them to class."*

The student's father writes: *" Lastly, per our phone conversation about a boy taking [the student] to the bathroom on two occasions, bringing her to the office (which I witnessed) on at least one occasion, and Monday the boy continued to mess with [the student's] shirt. I went back through some notes and the name I have from the shirt incident is 'Amari' or 'Amar'?"*

The building principal responds: *"I could not verify who was messing he [sic] [the student's] shirt. There isn't a student in the class by that name. I visited with specials teachers and no one sends a boy to escort a girl to the bathroom. It is possible that a boy walked her to the office, but I couldn't verify which boy."*

Summary and Conclusions - Other Concerns

Substantial evidence has been provided by the district to show timely responsiveness to parent concerns on an ongoing basis. A violation of special education statutes and regulations *is not substantiated.*

Issue Five

The district failed to properly document the reasons for the student's absence from school.

Position of the Parents

The parents assert that the student's absences due to illness on September 12 and October 14 and 15, 2024 was incorrectly coded as unexcused. They contend that the district did not timely respond to their repeated contacts with school staff in order to have the record corrected.

Position of the District

The district asserts that student absences are recorded through an automated system with some inherent delays in updating after receipt of excusal notes from parents. The district contends that attendance records show absences on the three dates in question as excused.

Applicable Statutes and Regulations

Procedures regarding the recording of daily attendance are not covered by special education laws. Districts establish policies and procedures regarding the reporting of absences. Accordingly, the handbook for the student's school states:

> *"Good attendance is critical for steady academic growth, and, by law, children are required to attend school.*
>
> *Please call the school office any time your child will not be in school.*
>
> *If you are asked to leave a voice mail, please give the following information:*
>
> - *Name of the parent or guardian calling*
> - *Student's name and grade*

- *Date(s) of absence*
- *Reason for absence; please be specific*

Absences will only be excused for the following reasons:

- *Illness*
- *Medical or dental appointment*
- *A family death or serious illness*
- *Court/judicial appearance*
- *Religious observations*
- *School-sponsored activities"*

Investigative Findings and Conclusions

While absences may have initially been coded as "unexcused" as reported by the parents, attendance records provided by the district on November 20, 2024 show the student absent on all three days cited by the parents due to "Medical/Dental" reasons. Records show that there was a "Dr. Note on file."

The student's current April 16, 2024 IEP does not require the district to address this student's absences differently than it would the absence of any other student in the district. A violation of special education statutes and regulations *is not substantiated* on this issue.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations on an issue presented 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 implement two accommodations:

- providing the parents with a communication book which included a daily record of services provided to the student and a log of her nutritional intake; and
- making a pulse oximeter available in the classroom and timely training staff to use the device.

Therefore, USD #259 is directed to take the following actions:

1. Submit to Special Education and Title Services (SETS) by no later than January 6, 2025, a written statement of assurance stating that it will 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 January 7, 2025, USD #259 shall
    a. Place a pulse oximeter in the student's general education classroom (unless the student's IEP has been revised to no longer include this accommodation).
    b. Conduct an IEP team meeting for the purpose of clarifying the content and structure of the communication "book."

c. Provide the parents with prior written notice of any proposed changes to the student's IEP with regard to her accommodations and request parental consent for any material change (25%) in services.
d. The district shall provide SETS a copy of the revised IEP within 5 business days of the day the proposed IEP is presented to the parent and shall at that same time provide SETS with a copy of the associated prior written notice form.

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).



Diana Durkin

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 #340 JEFFERSON CITY SCHOOLS
ON NOVEMBER 13, 2024

DATE OF REPORT:DECEMBER 13, 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" or "the father." ---------- is the student's mother and will be referred to as "the mother." Together, ---------- and ---------- will be referred to as "the parents."

The complaint is against USD 340 Jefferson City Public Schools. It is noted that Keystone Learning Services interlocal provides special education services for USD 340 Jefferson City Public Schools. In the remainder of the report, only USD 340 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 13, 2024, and the 30-day timeline ends on December 13, 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). Interviews were held with the following district personnel: Doug Anderson (Special Education Director), Belinda O'Dell (Assistant Special Education Director) and Wes Sturgeon (Principal) on December 3, 2024. In addition, the special education director was contacted November 19, 2024 about the complaint. The parent was contacted on November 18, 2024, to clarify the concerns of the complaint and verify the IDEA issues, and the parent was interviewed on December 5, 2024. Emails were exchanged with the parent and the district from November 20 to December 10, 2024. The following documentation and information were used in consideration of the issue(s).

Student information and related documents

1. The student's reevaluation report dated February 1, 2023
2. Prior written notice dated February 6, 2023, for a meeting on February 6, 2023 to change the IEP including substantial change in placement and material change in services signed by the mother giving consent on February 8, 2023

3. The student's IEP dated February 6, 2023
4. Prior written notice dated April 25, 2023, to review evaluation data and change the IEP including a material change in services and a substantial change in placement signed by the mother giving consent on May 1, 2023
5. Agreement to amend the student's IEP between meetings dated April 25, 2023, and signed by the mother giving consent on May 1, 2023
6. Progress report for the student with quarterly entries dated October 13, 2023, through December 20, 2023.
7. Team meeting notes dated January 31, 2024
8. The student's IEP dated January 31, 2024
9. Prior written notice dated January 31, 2024, for a meeting on January 31, 2024, to change the IEP including substantial change in placement and material change in services signed by the mother giving consent on February 15, 2024
10. Progress report for the student with entries dated March, 2024 (goal 6 only) and May, 2024 (all goals).
11. IEP amendment dated August 13, 2024, including rubric for determine eligibility for alternate assessment for students with most severe disabilities.
12. Team meeting notes dated August 13, 2024
13. Daily summary (morning report) attendance report for the student dated November 22, 2024
14. Student and staff schedule dated September 12, 2024
15. Student schedule, 2024-25 school year
16. Speech language therapy attendance form, 2024-25 school year
17. Occupational therapy service log, 2024-25 school year
18. Text from S. Caldwell to the mother dated November 13, 2024

Staff training and related documents

19. Certified Staff Inservice 2024, August 1st 8:00 a.m. to 4:00 p.m.
20. New Teachers and Paras Orientation dated August 2, 2024, 8 a.m. to 4 p.m.
21. New Para Monthly Orientation Agenda, Last Thursdays, 8:30 a.m. to 3:00 p.m.
22. BCBA training notes, undated document referring to staff training on October 14, 2024, and November 11, 2024
23. Fall 2024 Para Inservice (presentation slides)
24. Fall 2024 Certified Staff Inservice (presentation slides)

25. SLP statement regarding staff training, undated
26. De-escalation curve, undated
27. Work systems one page description, undated
28. Paraprofessional assignments to minimize the impact of a vacancy

Staff materials

29. Letter to parents regarding long term substitute dated August 14, 2024
30. Jeff West Team Members (list of classroom staff)
31. Kay Wheeler (SPL) Application and Resume
32. Rebecca Wilson Application and Resume
33. Melissa Strawn Application and Resume
34. Jessie Stitt, Application
35. Stacey Fleeker Resume and Professional License - Teaching
36. Sherry Caldwell Application and Professional License - Emergency Substitute Teacher
37. Tammy Scott Application
38. Hana Marie Dreiling Application and Professional License - School Psychologist
39. Rebecca Woolbert Application and Resume
40. Nicole Presnell Application
41. Neely Gower Resume
42. Matt Moher Resume
43. Laurel Lidman Resume
44. Marlene Jolly Application
45. Jamie Dempewolf Resume
46. Brianna Cobb Application
47. Sharon Bingham Application
48. Teri Base Application and Resume

Background Information

The student is a 7 year old attending second grade who, in 2018, was diagnosed as experiencing autism spectrum disorder, global developmental delay, and mixed receptive-expressive disorder. The student attended the Tiny K program before transitioning to ECSE services as a student with autism and attended Kindergarten in the district for half of the school day at the time of re-evaluation in 2023. The reevaluation found that the student needed support to engage in classroom activities like play and to follow the routine and

schedule, needed to develop receptive and expressive language including to use an assistive communication device, and needs in the adaptive behavior domain such as handwashing and putting on and taking off a coat. At the time of the evaluation, the IEP team continued a shortened school day, adding the lunch period to the schedule. The student's placement is in the district's elementary school, in a special education classroom and general education classroom settings.

Issues Investigated

1. ISSUE ONE: Did the district implement the student's IEP, specifically to provide special education, related services, attendant care, and placement as identified in the IEP?
2. ISSUE TWO: Did the district provide adequate staff qualified to implement the IEP, including having the ability to understand the student's disability, communication, and to provide the IEP services?
3. ISSUE THREE: Did the district develop an IEP designed to meet the needs of the student in light of their disabilities?

Issue One

Did the district implement the student's IEP, specifically to provide special education, related services, attendant care, and placement as identified in the IEP?

Applicable Law

Federal/State 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. 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 IEP due to staff shortages that have required the student to remain in the special education classroom rather than follow the scheduled placement in the student's IEP. The parent alleged that the district didn't provide proper care to the student and that the district was unable to provide the student's special education and related services as required by the IEP.

The district replied: "The student's IEP did not require "attendant care" support but all related services were regularly provided and/or adequately staffed to provide. Time out of schedule does not mean that services were not provided. When the student is in an emotional state that does not enable him to attend class he still receives instruction in communication strategies, self-regulation, and sensory desensitization. A review of attendance and staffing data indicates that the student received services in the resource room between 10:50-11:30 rather than with para support in the general education classroom as specified on the IEP. There are no accurate explanations for missed class periods so we must assume that every class period since the beginning of the year, minus the days that the student was absent (11 days) were not provided as required on the IEP. That is 1600 minutes (40 class periods) in the general education classroom missed due to staff absences, vacancies or the student's inability to attend due to sensory issues (refuses to go to class). The details of unscheduled interventions (de-escalation) are not documented so the impact of such interventions are impossible to support or deny."

The district offered to resolve this issue: "We will offer compensatory education by providing additional support in general education classes after his typical departure time by extending his day, and/or in summer programs in which general education students attend, or in other options agreed upon by the IEP team. The IEP team will make the decision regarding the number of minutes needed to compensate for these missed minutes for a time not to exceed 1600 minutes."

Findings

The district reported and documents showed that no attendant care was included on the student's IEP. Special education support was scheduled for recess, lunch and other nonacademic activities.

The student's IEP dated January 31, 2024, included goals in the following areas (in brief): (a) use speech or AAC device to request preferred items, (b) complete interverbal tasks, (c) match, point to alphabet letters, (d) count to ten, (e) make sets of five objects, (f) use scissors, and (g) engage in parallel play. The student's accommodations included using LAMP on an Ipad, visual

schedule, visual timer, modified reading curriculum, modified math curriculum, sensory breaks and sensory time before activities.

Two IEP amendments occurred. On April 25 2024, the IEP was amended to include Extended School Year (ESY) for the student during the summer, 2024 due to his lack of progress toward his IEP goals, according to the PWN dated April 25, 2024. On August 13, 2024, the IEP was amended to review the criteria for and to qualify the student for alternate assessment. The student was rated as having the most significant cognitive limitations in every category of the Kansas Alternate Assessment (DLM) for Students with the Most Significant Disabilities.

The IEP dated January 31, 2024, included the following special education and related services to continue through January 30, 2025: pull out speech language 20 minutes three times a week; pull out occupational therapy 20 minutes two times a week; pull out social work 20 minutes, one time each four weeks; and social work consult 15 minutes, one time each week. Special education and related services included through the end of the 2023-24 school year included pull out core instruction for reading and math 210 minutes, five times a week and special education support in general education settings for lunch, specials, recess and social emotional learning 125 minutes, five times a week. Along with the 20 minutes of related services daily, the student would receive 355 minutes of special education and related services daily.

Beginning August 16, 2024, through January 30, 2025, according to the IEP dated January 31, 2024, the amount of services changed to pull out core instruction for reading and math 165 minutes, five times a week and special education support in general education settings for lunch, specials, recess and social emotional learning for a total of 180 minutes, five times a week. Along with the 20 minutes daily of related services, the student would receive 365 minutes of special education and related services daily.

The parents and the district agree that the IEP services were not provided as described on the IEP. The parents and the district agree that the student did not receive time in general education as scheduled.

The student's daily schedule showed an attendance day of 7:55 a.m. to 1:30 p.m., with morning activity (20 minutes), recess (30 minutes), lunch (30 minutes), and specials (40 minutes) totaling 120 minutes in general education settings each day of an attendance schedule of 335 minutes. Follow up questions to the district via emails dated December 8 and 9, 2024 verified that this reflected the student's current schedule in general. According to an interview with the principal, the student began his schedule in the general education classroom each day till about 8:20 a.m. In the interview, the principal stated that the school staff were flexible in working with the student to get him to attend general education activities and that his behavior interfered with standard scheduling. In an email to the investigator, the principal stated that neither the afternoon "free time" period (15 minutes) nor the story time (30 minutes) occurred in general education.

The BCBA training notes provided by the district showed that the provider believed that the student's schedule in general education was 120 minutes daily: "His inclusion times would have been the same as they are now…going into his second grade class until 8:15, recess from 10:30 - 11:00, going to a first grade classroom for Science/SS/SEL from 11:00 - 11:20, lunch, and specials from 1:00 - 1:30."

The district reported in its response that the student did not go to his general education classroom as scheduled from 10:50-11:20 a.m. (30 minutes) each day for an undetermined number of weeks during the 2024-25 school year, with an assumption that each of these scheduled periods were missed by the student except when the student was absent from school.

The speech language therapy attendance form for the 2024-25 school year showed that the student did not receive speech language services three times a week (scheduled Monday, Tuesday, and Thursday). For the 12 weeks reported, the student received speech language services three times a week 5 times, two times a week 4 times (4 missed sessions) and one time a week 3 times (6 missed sessions). Student absences or no school days accounted for 8 of the 10 missed sessions.

Occupational therapy service logs for the 2024-25 school year showed that occupational therapy was provided one time a week for 10 of the 14 weeks reported. Student absences accounted for three missed sessions and staff unavailability for one missed session.

A statement provided by the social worker stated that the social worker provided one-time weekly indirect service to the student's classroom staff and one time monthly direct services to the student to gauge his social interaction with peers and to monitor progress.

Progress reports for the IEP dated January 31, 2024 showed that the quarterly reporting was completed for all 7 IEP goals in May, 2024 and only one goal (goal 6) had progress reporting in March, 2024. In each rating, the district answered "yes" to the question: "Is progress toward the annual goal adequate to achieve goal?"

Conclusion

In this case, the student's IEP in place for the current school year required the district to provide 180 minutes of special education support in general education settings, including the general education classroom. The district acknowledged that the student missed one scheduled general education period (30 minutes) each day, and documents and interviews revealed that the student missed an additional 30 minutes of time in general education each day. Therefore, it is found that the district did not provide the required amount of service during the current school year.

Additionally, according to documentation submitted by the district, the related services in the IEP (speech language 20 minutes 3 times a week and occupational therapy 20 minutes 2 times a week) were not provided in total. Two speech language sessions were missed (not due to student absences or unavailability) and only one rather than two OT sessions was scheduled

weekly and one session was missed due to staff unavailability, accounting for 15 missed OT sessions.

Based on the foregoing, ***it is substantiated*** that the district failed to implement the student's IEP, specifically to provide special education, related services, and placement as identified in the IEP. ***It is not substantiated*** that the district failed to provide attendant care to the student.

Issue Two

Did the district provide adequate staff qualified to implement the IEP, including having the ability to understand the student's disability, communication, and to provide the IEP services?

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.

Under some circumstances if a fully certified individual is not available, school districts are permitted to use emergency certified personnel. According to K.A.R 91-31-34(a)(4): "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."

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 findings of Issue One are incorporated herein by reference.

The parent alleged that the special education staff have repeatedly been replaced during the past two school years resulting in the failure of the staff to be appropriately prepared to provide special education, personal care, and related services to the student. The parent alleged that special education staff reported to the parents that they were left alone with no supervision and no support in the classroom. The parent alleged that a new paraprofessional accompanied the student when dismissed from school to his parent, when both the child and the paraprofessional appeared to be emotionally distressed. The parent alleged that upon returning home, the parent found a large deep bruise on the student's buttock in the shape of the student's boot print. The parent alleged that the school staff reported that they had toileted the student that day, and that in the past two years at the school, the staff had never toileted the child at school. The parent alleged that the student can communicate his protest during toileting.

The district responded: "*A multidisciplinary team was assembled to create and implement the complex elements of this student's IEP. Members of the team include a behavior specialist BCBA; speech language pathologist, occupational therapist, social worker in a consultation role, and teachers and paraprofessionals. Everyone with an educational need to know has access to the student's IEP and the paraprofessionals and sped teachers have received special training in positive behavior support and deescalation. In collaboration these team members have created and implemented educational task baskets, a multimodal communication system, and sensory diet to provide access to the curriculum and help the student navigate his day. . .*" The document entitled Jeff West Team shows that vacancies were filled relatively quickly and we maintained a staff to student ratio that provided the opportunity to cover required sped minutes. The documents in staff credentials show that most of our team members were licensed for the position in which they serve. All staff members at Jeff West Elementary participated in de-escalation training based on CPI standards. The district has access to certified CPI trainers on staff . . All paraprofessionals attend an orientation training within their first month on the job. This included instructional strategies, behavior management, and confidentiality etc. . . The related service providers (OT, SLP, BCBA, and SW) provided ongoing support and strategies to develop materials and to meet the sensory and communication needs of the student. . . There are times during the day that the student does not have the emotional energy to fully participate in his schedule. Strategies are employed to help him return to a cooperative state but the time period of these out-of-schedule experiences and the team's responses are not documented.

The district proposed the following: "*Resolution: Implement a recording system that accurately reflects the implementation of all services and the student's time in schedule. Notify the parents daily and the IEP team will make a decision regarding the circumstances under which a meeting will be scheduled for time out of the schedule or lack of progress on a goal*."

Findings

The parent reported that the staff turnover affected the student's education this school year. The district provided documentation that the emergency substitute teacher was replaced with a fully qualified teacher when that teacher was hired (October 23, 2024).

Upon request for staff qualifications and credentials, the district provided information such as job applications, resumes and licenses for 20 individuals.

The district listed the following certified or licensed staff members and their direct current or former roles in the student's classroom.

Neely Gower Special Education Teacher Professional License # 9135895292 Building Administrator K-9 Elementary K-9 Master of Education Administration Date-of-Hire: 10/23/2024	Sherri Caldwell Emergency Substitute Teacher License Number: 9492955873 Date-of-Hire: 08/02/2022 Date-of-Separation: 10/20/2024
Rebecca Woolbert Board Certified Behavior Analyst (BCBA) License # LBA 00439 Bachelors of Psychology Masters of Applied Behavioral Science Date-of-Hire: 07/24/2023	Stacy Davis Occupational Therapist License # 1701063 Date-of-Hire: 08/01/1998
Kim Wheeler Speech Language Pathologist License/Registration # 2496 Date-of-Hire: 08/07/2003	Matt Mohr Certified Occupational Therapy Assistant Certified Occupational Therapist Assistant License # 18-01623 Date-of-Hire: 08/05/2019
Hana Dreiling School Psychologist License # 2463157577 Date-of-Hire: 08/01/2013	Jamie Dempewolf Social Worker License # LMSW 12851 Date-of-Hire: 08/01/2023

The district reported that the following current or former staff provided paraprofessional services in the classroom.

Brianna Cobb Paraeducator for #340 Elementary 2023-2024, transferred to JDLA for 2024-2025. 11/11/2024 temporarily transferred to #340 elementary due to resignations from (Bingham and Scott) Em. Sub. License # 6897667765 Date-of-Hire: 04/03/2024	Melissa Strawn Nurse Aide Certification # 154889 Nursing Support / Paraprofessional Date-of-Hire: 11/21/2024
Teri Base Paraprofessional Date-of-Hire: 11/18/2024	Kayleigh Osborn Paraprofessional Date-of-Hire: 8/5/2024
Sharon Bingham Paraprofessional Date-of-Hire: 01/12/1994 Date-of-Separation: 11/01/2024	Rebecca Watson Paraprofessional Date-of-Hire: 08/05/2024 Date-of-Separation: 10/22/2024
Tammy Scott Paraprofessional Date-of-Hire: 09/05/2023 Date-of-Separation: 11/01/2024	

The district provided an additional list and credentials of persons who support the classroom in the case of absences or vacancies: Stacy Fleeker (Special Education Teacher), Jesse Stitt (Paraprofessional, BA in Social Work), Marlene Jolly (Paraprofessional), Nicole Presnell (Paraprofessional) and Laurel Lidman (Paraprofessional).

The district reported that all paraprofessionals receive orientation training within one month of their hire and the district provided content documentation on de-escalation, confidentiality, behavior support and specialized instruction. The district reported that paraprofessionals meet monthly for 3 hours of professional development and provided an example agenda.

The district provided documentation in the form of BCBA notes that paraprofessional staff received in classroom coaching on student specific needs and all staff received de-escalation training October 14, 2024 and the BCBA reported extensive coaching of the Emergency Substitute Teacher on student specific needs (language, assistive communication device, transitions, curriculum and specialized instruction). The BCBA reported providing training on structured learning to the classroom staff on November 11, 2024.

The district provided documentation in the form of the SPL therapist's statement that the classroom staff were trained in student specific needs such as the LAMP, visual schedules and timers, first/then boards, token boards, reinforcement and prompts, and evidence-based practices for students with autism.

Conclusion

In this case, the district provided documentation that the classroom personnel were qualified to hold the positions for which they were employed. An emergency substitute was in place at the beginning of the 2024-25 school year and was replaced with a fully qualified educator. The paraprofessionals were provided initial orientation (6 hours), monthly professional development (3 hours) and in classroom student specific training. Based on the foregoing, *it is not substantiated* that USD #340 failed to provide adequate staff qualified to implement the IEP, including having the ability to understand the student's disability, communication, and to provide the IEP services.

Issue Three

Did the district develop an IEP designed to meet the needs of the student in light of their disabilities?

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 of self or others, the need for braille or the impact of limited English proficiency, the child's communication needs, and the need for assistive technology.

Additionally, under 34 C.F.R. § 300.324(b), IEP reviews and revisions are appropriate to address, among other issues: any lack of expected progress toward meeting the annual goals; the results of any reevaluation; information about the child provided to, or by, the parent; the child's anticipated needs; or other matters. Other matters can include behavior that leads to short term removals from schooling, with the potential to affect the student's progress or free appropriate public education.

Recent OSEP (2022) guidance states: "frequent use of short-term or informal removals of children with disabilities may indicate that the child's IEP does not appropriately address their behavioral needs. . . School staff should be aware of, and gauge the need for and effectiveness of, behavioral interventions when implementing exclusionary disciplinary measures that continually or significantly interfere with a child's instruction and participation in school activities (e.g., a pattern of office referrals, repeatedly sending a child out of school on "administrative leave" or regularly requiring a child to leave the school early and miss instructional time)."

Analysis: Findings of Fact

The parent alleged that the student had a shortened school day, which was being gradually lengthened to allow the student to participate in general education settings during the school day. The parent alleged that the student has autism with global developmental delays, and that

the student is nonverbal, learning to use a communication device at school and home, and communicates his wants and needs in ways his parents understand. The parent alleged that the school is not providing an individualized program that allows the student the opportunity to be integrated with the general school population throughout the school day. The parent alleged that during the 2023-24 school year, the student developed behavioral problems, like hitting himself, which the parent associated with the student's experience at school. The parent alleged that during the past 12 months, school staff were abruptly changed without regard for maintaining the student's school routines and without communication to the parents so they could support the student through the changes. The parent alleged that the school did not appear to take their concerns regarding the toileting incident seriously.

The district responded: "District Response: The IEP and notes reflect that a multidisciplinary team of required IEP team members including the parents developed and amended IEPs that were designed to meet the complex needs of the student in light of his disabilities. The district wrote and implemented IEPs on 2/6/23 and 1/31/24 and the associated amendments included in this folder. The IEP documents and associated notes demonstrate that all aspects of special education and related services were considered and amended as needed by the team with parent input. The parent's responses to these recommendations were also noted."

The district continued: "Response: The IEP reflects a team that was sensitive to the social emotional needs of the student and his capacity to tolerate unpredictable or "loud" environments as he engages in school activities. The team was focused on sensory integration activities to help increase his ability to stay engaged in non-preferred tasks throughout the day. They also implemented a multimodal communication system to increase his opportunities for successful social Interactions. The progress on his goals and the efforts to increase time spent in general education and the lengthening of his school day demonstrates progress in light of the student's circumstances. Unfortunately, accurate records of time in schedule are not available for review."

In addition, the district stated: "Resolution: Data has not been collected regarding the student's ability to tolerate school work and social settings in a consistent manner. The school team will document time in schedule and time out of schedule each day on the communication form and the reasons for those deviations. As always, the district is willing to meet to review and amend an IEP at parent request. We will always consider all information provided when making an IEP team decision."

Findings

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

The district and the parent agree that the student's behavior, including reluctance to attend school or activities within school, was a concern through the past 12 months. Both the parent and district reported that the student at times would strike himself during a tantrum. The parent and the principal agreed that the IEP team determined the shortened school day to address the student's behavior such as meltdowns at school.

The PWN dated February 6, 2023, stated that the student would continue to attend half day through the kindergarten (2022-23) school year. The PWN dated February 6, 2023 stated that student's school day was to be extended by 20 minutes, to include a total of 110 minutes in general education (lunch, recess, morning activities, and read aloud; and 210 minutes in the special education classroom, along with related services (20 minutes of speech three times a week and 20 minutes of occupational therapy two times a week), for a total of 355 minutes per day.

The IEP dated January 31, 2024, showed that during the current school day, the length of the school day was from 7:55 a.m. to 1:30 p.m., or 335 minutes per day. The PWN dated January 31, 2024, stated that special education services would be 165 minutes in a special education classroom, 180 minutes in a general education classroom, and 20 minutes daily of related services for a total of 365 minutes. The school website (Elementary School Handbook) showed that the regular school day ended at 3:15 p.m.

At the time of the IEP dated January 31, 2024, according to parental concerns in the IEP, "Mom is concerned about [the student] not wanting to go to school and having more meltdowns at school." to be addressed in the social emotional PLAAFP of the IEP. According to an interview with the principal, this would have stimulated a compassionate response from the team to support the parent. The IEP's social emotional section states, "[The student] needs to continue to grow his ability to interact with his peers so that he can develop relationships with people who will be going to school with. In order to increase his ability to engage with his peers he will have to be offered more opportunities to interact with those peers" and that the need will be addressed through a goal. No further mention of meltdowns are in the IEP document or addressed in the IEP goal or behavior intervention plan.

The PWN dated January 31, 2024, stated: "[The student] is making progress with his speech and OT goals. It is believed he would make more progress in social emotional skills with more support given through general ed and special education teacher/paras rather than directly through the social worker. He will be increasing the length of his school day, which will increase his special education pull out and inclusion services."

In its response to the complaint, the district stated that they were not able to provide the investigator with information related to the impact of the student's behavior, stating: "Data has not been collected regarding the student's ability to tolerate school work and social settings in a consistent manner."

The parent and the principal agree that the student has not attended parts of the school day as scheduled, as found in Issue One.

The attendance daily summary report showed that the student had 10 "other approved" absences during the 2024-25 school year: August 14, September 4, October 4, 15, and 24, November 13, 14, 15, 18, and 20, 2024, five of which occurred prior to the complaint being filed. The principal reported that an example of the use of "other approved" was when the student would not enter the school building in the morning, which had occurred on the day of

the investigator's inquiry (December 9, 2024). The parent reported that prior to the complaint being filed, the school called the parent upon an unspecified number of occasions to come pick up the student when the student had a "meltdown."

The parent reported that the student was injured at school on November 12, 2024. The parent reported that the student was reluctant to enter the school on that day, and at the end of the day, the parents discovered the injury. The parent reported that he contacted school administrators and other authorities in response to the incident and that the parents withheld the student from school following the incident (November 13, 14, 15, 18, and 20, 2024). The parent reported that the school administrators, including the special education director, had contacted him after filing the complaint to attempt to resolve the issues of the complaint and to address his concerns. The parent also reported that the school was providing more information to the parents regarding the student's day at school and that they are no longer sending the student home when he has a tantrum.

The district reported that the student received instruction in a structured learning model with individualized task boxes. The district reported and provided evidence through interviews and staff statements that the student's special education classroom was supported by multidisciplinary team members with specialties in social work, behavior intervention, autism, and communication/language. In interviews with the district, the principal reported that the classroom staff used calming techniques when the student had a meltdown at school, laid down on the floor, or refused to attend scheduled activities.

The parent reported that the parents were reluctant to have the student attend school for a full day, due to both the student's behavior and the student's lack of toilet training that may stigmatize the student at school. The parent reported in an interview that he was unaware that the functional daily living skills such as toileting could be included as IEP goals.

The IEP Progress Report entry dated May 24, 2024, for the IEP goal 7 (engage with peers in parallel play) stated that the student's progress was adequate and that the student's willingness to engage appeared to be mood and preferred activity dependent.

Conclusion

In this case, the student's IEP team used a shortened school day as a solution to the student's unique behavior at school, described by school and parent as meltdowns. The student was also reported to refuse to attend certain activities, show preference for others, and to be administratively excused as absent if he refused to get out of the parent's car to enter the school building. The district reported that a multidisciplinary team, including specialists in social behavior, communication, specialized instruction, and behavior intervention provided direct, indirect, and training services to the student and the student's special education classroom staff. In its response to the complaint, the district acknowledged that no data were kept monitoring the student's absences from all or parts of school days or specific activities due to behavioral refusals or other indications of protest. The parent expressed concern about the student's reluctance to attend school and "meltdowns" at the IEP meeting on January 31.

2024, and these meltdowns were reported by both parties to be a continuing feature of the student's behavior at school. Both the parent and the school reported the use of informal removals (such as calling parent to pick up student, excusing student absences when the student refused to enter the building, or student refusal to follow his schedule at school) which were not systematically tracked by either party.

It is noted that the IEP team determined the shortened school day and the mother participated in the development of both IEPs that required the shortened school day, and that the father relayed the parents' concern regarding the student's tolerance for a full day of school. It is noted that, although no IEP team meeting has been held following the November 12, 2024, incident, the school district has attempted to address the parent's concerns and that the parent has reported improved communication regarding the student's educational program from the school.

However, the IEP team, including the school personnel, did not address the student's behavior through a goal, service, assessment, or intervention plan included in the student's IEP which had been amended in April and in August 2024 for other purposes. Additionally, the parent expressed reluctance to have the student attend a full day of school due to his lack of toilet training, which could have been addressed by the IEP team as an individual need of the student.

Based on the foregoing, ***it is substantiated*** that USD 340 failed to develop an IEP designed to meet the needs of the student in light of their disabilities.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. 300.323(c)(2) was found, based on facts above, including the failure to provide special education services in the general education classroom, speech language, and occupational therapy services as required by the student's IEP. Corrective action is required (as follows):

    a. CORRECTIVE ACTION:

        i. By January 13, 2025, USD #340 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 that the district implement the student's IEP as soon as possible after it is developed.

        ii. By January 13, 2025, USD #340 shall calculate the number of minutes of services lost to the student and offer the parent compensatory education specifically directed toward assisting the student to achieve the student's IEP goals, to include no fewer than 2880 minutes special education services in general education settings (Figured at 57 days of school till November 13, 2024 minus 9 days of student absences during that period is 48 days @ 60 minutes daily), 40 minutes of speech

language therapy, and 300 minutes of occupational therapy. The parents may accept all, some or none of the compensatory education offered by the district and must reply to the district with their decision no fewer than 15 business days following the date of the district's offer. Only at the parent's request and within 10 days of the date of the district's offer, the IEP team may meet to negotiate changes to the special education in general education minutes but not the speech language therapy or occupational therapy portions of the district's compensatory education offer.

iii. The district will provide PWN to the parents resulting from the parents' response to the compensatory education offer. The district shall submit the parent's request for the meeting to negotiate the special education in general education settings portion of the district's offer of compensatory education (if any), the parent's response to the offer of compensatory education, the PWN, and any notice of meeting, IEP team meeting notes or IEP amendments to SETS as evidence of the completion of this corrective action by February 10, 2024.

2. ISSUE TWO: A violation of 34 C.F.R. 300.156(a) was not found based on the facts above, including that the district provided adequate staff to provide student services. Corrective action is not required.

3. ISSUE THREE: A violation of 34 C.F.R. 300.324(a) and (b) was found based on the facts above, including the additional informal removals and separations of the student in addition the shortened school day required by the IEP, the unaddressed concern of the parent about student meltdowns and reluctance to enter school. Corrective action is required (as follows):

    a. CORRECTIVE ACTION:

        i. By January 13, 2025, USD #340 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will, subject to consent requirements, comply with federal regulations at 34 C.F.R. 300.324(a) and (b) which require that the district develop and revise the student's IEP to address 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 of self or others, the need for braille or the impact of limited English proficiency, the child's communication needs, and the need for assistive technology.

        ii. By January 13, 2025, USD #340 shall provide notice and convene the student's IEP team to consider each of the provisions of 34 C.F.R.

300.324(a) listed above and specifically the barriers to the student's full attendance at school including behavioral interventions, communication, and functional needs, including whether a functional behavioral assessment and behavior intervention plan is appropriate. The IEP team must discuss the length of the student's day and determine the appropriate services to ensure that the IEP addresses the student's needs.

iii. The district will provide PWN to the parents resulting from the parents' response to the compensatory education offer. The district shall submit the notice of meeting, IEP team meeting notes, any IEP amendments, and PWN to SETS as evidence of the completion of this corrective action by February 10, 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)

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 340
Jefferson West Public Schools: 25FC340-001

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on November 13, 2024, by -------, on behalf of his child, -------. In the remainder of this decision, ------- will be referred to as "the complainant," and ------- will be referred to as "the student." An investigation of the complaint was undertaken by a complaint investigator on behalf of the Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, a Complaint Report, addressing the allegations, was issued on December 13, 2024. That Complaint Report concluded that there were violations of special education statutes and regulations

Thereafter, the district filed an appeal of the Complaint Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the original complaint, the Complaint Report, and the district's notice of 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.

Discussion of Issues on Appeal

From Complainant

The district appeals two issues:

Issue One

Did the district implement the student's IEP, specifically to provide special education, related services, attendant care, and placement as identified in the IEP?

In its appeal, the district states that the two missed speech language therapy services "do not rise to a level of substantive educational impact on the educational performance of the student" to require compensatory education.

The IEP for this student specified that speech services were to be provided for "20 minutes – three times per week (Report, p. 7)." The report described the delivery of this service as follows: "For the 12 weeks reported, the student received speech language services three times a week 5 times, two times a week 4 times (4 missed sessions) and one time a week 3 times (6 missed sessions). Student absences or no school days accounted for 8 of the 10 missed sessions."

In short, when the student was in school, he received all but two twenty-minute sessions over a twelve week period.

When asked about this very question, regarding the need to schedule make-up sessions when speech-language pathology sessions are missed due to a child's absence from school cancellation for a class or school activity, or absence of the speech language pathologist, the Office of Special Education Programs (OSEP) said that the:

> *"**IDEA and the regulations do not address these issues**: States and local educational agencies (LEAs) are required to ensure that all children with disabilities have available to them FAPE (Free Appropriate Public Education), consistent with the child's individualized education program (IEP) (see 34 CFR ? 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**." See Letter to Clarke, 48 IDELR 77, (OSEP 2007).*
>
> *OSEP is the office within the United States Department of Education that writes and enforces the federal special education regulations.

Courts have ruled in a substantially similarly manner, saying that, "a party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP. This approach affords local agencies some flexibility in implementing IEP's, but it still holds those agencies accountable for material failures and for providing the disabled child a meaningful educational benefit (emphasis added). See, Houston Indep. Schl Dist. v. Bobby R, 200 F.3d 341, 31 IDELR 185 (5th Cir. 2000).

While the Appeal Committee does not minimize the importance of implementing an IEP as written, OSEP clarifies that perfection is not the legal standard. The Appeal Committee finds that speech language services for this student were in substantial conformance with this student's IEP, and there was no evidence in the report that the investigator made an individual determination that the failure to provide two twenty-minute speech sessions in a twelve week period (where the IEP specified three sessions per week) adversely impacted the student's educational progress or performance. Therefore, the Appeal Committee finds that the investigator's conclusion on this part of issue one should be overturned.

The district also appeals the finding and conclusion in Issue one that the district failed to provide Occupational Therapy (OT) in accordance with the IEP.

The IEP requires that OT be provided two times per week for twenty minutes per session (Report, p. 7). The investigator found that, OT "was provided one time a week for 10 of the 14 weeks reported. Student absences accounted for three missed sessions and staff unavailability for one missed session (Report, p. 9)."

Counting the session where staff were unavailable, 15 sessions were missed over the 14-week period. In its appeal the district submitted written documentation (COTA Daily Treatment & Goal Progress Monitoring log) confirming that in addition to the above services that were provided by the OT, the Certified Occupational Therapist Assistant (COTA) also provided OT services to the student on 8/23/24, 8/30/24, 9/624, 9/13/24, 9/20/24, 9/27/24, 10/9/24, 10/16/24, 10/23/24, 11/1/24, 11/8/24 and 11/22/24. The COTA provided these services with twelve sessions over the 14 week period. The student was absent for two sessions.

With this documented additional information, the Appeal Committee finds that the district substantially complied with the OT services component of the student's IEP.

For Issue 1, the Appeal Committee finds that the investigators conclusions that the district failed to implement the occupational therapy and speech therapy services in the student's IEP should be overturned. The remainder of the findings and conclusions regarding Issue 1 remain.

Issue Three

Did the district develop an IEP designed to meet the needs of the student in light of their disabilities?

Districts are required by law to provide a Free Appropriate Public Education (FAPE). FAPE has been defined by the United States Supreme Court to mean that schools must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." See, Endrew F. v. Douglas County School District, 117 LRP 9767, 137 S.Ct. 988 (2017).

For the purpose of analyzing the school's FAPE requirement for this student the Appeal Committee notes that this student's circumstances are significant. The student "was rated as having the most significant cognitive limitations in every category of the Kansas Alternate Assessment (DLM) for Students with the Most Significant Disabilities (Report, p. 7)."

The investigator concluded that the district failed to provide a FAPE for this student (Report, p. 21)

In its appeal of this issue, the district describes this conclusion to be "Monday Morning Quarterbacking," and cites two U.S. Circuit Court of Appeals as authority, including,

O'Toole v. Olathe USD 233, 144 F.3d 962, 28 IDELR 177 (10th Cir. 1998). As indicated above, the O'Toole v. Olathe case is a Tenth Circuit case, and its rulings are binding in Tenth Circuit states, such as Kansas.

In O'Toole, the 10th Circuit said:

> *"...if we are evaluating an IEP prospectively only, we agree with the Third Circuit...that the measure and adequacy of an IEP can only be determined as of the time it is offered to the student, and not at some later date. . . . Neither the statute nor reason countenance 'Monday Morning Quarterbacking' in evaluating the appropriateness of a child's placement.' However, an IEP* ***is a program, consisting of both the written IEP document, and the subsequent implementation of that document. While we evaluate the adequacy of the document from the perspective of the time it is written, the implementation of the program is an on-going, dynamic activity, which obviously must be evaluated as such. Thus, we do not hold that a school district can ignore the fact that an IEP is clearly failing...*** *" (citations omitted and emphasis added with bold/underlined print)."*

In the cited case, the Tenth Circuit is saying that courts should not "Monday Morning Quarterback" or otherwise use the benefit of hindsight to second guess the judgement of an IEP team, when the team makes reasonable decisions based on what the team knows at the time it develops the IEP. However, the court is also saying that the IEP teams work is not done when the IEP team meeting ends. The team must also track the student's expected progress. An IEP team cannot continue to idlily sit by when it becomes evident that a student is not progressing. Hence, when looking over an extended time, an investigator has a duty to distinguish between a reasonably developed IEP and a later unreasonable failure to address a failing IEP.

For this student, a shortened school day was included in both the 2/6/23 and 1/31/24 IEPs (Report p. 18). The students mother gave written consent for both IEPs (Report p. 2).

The report states that the district and the parent agreed that the student's behavior, including reluctance to attend school or activities within school, was a concern through the past 12 months, and that the IEP team determined the student would have a shortened school day to address the student's behavior such as meltdowns at school (Report p. 18).

The report included this comment:

> *In its response to the complaint, the district acknowledged that no data were kept monitoring the student's absences from all or parts of school days or specific activities due to behavioral refusals or other indications of protest. The parent expressed concern about the student's reluctance to attend school and "meltdowns" at the IEP meeting on January 31, 2024, and these meltdowns were reported by both parties to be a continuing feature of the student's behavior at school. Both the parent and the school reported the use of informal removals (such as calling parent to pick up student, excusing student absences when the student refused to enter the building, or student refusal to follow his schedule at school) which were not systematically tracked by either party.*

Noticeably missing from the report is reference to data/information occurring after development of the January 31, 2024 IEP. The few references are:

April 25, 2024 – IEP amended to include Extended School Year (ESY) services (p. 7)
August 13, 2024 – IEP Amendment – to review criteria to qualify for alternate Assessment (p. 7)
August 16, 2024 – Service times changed according to January 31, 2024 IEP (p.8)
March 2024 – Reported on only one goal (goal 6): Adequate progress (p. 9)
May 2024 – Progress reports for all 7 goals: Adequate progress (p. 9), including engaging with peers in parallel play (p. 20)
November 12, 2024 – Parents reported an undisclosed injury to the student at school, after which parents withheld student from school for 5 days (p. 19-20)

None of these references (with the possible exception of the November 12, 2024 injury) indicate a lack of appropriate progress for this student since his January 31, 2024 IEP was initiated. Further, the report added:

> *It is noted that the IEP team determined the shortened school day and the mother participated in the development of both IEPs that required the shortened school day, and that the father relayed the parents' concern regarding the student's tolerance for a full day of school. It is noted that, although no IEP team meeting has been held following the November 12, 2024, incident, the school district has attempted to address the parent's concerns and that the parent has reported improved communication regarding the student's educational program from the school.*

However, the investigator concluded that the IEP was insufficient because it "did not address the student's behavior through a goal, service, assessment, or intervention plan included in the student's IEP."

In its appeal, the district states that the student's diagnosis of autism and his demonstrated needs are addressed through materials and strategies that are in the student's IEP goals and in

accommodations in the IEP. That is, his entire program is based on the structured teaching model designed for students with autism and for these reasons the IEP team did not feel that it was necessary to add an additional behavior plan as all behavioral needs were being addressed within a structured teaching program which included: the LAMP app on his iPad to access "his voice," a visual schedule in all settings, a visual timer during transitions throughout the school day, sensory breaks scheduled before instruction time and whenever he needs a break throughout the day, and sensory needs met before instruction time (a proactive strategy to ensure that he has the best chance possible to tolerate non preferred tasks).

In the conclusion portion of the report on this issue, the investigator said: "the students IEP team used a shortened school day as a solution to the student's unique behavior at school described by the parent as meltdowns." The Appeal Committee disagrees with this description.

While a behavior intervention plan (BIP) targeting specific behaviors might be advisable in this situation, the law does not require that the district's strategies for addressing behaviors include developing a BIP. A BIP is required by law in the single situation where a student has been suspended and relevant members of the student's IEP team determine that the student's conduct was a manifestation of the student's disability (34 C.F.R. 300.530(f)(1)). That situation did not arise with this student.

The Appeal Committee finds that, during the time period for this complaint, the evidence supports the following: (1) the parents and other members of the IEP team fully participated in the development of both of this student's IEPs; (2) the parents agreed and gave consent for each of the IEPs, including the provision for a shortened school day; (3) the student's IEPs included strategies to address the student's behavior; (4) the student's progress reports indicated the student is making adequate progress, and (5) the district was gradually increasing the student's time at school (Report p. 18).

Conclusion

With these findings on Issue 1, the Appeal Committee concludes that both Speech and Occupational Therapy services were substantially provided in accordance with this student's IEP and, on Issue 3 the district, in cooperation with the parents, developed an IEP that was reasonably calculated to meet the needs of this student in light of his significant disabilities.

The Appeal Committee further concludes that the Corrective action in the report for Issue 1 is amended to remove the requirement to calculate and provide 40 minutes of speech language therapy and 300 minutes of occupational therapy. The remainder of the corrective action on Issue 1 remains in force.

Corrective action for Issue 3 in the report is removed in its entirety.

Nothing in this decision should be construed to limit any future review of this student's IEP by his IEP team. The IEP team has a continuing responsibility to afford this student's parents the right to participate in the decision making process and to make a FAPE available to this student.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 16th day of January, 2025.

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 # 234
ON NOVEMBER 8, 2024

DATE OF REPORT: DECEMBER 17. 2024

Issues Investigated

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 #234 Fort Scott Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #234.

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 November 8, 2024, and the 30-day timeline ended on December 8, 2024.

Allegations

The following issues will be investigated:

ISSUE ONE: USD #234, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP with the necessary special education and related services needed for the Student to make adequate progress. K.S.A. 72-3429(d)

ISSUE TWO: USD #234, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP accommodation of providing "support staff on field trips." K.S.A. 72-3429(a)(1)

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent via video conference on December 3, 2024. The following District staff were interviewed on December 3, 2024: the Director of Special Education, the School Principal, and the New Special Education Teacher.

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 District materials were used as the basis of the findings and conclusions of the investigation:

1. Student Progress Report dated January 12, 2024 through October 21, 2024
2. Individualized Education Plan (IEP) initially dated December 7, 2023, amended May 7, 2024
3. IEP Amendment Between IEP Meetings dated May 14, 2024
4. Prior Written Notice (PWN) dated May 7, 2024
5. IEP initially dated December 7, 2023, amended January 17, 2024
6. IEP Amendment Between Annual IEP Meetings dated January 17, 2024
7. PWN dated January 17, 2024
8. Functional Behavior Assessment Report dated January 5, 2023
9. Conference Record and Manifestation Determination Review dated January 17, 2024
10. IEP Amendment Between IEP Meetings dated January 11, 2024
11. Conference Record dated January 11, 2024
12. PWN dated January 11, 2024
13. Conference Record dated December 7, 2023
14. PWN dated December 7, 2023
15. Request for Transportation dated December 7, 2023
16. Reevaluation Team Report dated December 7, 2023
17. Certification of Eligibility for Special Education dated December 7, 2023
18. De-escalation procedures dated November 1, no year
19. Interval Data Summary dated November 7, 2022 through November 12, 2024

Background Information

This investigation involved a fourth-grade student enrolled at an elementary school in the District. 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). Records indicate the Student also has a diagnosis of Attention Deficit/Hyperactivity Disorder (ADHD). The Student has had an IEP since second grade and a regulated medication regime for ADHD since third grade. The Student splits their time between their Parents' homes.

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Parent and District staff.

1. Student de-escalation procedures updated on November 1 [2022-2023], outlined who to contact for assistance: the Special Education Teacher, the Principal or Assistant Principal, the Caseworker or Therapist, and then the Parent. (D151, Principal Interview, P1-P2, 02:12)
2. A December 7, 2023 "Reevaluation Team Report" indicated that the Student underwent an evaluation, and it was determined that the Student "struggles with a learning disability in the areas of math, reading, and written expression, and [the Student] continues to need special education services … ." The report included academic and behavioral assessment data, observation information, and input from parents, teachers, and other relevant school staff. A December 7, 2023 eligibility statement supported these findings. (D102-108, D120-121)
3. A December 7, 2023 District request for special transportation documented a need based on behavior information from the 2022-23 school year. (D100-D101)
4. A December 7, 2023 "Conference Record" documented an IEP annual review meeting on the same date. It was noted that a Functional Behavior Assessment (FBA) was in process, reading and math goals would be added to the IEP, the Parent requested support for field trips, and there was an increase in the Student's ability to focus following a medication change. (D93-D94)
5. A December 7, 2023 PWN indicated that services were determined as 270 minutes daily in the resource room, 180 minutes daily of inclusion support with a paraprofessional, and 45 minutes daily of special transportation. It was also noted that the Student would be served under the primary identification of "learning disability." (D95-D98)
6. A "Functional Behavior Assessment Report" dated January 5, 2023 indicated the assessment was conducted by the Special Education Teacher and the Behavior Specialist (signed January 11, 2024). During an interview with the Director of Special Education, it was determined that the date of the report should have been 2024 instead of 2023. The report included the following relevant information:
    a. Background and purpose of the assessment:
        i. The Student transitioned to an alternative learning environment in first and second grade and had spent the majority of their school days in a special education setting.
        ii. The Student's parents were separated and shared custody. The Student also spent time with a babysitter after school and sometimes before school.
    b. Student strengths:
        i. Intelligence assessment scores in the normal range;
        ii. Kind, creative, friendly, helpful, with a great imagination;
        iii. Performed well with a schedule; and

iv. Performed well with math, but it could be a trigger.

c. Student deficits:

i. Could escalate quickly when they did not want to do something;

ii. Was lagging behind academically;

iii. Could become angry quickly;

iv. Low tolerance for nonpreferred activities;

v. Hard time being around peers for extended time periods; and

vi. Was determined to have a learning disability at a three-year reevaluation.

d. Setting events:

i. Changes in medication, home environments, schools, staff; and

ii. Lack of ability to express themselves around other people.

e. Antecedents/triggers, precursors/signal behaviors, escalation process, challenging behaviors, and interventions in place (as listed in the IEP below).

f. Considerations:

i. Team approach;

ii. Consistent communication;

iii. IEP accommodations;

iv. Calm and consistent staff;

v. Distracting the Student;

vi. Debriefing with the Student and staff; and

vii. A Behavior Intervention Plan (BIP). (D48-D54; Director of Special Education Interview, P5, 15:09)

7. A BIP, no date, included all of the information from the FBA plus proactive strategies for addressing the target behaviors, implementation steps, de-escalation strategies, and an "If…Then…" chart. (D86-D92)

8. A PWN, a "Conference Record" with notes, and an "IEP Amendment" document dated January 11, 2024, indicated that the IEP Team had reviewed the FBA, including the Student's triggers and target behaviors. It also noted reviewing the strategies and interventions in the BIP and adding field trip support to the IEP accommodations. It was also noted that the Student "did well on [their] field trip to the movies." (D61-D67)

9. Two IEP cover pages with the same amendment date of January 11, 2024, indicated different signatures and signature dates.

a. One was dated January 11, 2024 and was signed by the Parent, the Math/Science teacher, the 3rd Grade Reading Teacher, the Behavior Specialist, the Principal, and the Special Education Teacher.

b. Another was dated January 17, 2024 and was signed by the Mental Health Case Manager, the School Psychologist, the Father, the Parent, the Classroom Teacher, the Assistant Principal, the Principal, and the Paraprofessional. (D28-D31)

10. A January 17, 2024 "Manifestation Determination Review" listed the following relevant information:

a. A summary of the Student's behavior on January 12, 2024 including tipping desks over, knocking things off other desks, knocking down room dividers, picking up and swinging a dowel rod, and running out of the room. It was noted that the Student's stepfather came to pick them up and they cleaned up the room before leaving the school.

b. A summary of the Student's IEP information.

c. Regular Education/Homeroom Teacher observation information that noted the Student's schedule (only in regular education classroom at the beginning of the day, and then specials and lunch) and refusal to participate in nonpreferred tasks. It was also stated that the Student was reading at a kindergarten level.

d. A summary of information provided by the Parent regarding the Student's behavior at each home.

e. A list of the Student's medications.

f. A list of dates with noted behaviors:

i. January 3, 2024: threw things in class and kicked the teacher's desk;

ii. January 8, 2024: eloped from specials;

iii. January 9, 2024: eloped from the resource room; and

iv. January 10, 2024: eloped from music.

g. Two statements marked "NO:"

i. "Was the conduct in question caused by or have a direct and substantial relationship to the child's disability?"

ii. "Was the conduct in question a direct result of the school's failure to implement the IEP?"

h. Determination: The Team determined that the behavior was not a manifestation of the disability, and disciplinary removal could occur. However, the District had to continue providing the Student with a free appropriate public education (FAPE). It was also noted that the School would conduct an FBA and develop a BIP.

i. Signatures from the IEP Team. (D57-D59)

11. An "IEP Amendment Between Annual IEP Meetings" document (no date) described a proposed change of "[R]educing/increasing minutes from resource room and general education classroom. Switching PE and music to music then PE with another classroom. Everything else will stay the same and we will meet again in about a month." The Parent and the Principal signed it on January 17, 2024. (D43)

12. A PWN dated January 17, 2024 and signed by the Parent on the same date stated, "[The Student] will receive 270 minutes of daily resource room time and 180 minutes of daily inclusion para[professional] support. [They] will receive special education transportation 45 minutes per day. All services will be 5 days per week for the duration of the IEP. [The Student] will be served under the primary identification of learning disability. Breaching the gap in [their] learning on [their] level going back to the basics. Changing minutes to resource room and general education classroom. Switching [physical education] PE and music were [sic] [the Student] goes to music first then PE." (D44-D47)

13. A "Conference Record" dated January 17, 2024 included notes from a meeting with both of the Parents and stated that the Student preferred the resource room to the classroom, had one-to-one support when working on grade-level tasks, demonstrated more behaviors in the morning, had paraprofessional support during specials, and was going to switch when they went to PE and music. (D56, D60)

14. An "IEP Amendment Between Annual IEP Meetings" document (no date) stated proposed changes of adding Extended School Year (ESY) services to the Student's IEP to help the Student from "falling further behind in academics" due to the Student "regressing during the summer and to give [them] the support [they need] during ESY." It indicated the change was proposed via phone call to the Parents. The document was signed on May 14, 2024 by the Parent and the Principal. (D20)

    A May 7, 2024 PWN documented this change to the IEP and was signed by the [Parent] on May 9, 2024. (D21-D24)

15. An IEP with an amendment date of May 7, 2024 and an "annual initiation" date of December 7, 2023, indicated:

    a. "Social and Emotional: "[The Student's] behavior impedes the learning of self or others. [The Student] requires a Behavior Intervention Plan."

    b. Present level statement: "[The Student] has met [their] IEP goal from last year: using appropriate responses at least 25% of each day. [The Student] exhibits appropriate behaviors throughout the school day when at baseline and [they] often [want] to demonstrate for others what appropriate behaviors look like. [The Student] exhibits appropriate abilities to listen, attend to tasks, and follow through with assignments and/or task completion when at baseline. [The Student's] ability to maintain a safe body (no displays of physical aggression) has increased and [the Student] has a safe body between 90-100% of the day and has throughout November and December ... ."

c. Concerns included the Student's display of the following behaviors at school:

   i. Physical aggression: "hitting, kicking, punching, grabbing, forceful pushing, biting, scratching, pulling hair and slapping."

   ii. Property destruction: "throwing items, pushing dividers over, altering items from their original state."

   iii. Verbal aggression: "screaming, cussing, and calling others names, whining, screaming, yelling."

   iv. Eloping: "running away from staff and not stopping when directed to wait, running around the hallways in the school, and running out or attempting to run out of the school building."

   v. Refusal: "moving away from the desk, saying, 'I am not going to do this,' running from the work area to another area in the room, and/or not completing a task/activity after 2 minutes with multiple prompts."

   vi. "After the most recent data collection, given interactions with peers and staff, [the Student] is able to appropriately respond to a situation with 3-5 adult prompts across staff, settings, and subjects with an average of of [sic] 60% of the time across 5 data days."

d. Area of need: "[The Student] struggles with a learning disability in the areas of social-emotional skills and [their] adaptive behavior which greatly impacts [their] educational day and other students around [them] to the point that it is difficult for [them] and others in class to learn. [The Student's] behaviors are aggressive and impulsive, and they can escalate quickly. This need will be met by goal(s) and accommodations or modifications."

e. Goals for social-emotional (appropriate requests), reading (sight words), and math (multiplication facts). Discrepancies in the reading and math goal sections were noted during this investigation. Both areas stated that [the Student] did not need specially designed instruction in the area and could access the general education curriculum with general education interventions and supports. However, both areas also indicated strengths and concerns and included baseline data and "area of need" statements with correlating goals.

f. "Academic/Functional Performance: The Team has no concerns about [the Student] in the area of Academic/Functional Performance at this time."

g. Accommodations for "social-emotional, reading, and math" for general and special education settings with a start date of December 7, 2023 and an end date of December 6, 2024:

   i. "[The Student] will utilize breaks throughout the day, upon appropriate request or after task completion, [for] 3-5 minutes."

ii. "[The Student] will utilize manipulatives for both math … and spelling … assignments, for the duration of the assignment." The end date was written as December 7, 2023.

iii. "[The Student] will receive assignments, broken down into smaller steps … Staff may also read the work to [the Student] upon [their] request or have [the Student] complete an answer and then have the staff complete an answer, [for] all assignments, through the completion of the assignment."

iv. "[The Student] will be provided a choice of [two]. 'Do you want to do this or this first?' 'Are you going to write fast or slow' etc., when [the Student] has difficulty getting started on an assignment, [for] 3-15 minutes."

v. "[The Student] will be given a movement break to aid with focus in the general education setting and during transition times or in between learning tasks, until [they are] able to withstand longer amounts of time with focus without excessive movement. [The Student] will also have access to sensory items such as a pop it, theraputty, or moon sand, etc., upon appropriate request, during transition out of the classroom, between learning tasks, or when [the Student] needs to decompress, [for] 3-15 minutes." The end date was written as December 7, 2023.

vi. "Prompt [the Student] to do things or answer questions that [they] [know] the answer to when [the Student] is displaying challenging behaviors (touch your head, touch your nose, 1+1=2, 2+2=4, etc.) You may need to model or complete them first and then [the Student] typically will start to answer … You can also prompt [the Student] to take slow breaths. Talk about something that is not related to what [the Student] is saying when [they] [are] upset; When [the Student] is displaying a challenging behavior, [for] 3-5 minutes."

vii. "[The Student] will be seated in an area that is considered [theirs] and an environmental position that will allow [them] to be successful, [for] all seated activities, through the duration of seated activities."

viii. "If [the Student] says that [they want] to lay down to sleep, allow [them] to do that in [their] area. If [they] are restless, it helps to have a staff member sit next to [them] and rub [their] back; Upon request to lay down until [the Student] is rested."

ix. "[The Student] requires special transportation as there are delays in [their] self-expression and social skills, daily for 45 minutes."

h. "Supports for school personnel" in the areas of "social-emotional, reading, and math" in the general and special education settings with a start date of December 7, 2023 and an end date of December 6, 2024:

i. "Staff will seat themselves positioned between [the Student] and the nearest exit so that if [the Student] attempts to run out of the immediate area, staff

are with him, during all seated activities, through the completion of the assignment."

ii. "If [the Student] is physically aggressive or throwing items, staff will move items out of [their] immediate area/reach, when [the Student] becomes physically aggressive or is throwing items, until [they are] no longer physically aggressive."

i. A social-emotional accommodation was added with a start date of January 11, 2024 and an end date of December 6, 2024. It stated, "[The Student] requires support staff for field trips as there are delays in [their] self-expression and social skills, [for] all field trips outside of school with [the] class, for the entire duration of the field trip."

j. A description of the Student's behavior plan was included within this IEP document. It noted the following:

i. Student's strengths and motivators

ii. Behaviors of concern (as listed previously)

iii. Possible triggers for the behavior (academic and nonpreferred tasks, loud noises or environments, transitions, the beginning of the day or of a task, lunchtime, recess, and being woken from a nap)

iv. Hypothesis/reasons for the behaviors (escape demands, avoid specific adults, get tangibles, escape environment, communicate wants/needs, avoid other students, gain attention or control)

v. Strategies (provide choices, redirect/distract, use rewards, identify and review clear expectations, sensory break, visual cues, academic accommodations)

vi. Other strategies (mental health services, access to food, staff support, alternative learning environments, choices of where to go, modifying tasks, shortening tasks, choice of assignments, break space, work toward preferred items, work/break system, movement breaks)

vii. Three targeted behaviors:

1. Physical aggression;
2. Eloping; and
3. Refusal.

viii. A crisis management plan that included:

1. Signs of escalating behavior;
2. Signs of crisis; and
3. Implementation steps/de-escalation strategies.

k. A statement regarding the regular education environment read, "[The Student] will receive a total of 270 minutes of specialized instruction in the resource room for all [their] academics, 5 days per week and will receive 180 minutes of inclusion para[professional] support 5 days per week. This includes 45 minutes for transportation 5 days per week. All services will be for the duration of the IEP. The IEP team has determined 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 field trips, assemblies, special events for the general education classroom or school, state or district-wide assessments and other such activities."

l. Extended school year: "The IEP team has enough information to determine that [the Student] does require extended school term services."

m. Parental concerns: "Parents expressed concerns that [the Student] has missed out on a lot of time with non-identified peers. They both expressed that [the Student] wants to be back in [their] classroom as well. A reintegration plan has been formulated so that [the Student] can spend more time with [their] non-identified peers."

n. Service summary:

    i. For the year 2024, with start dates of December 7, 2023, and end dates of May 16, 2024:

        1. Special education direct service outside the regular education classroom, "addressing deficits in the area of social[-]emotional support, 2024 minutes, 5 days per week." This was discrepant from another section of the same IEP that stated the same service for 270 minutes, 5 days per week.

        2. Special education direct service in the regular education classroom as "in[-]class support for social[-]emotional support, 180 minutes, 5 days per week."

        3. Special education transportation, "extracurricular, 2024 minutes, 5 days per week." This service was also listed as "45 minutes, 5 days per week" with a start date of August 16, 2024 and an end date of May 10, 2024.

    ii. For the year 2025, with start dates of August 16, 2024, and end dates of May 30, 2025:

        1. Special education direct service outside the regular classroom, "addressing deficits in the area of social[-] emotional support, reading, and math, 2025 minutes, 5 days per week." This was listed on previous versions of the IEP as "270 minutes, 5 days per week."

2. Special education direct service in the regular classroom as "in[-]class support for social[-]emotional support, reading, and math, 180 minutes, 5 days per week. (D6-D19, D41, D86-D92)

16. An "Interval Data Summary" ending May 15, 2024 indicated behavior data collected from August 28, 2023 through May 15, 2024 at regular intervals. Data on physical aggression, property destruction, verbal aggression, eloping, refusal, on-task behavior, appropriate refusals, and appropriate requests was collected. Overall, daily percentages of physical aggression showed a decrease in occurrence. Eloping showed an inconsistent pattern of decreasing and increasing. Refusal showed an increase in occurrence with several spikes on certain days. (D154)

17. A "Student Progress Report" for the 2024-25 school year indicated three goal areas and corresponding progress. Relevant information included:

    a. "Social-Emotional Goals: Appropriate Requests - by the end of the IEP year (December 2024, given interactions with peers and staff, [the Student] will be able to appropriately respond to a situation (appropriate request and safe body) with 3-5 adult prompts across staff, settings, and subjects with an average of of [sic] 85% of the time across 5 data days."

        i. Baseline behaviors included physical aggression, property destruction, verbal aggression, eloping, and refusal.

        ii. Progress updates:

            1. January 12, 2024: average of 30% of the time;

            2. March 22, 2024: average of 50% of the time;

            3. May 1, 2024: average of 40% of the time; and

            4. October 21, 2024: average of 65% of the time.

    b. Two additional goals in reading (sight words) and math (multiplication facts) were reported with progress. As of October 21, 2024, neither goal had been met. (D1-D3)

18. An "Interval Data Summary" ending November 12, 2024 indicated behavior data collected from August 20, 2024 through November 12, 2024 at regular intervals. Data on physical aggression, property destruction, verbal aggression, eloping, refusal, on-task behavior, appropriate refusals, and appropriate requests was collected. The data shows increases and decreases in occurrence but no significant decrease in targeted behaviors over time or significant increase in positive behaviors. (D156)

19. During interviews with the Complaint Investigator, the Parent stated they believed the Student was prevented from attending two field trips last school year and two field trips during the current school year. The Parent also noted that the School would often tell the Student that if they did not improve their behavior, they would not be allowed to attend whatever field trip was coming up, regardless of how close or far away the trip date was. Then, if the Student perceived they had corrected their behavior, the field trip

was still taken away. The Student's Parent added that when they asked the school why the field trip was taken away, the answer was just that the Student lost the opportunity (with no specific details) or that the School didn't have enough support staff for the Student to attend "even though it is mandated in [the Student's] IEP." The Parent confirmed they'd been verbally told more than once by the Principal, usually the day before or the day of a field trip, that there wasn't enough support staff for the Student to attend. (Parent Interview, P1-P2, 02:54)

To the Parent's knowledge, there were no incidents of the Student eloping from campus last school year or the current school year. Additionally, they understood that the Student had attended one field trip last school year, and the School had given a positive report. "They said [the Student] behaved really well. [The Student] did really great, and [they] enjoyed it." (Parent Interview, P3, 06:19)

20. During interviews with the Complaint Investigator, the Principal stated that the Student had not attended three field trips with their class last school year and two this school year. They also said that other students did not attend this year's field trips due to similar behavior as the Student's and for other behaviors such as classroom outbursts, physical aggression, and not following directions. (Principal Interview, P2, 04:26; P4, 07:25)

    When asked for the reasons for the Student's non-attendance on the field trips last school year, the Principal responded, "Elopement out of the classroom, not following directions, and violent responses to being asked to do unwanted tasks." The reasons for non-attendance of the current school year's field trips were "[e]lopement and violence. Again, when being asked to not do the task. Also, not following teacher directives. If a teacher were to say, 'Go down this hallway, go to this room,' [the Student] does not follow directions like that." (Principal Interview, P3, 04:56)

    The Principal stated that parents have generally been offered to accompany their students on field trips if the students' school behavior warranted it. They described accommodating the Student for the one attended field trip last school year by sending a paraprofessional to provide one-to-one support. They said [the Student's] behavior near the trip date had been better and that the field trip day "was a struggle, but [the Student] was able to mostly make it through." The Principal elaborated that the Student had difficulty sitting and listening during the trip and needed to be up and moving around, so the paraprofessional walked around with them. The Director of Special Education added that per the Student's IEP accommodation of field trip support staff, someone would have been available to attend other field trips with the Student. They said, "We had adequate staff if [the Student's] status would've been, made [them] eligible to go, yes." (Principal Interview, P5, 09:06; P4, 08:49)

    The Director of Special Education also indicated that after missing the second field trip this year, the Student was offered an opportunity to "re-earn an equal opportunity for a

field trip" but that the Student's behavior was "very volatile during that timeframe and it did not happen because of that." They explained that the trip would not have been with the Student's peers but that the staff would have taken the Student to do "something of equal, extra curriculum … ." (Director of Special Education Interview, P6, 16:16)

The Principal further explained that their greatest concern is safety for all the students, especially given that the two field trips this year were out of town. They said, "And outbursts of violence are less, but they're still there. … When [the Student] does have outbursts, they're significant. When [the Student] elopes and [they're] mad, there's [sic] some times that you cannot reason or calm [the Student] down in a decent amount of time that would keep [them] safe and others safe. And I think these are things that we have to be aware of for a student, and in the end, [the Student's] safety is my responsibility, and can I send a child somewhere and know that they're going to be able to be safe and follow directions. The reality is I do not feel like [the Student's] behavior this year or last year warranted [them] going and being safe. When it did, I did give [them] the field trip and [they] can for the rest of the year, if [their] behavior is better, can also go on field trips. And again, we will accommodate and provide all the support that [the Student] needs to go." (Principal Interview, P3, 05:49; P5, 10:04)

Additional Findings

During this investigation, several discrepancies or errors were found within the IEP paperwork and provided documents. The Complaint Investigator attempted to clarify these via interviews with District staff. However, the Special Education Teacher was new and did not participate in developing any of the provided documents, so could not speak about them. The Director of Special Education did not have the Student's file with them during the interview, so attempted to clarify based on memory. The Director of Special Education indicated that some errors may have been due to a change in the IEP computer software system and a need for staff training. When asked to clarify the discrepancies in the present levels and functional performance statements, the Director of Special Education said they would need to get clarification from the IEP Team. They also added, "Every meeting I've attended, it hasn't been about ability. It's been about the interfering behaviors." (Director of Special Education Interview, P2, 05:11)

The following discrepancies or errors were noted:

1. The most recent IEP with an amendment date of May 7, 2024 indicated:
    a. The Student did not need specially designed instruction for reading or math and could access the general education curriculum. However, both areas had concerns, areas of need, and goal statements.
    b. "The Team has no concerns about [the Student] in the area of Academic/Functional Performance at this time." However, numerous concerns about academics or functional performance were indicated.

c. Listed service times for "direct service outside of the regular education classroom" and specialized transportation were input as 2024 and 2025 minutes.

d. Listed end dates for some accommodations were input as December 7, 2023 instead of December 6, 2024. (D6-D19)

2. A January 17, 2024 PWN indicated a change in service minutes, but no aligned changes were documented on the IEP for that date. (D44-D47)

3. Meeting notes from December 7, 2023 indicated the Parent had requested support for field trips, but the accommodation was not added and documented until January 11, 2024 (D65, D94)

4. The FBA report listed a date of January 5, 2023, but it was confirmed that it should have been January 5, 2024. (D48-D54; Director of Special Education Interview, P5, 15:09)

5. A BIP was provided that was not dated. It was unclear when it was written. Interviews indicated it would have been from January 2024, but then it was mentioned that other associated documents had come from previous years at a different school. (D86-D92)

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

USD #234, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP with the necessary special education and related services needed for the Student to make adequate progress. K.S.A. 72-3429(d)

According to 34 CFR §300.320 and K.S.A. 72-3429(d), the IEP team must consider student strengths and needs, parental concerns, evaluation results, and language or communication needs when developing an IEP. Additionally, K.A.R. 91-40-18 indicates that if an IEP team determines that a child needs behavioral interventions, strategies, accommodations, or modifications, those must also be included in the IEP.

The Parent alleged that the Student was struggling and lacked the resources necessary to succeed. The Parent claimed the Student had been frequently excluded from field trips over multiple years due to their behavior. To address this, the Parent ensured the Student's IEP included an accommodation requiring support staff on field trips. However, despite having an IEP since second grade, the Student had only attended one field trip in their five years of schooling.

According to District records, an IEP had been developed and was in place for the Student. It had also been amended twice based on the Parent's input and behavior data including an FBA.

A reevaluation report from December 7, 2023 indicated that academic and behavioral assessments and observations had been completed, and this information was combined with input from school staff and the Parent to determine eligibility and develop an IEP. The IEP outlined baseline data and goals for reading, math, and social-emotional areas. It listed specific behavior concerns, including physical and verbal aggression, property destruction, elopement, and refusal. It also included pull-out and push-in services and accommodations for academic and social-emotional support and special transportation. An FBA was also completed in January 2024, resulting in a team-developed BIP that included proactive strategies for addressing target behaviors, implementation steps, and de-escalation procedures. The IEP was amended in January 2024 based on information from the FBA and BIP. Field trip support was added as an accommodation at this time. Following a Manifestation Determination Review in January 2024, the IEP Team decided to switch the order of specials in the Student's schedule to help improve behavior. In May 2024, the IEP was amended again, and Extended School Year services were added to help maintain academic support for the Student over the summer. An IEP Progress Report indicated progress and regression toward the social-emotional goal from January 2024 through October 2024. The Student ultimately made progress from their baseline score but did not meet the criteria set for accomplishing the goal.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the district failed to develop an IEP with the necessary special education and related services needed for the Student to make adequate progress. District records indicated that all areas of concern were evaluated and then considered in developing the IEP, FBA, and BIP. Multiple meetings were held during the year to address behavior information and input from the Parent and to amend the IEP accordingly.

Issue Two

USD #234, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP accommodation of providing "support staff on field trips." K.S.A. 72-3429(a)(1)

According to 34 CFR §300.320 and K.S.A. 72-3429(a)(1), an IEP must be in effect at the beginning of each school year.

The Parent alleged the District failed to provide support staff for field trips. According to the Parents, the Student was often excluded from field trips due to their behavior and lack of staffing. This occurred again on November 5th, when the Student was not allowed to attend a field trip with their class due to behavior. The Parent expressed concern that the Student's behavioral issues stemmed from missing this field trip. They felt the Student was still struggling despite having supports in place, including appropriate medication and the IEP accommodation intended to ensure field trip participation with support.

The District responded via interviews that the Student's school behavior did not warrant participation in field trips, but if it had, there were support staff available to accompany the

Student, or Parent accompaniment would have been considered. The District indicated that the Student had been given an opportunity to earn a substitute field trip this year but had displayed volatile behavior, and therefore, that field trip did not happen. The District claimed that their decision to prevent the Student from attending field trips was based on significant safety concerns for the Student and other students.

The IEP accommodations stated that the Student required support staff for all field trips outside of school with their class for the entire field trip. However, it did not list specific field trips or state that Student attendance was required for all scheduled field trips. The District stated that the Student was afforded similar opportunities to attend field trips as other students and that support staff was available to accompany the Student if they had "earned" the field trips. They also stated that when the Student had displayed appropriate behavior, they attended a field trip with paraprofessional support as indicated by the IEP accommodation. According to information obtained through interviews with the District and the Parent, the Student was not the only one excluded from attending field trips due to behavior or safety concerns. The Parent and the District gave discrepant information regarding the availability of support staff to fulfill the IEP accommodation regarding field trips. No other written or recorded documentation was provided to corroborate either stance. The IEP, as written, did not require the District to ensure the Student's attendance for class field trips or specify criteria for determining whether or not the Student was permitted to attend a field trip. It only indicated that support was required when the Student did attend a field trip.

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 accommodation of providing "support staff on field trips."

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. A violation occurred in the following area:

A. Federal regulations at 34 CFR §300.320 and K.A.R. 91-40-18 specify that an IEP must be developed, reviewed, and revised in a meeting and include certain components, including a statement of the child's present levels of academic achievement and functional performance, the projected dates and anticipated frequency, location, and duration of services and modifications, and any necessary behavior interventions or supports.

In this case, the evidence supports the finding that USD # 234 did not develop an IEP that accurately reflects the Student's present academic and functional performance levels or includes accurate dates and frequencies for all services, accommodations, and behavior interventions.

Based on the foregoing, USD # 234 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #234 shall review and revise the IEP and associated documents listed in this report, correct errors, and submit updated paperwork to the Parent and KSDE Special Education and Title Services (SETS).

2. No later than May 16, 2025, USD #234 will train all staff responsible for writing IEPs and related documentation on the requirements for the content of IEPs and PWNs and the steps for reviewing, revising, and ensuring accuracy. USD #234 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 #234 will provide SETS with any handouts and/or a copy of the presentation.

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 #202, TURNER PUBLIC SCHOOLS
ON NOVEMBER 25, 2024

DATE OF REPORT: DECEMBER 18, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #202 (Turner Public Schools) on behalf of -------- by --------, advocate for the mother, --------. In the remainder of the report, -------- will be referred to as "the student", -------- will be referred to as "the parent" or as "the mother". -------- will be referred to as "the advocate" or the "complainant".

The complaint is against USD #202 (Turner Public Schools). In the remainder of the report, USD #202 will be referred to as "the district." The student currently attends the Sixth Grade Academy which will be referred to as the "sixth grade building" in the remainder of the report. During the 2023-2024 school year the student attended 5th grade at Midland Trail Elementary School also in the Turner School District, which will be referred to as " the elementary school" in the remainder of the report. Prior to the 2023-2024 school year the student attended an elementary school in USD #500 which will be referred to as a "nearby district". Ashley Pieper is the student's IEP case manager and will be referred to as the "IEP case manager" in the remainder of the report. Brandon Porter was the school psychologist at Midland Trail Elementary school and will be referred to as the "school psychologist". Matthew Kennedy is the principal at the Sixth Grade Academy and will be referred to as the "sixth grade building principal". University of Kansas Health System is the hospital the student was admitted to and will be referred to as the "hospital" in the remainder of the report. PACES is the community mental health organization from whom the student receives counseling and will be referred to as the "community mental health provider".

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 25, 2024.

Evidence Reviewed

USD #202 made the following staff available for interviews on December 11 and 12, 2024 as part of this investigation. These staff will be referred to as follows in the remainder of this report:

- Cristina Compton is the Director of Special Services for the district and will be referred to as the "director".

- Julie Metiz is the Special Services Coordinator for the district and will be referred to as the "coordinator".
- Angie Candelario is the Social Worker and will be referred to as the "social worker".

During the investigation, the Complaint Investigator, Nikki Crawford, reviewed all evidence and documentation provided by the district, advocate and the mother. Additionally, the complaint investigator contacted the district and parents on November 25, 26, 27, 30, December 3, 5, 6, 9, 10, 11, 12, and 13 and 2024 by phone and email to clarify evidence and documentation.

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:

1. Annotated 2023-2024 district calendar noting dates of assessment activities and student attendance during the special education evaluation period
2. Student attendance record dated August 17, 2023-May 21, 2024
3. The social worker's Certificate of Completion dated August 25, 2023 for the Child and Adolescent Functional Assessment Scale (CAFAS) training
4. District contact log dated November 21, 2023 to December 5, 2024
5. Behavior Detail Report dated November 27, 2023, including a description of the Due Process Hearing decision
6. Email from advocate to special education coordinator requesting a special education evaluation including a functional behavioral assessment (FBA), dated November 28, 2023
7. Email from special education coordinator to advocate clarifying that the school has been implementing general education supports and willing to meet with the mother, dated December 4, 2023
8. Email from advocate to special education coordinator and building principal clarifying that the evaluation should be expedited dated December 4, 2023
9. Email from special education coordinator to advocate confirming the request for an expedited evaluation, dated December 5, 2023
10. PWN for initial special education evaluation dated December 6, 2023, signed by the mother on December 12, 2023 and received by district on December 14, 2023
11. Email from the coordinator on December 6, 2023 to the advocate and mother to get the PWN for evaluation signed
12. Email from the coordinator on December 7, 2023 that the PWN and Parent Rights would be sent the following day in the sibling's backpack
13. Email from the advocate to the coordinator with an attached photo of the signed PWN dated December 12, 2023
14. Email dated December 13, 2023 from the coordinator to the mother and advocate

15. Email dated December 19, 2023 from the coordinator to the mother requesting any additional information related to a diagnosis of anxiety, depression or trauma
16. Email dated December 20, 2023 sent to the coordinator listing the student's current diagnoses found in the student's medical record
17. January 12, 2024 email from coordinator to the mother and advocate requesting the student come to school for the special education evaluation
18. Email from coordinator to mother on January 19, 2024 requesting the student come to the sixth grade building on January 22-26, 2024 to complete the initial evaluation
19. FBA observation data collection sheets and summary from January 29 to February 23, 2024
20. Email from the advocate to the coordinator dated January 29, 2024 requesting specifics about the special education evaluation
21. Email from advocate to coordinator on January 30, 2024 requesting the list of tests used in the evaluation
22. Email on February 8, 2024 from advocate to coordinator requesting the results of the student's evaluation
23. PWN declining dates offered for meeting due to staff schedules, dated March 4, 2024
24. Notice of Meeting dated March 8, 2024, proposing meeting on March 21, 2024 to review the evaluation and determine eligibility as well as develop the Individual Education Program (IEP)
25. Evaluation Report dated March 21, 2024
26. Initial IEP dated March 21, 2024
27. IEP meeting minutes dated March 21, 2024
28. PWN for special education services dated March 21, 2024
29. Behavior Detail Report April 29, 2024
30. Notice of Meeting dated May 6, 2024 for May 10th meeting to address mother's concerns
31. IEP team meeting agenda dated May 10, 2024
32. IEP team meeting minutes dated May 10, 2024
33. School-wide Behavior Intervention Plan (BIP) discussed at the May 10, 2024 meeting
34. Student class schedule included in the May 10, 2024 meeting materials
35. Contact log dated May 10, 2024 reflecting district staff facilitating intake process with PACES
36. Email from the advocate to the IEP team sent on May 16, 2024
37. Student attendance record dated August 19, 2024-December 6, 2024
38. Behavior Detail Report dated September 3, 2024
39. Behavior Detail Report dated September 6, 2024
40. PWN dated September 20, 2024 for FBA at sixth grade building, signed by the mother on December 2 and received by the district on December 4, 2024
41. Phone call between the investigator, mother and advocate on November 25, 2024

42. Phone call between the investigator and the director on December 2, 2024
43. District's response to the allegations dated December 3, 2024
44. Phone call between the investigator and the director on December 6, 2024
45. Notice of Meeting signed December 6, 2024 for December 12, 2024 meeting to discuss recent behavioral incident
46. District interview on December 11, 2024 with the coordinator and director
47. District interview on December 12, 2024 with the social worker and director
48. Email from advocate to the investigator on December 12, 2024
49. Email reply from investigator to advocate and mother on December 13, 2024

Background Information

The subject of this complaint is an 11 year old girl enrolled in the 6th grade at the sixth grade building during the 2024-2025 school year. She lives with her mother and younger siblings, one of whom receives special education services at the elementary school and the other an infant who has had serious health challenges since birth.

According to the most current evaluation narrative dated March 21, 2024, the student achieved her developmental milestones and did not participate in early intervention services. Prior to enrollment in the sixth grade building, she attended pre kindergarten through 4th grade in a nearby district and entered 5th grade at an elementary school in the current district.

According to the most recent evaluation conducted in the spring of 2024, the student's qualifying exceptionality is a specific learning disability in math and she also qualifies for social work services. Additionally, the student was hospitalized November 21-24, 2024 for threats of self harm following an altercation at school with her grandfather. While in the hospital the student was diagnosed with Major Depressive Disorder (MDD), recurrent episode, moderate (HCC), anxiety, suicidal ideation, grief, trauma and stressor-related disorder, attention deficit, and aggressive behavior.

Issues Investigated

Based on the written complaint and an interview with the complainant, two issues were identified and investigated.

Issue One

Did USD #202 conduct a complete, comprehensive Functional Behavioral Assessment to develop the student's Behavior Intervention Plan during the last 12 months?

Applicable Law

K.A.R. 91-40-8. Evaluations. (c) As a part of an initial evaluation, if appropriate, and as a part of any reevaluation, each agency shall ensure that members of an appropriate IEP team for the

child and other qualified professionals, as appropriate, comply with the following requirements: (1) The evaluation team shall review existing evaluation data on the child, including the following information: (A) Evaluations and information provided by the parent of the child; (B) current classroom-based, local, and state assessments and classroom-based observations; and (C) observations by teachers and related services providers.

K.A.R. 91-40-9. Evaluation procedures, (a)(3) A variety of assessment tools and strategies shall be used to gather relevant functional and developmental information about the child, including information provided by the parent, (5) If an assessment is not conducted under standard conditions, a description of the extent to which the assessment varied from standard conditions shall be included in the evaluation report.

A district must ensure the child is observed in the child's learning environment (including the regular education classroom setting) to document the child's academic performance and behavior in the areas of difficulty (K.A.R. 91-40-11(c); 34 C.F.R. 300.310).

Parent Position

The advocate and parent report that USD #202 did not complete a comprehensive FBA as requested on November 28, 2023, in order to develop a BIP.

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. According to district records, the student was involved in a serious physical altercation on the bus with another student, November 17, 2023 resulting in a Due Process Hearing on November 27, 2023 and out-of-school suspension (OSS) from her elementary school for the remainder of the first semester and from district transportation for the remainder of the school year. Beginning the second semester, the student was assigned to a new placement, the district's sixth grade building where the student would be in a general education In-School Suspension (ISS) room for a shortened day until reevaluated at conferences and if doing well, return to her elementary school prior to 4th quarter.
2. Emails shared by the advocate note that on November 28, 2023 she sent the coordinator an email requesting a special education evaluation, including a FBA. District records reflect that on November 30, 2024 the coordinator responded to the advocate requesting that the mother complete a release of information (ROI) to communicate and share information regarding the student. The coordinator also acknowledged the request for an initial evaluation, sharing that a request must be made by a parent or guardian in writing or verbally and that she would be happy to speak with the mother.
3. The advocate provided a copy of an email from special education coordinator to advocate confirming the request for an expedited evaluation dated December 5, 2023.
4. Advocate provided a copy of an email sent to the coordinator on December 5, 2023 stating that the mother finds the district communication related to the student's needs

difficult to understand. The email also shares concern that the student is failing two classes with written documentation of educational interventions currently being used as well as given access to a calm down area and yet the child has not yet been identified through Child Find by the district. The email also restates the need for an expedited evaluation due to the student's current OSS placement.

5. The district response notes that on December 6, 2023, the director and coordinator went to the student's home to attempt to speak with the parent and obtain PWN to begin an initial evaluation. There was no response from the parent. On the same date, the advocate emailed to request that the PWN be sent home in the sibling's backpack.
6. The advocate provided a copy of an email from the coordinator on December 6, 2023 to the advocate and mother to get the PWN for evaluation signed. The email was sent to an outdated address for the mother.
7. The advocate provided a copy of an email from the coordinator on December 7, 2023 that the PWN and Parent Rights would be sent the following day in the sibling's backpack.
8. The district response stated that on December 8, 2023, the Parent Rights and PWN for an initial evaluation were sent home in the sibling's backpack as requested.
9. The advocate provided a copy of an email from the advocate to the coordinator with an attached photo of the signed PWN dated December 12, 2023.
10. The advocate provided a copy of an email dated December 13, 2023 from the coordinator to the mother and advocate that there was missing information in the PWN and that she will send it back home in the sibling's backpack. This email was sent to an outdated address for the mother.
11. The district response states that the PWN signed by the parent was received by the district on December 14, 2023.
12. The district response shares that the team initiated the evaluation with a record review of existing data on December 18, 2023.
13. The advocate shared an email dated December 19, 2023 from the coordinator to the mother requesting any additional information related to a diagnosis of anxiety, depression or trauma. This email was sent to an old email for the mother.
14. The advocate shared an email dated December 20, 2023 sent to the coordinator listing the student's current diagnoses found in the student's medical record.
15. The advocate shared in the November 26, 2024 interview that the mother did not have transportation in order to take the student to school at the alternative placement beginning January 8, 2024, which is nearly a mile from the student's home.
16. During the district interview on December 12, 2024 staff shared that the mother chose not to send her daughter to the alternative placement beginning January 8, 2024 and that the district provided special transportation for the student during the evaluation period.
17. January 12, 2024, the district contact log reflects an email sent from the coordinator to arrange specialized transportation for the purpose of the special education evaluation. It is noted that according to evidence provided by the advocate, this email went to an outdated address for the mother.

18. January 16, 2024: District snow day.
19. As noted in the district's response, the coordinator called and emailed the mother on January 19, 2024 to notify her that transportation to the sixth grade building would be canceled the following week since the mother had not responded to emails. The coordinator also requested that the student attend school January 29–February 2, 2024 with the district providing transportation for the purpose of evaluation. It is noted that according to evidence provided by the advocate, this email went to an outdated address for the mother.
20. The in-school portion of the evaluation did not begin until January 29, 2024 due to the student's lack of attendance, according to the district's response.
21. During the district interview on December 12, 2024, staff shared that the primary sources of data for the FBA included observations, interviews, record reviews and completion of the CAFAS.
22. The district shared 17 FBA observation data collection sheets from the ISS classroom in the sixth grade building which occurred between January 29 and February 23, 2024. The targeted behaviors listed on the FBA data collection sheets include: Non-compliance/refusal, off task behaviors, disruption, inappropriate language, throwing objects, hitting, kicking, inappropriate voice volume, and verbal aggression. During the classroom observations there were no target behaviors observed. The social worker, school psychologist and special education teacher conducted the observations. The district attendance record shows that the student was present for 11 of the 17 days of FBA observation data collection.
23. It is noted in the evaluation report dated March 21, 2024 that these FBA observations took place in the sixth grade building in a general education ISS room, rather than the student's home classroom in the elementary school due to the student's change in placement as a result of the November 27, 2023 Due Process Hearing.
24. According to staff in the December 11, 2024 district interview, during the observation period there were anywhere from 2-5 students in the room as it is used as a "recovery room" for students who need a small setting in which to gain behavioral self-control.
25. In addition to the FBA observations, district staff shared in the December 12, 2024 interview that past discipline records and student attendance records were reviewed as well as information gathered in a background history interview with the mother. The student, IEP case manager and teachers from the student's elementary school were also interviewed The record review also included information from the student's elementary school where she attended pre kindergarten through 4th grade in a nearby district.
26. During the district interview on December 11, 2024, staff shared that the CAFAS was completed by the district's social work department head who is a clinical licensed social worker. to complete the CAFAS. The district shared documentation that the social worker completed CAFAS training August 25, 2023. In an interview with the social worker on December 12, 2024 she shared that the team chose to use the CAFAS because it examines domains that were relevant for the student's challenging behaviors. She also reported that the CAFAS is sensitive to high intensity, low frequency behaviors which are the types of behaviors the student has typically struggled with.

27. According to the district response, the special education evaluation was completed on February 23, 2024.
28. According to the district response, the Eligibility Determination and IEP meeting was held at the elementary school on March 21, 2024. The team agreed the student met the criteria for a Specific Learning Disability in the area of math, however due to the lack of target behaviors during the FBA observations the team was unable to identify a hypothesis upon which to create a BIP. In the IEP, the baseline notes explosive behaviors such as yelling, refusing to follow directions, using profanity and assaulting others, but does not include rates of these behaviors. The team did agree to include a social work goal to increase appropriate conflict management skills with peers. Related services include 15 minutes extracurricular special education transportation, 2x daily and 20 minutes social work services in the special education setting, 1x week. The team determined it would be appropriate to address previous behaviors through a school-wide positive behavior support plan when the student returned to school.
29. According to the district interview on December 11, 2024 the team held a meeting on March 25, 2024 to discuss ways to help the student transition easily back into her elementary school; the mother and advocate were in attendance. The team strategized ways to help the student connect with the school community and better manage her behaviors. The student returned to school on March 27, 2024.
30. According to the district response, on May 10, 2024 the IEP team met to discuss parent concerns and update the school-wide positive behavior support plan. The team also discussed the option of conducting another FBA this school year, but with only seven school days left, decided it would be most appropriate to request Prior Written Notice and conduct a new FBA in the fall when school resumed.
31. According to the district contact log, on May 10, 2024 district staff facilitated the student's intake process with PACES in order to get additional social emotional support.
32. According to the district response and the contact logs, since August 16, 2024, the district has sent emails or made phone calls eight times in an attempt to get a signed PWN for an FBA.
33. The signed PWN for the FBA was received by the district on December 4, 2024.

Conclusion

In this case, the advocate requested, on behalf of the mother, a special education evaluation including a FBA in response to the student's Due Process Hearing decision which resulted in OSS from her elementary school for the remainder of the first semester and from district transportation for the remainder of the school year.

The FBA portion of the initial special education evaluation consisted of interviews, record reviews, classroom observations and the CAFAS. Ideally, the FBA observations which help to determine a hypothesis for the challenging behaviors, would have been conducted in the school environment in which the problematic behaviors occurred. However, due to the results of the Due Process Hearing on November 27, 2023, the student was assigned to an alternative setting in the ISS room at the sixth grade building for the 3rd quarter of the 2023-2024 school year. The district noted the change in FBA observation location in the evaluation, as required.

The district provided the student transportation to school during the special education evaluation period as the mother chose not to send her daughter to this alternative setting in part, due to the lack of family transportation.

Observational data was collected over the 11 days the student was in attendance as evidenced by the FBA data collection sheets from January 29 to February 23, 2024, during this time there were no instances of the target behaviors. The IEP team agreed to implement a school-wide behavior intervention plan based on the interviews, record review and CAFAS data to support the student to be successful in spite of the lack of observational data. The district met its obligation for a comprehensive social emotional assessment, including a FBA. The district has made ongoing efforts to get consent to conduct another FBA as the student's behaviors continue to need addressing.

An additional consideration for this issue is that the special education laws and regulations do not define the term "Functional Behavioral Assessment." In short, a FBA has no required elements. Thus, even if the FBA was somehow conducted in an unsatisfactory manner (which is not substantiated in this complaint), there cannot be a violation of special education laws or regulations as a result.

Based on the foregoing, USD #202 did conduct a complete, comprehensive FBA an***d is IN compliance with IDEA regulations***.

Issue Two

Did USD #202 conduct an expedited Functional Behavioral Assessment for the student during the past 12 months?

Applicable Law

34 C.F.R.300.534 (d)(2)(i) "If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under § 300.530, the evaluation must be conducted in an expedited manner".

Parent Position

The advocate and parent report that USD #202 did not complete the FBA in an expedited manner upon receiving consent on December 14, 2023.

Analysis: Findings of Fact

The following finding of facts is based upon a review of the documentation noted previously and interviews with both parties. The findings of Issue One are incorporated herein by reference.

1. The district shared an annotated 2023-2024 school calendar that reflects during the evaluation period of December 14, 2023 to February 23, 2024 when the evaluation was completed, there were 35 school days, only 11 of which the student was in attendance.
2. The district's winter break was December 21, 2023 – January 8, 2024.

3. According to the director interviewed on December 11, 2024 the Due Process Hearing findings stated that the student could begin attending the sixth grade building for shortened days on January 8, 2024.
4. The district response states that on January 8, 2024, there was a parent meeting with the sixth grade building principal and director of administrative services to discuss ISS placement at the sixth grade building as a result of the November 27, 2024 Due Process Hearing.
5. January 9, 2024: District snow day.
6. January 12, 2024: District snow day. The district contact log reflects an email sent from the coordinator to arrange specialized transportation for the purpose of the special education evaluation. It is noted that according to evidence provided by the advocate, this email went to an outdated address for the mother.
7. January 16, 2024: District snow day.
8. As noted in the district's response, the coordinator called and emailed the mother on January 19, 2024 to notify her that transportation to the sixth grade building would be canceled the following week since the mother had not responded to emails. The coordinator also requested that the student attend school January 29–February 2, 2024 with the district providing transportation for the purpose of evaluation. It is noted that according to evidence provided by the advocate, this email went to an outdated address for the mother.
9. January 22, 2024: District snow day.
10. Noted in the district response is an email sent by the mother to the coordinator on January 24, 2024 confirming the student would attend the sixth grade building January 29–February 9, 2024 for evaluation purposes.
11. According to the district response, the student was called in sick on February 1, and had unexcused absences on February 2, 6, and 8, 2024.
12. The district timeline reflects that February 12-14, 2024 the evaluation and transportation were extended due to student's absences.
13. The district attendance log reflects that the student had an unexcused absence on February 13. 2024.
14. The district timeline reflects that February 20-23, 2024 the evaluation and transportation were again extended due to student absences.
15. The district attendance log reflects that the student had an unexcused absence on February 20, 2024.
16. According to the district contact log, the coordinator notified the mother on February 23, 2024 that the team had completed gathering initial evaluation information and that specialized transportation would no longer be provided for purposes of the evaluation. She informed the mother that the team would contact her to schedule an eligibility determination meeting.
17. According to the district timeline the Notice of Meeting and Parent Rights were sent home with the younger sibling, as requested by the parent on March 7, 2024.

18. According to the district response, the Eligibility Determination and IEP meeting was held at the elementary school on March 21, 2024.

Conclusion

IDEA requires that districts complete a special education evaluation and initiate services within 60 school days of receiving parental consent. The regulations also state that when a student is subject to disciplinary measures during the evaluation period the evaluation should be expedited.

In this case, the district received consent for the special education evaluation on December 14, 2023 and held the Eligibility Determination and IEP meeting on March 21, 2024, which is within 46 school days. Although IDEA does not offer a definition of "expedited", 46 school days is reasonable, particularly given the number of days the student missed school during the evaluation period.

Based on the foregoing, USD #202 did conduct an expedited FBA and is found to be *IN compliance with IDEA regulations*.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of K.A.R. 91-40-8(c)(1)(A-C); K.A.R. 91-40-9 (a)(3)(5); (K.A.R. 91-40-11(c); and 34 C.F.R. 300.310) was not found based on the completion of a comprehensive FBA as part of the initial special education evaluation. Corrective action is not required.
2. ISSUE TWO: A violation of 34 C.F.R.300.534 (d)(2)(i) was not found based on the Eligibility Determination and IEP meeting, including a FBA within 46 days of receiving 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 #259
ON DECEMBER 3, 2024

DATE OF REPORT: DECEMBER 27, 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 Wichita Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #259.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint. 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 December 3, 2024, and the 30-day timeline ended on January 2, 2025.

Allegations

The following issue will be investigated:

ISSUE ONE: Whether USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement accommodations on the Student's Individualized Education Program (IEP) by not allowing the Student to call home or receive movement-calm down breaks. K.A.R. 91-40-16(b)(3).

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Special Education Teacher and an Administrator on December 13, 2024. A written statement from the Classroom Teacher was provided to the Complaint Investigator on December 17, 2024. The Parent was interviewed on December 26, 2024.

In completing this investigation, the Complaint Investigator reviewed documentation provided by 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:

1. Schedule, no date
2. Daily Tracker, no date
3. Daily Tracker dated December 4, no year
4. Daily Tracker dated September 27, no year
5. Classroom Photos, no date

6. Attendance Record dated April 25, 2024 through December 9, 2024
7. Contact Log dated August 26, 2022 through December 4, 2024
8. Contact Log dated December 9, 2022 through December 3, 2024
9. Individualized Education Program (IEP) dated November 15, 2023
10. IEP dated March 29, 2024
11. Signed Consent Form dated December 4, 2023
12. Prior Written Notice (PWN) dated November 15, 2023
13. PWN dated February 21, 2024
14. Notice of Meeting dated March 18, 2024
15. Multidisciplinary Team Report (MTR) dated March 29, 2024
16. Behavior Data dated January 3, 2024 through March 25, 2024
17. Emotional Disability Policy KAR 91-40-1 dated July 2023
18. Autism Policy KAR 91-40-1 dated July 2023
19. Signed Consent Form dated March 29, 2024
20. PWN dated March 29, 2024

Background Information

This investigation involved a seven-year-old, first grade student enrolled at USD #259, Wichita Public Schools. 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). The Student has a documented Developmental Delay and Emotional Disability which impacts the Student's ability to fully access the general education curriculum.

Findings of the Investigation

The following findings are based on a review of documentation and interviews with staff in the District.

1. The District provided visual schedules for the classroom that included the schedule, the task, a timer, the expected voice level, and first-then visuals. Visual schedules were provided for the following routines: morning routine, circle time, break time, reading rotations, recess/lunch, calm time, reading intervention, recess, snack time, math rotations, and clean-up/home. (D3-D28)
2. The IEP dated November 15, 2023, described the following:
    a. The Student was six years old and in the first grade, attending their neighborhood school.
    b. The Student was eligible for Special Education services in the category of Developmental Delay.
    c. The Student's reevaluation was due on March 3, 2026.
    d. A summary of the Student's Present Levels of Academic Achievement and Functional Performance was included.
    e. Special Considerations and Relevant Medical Information were described, and Parent/Guardian Concerns were listed.

f. Evaluation Results, Behavioral Needs, Communication Needs, and Physical Education Needs were described.
g. Annual Goals in the areas of Social, Behavioral, Speech, Reading, and Math were included.
h. A Statement of Special Education/Related Services was included.
i. The following Supplementary Aids and Services as Classroom Accommodations and Modifications were described:
    i. "Behavior chart at school sent home daily" beginning on November 15, 2023 occurring throughout the day in all settings.
    ii. "Preferential seating: assigned seat, defined area" beginning on November 15, 2023 and occurring during the academic portions of the day in the regular education or special education classroom throughout the day.
    iii. "Movement breaks when needed. (walks, sensory activity, buddy room, in the classroom or out of the classroom)" beginning on November 15, 2023 during academic portions of the day, during transition if possible or when the Student demonstrated a need in the regular education or special education classroom. The duration section described "10 minute breaks after completing a required task, either 10 minutes of work or completing an assignment that satisfied the work expectation."
    iv. "Visual cards for first, then" beginning on November 15, 2023 throughout the core academic portion of the day in the regular education or special education classroom for the academic (core) portion of the day.
    v. The Least Restrictive Environment section described the rationale for the selection.
    vi. Parental Rights/Procedural Safeguards were provided on November 15, 2023.
    vii. A Behavior Intervention Plan described that when the Student was unsafe, the response to the behavior would include "Restat[ing] expectations of how to ask for break and expectations."
    viii. The Parent signed the IEP on December 4, 2023 under the "I give consent" section, but the "I give consent" box was not checked. (D37-D56)

3. The IEP dated March 29, 2024, listed the following:
    a. The Student was seven years old, in the first grade, and was attending their neighborhood school.
    b. The Student was eligible for special education services in the area of Emotional Disability.
    c. The reevaluation was scheduled for March 28, 2027.
    d. The Present Levels of Academic Achievement and Functional Performance indicated that the Student "currently uses the following accommodations:
        i. "Sentence starters";
        ii. "Scribes";
        iii. "Preferential Seating";
        iv. "Safe space to use when [the Student] is upset";
        v. "Small group instruction for most instruction";
        vi. "Connections behavior chart";

vii. "Frequent monitoring redirections";
viii. "Repeated directions";
ix. "Extra time"; and
x. The general education teacher indicated that "[The Student] does much better when offered these accommodations and they are needed most of [their] day for [the Student] to be successful."
xi. According to the IEP Manager, "[The Student's] goals and accommodations established in November 2023 were reviewed prior to this meeting; however goals have not been met and no changes were made."

e. The following Classroom Accommodations and Modifications were listed in addition to the accommodations from the November 15, 2023 IEP:
i. "Proactive support from adults regarding student's concerns" beginning on March 29, 2024, occurring throughout the day in all settings for the duration of the day, especially at times when the Student begins to show behaviors or agitation.
ii. "Providing a 'job' and adding weight to meet a sensory need as well as a social need (responsibility)" beginning on March 29, 2024 when making the transition to and from the special education classroom or other setting in the school building for the time required to make the necessary transition.
iii. "Separate area for testing" beginning on March 29, 2024 throughout the school day in all settings. (D72-D90)

4. A PWN indicated that the Parent consented to the Student's placement and services on March 29, 2024 by checking the "I give consent" box and signing in the same section. (D115-D121)
5. The Special Education Teacher explained they use a work break system in their classroom, which includes 20 minutes of work time. Then the Special Education Teacher started a five minute timer which denoted the start of a break time. The Special Education Teacher said this totaled about 10 minutes. To meet the Student's accommodation, the Special Education Teacher explained that anytime the Student was getting overstimulated or required a movement break, whether the Student asked for the break or it was offered to the Student and they accepted, the movement break was always granted. (Special Education Teacher Interview, P1, 00:56)
6. Regarding the Student calling home, the Special Education Teacher reported during interviews, "[The Student is] able to, but we like [them] to do it when [they are] in a safe area and not around other students because [they] can get pretty physical and start throwing things. So [the Student] tends to try to just pick up any and every phone [they] can grab to try to call and we're like, 'Hey, let's go to this area so that you can call your [the Parent].' But [the Student] takes that kind of out of context of we're not letting you call [their Parent] at that exact moment." (Special Education Teacher Interview, P2, 03:20)
7. The Special Education Teacher stated the Parent had not asked for the accommodation of calling home to be added to the IEP. The Special Education Teacher said, "No, we just met with [the Parent] and [they] mentioned that [the Student] is not allowed to call

whenever they wants [sic]. … So we were adding that accommodation for specific times that [the Student] can call [the Parent], … . And that was by [the Parent's] request." (Special Education Teacher Interview, P2, 04:09) The Special Education Teacher indicated the Parent made this request after the complaint was filed. (Special Education Teacher Interview, P2, 04:41) During the interview, an Administrator explained that calling home was not a formal request for the IEP and the Parent did not mention it prior to filing the complaint. (Special Education Teacher Interview, P2, 04:46)

8. The Special Education Teacher stated they did not know why the Parent believed the Student was not receiving movement breaks. The Special Education Teacher said, "… [the Parent] knows our work break system and we have told [the Parent] that several times. We've also told [the Parent] that we do offer [the Student] movement breaks when [they are] becoming escalated, and oftentimes [the Student] will deny them. So we can't obviously force [the Student] to get up and go take a movement break." (Special Education Teacher Interview, P2, 05:08)
9. According to the Classroom Teacher, during classroom rotations, students moved every 10-12 minutes during instructional time. They stated the Student was given flexible seating options such as a rocking chair, wobble stool, inflatable donut seat or rocking seat for carpet time. (Written Statement from Classroom Teacher, December 17, 2024)
10. The Classroom Teacher explained the Student had scheduled movement breaks after every 10 minutes of work time, where the Student could go on a walk with a paraprofessional, or go to a sensory room to play in a sand/rice table. The Classroom Teacher indicated the Student could ask for a break during their work time. The Classroom Teacher would pause the Student's timer and the Student could go on a break if needed. Then the Student would return and complete the remainder of work time before their next break. (Written Statement from Classroom Teacher, December 17, 2024)
11. The Classroom Teacher said, "The [S]tudent had never requested to me to call the parent. There were times when [the Student] was dysregulated where I would call [the Parent] and [they] would request to speak to [the Student]. Some of the time, this would help support de-escalation and other times I saw no effect." (Written Statement from Classroom Teacher, December 17, 2024)
12. During interviews, the Parent stated there was initially no structure regarding how the Student should be allowed to call home. The Parent indicated the Student said there were numerous times the School would not allow them to call home. The Parent did not have dates for these incidents. (Parent Interview, P1, 01:03) The Parent said they spoke to the school on several occasions about the Student calling home, which they recalled taking place from August through December 7, 2024. The Parent said they told the School the Student was supposed to be able to call the Parent to help stop the Student from escalating. (Parent Interview, P1, 02:31)
13. The Parent believed the accommodation to call home was in the Student's IEP from their previous school. The Parent explained in March 2024, they and a previous teacher created an undocumented routine for when the Student was supposed to call home. (Parent Interview, P2, 04:26) The Parent said, "That it wasn't going to be written … it was

just something that we agreed on to try to assist with some of [the Student's] behaviors. But it wasn't because of how we had the IEP set up. It wasn't going to be written down… ." (Parent Interview, P2, 05:44) The Parent believed the accommodation to call home was in the Student's March 2024 IEP. (Parent Interview, P2, 06:51) During the interview, the Student's Grandparent said, "… it was discussed about the calls and the teacher agreed, again, it wasn't written in the IEP or anything … ." (Parent Interview, P3-4, 08:10) The Parent indicated the Student would elope and call the Parent, right up until their last day at the School. (Parent Interview, P4, 10:41)

14. The Parent believed the School was counting the Student's movement breaks as a free break. The Parent believed the School would not allow the Student to go into another room when they wanted to do so. (Parent Interview, P5, 13:07) The Parent indicated the School told them they had a place for the Student to go. The Parent believed the School did not start putting the Student into another room until they gave the Student an in-school suspension. (Parent Interview, P5-6, 14:16)
15. The Parent indicated the Student was given a free break if they completed their work, in addition to a separate break for calm down and movement based on how they were regulating. The Parent believed the Student wasn't receiving either break because the Student told them they were not getting breaks. (Parent Interview, P6, 15:08)

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement accommodations on the Student's IEP by not allowing the Student to call home or receive movement-calm down breaks. K.A.R. 91-40-16(b)(3).

According to 34 CFR § 300.320 and K.A.R. 91-40-16(b)(3), an IEP is in effect for each exceptional child at the beginning of each school year.

Parent Position: The Parent alleged the School failed to implement the Student's IEP by not allowing the Student to call home or receive movement-calm down breaks.

District Position: The District responded that it did not violate state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), and it did not fail to implement accommodations included in the Student's IEP. K.A.R. 91-40-16(b)(3).

Analysis & Conclusion: In accordance with the Student's IEP, the Student received certain accommodations, including movement breaks. In interviews with District staff, it was explained that a movement break was granted any time the Student was getting overstimulated or required such a break. This was also documented in data sheets provided by the District.

Additionally, while calling home was not listed as an accommodation in the IEP, contact logs documented times when the Student was allowed to call their Parent/home.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the District failed to implement accommodations listed in the Student's IEP.

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 #413
ON NOVEMBER 11, 2024

DATE OF REPORT: DECEMBER 26, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ------- by ------- and -------. ------- is the child's parent and ------- lives with the family.

In the remainder of the report, ------- will be referred to as the "student". ------- will be referred to as the "complainant" and ------- will be referred to as the "father" while both ------- and ------- will be referred to as "the parents".

The complaint is against USD #413 (Chanute Public Schools) who contracts with the ANW Special Education Interlocal to provide special education services to students enrolled in the school district. In the remainder of the report, both of these 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 60-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 November 11, 2024. The 60-day appeal deadline is January 10, 2025

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all the documentation provided by both the complainant and the district.

The complainant and the father were interviewed by telephone on November 19, 2024 as part of this investigation. In addition, the complainant and the investigator spoke by telephone on November 18 and 21, 2024 as well as December 3, 4, 6, 9, 10, 13, 16, and 18, 2024 to clarify issues/concerns and to gather additional information.

Korenne Wolken, Director for the ANW Special Education Interlocal and the investigator spoke by telephone on November 21, 2024 as well as December 5, 10, 16, and 19, 2024 regarding the allegations.

The following written documentation was used in consideration of the issue:

1. IEP Goal Progress Reports for 2nd, 3rd and 4th quarters of the 2023-24 school year and the 1st quarter 2024-25 school year
2. Team Meeting Notes dated February 14, 2024 referencing the Dyslexia Evaluation completed by Pittsburg State University

3. Individualized Education Program (IEP) dated March 29, 2024
4. Evaluation / Eligibility Report dated March 30, 2024
5. Evaluation / Eligibility Report dated November 18, 2024
6. IEP dated November 18, 2024
7. IEP Team Meeting Notes dated November 18, 2024
8. Prior Written Notice (PWN) dated November 18, 2024 requesting consent for a material change in special education services
9. Response to the Allegations dated December 10, 2024 written by Ms. Wolken
10. Amended IEP dated December 11, 2024 containing revisions requested by the parents
11. PWN dated December 11, 2024 requesting consent for a material change in special education services
12. Daily Student Schedule based on the December 11, 2024 IEP
13. Email dated December 11, 2024 at 5:22 PM written by Ms. Wolken to the complainant regarding the revisions requested by the parents
14. Email dated December 11, 2024 at 9:28 PM written by Ms. Wolken to the parents with attachments including a student schedule as well as the IEP and PWN dated that same date
15. Letter dated December 16, 2024 written by Ms. Wolken to the parents regarding miscommunication

Background Information

The student is a 10-year-old young man who is currently enrolled in the fourth grade at Chanute Elementary School in USD #413. Interviews and records show the student received early intervention services and was initially identified for early childhood special education services at age three under the exceptionality category of Developmental Delay. He has received special education and related services through an IEP since that time. The parent reports and the district staff acknowledged the student also has a diagnosis of Dyslexia from Pittsburg State University.

It is noted that eligibility for the exceptionality category of Development Delay ends at age 10 so a reevaluation with additional assessment was conducted during the 2024-25 school year. As a result of that reevaluation, USD #413 determined that the student continued to be eligible for special education and related services under the exceptionality category of Intellectual Disability on November 18, 2024.

Issues Investigated

Based on the written complaint, two issues were identified and investigated.

Issue One

USD #413, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parents with IEP goal progress reports during the past 12 months which negatively impacted their opportunity to participate meaningfully in the IEP team meetings.

Applicable Law

Federal regulations at 34 C.F.R. 300.320(a)(3)(ii) require school districts to provide parents with periodic reports on the progress a child is making toward meeting the annual IEP goals such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards.

Analysis: Findings of Fact

The following finding of facts is based on interviews and record review:

The student's IEPs in effect during the past 12 months include a statement regarding Progress Report Distribution which indicates these will be provided to parents at the same time as progress is reported for the general education peers. According to USD #413 staff, this progress is reported quarterly through grade reports and parent conferences.

The parents initially reported that they were not provided with progress reports on the student's IEP goals during the last 12 months. However, the parents later acknowledged that they did receive these reports and had copies of each one in their possession.

The district provided copies of the IEP Goal Progress Reports retrieved from the IEP system which included the date that each was provided to parents as well as the manner in which they were delivered. USD #413 staff also reported that the student's parents attended the 2024 fall parent teacher conference and have visited with staff on multiple occasions to discuss the student's progress during the 2024-25 school year.

The district reported and the parents acknowledged that the district specifically responded to this allegation in the child complaint as follows:

Superintendent Matt Koester and Special Education Director Korenne Wolken met with parents on December 3, 2024 to discuss their complaint. At this time, the parents provided verification that they had received copies of the progress reports during the last 12 months. They were very organized and had each progress report in a manilla folder that indicated the date they received them and the teacher who sent it to them. Mr. Koester and Mrs. Wolken reviewed the progress reports with the parents in an effort to provide clarification on how to read them. The parents expressed frustration that there were items such as "common core standards" and "baselines" indicated on the progress report and shared that they "contained a bunch of gibberish." Mr. Koester and Mrs. Wolken spent over 1 hour walking the parents through how to interpret a progress report.

Conclusion

Federal regulations require school districts to provide parents with periodic reports of student progress towards the annual IEP goals. In this case, both the parent and the district acknowledge that the IEP goal progress reports were provided as required. Based on the foregoing, the district is found to be *IN COMPLIANCE* with the requirements of the IDEA.

It is noted that the district identified miscommunication as the underlying issue which resulted in this allegation and subsequently met with the parents to address their concerns and provide information on how to understand and interpret the IEP Goal Progress Reports in the future.

Issue Two

USD #413, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a free appropriate public education (FAPE) to the student during the past 12 months, specifically by failing to provide the educational support required the for the student's learning disability of dyslexia.

Applicable Law

Federal regulations at 34 C.F.R. 300.320(a)(4) require school districts to include a statement of the special education and related services and supplementary aids and services to be provided to enable the child to 1) advance appropriately toward attaining the annual goals; 2) be involved in and make progress in the general education curriculum and participate in extracurricular and other nonacademic activities; and 3) be educated and participate with other children with disabilities and nondisabled children.

Analysis: Findings of Fact

Again, the following finding of facts is based on interviews and record review:

Meeting notes document that the parents shared a Pittsburg State University evaluation diagnosing with the student Dyslexia with the staff in USD #413 on February 14, 2024. The parents expressed concerns that the IEP was not addressing the student's difficulties with basic reading skills and reading comprehension. They indicated they were confused as to when the student actually received his specialized reading instruction.

The IEP team met on March 29, 2024 to review and revise the student's IEP. The IEP documented the parents' concerns for increasing the student's reading decoding skills and the request for "help with dyslexia concerns". This IEP included two reading goals - one to increase reading decoding skills and another to increase reading comprehension skills. The IEP required 150 minutes per week of specially designed reading instruction in the special education resource classroom setting and 300 minutes per week of specially designed functional academic reading and math instruction in the special education functional skills classroom setting in order for the student to make progress towards achieving these two

goals. IEP goal progress reports indicate the student was making adequate progress towards these goals at the end of the 2023-24 school year.

USD #413 initiated a reevaluation at the beginning of the 2024-25 school year as the student would be turning age 10 and no longer be eligible for special education under the eligibility category of Developmental Delay. The parents reported they were informally told by the school psychologist that the student would now qualify under the eligibility category of intellectual disability and not Dyslexia prior to the eligibility determination meeting scheduled for November 18, 2024. The IEP team met on November 18, 2024 and proposed a change in eligibility from Developmental Delay to Intellectual Disability with delays in reading, writing, and math.

The IEP team also met on this same date to review and revise the student's IEP in light of the proposed change in eligibility for special education and the results of the additional assessments. This IEP noted the parents continue to be concerned with the student's reading deficits and whether the proper interventions were being provided to address these deficits. In addition, the parents "expressed concerns with staff using jargon that is not descriptive enough for understanding".

The November 18, 2024 IEP proposed by USD #413 continued to include a reading decoding goal and a reading comprehension goal. Specially designed instruction in reading was continued at 150 minutes per week in the special education resource classroom and changed to include 200 minutes per week of functional reading instruction in the functional skills classroom along with 150 minutes per week of special education reading instruction and support in the general education classroom. However, the parents disagreed with the proposed change in eligibility and the proposed IEP and refused to provide consent when provided with appropriate prior written notice by USD #413.

During telephone calls with the parents, the investigator encouraged them to clarify their specific concerns and requests and to share these with the LEA staff. Throughout the investigation window, the parents, the LEA staff and the investigator communicated frequently regarding these concerns and parent recommendations related to eligibility, the IEP goals, additional special education services necessary for the student to achieve the IEP goals, and the addition of several accommodations/modifications which would need to be provided so the student could more effectively access the general education curriculum.

On December 11, 2024, USD #413 amended the proposed November 18, 2024 IEP to include all of the parent requests and provided the parents with an appropriate prior written notice explaining the change in eligibility and the material change in services. In addition, the district provided the parent with a proposed schedule showing when the specialized reading instruction would be provided to the student. On December 16, 2024, USD #413 again communicated with the parents expressing their desire to continue to work together to provide the student with a free appropriate public education.

Conclusion

Federal regulations require that districts include a statement of the special education and related services and supplementary aids and services to be provided to enable the child to 1) advance appropriately toward attaining the annual goals; 2) be involved in and make progress in the general education curriculum and participate in extracurricular and other nonacademic activities; and 3) be educated and participate with other children with disabilities and nondisabled children.

In this case, the parents shared an outside evaluation with the district which identified the student with dyslexia in February 2024. The IEP team met on March 29, 2024 to review and revise the IEP and included goals to address the reading concerns shared by the parents. This IEP required specially designed instruction in the area of reading to enable the student to make progress towards achieving these IEP goals and subsequent IEP goal progress reports showed the student was making progress.

The IEP team met again on November 18, 2024 and again reviewed and revised the student's IEP based on the most recent reevaluation with assessment which identified the student under the exceptionality category of intellectual disability with delays in reading, writing, and math. The parents refused to provide consent for a material change in services at that time but subsequently worked with the LEA staff to amend the proposed November 18, 2024 IEP on December 11, 2024 to include goals, services, as well as accommodations/modifications to provide the student with FAPE in light of the identified intellectual disability with delays in reading, writing, and math.

Based on the foregoing, USD #413 is found to be *IN COMPLIANCE* with the requirement to develop an IEP to provide a free appropriate public education (FAPE) to the student during the past 12 months, specifically by addressing the educational support required the for the student's learning disability of dyslexia.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of federal regulations at 34 C.F.R. 300.320(a)(3)(ii) was not found because the parents did receive copies of IEP Goal Progress Reports for the student during the past 12 months. It is noted that the LEA provided an explanation of these reports when it learned the parents did not fully understand the information provided.

2. ISSUE TWO: A violation of federal regulations at 34 C.F.R. 300.320(a)(4) was not found because the district did include IEP goals, specially designed instruction, and accommodations/modifications to address the parents' concerns related to reading skills and dyslexia when the student's IEP was reviewed and revised on March 29, 2024. In addition, the district reviewed and revised the IEP again on November 18 and again on December 11, 2024 to address the parents' concerns regarding reading as well as new information resulting from a reevaluation of the student. It is noted the district also provided the parent with a copy of the proposed schedule showing when all

specialized instruction in reading would be provided to the student as the parents had expressed concerns that all services were not being provided.

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 #512, SHAWNEE MISSION PUBLIC SCHOOLS
ON NOVEMBER 26, 2024

DATE OF REPORT: DECEMBER 21, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #512 Shawnee Mission 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 "the mother."

The complaint is against USD #512 Shawnee Mission Public Schools. In the remainder of the report, USD #512 will be referred to as "the district." The student attends Tomahawk Elementary. In the remainder of the report this 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 November 26, 2024 and the 30-day timeline ended on December 26, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator Dr. Donna Wickham reviewed all documentation provided by the district and the parent. The following was used in consideration of the issues:

- Notice of Meeting dated May 3, 2024
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent, dated May 15, 2024
- Individual Education Program dated December 11, 2023 and amended May 28, 2024
- Progress Report with report dates of January 4, 2024; March 20, 2024; May 29, 2024; and October 15, 2024
- Timeline Narrative from November 21, 2024 from 10:56 a.m. through approximately 1:00 p.m.
- Parent Notification Letter – Emergency Safety Intervention dated November 21, 2024
- District response dated December 16, 2024

The Investigator first spoke with the mother by phone on December 3, 2024 and then emailed with the mother on several occasions to clarify specific points. The investigator called but was unable to speak with the father. The investigator called and spoke with a family friend,

Stephanie Beattie on December 21, 2024. The Investigator interacted with the district by email to clarify evidence. The district declined to participate in an interview with the investigator.

Background Information

The student is an eleven-year-old sixth grader and was eligible for special education and related services under the category of Other Health Impaired based on the most current reevaluation dated December 11, 2023. He additionally has a medical diagnosis of ADHD and epilepsy. At the time of the complaint the student had an IEP developed on December 11, 2023 and amended May 28, 2024 to include three goals, one in reading, math and behavior. it is marked that the student has behaviors that impede his learning or the learning of others. These needs are met by accommodations and goals. The behavior goal uses a rubric to improve behavior in four areas: following directions, having a safe body, activity completion and listening. The IEP lists specially designed instruction in a special education setting 60 minutes daily for reading and math goals and 15 minutes daily for behavior goal and OT consultation 20 minutes monthly. The student's accommodations include: positive, concrete reinforcement for positive behavior and best effort; shorten assignments to demonstrate mastery; directions presented in multiple formats-written, verbal, etc.; Math resources including but not limited to hundreds charts, multiplication chart, etc.; provide "CLOZE" or fill-in-the-blank notes; when possible, provide redirection in quiet, individual manner; frequent and structured sensory breaks to help with focus and attention; separate setting and frequent breaks for assessments; visuals of test-taking strategies and positive self-talk; copies of stories or text read aloud for the purpose of highlighting and note taking; let student know about schedule changes in advance; access to fidgets, opportunities to stand, flexible seating options, visual schedule; independent activities available during downtime; seating near the board; option of speech to text and text prediction for written assignments; read aloud for all state and district assessments. No staff supports were written into the IEP.

Issues Investigated

The child complaint submitted by the mother referred to a November 22, 2024 incident. It was later verified that the date of the incident was November 21, 2024. All evidence and issues were updated to refer to the correct date of November 21, 2024 in the report.

ISSUE ONE: Did the district follow the student's IEP when addressing a school conflict occurring on November 21, 2024?

ISSUE TWO: Did the district follow IDEA procedures in regard to parental contact regarding the school incident on November 21, 2024?

Issue One

Did the district follow the student's IEP when addressing a school conflict occurring on November 21, 2024?

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 staff accused the student of lying about a peer conflict and sent the student to the office. During that exchange, the police were called when the student stated he wanted to die and was handcuffed. As a result of this the parent stated she does not feel it is safe for her student to attend the school.

The timeline of the incident provided by the district confirmed that a teacher approached the student asking about an incident, "10:56- Witness reports (6th grade teacher, 5th grade teacher, and [Student]) share 6th grade teacher and [Student] were asked to speak with 5th grade teacher. 6th grade teacher and [Student] come inside from recess and meet with 5th grade teacher. She asks [Student] if [Student] told one of [the] students [Student] "[description of incident]. [Student] denied the statement. 5th grade teacher brings the accuser into the hallway to speak with [Student]. The accuser sticks with [the] story. 5th grade teacher asks if anyone heard it. The accuser names two people. One heard something but could not remember what it was. The other confirmed the accuser's story. 5th grade teacher makes a statement about how [the] student has never lied to [teacher]."

The family friend reported during an interview with the investigator on December 21, 2024 that in addition to being a friend of the family [they] work at the school as an instructional aide and meet with the student at the end of each school day to do a "checkout" . The family friend is also known in the school, along with the social worker to be a person that the student can go when frustrated or needs a quiet place. The family friend reported that [they] were not aware of the incident at the time it was occurring and was not contacted about the situation to be a resource to the student. The family friend reported that they met with the principal after the incident to reiterate a desire to be available to the student.

The IEP dated December 11, 2023 and amended May 28, 2024 is marked that student has behaviors that impede learning or the learning of others and the needs are met by accommodations and goals. The IEP includes a behavior goal to teach appropriate behavior for following directions, having a safe body, activity completion and listening with 15 minutes of special designed instruction provided daily in the special education setting. The student had accommodations for 1) positive, concrete reinforcement for positive behavior and best effort; and 2) when possible, provide redirection in quiet, individual manner.

In the present levels of performance section of the student's December 11, 2023 and amended May 28, 2024 IEP, the teacher and social worker rated, the student's Social

Participation on The Sensory Processing Measure – 2nd Edition (SPM-2) as "Never" for "handles frustration without outbursts or aggressive behavior."

The district described in their response dated December 16, 2024 that the student was significantly dysregulated and trying to harm self by banging head against the wall or climbing the railing in the stairwell and attempting to jump over the railing triggering Emergency Safety Interventions (ESI). When emergency personnel arrived, the student kicked a law enforcement officer and was handcuffed according to the district timeline. The district reported that since the student did not have a behavior intervention plan (BIP), nor emergency procedures in the IEP the district administrators followed their district procedures and contacted law enforcement to keep the student safe when the emergency situation was occurring.

The timeline of the incident provided by the district documented that the parents and district staff debriefed about the event and discussed strategies to prevent incidents from happening again at approximately 1:00 p.m. on the same day of the incident. Additionally, according to the student's mother the IEP team met afterward and made changes to the student's IEP accommodations.

According to the district and parent the student returned to school and was not given a suspension.

Conclusion

Federal regulations at 34 C.F.R. §300.323(c)(2) and state regulations at K.A.R. §91-40-16(b)(2) require a district to implement the IEP in a timely fashion. While the student's IEP documented the student had behaviors that impeded the student or other's learning, and the student had goals and accommodations related to behavior these services did not address emergency procedures. Since the IEP did not include any services or provisions related to emergency procedures when the student was attempting and/or threatening self-harm the district did not have any IEP implementation obligations in this situation.

Therefore, it is found that since the student's IEP did not include emergency procedures for the district to implement when responding to the student's behavior, it ***is not substantiated*** that the district failed to implement the student's IEP in regard to the November 21, 2024 incident.

Issue Two

Did the district follow IDEA procedures in regard to parental contact regarding the school incident on November 21, 2024?

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 parent alleged in the complaint that the parent was not contacted about the incident in a timely manner and the student was not allowed to contact the parent during the incident.

The timeline of the incident provided by the district reported that at, "11:04- [Student] paces around the office and is picking up phones, saying [Student] wants to call [Student's] mom. Building Administrator says let's call from my office. [Student] exits the office from the nurse's office."

The IEP dated December 11, 2023 and amended May 28, 2024 does not include any reference to contacting a parent during a crisis. The timeline narrative for the day of the event provided by the district documented the mother was called using speaker phone to allow the student to speak to the mother at 11:06 a.m.,11:09 a.m.,11:13 a.m., 11:25 a.m.,11:27 a.m.,11:36 a.m., and 11:48 a.m. The timeline further documented that the district placed phone calls to the father at 11:18 a.m., 11:22 a.m. and 11:26 a.m.. At 11:27 a.m. the district called all emergency contacts by phone and emailed both parents, At 11:49 a.m. the father was reached via text and at 12:10 p.m. the family friend called back. A phone log provided by the district verified the times listed on the timeline.

Conclusion

IDEA regulations do not address fundamental rights or timelines for contacting parents or student's request to call a parent. However, procedures for parent and student contact may be addressed by the IEP team if needed and included in the student's IEP. In this case the student's IEP did not include any statement that the family should be contacted in the event of a behavioral incident, nor that the student should be allowed to contact a family member in the event of a behavioral incident.

Since the IEP did not address contacting the family in the case of a behavioral incident IDEA regulations do not address the November 21, 2024 incident.

While not addressed by IDEA nor the student's IEP it is noted that the district documented attempts to reach both parents and persons listed on the emergency phone list within two minutes of the student asking to call his mother.

Based on a review of the student's IEP and review of IDEA regulations, it is found that USD #512 *met their obligation and followed IDEA procedures* in regard to parental contact regarding the school incident on November 21, 2024.

Summary of Conclusions/Corrective Action

ISSUE ONE: A violation of 34 C.F.R. §300. 323(c)(2) K.A.R. §91-40-16(b)(2) was not found, based on the facts above. Corrective action is not required.

ISSUE TWO: A violation of 34 C.F.R. §300.323(c)(2) K.A.R. §91-40-16(b)(2) was not found, based on the 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 #268
ON NOVEMBER 25, 2024

DATE OF REPORT: DECEMBER 25, 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 #268, Cheney Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #268.

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 November 25, 2024, and the 30-day timeline ended on December 25, 2024.

Allegations

The following issue will be investigated:

ISSUE ONE: Whether USD #268, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement 600 minutes of paraprofessional support in the Student's English Language Arts Class and 180 minutes of social work support as described in the Student's IEP K.A.R. 91-40-16(b)(3).

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent via video conference on December 11, 2024.

In completing this investigation, the following items were provided by the District, but were not reviewed due to the District not contesting the allegation.

1. Individualized Education Program (IEP) DRAFT dated November 5, 2024
2. IEP dated December 6, 2023
3. [Student] Compensatory Services in Reading dated November 14 through December 3, no year
4. Letter to Parents dated November 11, 2024
5. Letter to Parents with signature dated November 11, 2024
6. IEP dated April 4, 2024

7. Notice of Special Education Meeting dated March 21, 2024
8. Prior Written Notice (PWN) dated April 4, 2024
9. Letter to Parents with notes dated November 8, 2024
10. Timeline of Events dated October 18 through November 16, 2024
11. Progress Report dated November 11, 2024
12. District Response dated December 2, 2024
13. Schedule, no date
14. [Student] Compensatory Social Work Services dated November 12 through December 5, 2024
15. Email, re: para assistance dated October 14, 2024
16. Email, re: updated progress report dated November 11, 2024
17. Email, re: follow up email dated October 22, 2024
18. Email, re: compensatory services letter dated November 8, 2024
19. Email, re: follow up dated October 25 through November 10, 2024
20. Email, re: compensatory services letter dated November 8 through November 16, 2024
21. Email, re: follow up email dated October 22, 2024
22. Email, re: middle school schedule dated October 22, 2024
23. Email, re: website message dated October 18, 2024
24. Email, re: website message dated October 22, 2024

Background Information

This investigation involved a sixth grade student who is on the autism spectrum, and has dyslexia and ADHD. The Student is enrolled at a middle school in Cheney Public Schools USD #268.

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Parent.

1. The Parent stated the Student is in sixth grade at a middle school in the District, and receives educational accommodations. (Parent Interview, P1, 00:55)
2. The Parent indicated they first learned that special education services were not being provided to the Student at parent-teacher conferences in October 2024. The Parent explained that during a conversation with the English Language Arts (ELA) teacher, the teacher commented that if the paraprofessional was present in the class for the entire time, then maybe the Student could get extra help. The Parent identified this as a problem because they know the Student's Individualized

Education Program (IEP) requires full paraprofessional coverage for English Language Arts and other classes.

3. The Parent stated the Student requires support because they frequently have questions, require repeated instruction and to have things broken down, and intervention with comprehension. The Parent said the Student is on the autism spectrum, and has dyslexia and ADHD.
4. When asked by the Investigator about any impacts from the lack of paraprofessional support in English Language Arts class, the Parent said, "[The Student] has failed every single AR or accelerated reader book tests that they have to take on their library books. [The Student has] failed every single test except the one that I read with [them] at home. [The Student] is not at a place where [they] can be independent with [their] reading. And so the para [sic] was actually not there for the silent reading time. And so that has been a direct impact."
5. The Parent stated they emailed the special education teacher and principal about the lack of paraprofessional support after learning about it at the parent-teacher conference. The Parent explained the special education teacher replied and indicated there was a paraprofessional shortage and they were working to serve the students at their time of greatest need. The Parent disagreed with this statement because it was not what was stated in the Student's IEP. The Parent then met with the principal and during that conversation, said it was their understanding that the shortage and hiring of paraprofessionals was the responsibility of the COOP.
6. After their meeting with the principal, the Parent stated they spoke with the COOP director, who said they were not aware of a shortage of minutes for paraprofessionals. The Parent indicated they received conflicting information from the school and the director of the COOP as to whose responsibility it was to hire paraprofessionals. The Parent said, "At that point, the superintendent had some time to look into it and did confirm with me that it is the school's responsibility. [The Superintendent] explained to me what that process looks like with the [COOP] support. … And [the Superintendent] is also the one who had the data about how many minutes were missing in ELA and specifically why they were missing because … it was due to a decision that was made by a special education teacher because [they] wanted [the Student] to be more independent."
7. The Parent stated they disagreed with the decision to remove the paraprofessional from the English Language Arts class, and that it went against the Student's IEP. The Parent indicated they were made aware of this decision by the Superintendent after they had brought up their concerns to the Superintendent.
8. The Parent indicated the School failed to provide 180 minutes of social work support. The Parent explained the Superintendent took steps to address the issues with the paraprofessional support, get the minutes covered, and put the Parent in contact with COOP assistant directors to address concerns the Parent had regarding a Study Skills class. The Parent stated the assistant COOP director

informed them that during their investigations into the Student's IEP, it was discovered that there were also missing social work minutes. The Parent indicated they learned that the Student was only being provided one session of social work per week rather than the two, which was what was written in the IEP.

9. The Parent explained the School offered to provide the Student with the missing minutes with compensatory services, and the Parent accepted this offer. The Parent said that a resolution is in process.
10. According to the Parent, "The reason that the social worker said that only one session was being provided instead of two is because [they] misread the IEP. … we've got one special education teacher making a decision … to go against the IEP with ELA, and then we've got one misreading the IEP. … And we've got people making decisions that are wrong and making mistakes and, and both are not acceptable."
11. The Parent said, "I appreciate the co-op [sic] and the district offering compensatory services. … [The Student] was owed those minutes and [they need] to be … delivered those minutes. They need to be made up."
12. The District did not contest the allegation. Once the District realized they were out of compliance with the IEP, they offered compensatory services to the Student for the minutes and sessions that had been missed.

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #268, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement 600 minutes of paraprofessional support in the Student's English Language Arts Class and 180 minutes of social work support as described in the Student's IEP K.A.R. 91-40-16(b)(3).

According to 34 CFR §300.323 and K.A.R. 91-40-16(b)(3), an IEP must be in effect for each exceptional child at the beginning of each school year.

The Parent alleged the Student's teacher did not follow the IEP when the Student did not receive paraprofessional support for their English Language Arts class. A special education teacher indicated to the Parent this was due to a paraprofessional shortage. The Parent alleged the Student only received social work support once per week, when the IEP required it to be twice per week.

The District acknowledged in the District Response that 600 minutes of paraprofessional support in the Student's English Language Arts class and 140 minutes of social work support was not provided as described in the Student's IEP. The superintendent emailed the Parent on October 25, 2024 stating the Student was not provided special education services for 24 class

periods. The Superintendent also stated in their email that the District would agree to compensatory services which would be discussed at an upcoming IEP meeting. The COOP also agreed to provide compensatory services for the Student.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is substantiated*** that the District failed to offer support services as outlined in the Student's IEP.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. A violation occurred in the following area:

A. Federal regulations 34 CFR §300.323 and K.A.R. 91-40-16(b)(3), an IEP must be in effect for each exceptional child at the beginning of each school year.

In this case, the evidence supports the finding that USD #268 did not provide 600 minutes of paraprofessional support in the Student's English Language Arts class and 140 minutes of social work support as described in the Student's IEP.

Based on the foregoing, USD #268 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #268 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 CFR §300.323 and K.A.R. 91-40-16(b)(3), an IEP must be in effect for each exceptional child at the beginning of each school year.
2. By February 15, 2025, USD #268 shall submit written verification that District staff responsible for implementing IEPs or supervising the implementation of special education and related services received training on requirements at 34 CFR §300.323 and K.A.R. 91-40-16(b)(3), an IEP must be in effect for each exceptional child at the beginning of each school year.
3. Within 15 calendar days, USD #268 will offer compensatory services to make up for 600 minutes of paraprofessional support in the student's English Language Arts class and 140 minutes of social work support. To the extent that the offer of compensatory services is less than 600 minutes of paraprofessional support in the student's English Language Arts class and 140 minutes of social work support, the parent must agree in writing to the lesser amount.
4. Further, within 15 calendar days USD #268 will submit to Special Education and Title Services (SETS) a detailed accounting of the compensatory services to be provided and the anticipated completion dates, along with a copy of any written statement of agreement from the Parent to the amount of compensatory services.
5. Within 10 calendar days of completing the compensatory services specified above, USD #268 shall submit written notice to Special Education and Title Services (SETS) that the

compensatory services have been completed. USD #268 shall send a copy of that notice to the Parent.

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 #357
ON NOVEMBER 22, 2024

DATE OF REPORT: JANUARY 2, 2025

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ---------- by ----------, a school ---------- employed by USD #357. In the remainder of the report ---------- will be referred to as the "student" and ---------- will be referred to as the "complainant".

The complaint is against USD #357 (Belle Plaine Public Schools) who contracts with the Sumner County Educational Services Interlocal #619 to provide special education services to students enrolled in the school district. In the remainder of the report, both of these responsible public agencies may also be referred to as "the district", "the local education agency (LEA)", or "the school". Individually, they will be referred to by "USD #357" and "Interlocal #619" respectively.

It is noted that the complainant is not the educational decision maker for the student.

Anna Van Boening is the student's mother and she will be referred to as the "parent" in the remainder of the report. It is noted that the parent provided written consent to share personally identifiable information regarding the student to the complainant on December 11, 2024 and, as such, a copy of this report is being provided to the school district, the interlocal, the parent, and the complainant.

The Kansas State Department of Education (KSDE) allows for a 60-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 November 22, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all the documentation provided by both the USD #357 and Interlocal 619.

The complainant and Pete Bastain, Superintendent of USD #357, were interviewed by telephone on December 16, 2024 as part of this investigation. Mr. Bastain will be referred to as the "Superintendent" in the remainder of the report.

In addition, Amanda Lowrance, Director of the Sumner County Educational Services Interlocal #619, and Hannah Hemberger, Assistant Director of Sumner County Educational Services Interlocal #619, were interviewed by telephone on December 17, 2024. These staff will be

referred to and the "Interlocal Director" and "Interlocal Assistant Director" respectively in the remainder of the report.

The parent was interviewed by telephone on December 10, 2024 and on December 28, 2024.

The following written documentation was used in consideration of the issue:

1. Attendance Records dated between August 15 and November 22, 2024
2. Emergency Safety Interventions dated August 20, 22, and 26, September 3, and November 14,2024
3. Behavior Documentation dated between August 20 and November 14, 2024
4. Behavior Reports dated between August 20 and October 15, 2024
5. Letters to the parent documenting out-of-school suspensions (OSS) dated August 20, 22, and 26, September 3, and October 14 and 16, 2024
6. HOPE Team Documentation Form
7. School Psychologist Call Log dated August – November 2024
8. Meeting Notes dated between August 27, 2024 and November 19, 2024
9. Email dated August 29, 2024 at 1:56 PM written by the Interlocal Assistant Director to the USD #357 administrators and Interlocal #619 evaluation staff
10. Prior Written Notice (PWN) for Evaluation/Reevaluation and Request for Consent dated August 29, 2024
11. Behavior observation dated August 29, 2024 conducted by the Interlocal Assistant Director
12. Behavior observation dated September 5, 2024 conducted by Dave Martin, Sumner County Academy Principal in Interlocal #619
13. Behavior observation dated September 6, 2024 conducted by McKenzie Stalnaker, Sumner County Academy School Social Worker in Interlocal #619
14. Behavior observation dated September 9, 2024 conducted by Crystal Willson, Sumner County Academy Elementary Teacher in Interlocal #619
15. Behavior observation dated September 11, 2024 conducted by Leah Reep, Interlocal #619 Psych Paraprofessional
16. Email dated October 22, 2024 at 4:06 PM written by the Interlocal Director to the Complainant and Superintendent
17. Notice of Special Education Meeting dated October 31, 2024
18. Proposed Initial Evaluation dated November 6, 2024
19. Request for Initial Evaluation Extension dated November 13, 2024
20. Emails dated November 18 and 19, 2024 between the Interlocal Director, Interlocal Assistant Director, and the Superintendent
21. Notice of Special Education Meeting dated November 26, 2024
22. Response to the Allegations dated December 4, 2024 written by the Interlocal Director
23. Response to the Allegations dated December 5, 2024 written by the Complainant
24. Functional Behavioral Assessment dated December 16, 2024
25. Request for Initial Evaluation Extension dated December 16, 2024

26. Proposed Individualized Education Program (IEP) and Behavior Intervention Plan (BIP) for the student dated December 16, 2024
27. Proposed PWN for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement and/or Request for Consent
28. Email dated December 19, 2024 at 3:05 PM written by the Interlocal Director to the Investigator
29. USD #357 School Calendar for the 2024-25 School Year
30. Sumner County Educational Services Interlocal #619 Special Education Reference Manual updated in August 2024
31. Social Stories for Classroom Rules; Raising My Hand; and Waiting Patiently
32. Kindergarten Report Card for Quarter 1
33. Kindergarten Progress Report for Quarter 2
34. USD #357 Student Code of Conduct

Background Information

The student is a 6-year-old boy who is currently enrolled in kindergarten at the Belle Plaine Elementary School for the 2024-25 school year. The parent reported the student has always had "erratic behavior and was moody" even as a toddler. The parent stated that the student was initially diagnosed with emotional problems by the Sumner County Mental Health Center (SCMH) at the age of four due to "Other Trauma- and Stressor-related Disorders". The Diagnostic and Statistical Manual – Fifth Edition lists the following disorders under this category: Acute Distress Disorder, Post-traumatic Stress Disorder, and Adjustment Disorder.

The student has received counseling services through SCMH since that time and was subsequently diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD).

Following a significant behavioral incident at school on November 19, 2024, the parent reported that law enforcement required the student to have an emergency in-patient evaluation at the Camber Children's Mental Health Center (CCMHC). As a result of that evaluation, the parent indicated the student was referred for a Serious Emotional Disturbance (SED) waiver and additional counseling services through CCMHC. The parent noted that an eligibility meeting for the SED waiver is scheduled for January 6, 2025.

The parent reported the student has not attended the public school since November 19, 2024 at the recommendation of the CCMHC but that he continues to be enrolled so that the initial special education evaluation can be completed and an IEP developed that will provide a free appropriate public education (FAPE) to the student. The parent stated that she calls the student in absent each school day so that she will not be reported for truancy by the school district.

Issues Investigated

Based on the written complaint, two issues were identified and investigated.

Issue One

Did USD #357 and USD #619, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), fail to identify a student with a disability in need of special education and related services and to provide that student with a free appropriate public education (FAPE) by not following the appropriate procedures when conducting a special education evaluation of the student during the 2024-25 school year?

Applicable Law

Federal regulations at 34 C.F.R. 300.301 require school districts to conduct a full and individual initial evaluation of a student within 60 days of receiving parental consent to determine if a child is a child with a disability and in need of special education and related services. This evaluation may be initiated by either the parent or the school district.

Kansas regulations at K.A.R. 91-40-8(f) define the "60 days" as "60 school-days" and allow for an extension of the 60 school-day evaluation timeline If the parent consents in writing to extend the timeline.

Federal regulations at 34 C.F.R. 300.305(a)(1) require the IEP team and other qualified professionals, as appropriate, to review existing evaluation data including any evaluations or information provided by the parents of the child; current classroom-based, local, or State assessments, and classroom-based observations; and any observations by teachers and related services providers.

Federal regulations at 34 C.F.R. 300.305(b) allow for this review of existing data to be conducted in a meeting or through consultation with all required IEP team members and other professionals, as appropriate.

Federal regulations at 34 C.F.R. 300.305(a)(2) require that, based upon that review and input from the child's parents, the IEP team must identify what additional data, if any, are needed to determine whether the child is a child with a disability and the educational needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related services; and whether any 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.

Federal regulations at 34 C.F.R. 300.305(c) require the school district to administer such assessments and other evaluation measures as may be needed to produce the data necessary to identify 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. 300.306(a-c) require that, upon the completion of the administration of assessments and other evaluation measures, a group of qualified professionals

and the parent of the child determines whether the child is a child with a disability. This eligibility determination must consider information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior. The child must not be determined to be a child with a disability if the determinant factor is a lack of appropriate instruction in reading or in math or because of limited English proficiency.

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, educational placement, or the provision of FAPE to the student.

Federal regulations at 34 C.F.R. 300.503(b)(1) and (6) as well as Kansas statutes at K.S.A. 72-3428(b) require that this prior written notice includes a description of any evaluation procedures the school district proposes to conduct as well as a description of other options that the IEP Team considered and the reasons why those options were rejected.

Analysis: Findings of Fact

The following findings of fact are based upon interviews and record review.

The student initially enrolled in kindergarten at Belle Plaine Elementary School on August 13, 2024. As part of the screening process, the parent completed the Ages and Stages Questionnaire (ASQ). The parent noted concerns with the student's behavior and shared the student's mental health diagnoses and services. Prior to the beginning of the school year, USD #357 placed the student with the Hope Team, the district's student intervention team as a means of providing the required multi-tiered system of support (MTSS) based the enrollment information.

The first day of school was August 20, 2024 but because of inappropriate behavior, the student was sent home at approximately 1:00 PM that day and was assigned one day of out-of-school suspension (OSS). The student returned to school on August 22, 2024 and again displayed inappropriate behavior resulting in the student being sent home at approximately 12:45 PM with another day of OSS. The student returned to school on August 26, 2024 but again displayed inappropriate behavior and was sent home at 12:25 PM. The student was then suspended for an additional two school days.

Records reflect the following inappropriate behaviors are seen in the school setting: impulsivity; running around the classroom; crawling under desks/tables; jumping or standing on chairs, tables, cabinets, walls; refuses to comply with requests and is argumentative; uses inappropriate and foul language; defiant; makes disruptive noises and sounds interrupting teaching and learning in the classroom; eloping; pretending to use guns and engages in violent play with peers; threatens to hit staff and peers; throws objects such as books, toys, rocks, etc. at peers and staff; knocks over chairs and classroom items; is physically aggressive with others including hitting, kicking, spitting, biting, pinching, and punching a staff member in the face twice.

Documentation shows the school staff spoke with the parent regarding the student's inappropriate behavior in the school setting on August 26, 2024 and the parent reported she requested an IEP for the student at that time.

The Hope Team met on August 27, 2024 regarding the student. It is noted that the Hope Team consists of the building principal, the classroom teacher, a reading interventionist, the school nurse and the school social worker from USD #357 as well as the school psychologist from Interlocal #619.

The USD #357 staff recommended an initial special education evaluation be conducted in a 45-day alternative educational setting at the Sumner County Academy because the student had been suspended on three separate occasions during the first two weeks of the school year, required an emergency safety intervention (ESI), and had never attended a full day of kindergarten due to the extreme behaviors. However, Interlocal #619 staff reported that because the student had never been in any type of a structured preschool program, general education interventions (GEI) were required to be attempted prior to moving the student to such a restrictive setting.

Interlocal #619 staff provided Crisis Prevention and Intervention (CPI) training to USD #357 staff working with the student on August 28, 2024.

An email dated August 29, 2024 written by the Interlocal Assistant Director showed that the student was "*on the radar for SCA* [Sumner County Academy]". The email stated:

> *We had a meeting this morning that included Tammy [building principal], Tearra [complainant], and parents to get consent signed for special education evaluation and to give parents documentation for suspensions and ESI paperwork. They had a SIT [student intervention team – the Hope Team] meeting for him earlier this week and one of the interventions was to move him to half days. It was agreed that he would attend mornings until lunch and leave at 11:20 a.m. His major behaviors have occurred in the afternoon, so hopefully a shortened day will help him adjust to school structure, routines, and expectations. Plan is to meet again October 1st with parents to assess his progress. A 45-day placement was discussed with the parents as an option should there be a need due to his behavior and completing the evaluation with valid and reliable results.*

On August 29, 2024, the parent was provided with a prior written notice for an initial special education evaluation and request for consent. The "Action Proposed" section documents the following check marked statement:

> *The Sumner County Educational Services Interlocal proposes to conduct an initial special education evaluation. (Parent consent required) Based upon a review of existing data (if appropriate), the IEP team (including the LEDM [legal educational decision maker]), is proposing to conduct an initial evaluation of your child. Information will be collected in the areas checked on the following page that provide relevant information that directly assists the team in determining:*

- *whether your child is a child with an exceptionality and the educational needs of your child;*
- *the present levels of academic achievement and related developmental needs of your child; and*
- *whether your child needs special education and related services.*

The following areas were marked both as having existing data and for needing new data: Health/Motor Ability; Vision; Hearing; Social/Emotional Status / Behavioral Status; General Intelligence; Academic Performance; and Communicative Status. Each of these areas includes a description of what may be included in an assessment of that particular area; however, no area includes any specific assessment tool or lists an observation of the student as a possible assessment. For example, the Academic Area description states:

> *May include assessment of academic or preacademic skills and achievement levels in relation to the general curriculum such as oral or written expression, reading skills or comprehension, mathematical calculation or reasoning. For a child who is blind or visually impaired, the need for Braille instruction may be assessed.*

With the exception of single disciplinary e.g. "speech only" evaluations, the Interlocal Director and Assistant Director reported that their practice is to routinely mark all areas as potentially needing new data so parent consent is obtained in case additional assessment in a particular area is later found to be necessary to determine categorical eligibility. They stated that the parents were being provided with prior written notice that additional data "may" be collected in an area rather than providing the parent with prior written notice that additional data "shall" be collected in a particular area to assist the multidisciplinary team to determine categorical eligibility.

The Options Considered section of the PWN notes that not conducting an initial special education evaluation was considered but rejected because of "*Kansas guidelines and a need for information for appropriate program planning*". The consideration of the 45-day placement option for conducting the initial evaluation discussed with the parents and documented in the August 29, 2024 email written by the Interlocal Assistant Director was not documented as being either considered or rejected.

Interviews and documentation showed that the USD #357 team and the Interlocal #619 team met at the end of October to review the evaluation data collected and discussed the student's eligibility for special education services. An email dated October 22, 2024 written by the Interlocal Director stated:

> *Following up from our meeting yesterday morning, I would like to start by saying that it felt like it did not go at all as planned from my perspective. I understand that there are definitely some concerns and based on the reading in the room, it felt as if the team was very upset. I want to make sure that we go through the full process to ensure complete understanding. When looking at a student and whether or not they are placed in special education, we must look at both prong one and prong two.*

Prong one is "Does the student have a disability?" When looking at prong one, the student in question is coming out low average to average. We must keep in mind that while there are some low average scores, the student has been out 30% of school days from ten suspension days and three additional days of illness. This is an exclusionary factor under chronic absenteeism as he is not receiving any instruction when at home. The State of Kansas defines Chronic Absenteeism as: "Being chronically absent means a student is missing 10 percent or more of school, for both excused and unexcused reasons. This puts the student at a higher risk of not graduating high school and possibly becoming a high school dropout." Kansas Eligibility Criteria Indicators. A child must NOT be determined to be a child with an exceptionality if the determinant factor is: Exclusionary Factor: The child does not otherwise meet the eligibility criteria as a child with an exceptionality if evidence shows that the child's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, chronic absenteeism, etc.

Absenteeism is leading to the lack of exposure to curriculum and instruction in reading, math, and social/emotional learning which is an exclusionary factor. IDEA Section 1414. Evaluations, eligibility determinations, individualized education programs, and educational placements. Special rule for eligibility determination. In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is— (A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 6368(3) of this title, as such section was in effect on the day before December 10, 2015); (B) lack of instruction in math; or (C) limited English proficiency. These are all factors that go into his evaluation when we are looking at the eligibility indicators to determine placement. Based on the exclusionary factors and the low average to average scores, the student does not qualify under prong one.

Prong two states "Is the student's disability impeding his learning?" Prong one indicates no disability. Regardless, when looking at prong two as the team could see, the student scores have increased since the beginning of the year. While he did not have any prior education, he is still showing in the low average to average range with the minimal days he has been in school. He is showing growth, while his suspensions and outbursts have decreased. In the first six days of school, he had already been suspended for an accumulative of four days. We are now at the end of 10 weeks and he has only been suspended an additional six days. While I understand that the behaviors do appear extreme at times, he is showing growth, therefore, it is very important that the interventions continue with the student.

I understand that being in the middle of the situation and handling it day-to-day first hand can feel like there is no growth and like no one is supporting you and there is no assistance. Please rest assured, even though he is not qualifying for special education, Leah [Psych

Paraprofessional] will continue to work with him on social stories. We need to get with Mr. R [SCMHC Therapist] to see what he's working on and try to provide some further guidance in that area. I would suggest that we pick out two to three target behavior areas to focus on specifically with him, taking data to see how frequently these behaviors are occurring with the goal of decreasing these behaviors. At this time, he will need to remain in the HOPE team. Please note that when we provide suggestions, we are not saying you are not doing these things. We are saying that these things must continue to be done with fidelity in order to see growth which takes time. Even if the student were to be placed, he would still remain at the elementary school with his current teacher. However, the team can make decisions, such as a potential teacher change, which is not a placement change. Prek was also another option that was brought up. This is something that could occur if necessary, since PreK is play based and focused on getting acclimated with school. This is a decision the general education team can make.

We understand all of the frustrations that can arise from this situation and we did share that extinction bursts could occur when adding time. When he did have a pretty severe outburst last Tuesday, he had only been attending with the additional time of recess and math for four days. While frustrating, this is normal and expected, and is needed in order for the student to work towards growth where we want him to be. He was able to make it four days before an outburst, this is huge. I know there has been a mention of concern for his safety and the potential of breaking glass. Hannah [Interlocal Assistant Director] did train staff in Belle Plaine in CPI for assistance with any potential safety issues. It is acceptable to put him in a hold when he is being harmful to himself or others. Hannah is more than willing to assist with paperwork.

There was mention that there was concern that the students in the room are not able to learn. This is a great point that I appreciate you bringing to the table. It would be valid to look at student data for all students in the room to show progression or lack thereof. This is important data we can take into consideration when looking at eligibility.

I am concerned that it was asked when he would have a meeting to show results from special education testing. It appeared that the immediate thought was to lean towards an expulsion for this student. I understand he is challenging, however, he deserves the right to a free and appropriate public education. This includes being educated on how to behave in school. The more he is sent home, the more he misses instruction he is needing and the more he is potentially rewarded for his misbehavior. Further, even if he is expelled and sent out, he is a Belle Plaine resident and he will come back to Belle Plaine eventually. Please take this into consideration and let us know how we can assist you in moving this student forward in a positive direction.

> *There was a question of how long it would take for the exposure factor to no longer be exclusionary. When he has been in school and is not considered to have chronic absenteeism with no further growth in his learning, then we could possibly look at a potential IEP.*

An eligibility determination meeting was held on November 6, 2024. The evaluation report only considered the disability category of Developmental Delay and concluded that the student was not eligible for special education. The parent and the USD #357 staff were not in agreement with this conclusion and Interlocal #619 requested and was granted consent from the parent on November 13, 2024 to extend the initial evaluation in order to collect the following additional data:

> *The team was informed at a meeting on 11/06/2024 that there were sensory and other fine motor concerns that were never discussed previously. Therefore, the Occupational Therapist needs time to work with the student to assess how these concerns impact his education. However, the student has been sick multiple times since that meeting and he is currently only attending school for half the day. The proposed, new due date is 12/20/24.*

Emails between the Interlocal Director and the Superintendent dated between November 18 and 19, 2024 reflect concerns related to the need to extend the student's initial evaluation because additional assessments were needed despite the parent providing consent for additional assessment in these areas. The Interlocal Director reported they were not provided with the student's diagnosis until the November 6, 2024 meeting and that the additional concerns in the area of sensory and fine motor were never shared so testing in those areas was not conducted prior to the November 6, 2024 eligibility determination meeting. The Interlocal Director stated in an email:

We would like to further assist, though the interventions appear to not be provided on a consistent basis with fidelity. These are 357 students and it falls back on the district as to whether FAPE is being provided. Our responsibility is to the ensure that we are providing the least restrictive environment as a Special Education entity. We take fault for agreeing to gain consent for an evaluation too early in the school year.

Interviews and documentation found the following GEI were provided to the student during the initial and extended evaluation periods: shortened school day; access to a paraprofessional in the kindergarten classroom; social stories; if/then options; frequent breaks; redirection; behavior charts, preferential seating, small groups, 1-1 instruction, Tier 3 interventions, etc. It is also noted that the student received counseling services at the school building from R'Darby Whitsitt, Therapist from SCMH. Despite these interventions, the student had major behavioral incidents on September 3, 9, and 27; October 3, 10, and 15; and November 14, 2024. ESI procedures were required on September 3 and again on November 14, 2024. On November 19, 2024, law enforcement became involved due to incident involving assault/battery which resulted in the student being hospitalized.

The student's grade card for Quarter 1 rated the student as needing improvement in seven of the eight Social & Emotional Development Skills: Listens & follows directions; Makes good use

of time; Waits turn; Participates in group activities; Keeps hands, feet & objects to self; Works & plays well with others; Manages emotions appropriately; and Completes work independently.

The Progress Report for Quarter 2 indicated the student was not making expected progress in reading (recognized 8/26 uppercase letters, 7/26 lowercase letters, 0 letter sounds, 2/10 color words), math (recognized 13 numbers 0-20, rote count to 12/100), and writing (unable to write last name or numbers 1-10 due to shortened school day).

Interviews with the parent and USD #357 staff indicated that an eligibility determination meeting was held on December 16, 2024. The OT evaluation and a Functional Behavioral Assessment were reviewed, eligibility was discussed, and the student was determined eligible for special education under the category of Other Health Impaired. The team then began developing a proposed IEP and BIP for the student. This meeting was stopped at approximately 4:30 PM and the IEP team is scheduled to reconvene to complete the IEP after the holiday break.

An email dated December 19, 2024 at 3:05 PM written by the Interlocal Director stated:

> *Eligibility was not decided in full at this meeting. A draft IEP was started and the ETR entered and reviewed as it relates to a prospective IEP due to parents and the LEA being adamant of an IEP needed though there is data missing from the parent as well as additional data with frequency, duration, and location of the target behaviors. It is listed in the draft IEP that they are considering DD or OHI . . . The meeting was stopped at 4:20 by the Belle Plaine building principal. It is my understanding that a follow up meeting has been scheduled for 2:15 on January 9th.*

Interlocal #619 requested and was granted consent from the parent on December 16, 2024 to extend the initial evaluation. The justification for the extension states, "*The IEP team, including the parent, wants to do a follow-up to complete the IEP and finish discussing needed supports for the student*". The new due date for completion of the initial special education evaluation is January 31, 2025.

Conclusion

Federal and state regulations require that school districts to conduct a full and individual initial evaluation of a student suspected of having a disability and in need of special education and related services within a 60 school-day timeline unless parents provide written consent to extend the timeline.

In this case, the parent made a request for a special education evaluation on August 26, 2024 and the school district responded appropriately by conducting a review of existing data on August 29, 2024 with the parent in attendance. On that same date, the parents provided written consent to conduct an initial evaluation of the student as described in the PWN.

Interlocal #619 requested and the parent consented to extensions to the evaluation timeline on November 13 and again on December 16, 2024 in order to conduct additional assessments

and gather additional data. The initial evaluation is now required to be completed and eligibility determined no later than January 31, 2025. It is noted that Interlocal #619 did follow the appropriate procedures to extend the 60 school-day timeline for completing the initial special education evaluation.

Interviews and documentation show that while Interlocal #619 did conduct a review of existing data as required, the only suspected area of disability considered was Developmental Delay despite the mental health diagnosis at the age of four and the significant behavioral concerns noted both at home and at school. Interlocal #619 did not develop an appropriate plan for conducting a full and individual special education evaluation by failing to consider other possible categories of disability including Other Health Impaired or Emotional Disturbance.

In addition, Interlocal #619 failed to describe the evaluation procedures to be conducted as part of the initial special education evaluation being proposed by marking that additional assessments would be conducted to obtain "new data" in all areas but then failed to collect this new data in all of the areas for the November 6, 2024 eligibility determination meeting.

Specifically, the August 29, 2024 PWN did not include a clear description of the areas to be assessed which caused miscommunication between the parent, USD #357 and Interlocal #619. While both the parent and USD #357 staff understood that the parent was consenting to additional assessments in all the checked areas, Interlocal #619 staff believed that the parent consent was only being sought because additional assessments may be needed in one or more of the areas to determine eligibility for special education. This miscommunication resulted in the need to extend the 60 school-day timeline twice and to delay the initial eligibility determination of the student.

One of the purposes of a PWN proposing to conduct an initial evaluation is to provide sufficient information to enable the parents to give consent for that proposed evaluation. Federal regulations at 34 C.F.R. 300.9 clarify that part of the definition of "consent" is "*the parent has been fully informed of all information that is relevant to the activity for which consent is sought*…" A district fails to comply with this requirement when it gives a broad description of the areas to be evaluated but does not intend to conduct assessments for which it has requested consent. In this kind of situation, parents are not <u>fully</u> informed of what the district is proposing. Parents should reasonably expect districts to complete all assessments specified in a PWN.

It is also noted that the August 29, 2024 PWN did not include information regarding the 45-day alternate placement to conduct the evaluation option considered and why it was rejected nor did it inform the parent of the need to conduct observations of the student as part of the evaluation

The Kansas Special Education Process Manual provides guidance regarding the need to individualize the special education evaluation on page 36 as follows:

> *When preparing the prior written notice of its proposal to conduct an initial evaluation, the school staff must plan which assessments and other evaluation measures may be needed to produce the data needed to meet the requirements of eligibility determination (K.A.R. 91-40-8(e)(1); 34 C.F.R. 300.305(c)). Every evaluation should be approached and designed individually based on the specific concerns of the child to be evaluated and existing data. Thoughtful planning is required to ensure the use of appropriate tools to collect the data needed, while eliminating time spent collecting information that is either unnecessary or overly time-consuming for no clear purpose. It would be inappropriate to use the same battery of assessments for all children or to rely on any single tool to conduct an evaluation. To ensure that the necessary and sufficient data will be collected as part of the evaluation, school staff are reminded of the importance of using a variety of assessment tools and strategies to collect relevant functional, developmental, and academic information about the child. There are also requirements that each child be observed in the child's learning environment which will also need to be included on the Prior Written Notice. The team must ensure that each evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs. All appropriate domains should be considered via review of screening and/or GEI data. If potential educationally related deficits are suggested by screening, then the evaluation must provide in-depth assessment in the domain. If screening suggests adequate functioning, then in-depth assessment may be wasteful and irrelevant. In addition to these considerations, the proposed evaluation must yield information needed to rule out any exclusionary criteria when making eligibility decisions, and therefore should plan to collect any needed information related to the exclusionary criteria: lack of instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency (K.A.R. 91-40-10(c); 34 C.F.R. 300.306(b)).*

Documentation and interviews indicate the procedures for determining eligibility have not been followed by Interlocal #619 staff. There is confusion regarding if an eligibility determination was made at the December 16, 2024 meeting, which included the parent. Documentation provided by Interlocal #619 includes a PWN for initial eligibility and a draft IEP. However, the email dated December 19, 2024 written by the Interlocal Director states that eligibility has "*not yet been fully determined*" and that the development of the "*prospective IEP was due to parents and the LEA being adamant of an IEP needed though there is data missing from the parent as well as additional data with frequency, duration, and location of the target behaviors.*"

While it is unclear whether the parent received the copy of this PWN document for initial eligibility following that meeting as parent consent is not required for this proposed action, it is clear that the parent believed initial eligibility had been determined because the team proceeded to develop an IEP and BIP for the student and a meeting is already scheduled to complete this process following the holiday break.

Documentation and interviews support that USD #619 staff have misinterpreted several eligibility requirements. First, they failed to conduct a "full and complete" evaluation to determine eligibility in all areas of suspected disability. In this case, based upon the student's mental health diagnosis and services combined with the significant behavioral concerns which occurred prior to the review of existing data meeting with the parent, there was reason to suspect the student may be eligible under the IDEA categories of Developmental Delay, Other Health Impairment, or Emotional Disturbance. The first evaluation report dated November 6, 2024 only considered the category of Developmental Delay which resulted in an extension of the evaluation timeline to gather additional data to determine eligibility under the other categories that should have been suspected.

It is noted that the evaluation did correctly include providing GEI prior to determining eligibility for special education. These interventions were provided concurrently during the evaluation and provided data necessary for the team to consider when determining eligibility for special education.

Second, Interlocal #619 staff appear to misinterpret the exclusionary factors required to be considered during the eligibility determination. Interviews and documentation show Interlocal #619 staff believe the student is not eligible for special education because of lack of instruction in reading and math as a result of "chronic absenteeism". However, federal regulations at 34 C.F.R. 300.306(b) require that this lack of instruction cannot be the "determinant factor" when making an eligibility determination.

Documentation and interviews support a finding that the student's lack of instruction in reading and math is a result of the significant behaviors displayed as a result of the student's mental health diagnoses which have resulted in OSS and never attending a full day of school during the first two weeks of the school year; partial day attendance as GEI beginning on August 29, 2024 and ending on November 19, 2024 when the student was hospitalized at the Camber Children's Mental Health Center; and the parent keeping the student at home at the recommendation of the Camber Center until special education eligibility can be determined.

Based on the foregoing, the district is found to be OUT of compliance for this issue.

Issue Two

Did USD #357 and USD #619, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), fail to follow appropriate disciplinary procedures for a student suspected of having a disability during the 2024-25 school year?

Applicable Law

Federal regulations at 34 C.F.R. 300.534(d) state that if a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the

child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services to the student for any disciplinary change of placement that occurred.

Federal regulations at 34 C.F.R. 300.530 require specific procedures to be followed when a student with a disability or suspected of having a disability are subject to a disciplinary change of placement as a result of a violation of the student code of conduct.

Federal regulations as C.F.R. 536(a) define a disciplinary change of placement as occurring when a student's educational placement has been changed for more than 10 consecutive school days or for more than 10 cumulative school days when a pattern exists due to disciplinary action resulting from a violation of the student code of conduct.

Analysis: Findings of Fact

The findings of Issue One are incorporated herein by reference.

The parent initially requested a special education evaluation for the student on August 26, 2024 when USD #357 staff sent the student home on that date with an additional two days of OSS.

On August 29, 2024, the parent agreed to GEI of partial day attendance in kindergarten with the student leaving at 11:20 a.m each school day. The parent signed consent for an initial special education evaluation on this same date.

Documentation shows the student was sent home early on September 3, 2024 and was assigned OSS due to violations of the student code of conduct on September 4, 2024; however, no other early dismissals or disciplinary actions were noted in behavior logs. As a result of the success of the GEI, the student's partial day attendance was extended to 12:40 p.m. each school day beginning on October 9, 2024.

Documentation shows the student was sent home early due to violations of the student code of conduct on the following dates: October 14 and 15, 2024. The student was then assigned five additional days of OSS starting on October 16 and ending on October 22, 2024. As a result of the behavioral concerns, the student's GEI partial day attendance was changed back to 11:20 a.m. each school day beginning on October 23, 2024.

Documentation shows the student was assigned OSS on October 30, 2024 and was sent home early on November 14, 18, and 19, 2024. The student was hospitalized and was not sent back to school by the parent at the recommendation of the Camber Children's Mental Health Center. It is noted that the student does continue to be enrolled in USD #357 awaiting the results of the initial special education evaluation.

Conclusion

In this case, the parent initially requested a special education evaluation of the student on August 26, 2024 as a result of disciplinary action resulting from a violation of the student code

of conduct and the district was required to expedite the initial evaluation of the student. As noted in Issue One, this did not occur and noncompliance has actually resulted in two extensions to the evaluation timeline. Currently the evaluation must be completed no later than January 31, 2025 which is more than five months from the date the parent signed consent for the initial special education evaluation.

It is noted that since the date of consent for the initial special education evaluation, the student has been subject to disciplinary action due to violations of the student code of conduct on 13 days between August 29, 2024 and the last day of school attendance on November 19, 2024. In addition, the student has been enrolled and waiting for the eligibility determination for 18 school days through the end of the first semester plus any additional days missed during the second semester until eligibility for special education is determined. Based on this data, the student has missed a total of 31 days due to leaving early or OSS. Because a disciplinary change of placement occurs starting on day 11, the student is found to have experienced a disciplinary change of placement for a total of 20 days during the first semester of the 2024-25 school year due to early dismissals and OSS.

Based on the foregoing, USD #357 and Interlocal #619 are found to be OUT of compliance in regards to this issue.

Summary of Conclusions/Corrective Action

ISSUE ONE: Violations of federal and state regulations are found in the following areas:

1) Federal regulations at 34 C.F.R. 300.301 and state regulations at K.A.R. 91-40-8(f) which require school districts to conduct a full and individual initial evaluation of a student within 60 school-days of receiving parental consent to determine if a child is a child with a disability and in need of special education and related services.

    a) Corrective Action Required

        i. Within 10 days of this report, both Interlocal 619 shall provide to SETS an assurance statement that it will comply with federal regulations at 34 C.F.R. 300.301 and state regulations at K.A.R. 91-40-8(f).

        ii. Per the most recent evaluation timeline extension, an eligibility meeting shall be held with parent participation and "full" eligibility for special education determined no later than January 31, 2025 considering, at a minimum, the eligibility categories of Developmental Delay, Other Health Impaired, and Emotional Disturbance. The parent will be provided with appropriate PWN regarding the eligibility determination and SETS will be provided with a copy of the Evaluation Report and the PWN no later than 10 days following the eligibility determination meeting date.

2) Federal regulations at 34 C.F.R. 300.305(a)(2) which require that, based upon that review and input from the child's parents, the IEP team must identify what additional data, if any, are needed to determine whether the child is a child with a disability and

the educational needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related services; and whether any 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.

a) Corrective Action Required

i. Within 10 days of this report, both Interlocal 619 shall provide to SETS an assurance statement that it will comply with federal regulations at 34 C.F.R. 300.305(a)(2).

ii. iInterlocal 619 shall review all policies, procedures, and practices to ensure that, specific data is identified at all future reviews of existing data which will be needed to determine eligibility for all the areas of suspected disability. A summary of this review and the changes/edits, if any, shall be provided to SETS within 60 days of the date of this report. If changes/edits are made, the summary must include a plan to inform all relevant staff of these changes.

3) Federal regulations at 34 C.F.R. 300.305(c) which require that all such assessments and other evaluation measures be administered in order to obtain the necessary data in order to determine eligibility for special education.

a) Corrective Action Required

i. Within 10 days of this report, both Interlocal 619 shall provide to SETS an assurance statement that it will comply with federal regulations at 34 C.F.R. 300.305(c).

ii. No later than the last day of the 2024-25 school year, Interlocal 619 shall provide SETS with three samples of completed evaluation reports completed following the date of the review of policies, procedures, and practices which document that all assessments and other evaluation measures were administered to determine eligibility in the suspected area(s) of disability based upon the review of existing data.

4) Federal regulations at 34 C.F.R. 300.306(b) which require that a lack of instruction in reading and math must not be the determinant factor for making an eligibility decision.

a) Corrective Action Required

i. Within 10 days of this report, both Interlocal 619 shall provide to SETS an assurance statement that it will comply with federal regulations at 34 C.F.R. 300.306(b).

5) Federal regulations at 34 C.F.R. 300.503(b)(1,6) which require the parent be provided with appropriate PWN describing the evaluation procedures proposed to be conducted as part of the special education evaluation as well as a description of the other options considered and why those options were rejected.

   a) Corrective Action Required

      i. Within 10 days of this report, both Interlocal 619 shall provide to SETS an assurance statement that it will comply with federal regulations at 34 C.F.R. 300.503(b)(1,6).

      ii. No later than the last day of the 2024-25 school year, Interlocal 619 shall provide SETS with three PWNs requesting consent for initial evaluations for the evaluation reports provided per the corrective action ordered in 3(a)(ii) above which show the specific evaluation procedures that were proposed and the other options considered and rejected.

ISSUE TWO: A violation of federal regulations is found in the following area:

1) Federal regulations at 34 C.F.R. 300.534(d) which state that if a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. In this case the parent requested an initial special education evaluation of the student on August 26, 2024 when informed of the student's suspension from school resulting from a violation of the student code of conduct. The district appropriately responded to the request but failed to expedite the evaluation to determine eligibility for special education and has sought two extensions to the evaluation timeline to date.

   b) Corrective Action Required

      i. Within 10 days of this report, both USD #357 and Interlocal 619 shall provide to SETS an assurance statement that it will comply with federal regulations at 34 C.F.R. 300.534(d)

      ii. Per the most recent evaluation timeline extension, an eligibility meeting shall be held with parent participation and eligibility determined no later than January 31, 2025 and the parent will be provided with appropriate PWN regarding the eligibility determination. If the child is found to be eligible for special education and an IEP developed, the IEP team will offer a minimum of 20 days of services to compensate for not providing services following the disciplinary change of placement that occurred during the first semester of the 2024-25 school year. Documentation of the eligibility determination and the offer of compensatory services shall be provided to SETS no later than February 15, 2025.

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
Against Unified School District No. 357
Belle Plaine Public Schools: 25FC357-001

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on November 22, 2025, by both the district and by -------, a social worker employed by the district, on behalf of -------, a student attending school in USD 357. In the remainder of this decision, ------- will be referred to as "the complainant," and ------- will be referred to as "the student." ------- is the student's mother and she will be referred to as the "parent" in this decision. It is noted that the parent provided written consent to share personally identifiable information regarding the student to the complainant on December 11, 2024, and, as such, a copy of this decision is being provided to the school district, the interlocal, the parent, and the complainant.

An investigation of the complaint was undertaken by a complaint investigator on behalf of the Special Education and Title Services team at the Kansas State Department of Education. Following the investigation, a Complaint Report, addressing the allegations, was issued on January 2, 2025. That Complaint Report concluded that there were violations of special education statutes and regulations

Thereafter, the complainant and district filed an appeal of the Complaint Report. Upon receipt of the appeal, an Appeal Committee was appointed, and it reviewed the original complaint, the Complaint Report, and the complainant's notice of 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.

Discussion of Issues on Appeal from Complainant

The report identified two issues. The appeal relates only to Issue 2, which is: Did USD #357 and Interlocal #619, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), fail to follow appropriate disciplinary procedures for a student suspected of having a disability during the 2024-25 school year?

In its appeal, the complainant and district state:

> *USD 357 appeals the decision from Issue Two. USD 357 has advocated for this student since August 20th, 2024 to receive vital special education services and provide adequate support from 619 for the student to be successful at USD 357. 619 failed to expedite the evaluation, and failed to identify the student as having a disability on numerous occasions. USD 357 provided adequate behavior data information to place the student for special education services. 619 has been less than cooperative with collaborating with 357, and the parents to ensure that this student received crucial interventions and support.*

In its appeal, the complainant and district do not refute the findings and conclusions in the report, except to the extent the findings and conclusions apply to the district. The essence of this appeal appears to be that the findings and conclusions should be directed solely to the Interlocal.

The Appeal Committee sustains the findings and conclusions in the report for the following reasons:

The disciplinary protections for children with disabilities under Kansas law are directed at school districts, not interlocals. K.A.R. 91-40-35 through 91-40-38, regarding the services to be provided during suspensions, state that the duty to provide such services belongs to the "agency." The term "agency" is defined in K.A.R. 91-40-1(b) to mean "any board or state agency (emphasis added)." The term board is defined in K.A.R. 91-40-1(h) to mean "the board of education of any school district." Accordingly, when it is required, the duty to provide special education and related services during suspensions falls entirely on the school district where the student is enrolled. In addition, K.S.A. 72-3436 specifies that it is the "school district" that is obligated to apply the disciplinary protections for students for whom the district has knowledge that the child is a child with a disability prior to identification.

K.S.A. 72-13,000 permits districts to enter into interlocal agreements. Paragraph (b) of the statute says: "Except as otherwise specifically provided in this subsection, any power or powers, privileges or authority exercised or capable of exercise by any school district of this state, or by any board of education thereof, may be jointly exercised pursuant to the provisions of a school district interlocal cooperation agreement (emphasis added)."

Although permitting the joint exercise of powers or authority by districts and interlocals, notably missing from this statute is any transfer of the legal responsibility for providing necessary services

under the Kansas Special Education for Exceptional Children Act. K.S.A. 72-3410(a)(2) states that, "Each board shall provide a free appropriate public education (FAPE) for exceptional children enrolled in the school district (emphasis added)." Thus, while districts are authorized by statute to enter into interlocal agreements for providing special education services, such agreements do not exempt districts from their duty under K.S.A. 72-3410(a)(2) to assure that all exceptional children that are enrolled in the district are provided with a FAPE.

Although not under appeal, the Appeal Committee applies the same analysis to the "child find" responsibilities of districts. The applicable statute, K.S.A. 72-3410(a)(1) says: "Each board shall adopt and implement procedures to assure that all exceptional children residing in the school district, including homeless children, foster care children and children enrolled in private schools, who are in need of special education and related services, are identified, located and evaluated (emphasis added). Nothing in K.S.A. 72-13,000, permitting districts to enter into interlocal agreements, exempts such districts from their child find and FAPE responsibilities under K.S.A. 72-3410.

When member districts of an interlocal or special education cooperative believe the interlocal or cooperative is in breach of the agreement, they may either provide the services themselves, negotiate, take legal action, or use the statutory process for partial or complete termination of the agreement. What member districts cannot do is to use an interlocal or cooperative agreement to absolve themselves of their statutory duties. In short, member districts cannot contract their way out of complying with their legal responsibilities to exceptional children.

The Appeal Committee has reviewed all of the material submitted in this appeal, and has identified no basis to overturn any portion of the report. Therefore, the Appeal Committee finds that there is sufficient evidence to support the findings and conclusions related to Issues one and two in the report.

Conclusion

For the reasons stated herein, the Complaint Report is sustained in full.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 22nd day of January, 2025.

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 #305
ON AUGUST 12, 2024

DATE OF REPORT: SEPTEMBER 10, 2024

Summary of Conclusions/Corrective Action

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." USD #305 will be referred to as "the district."

Investigation of Complaint

On August 13, 2024, the complaint investigator spoke via telephone with Sarah Loquist Berry, General Counsel for the Central Kansas Cooperative in Education (CKCIE). CKCIE provides services for special education for students who are enrolled in the district. On August 21, 2024, the investigator again spoke with the General Counsel via Zoom. Also participating in the call were Tiffany Lowe, Assistant Principal for the student's school of residence and Brandi Duskie, Special Services Coordinator for the district.

The investigation of a formal complaint requires the investigator to contact the complainant in order to gather additional information and verify specific allegations of noncompliance that may be relevant to the investigation. To that end, the investigator left a voicemail message for the parent on August 16, 2024 asking the parent to call the investigator to discuss this complaint. On that same date, the investigator also sent an email to the parent providing contact information for the investigator. On August 28, 2024, the investigator spoke briefly by telephone with the parent who stated that she was a full time student and had been very busy since filing this complaint. The parent told the investigator that because of her busy schedule, she had not been able to contact the investigator. Further, at the time of the August 28, 2024 call from the investigator, the parent was unable to discuss the complaint but stated that she would contact the investigator later in the evening of August 28, 2024.

Having received no return call from the parent the preceding evening, the investigator sent the parent an email on August 29, 2024. In the email of August 29, 2024, the investigator again provided contact information and told the parent that – absent the presentation of additional information by the parent – the investigative findings would be based upon the information provided by the parent in her August 12, 2024 complaint as well as on information obtained from the district by the investigator.

The parent responded via email on August 30, 2024 stating that the email address used by the investigator (while used by the parent for the submission of her complaint) was for an account used only infrequently by the parent. The parent stated that she would be available to talk with the investigator after 3:00 PM on August 30, 2024 and asked the investigator to confirm availability for a call on an email account used more frequently by the parent. The investigator responded on that account telling the parent that the investigator could call at 3:30 PM if that time worked for the parent. The investigator asked the parent to let the investigator know if that time was not workable.

At 3:30 PM on August 30, 2024, the investigator placed another telephone call to the parent and, when the parent did not answer, left another voicemail message telling the parent that the investigator would be available for the next hour for a return call. The investigator also sent a text message with the same information. The parent did not return the call or respond to the text message.

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

- IEP Progress Report for the student for the period of March 9, 2023 through December 19, 2023
- Section 504/ADA Student Services Plan dated April 17, 2023
- IEP for the student dated January 17, 2024
- IEP Progress Report for the student for the period of January 17, 2024 through May 18, 2024
- Grade Reports for the student covering school years 2021-22 through 2024-25
- District Board of Education Policies regarding Internal Transfers and Nonresident Enrollment dated March 2024
- Transfer and Nonresident Enrollment Information on the district website (https://www.usd305.com/parents/resources/transfer-and-nonresidnet-enrollment-information)

Background Information

This investigation involves a 17-year old girl who is enrolled in the 12th grade in her neighborhood high school. According to the student's current IEP, the parent has reported that the student has diagnoses of Depression and Anxiety as well as Ulcerative Colitis. The student also has been diagnosed with ADHD but refuses to take prescribed medication.

Medical issues have contributed to the student missing many days of school. During the student's freshman year (9th grade), she missed 34 days of school. During her sophomore year (10th grade), she was absent for over 42 days. During the student's junior year (11th grade), she missed 64 days of school. The majority of these absences were considered excused.

Under IEPs developed during the student's sophomore and junior years, she has been receiving special education support to address deficits in the area of math as well as identified needs with regard to the planning, organizing, initiating and completing of tasks. She has struggled with time management and maintaining attention to task. Her organizational needs have impacted her ability to keep class work together in a place where it can easily be located.

Since the last revision of the student's IEP on January 17, 2024, the student's needs have been addressed through the implementation of two annual goals and through the provision of 5 accommodations. According to that IEP,

- when given an assessment, the student would be provided with a separate, quiet, or individual setting within which to complete the assessment;
- assignments were to be presented one page at a time so that the instructor could check for understanding before moving on;
- the student would be given preferential seating whenever complete focus was required;
- when note-taking was required, the student would be provided fill-in-the-blank notes with a full copy of notes to supplement/fill in any missing material; and
- the student was allowed to use a calculator for completing math assignments or assessments (unless basic calculation skills were being assessed).

A Section 504/ADA Student Services Plan was developed for the student on April 17, 2023 while the student was in 10th grade. The student, the parent, a school counselor, the assistant principal, the student's case manager, and two instructors developed the plan to address needs associated with "a*ttendance due to health causes" – specifically the student's Ulcertive Colitis. That plan, which was in place throughout the student's 11th grade year, allowed the student to "use the school nurse as needed*." If the student missed school, she would be given additional time to make up missed assignments.

The plan also allowed the student to use an alternative setting in the school – the school office – rather than remaining in her classroom when she was fatigued. By report of the assistant principal, this accommodation was put in place to encourage the student to remain in school rather than going home when she didn't feel well. It was thought that the accommodation would help minimize missed assignments and lessen the impact of absences.

According to the assistant principal, the student was discouraged from coming to the office alternative setting during core content classes or during special education service time. Before coming to the office, the student was to first report to the nurse who would contact the parent to inform the parent that the student was reporting fatigue. If the student asked to remain in the office for an extended period (which could include core content or special education classes) because she felt she could not get comfortable using the beanbag chair available for her in the office, the parent was to be notified.

Issues

In her complaint, the parent asserts that the student was bullied throughout her sophomore and junior years which led to flare-ups of her colitis. The parent states that she requested a transfer of the student to another high school so that the student could escape ongoing bullying, but the district denied that request even though the student is receiving services under an IEP. The parent further contends that the student was not appropriately served under her 504 plan because it was not appropriate to isolate the student instead of protecting her from those students who bullied her.

Applicable Statutes and Regulations

Not every action taken by a school district with regard to a student who has been determined to be a student with an exceptionality is covered under special education law. Similarly, special education law does not address everything experienced by an exceptional student within a school setting. At K.A.R. 91-40-51, Kansas regulations state that, when filing a formal complaint, the complainant must allege that a violation of federal or state 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.

In her written complaint, the parent 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)). Concerns focused on alleged bullying, for example, are not eligible for investigation through this process. Likewise, district transfer policies are not covered by special education laws. This investigator does not, therefore, 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 the student's right to FAPE. (K.S.A. 72-3410(a)(2); K.A.R. 91-40-2, -51(a).) "FAPE" (free appropriate public education) is defined as special education and related services that are provided in conformity with an individualized education program (K.A.R. 91-40-1(z).

In this complaint, the parent also alleges that an accommodation provided to the student under a Section 504 plan failed to properly address the student's needs. As stated in a letter to the parties dated August 12, 2024 from the Education Program Consultant for the Special Education and Title Services division of the Kansas State Department of Education,

> *"This complaint process may be used only for alleged violations of special education laws and regulations. There are times when an allegation may involve more than one law…[T]his complaint process will only address the special education process. Complaints regarding alleged violations of Section 504 must be presented to the Office for Civil Rights [OCR]…"*

If the parent believes that the student's current Section 504 plan is not appropriately addressing the student's needs, the parent may file a complaint with OCR or she may request a meeting with the student's Section 504 team to discuss that plan.

Investigative Findings

Bullying:

The parent reports that the student has been bullied in classes and hallways during school time and outside of school by a former boyfriend and the girl that the former boyfriend was dating. According to the district, the student was on August 23, 2023 involved in an altercation off school grounds with the new girlfriend. According to the assistant principal, following that altercation the district made sure that the student did not have any classes with either the former boyfriend or his new girlfriend and kept the students separate during passing times and lunch periods.

The student's former boyfriend stopped attending school on September 27, 2023 and formally withdrew from school on November 27, 2023. The girlfriend also stopped attending the high school shortly after the off-school-grounds altercation with the student.

Neither the student's former boyfriend nor his current girlfriend are attending the student's high school of enrollment/residence for the 2024-25 school year. One of the students has graduated, and the other has dropped out of school with the intention of obtaining a GED.

Attendance records provided by the district show that the student spent part of 16 school days in the alternative setting (office) during the 2023-24 school year, first taking advantage of the accommodation on August 28, 2023. On the majority of these 16 days, the student left only one (on 8 days) or two (on 5 days) classes. The record shows that the student did not miss any special education classes on those 13 days. The student utilized the office accommodation on one day in each of the months of August and September. The accommodation was implemented on two days in each of the months of January, March, and April. The student went to the office on three days in November and five days in May. The student did not come to the office during the months of October, December, or February.

During the 2023-24 school year, the student did not attend school on 64 days. The attendance record shows that the student missed most or all of 42 school days due to illness and 13 additional whole or part days because of appointments. Family emergencies of out-of-town travel accounted for 6 additional days of absence.

For the 2024-25 school year, the student has enrolled in and has been attending the high school she has previously attended, having missed three days of the first week of school.

Transfer Request:

According to policies established by the Board of Education for the district last revised on October 13, 2020,

> *"A student shall enroll in his/her assigned attendance center except where a special assignment is granted or made. A lawful custodian or school administrator may request a pupil be assigned to a school other than the school indicated by the student's legal residence. Requests must be approved by the executive director of educational programs.*

The student's legal residence will be construed to mean the abode or home where the legal guardian(s) resides except when the student is 18 years of age or older and is no longer dependent upon his/her family. Reasons for considering a special assignment are the following:

Additional conditions for special assignments include the following:

Health of Student: A statement prepared by a licensed physician must accompany the request for assignment. The statement must state explicitly the nature of the disability and why the desired school will be more beneficial to the student's health. Length of Assignment: Determined by the executive director of educational programs.

Administrative Recommendation: A building administrator or the executive director of educational programs may recommend the initiate a special assignment (sic) when there are substantial educational reasons to indicate that a change in schools may be in the best interest of the pupil. This includes matters of personal safety and/or emotional well-being. Length of assignment: For the current school year.

In March of 2024, the Board of Education for the district established additional specific policies regarding internal transfers. According to those policies, "the school that resident students are attending in 2023-2024 will be considered the student's attending school moving forward."

This student attended Central High School for the 2023-24 school year. At that time, the student also resided within the attendance boundaries of Central High School as she does currently. Although the student had been granted a transfer to attend a middle school outside of her residence area, she has been enrolled in Central High School since her sophomore year. According to district policies, if a student who has been granted a transfer chooses to return to their school of legal residence, "the student will not be eligible for a future transfer."

District policies state that "a transfer application will be required for the 2024-25 school year." Applications for transfer were made available online as of March 6, 2024 or could be requested at the district office. The number of available seats for each building was posted on the district website on March 6, 2024. According to district policies, "applications [would] only be accepted for buildings that have not exceeded school or grade-level capacity." According to the district website (https://www.usd305.com/parents/resources/transfer-and-nonresidnet-enrollment-information), there are no open seats at any grade level in the high school to which the parent has requested the student be allowed to transfer.

Applications for transfer were due by March 27, 2024 at 5:00 PM. According to policies, applications received after the deadline would not be accepted. Open seats would be filled through a drawing with a waiting list established should a seat become available at a later date.

No evidence was provided by the parent to show that a formal request for the transfer of the student was submitted by the March 27, 2024 deadline. In a Zoom call with the investigator

and others on August 21, 2024, the assistant principal reported that the parent did speak with the secretary for the Deputy Superintendent for the district about a transfer. According to the assistant principal, the parent was told that there were no openings at the requested high school. It was also reported that the parent made a verbal request for transfer for the student with the district's Curriculum Coordinator.

The assistant principal told the investigator that she met with the student and the parent on August 12, 2024. According to the assistant principal, the parent requested that the student be allowed to transfer to another high school to avoid the bullying that had triggered colitis flare-ups for the student during the 2023-24 school year. The assistant principal told the investigator during a Zoom conference call on August 21, 2024 that, until the parent informed her of the cause of flare-ups during the previous year, she had not been aware of any connection between alleged bullying and colitis flare-ups.

The assistant principal reported that during the August 12, 2024 meeting she asked the student why she wanted to transfer out of her high school of residence. According to the assistant principal, the student stated that she did not want to leave the school and preferred to graduate with the students she had been with since her sophomore year.

FAPE:

According to the IEP Progress Reports for the student, she made adequate progress toward attainment of all her annual goals for the first and second semester of the 2023-24 school year.

The IEP Progress Reports for the third and fourth quarter of the 2023-24 school year indicate that the student made progress – although minimal – toward attainment of her math goal. Progress was also made on attainment of her organizational goal during the third quarter of the school year, but the student failed to demonstrate adequate progress on this goal during the fourth quarter.

According to the student's grade report, she had, by the beginning of her senior year, earned 21 of the 24 credits needed for graduation despite having failed one class (Graphic Design 2D) during the first semester of her junior year as well as 3 of 7 credit courses during the second semester (English, Physical Science, and Study Skills).

No evidence was provided by the parent to show that the special education services required by the student under her current IEP are unavailable to the student in her high school of residence.

Summary and Conclusions

In her complaint, the parent alleged several issues which are not covered under special education laws. While this investigation cannot focus on these non-special education issues, this investigator must determine whether the actions of the district resulted in a denial of FAPE to the student.

The district followed its established policies when denying the request for the transfer of the student. No evidence was provided by the parent to show that the student's special education needs could not be addressed or were not being addressed in her building of residence, and that the denial of a transfer resulted in the loss of FAPE. Neither of the students whose alleged bullying behavior had, by report of the parent, triggered colitis flare-ups for the student were attending the student's school after the first few weeks of the 2023-24 school year, and neither are enrolled in the school for the 2024-25 school year.

No evidence was provided by the parent to show that it was the implementation of a Section 504 plan that led to the student's minimal progress toward attainment of annual goals or to the student's having failed a number of classes. On the contrary, the student was able to remain in school and attend the majority of her classes on days when the 504 plan's office accommodation was utilized. It appears far more likely that the student's complete absence from school for 64 days during the 2023-24 school year played a greater role in the student's progress or lack thereof.

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.



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 #458
ON DECEMBER 17, 2024

DATE OF REPORT: JANUARY 14, 2025

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 # 458, Tonganoxie/Basehor-Linwood Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #458.

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 District. In this case, the KSDE initially received the complaint on December 17, 2024, and the 30-day timeline ended on January 16, 2025.

Allegations

The following issues will be investigated:

ISSUE ONE: Whether USD #458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), provided the Parent the opportunity to participate in IEP meetings. K.A.R. 91-40-17 (a).

ISSUE TWO: Whether USD # 458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to annually review the Student's IEP. K.A.R. 91-40-16.

ISSUE THREE: Whether USD # 458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the Student with an Augmentative and Alternative Communication (AAC) device, the least restrictive environment, and a free appropriate public education (FAPE). K.A.R. 91-40-1.(II); K.S.A. 72-3420; K.A.R. 91-40-1(z).

Investigation of Complaint

The Complaint Investigator interviewed the Parent by video call on January 8, 2024, and the Director of Special Education for the Tonganoxie/Basehor-Linwood Special Education Cooperative on January 9, 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:

1. Email, re: no subject, 05/09 no year
2. Email, re: no subject, 05/14-05/21
3. Notice of Meeting, 05/07/24
4. Email, re: [Student], 05/08-05/17/24
5. Insurance Claim, 07/08-07/13/24
6. Individualized Education Program, Amended, 04/10/24
7. Notice of Meeting, 10/11/24
8. Meeting Notes, 11/19/21 [sic]
9. Prior Written Notice (PWN), 11/19/24
10. Request for Consent, 12/04/24
11. Notice of Meeting, 01/18/24
12. Notice of Meeting, 01/03/24
13. PWN, 01/24/24
14. Notice of Meeting, 03/03/24
15. Notice of Meeting, 03/28/24
16. Notice of Meeting, 04/01/24
17. Meeting Notes, 04/10/24
18. PWN, 04/15/24
19. Notice of Meeting, 05/09/24
20. Email, re: meeting tomorrow, 05/20-11/14/24
21. Notice of Meeting, 08/13/24
22. Individualized Education Program (IEP), 08/15/24
23. Assistive Technology Help Form, no date
24. Parent Consent Form, 08/22/24
25. PWN, 08/15/24
26. Meeting Notes, 08/15/24
27. IEP, Amended, 09/26/24
28. PWN, 09/25/24
29. IEP Amendment Signature Panel, 09/25-09/26/34
30. IEP, Amended, 10/02/24

Additional documents, statutes, and administrative regulations were reviewed during this investigation:

1. Kansas Special Education Process Handbook
2. K.S.A. 72-3416
3. District Website

Background Information

This investigation involved a second-grade student who attends an elementary school within the same special education cooperative but outside of their resident district in USD #458. The Student is currently receiving special education or related services as a child with a disability per the Individuals with Disabilities Education Act (IDEA) due to Autism, speech and language delay, and a hearing loss.

The current complaint coincides with a period of interaction between the Parent, the District, and the Kansas Department of Education. Multiple complaints filed by the Parent during this timeframe resulted in scheduled mediations and a Due Process Hearing convened on September 16, 2024. While the outcomes of those prior complaints hold no direct relevance to the present complaint, it is important to note the overlap in the timeframe.

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Parent and the Director of Special Education for the District.

1. A May 1, 2023 IEP indicated the Parent's participation in the IEP development and included information and documentation regarding the Student's strengths and needs in the areas of fine motor, gross motor, language, reading, math, sensory, and social/emotional. Placement considerations were the following:
    a. The Projected Date of the Annual Review was April 30, 2024.
    b. The Special Considerations Section indicated that the Student did not require Assistive Technology devices and/or services and was not considered deaf or hearing impaired.
    c. A continuum of six different placements was considered.
    d. Placement Selected:
        i. "Special Education Direct Services in a General Education Classroom in a[n] Elementary or Secondary Building"; and
        ii. "Special Education Classroom in General Education Elementary or Secondary Building."
    e. Placement decisions regarding possible harmful effects were discussed.
    f. Placement Considerations:
        i. "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?"
            1. Marked "Yes:" "The team determined that [the Student] would most greatly benefit from placement within a specialized program that would meet [their] social/behavioral needs more directly than the regular education environment with supplementary aids and services only. [The Student] will be away from [their] non-

disabled peers during written expression, small group reading, social studies, science, [and] whole group math."

ii. "Is the student's placement as close as possible to the student's home and/or in the school he/she would attend if nondisabled … ?"

1. Marked "No:" "The team determined that [the Student's] least restrictive environment was within a specialized program housed at a school that is not [the Student's] neighborhood school." (D370-D388)

2. A January 3, 2024 Notice of Meeting indicated a meeting to "address parent concerns" was scheduled for January 12, 2024. (D70-D71)
3. A January 18, 2024 Notice of Meeting indicated a meeting to "discuss parent concerns" was scheduled for January 24, 2024 and was signed by the Parent on January 18, 2024. (D68-D69)
4. Meeting Notes and a PWN from January 24, 2024 indicated a change in the IEP. The Student met two communication goals, and two new goals were added. All other IEP services and goals remained the same. The meeting notes included a conversation regarding missed IEP services due to inconsistent staffing and options for providing compensatory services. (D74-D79, D526-D528)
5. In an interview, the Director of Special Education shared that in January 2024, the Student had achieved some of their speech goals, so new goals were set. However, these new goals were mistakenly left out of the Student's IEP, leading to confusion. Progress Reports from March 2024 showed data from the old goals, even though the Student was working on the new ones. According to the Director of Special Education, this error was acknowledged, and the reports were re-issued with the correct goals. The Director of Special Education described that the Student "made progress in speech despite their hearing loss." (Director of Special Education Interview, P12, 32:42)
6. In an interview, the Director of Special Education indicated that "… the District received the audiogram on February 1, 2024. The information was considered and addressed in the IEP meeting … on April 10th … ." (Director of Special Education Interview, P4, 11:37)
7. A March 3, 2024 Notice of Meeting indicated a meeting to "[d]iscuss possible [IEP] changes" and "[c]onduct an annual [IEP] review" and was scheduled for March 29, 2024. (D80-D82)
8. The Progress Report for the IEP year May 1, 2023 through March 13, 2024 indicated that the Student was making progress in five of ten goal areas and had met their goals in the remaining five areas. (D356-D362)
9. On March 22, 2024, the Special Education Teacher emailed the Parent, "I just wanted to follow-up [sic] on our conversation from this morning. I talked with the team and they all were in agreement that we can move the annual IEP to April and proceed with the BIP meeting this Friday, March 29th. I will chat more with everyone

to see what dates in April work best for that annual IEP meeting. I will send you a couple of dates to see what works best with your schedule." (D390)

10. On March 26, 2024, the Parent completed the Notice of Parent's Request for Special Education Due Process Hearing. (D490) The District received the Notice on the same day and indicated that a "resolution session was convened within 15 days of the receipt of request for due process." April 10, 2024 was listed as the "date of the resolution session." The District and Parents signed and dated the document and marked, "We agree to use the mediation process (This will retain the 30[-]day resolution period)." (D493)
11. On March 28, 2024, the School Psychologist emailed the IEP Team and the Parent and attached documents related to a Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP) for a March 29, 2024 IEP meeting. The Parent responded on the same day, "I am reaching out to address some confusion we as parents have encountered regarding the recent email correspondence with [the Special Education Teacher] and [the School Psychologist] regarding [the Student's] IEP meeting." The Parent wrote, "We kindly request that the team and [the District], [Director of Special Education] provide clarification, verification, and confirmation in a transparent and easily understandable manner, with detailed sources, to explain why [the District] is requesting [the Parents] to attend an official IEP meeting in light of this information." The Special Education Teacher apologized for the confusion and wrote, "Tomorrow, Friday March 29th we will conduct a BIP meeting to discuss the FBA and BIP. We will not be holding an annual review of [the Student's] IEP. However, we will be able to schedule a date for the annual review at that meeting." (D389-D390)

    The Director of Special Education replied on March 28, 2024 to explain the purpose of the scheduled IEP meeting and how it correlated with the complaint investigation results, including certain required timelines and actions. The Director of Special Education mentioned a required team meeting due by April 16, 2024 for a different issue and listed options for the Parent. The Director of Special Education wrote, "Since the annual review is due before May 1, 2024 you can choose whether to schedule two separate meetings or add this to the agenda while conducting the annual review".

    The Director of Special Education listed attendees for the March 29, 2024 IEP meeting to discuss the FBA and BIP and clarified that the original meeting notice was sent on March 3, 2024. The Director of Special Education wrote, "There could be confusion regarding the phrase 'IEP meeting.' On the Notice of Meeting there is a list of several options as to why the IEP team can convene. Based on the Notice that was sent on 3/3/24 the options selected were to 'Discuss possible changes in your child's [IEP]; and 'Conduct an annual review of your child's [IEP].' My understanding, based on the email correspondence you attached, is that there was a request to

only review the FBA and BIP and to move the annual review to April. So, the IEP team can meet if you are agreeable to changing the purpose of the meeting to 'Discuss possible changes in your child's [IEP]' and 'Other: Discuss results from [FBA] and review [BIP],' and that the school invited additional people to the meeting. The revised Notice is attached to this email." (D389-D391)

12. On March 28, 2024, the Director of Special Education sent a follow-up email and said, "There has been a lot of information to take in this week. If you would prefer, we are happy to reschedule. The only issue is that the timeline for the FBA is 60 days, and if we reschedule we would have to extend the evaluation timeline, which requires your consent. Please let us know if you would like to reschedule … ."

    The Parent replied, "As you mentioned, we have already rescheduled the meeting that was initially set for March 29, 2024, and the IEP team for [the Student] has agreed to this rescheduling for a later date in April 2024. However, I would like to seek clarification on your recent email. It seems to imply that there is a plan for an IEP meeting tomorrow without prior notice. Could you please provide an explanation for this and clarify the circumstances surrounding the proposed meeting? … The tone of your email has raised concerns that you, [the Director of Special Education], [the School], and [the District], are pressuring us into complying with demands that could infringe upon our rights." (D392)

13. A March 28, 2024 Notice of Meeting described a meeting to "[d]iscuss possible [IEP] changes" and to "[d]iscuss results from Functional Behavior Assessment [FBA] and review Behavior Intervention Plan [BIP]" and was scheduled for March 29, 2024. (D83-D85)

14. On March 29, 2024, email exchanges occurred between the Parent and the Director of Special Education regarding an IEP meeting scheduled for that day. The Director of Special Education explained that the Parent received a meeting notice on March 3, 2024 to review the FBA and BIP information. The Director of Special Education wrote, "My intent is to clarify that today is indeed an IEP meeting, although not an annual review since we are discussing changes to [the Student's] IEP (the BIP is part of the IEP)." They asked the Parent if they wanted to reschedule or proceed with the scheduled meeting.

    The Parent acknowledged receipt of the Notice of Meeting on March 3, 2024, and added that they had also received confirmation on March 22, 2024 that the IEP Team agreed to reschedule the IEP meeting in April 2024. Their understanding was that the March 29, 2024 meeting was to "discuss data and answer questions about data, that today was NOT [emphasis added] an IEP meeting." They added, "Your email responses have made us feel that you are compelling us and the IEP team to meet and deliberately schedule an IEP MEETING for TODAY [emphasis added] while only providing [Notice of Meeting] yesterday 3/27/2024. Because we fear direct reprisal against us as parents, [the Student], and members of the IEP team, pending

future interactions and their outcomes with [the District] we will [emphasis added] be at [the School] today at 1 pm. … Your conduct for us is a blatant retaliation for the [Agency] report."

The Director of Special Education replied, "My intent is to provide clear, direct communication so that everyone can make decisions that are in [the Student's] best interest. Given that there is clear confusion about the IEP meeting today, I am cancelling [sic] the meeting scheduled for 1:00 [p.m.] today. We will reschedule the meeting prior to April 15th, as required by the timeline given. In addition, we will have legal counsel at our next meeting. You have the right to bring guests as well. We will be in touch to set up the next meeting." (D393-D394)

15. In a March 29, 2024 email exchange, the Parent asked the Special Education Teacher, "In light of [the Director of Special Education] cancelling [sic] the IEP meeting, would you still be willing to meet with me today at 1 pm to discuss methodology in regards to [the Student] as previously agreed upon?" The Special Education Teacher replied, "We are not able to meet outside of the time that we have scheduled for our team meetings. Transparency fosters trust and ensures that everyone is hearing the same message and on the same page to do what is best for [the Student]." (D531)
16. The Parent described in an interview that the March 29, 2024 meeting "was to go over the behavioral, it was an FBA that was due on [the Student] and we were just going to go over that data and hold off on the IEP meeting. We were currently doing [a] mediation situation. We were going through the formal complaint process, attempting to do mediation, and so we were holding off." (Parent Interview, P7, 18:14)
17. A March 29, 2024 email from the Director of Special Education to the Parent listed two dates in April 2024 to schedule the next IEP meeting. They also notified the Parent of the duration and location of the meeting and a proposed agenda. It was noted that once the Parent picked a date, a Notice of Meeting would be sent. (D363)
18. An April 1, 2024 Notice of Meeting indicated a meeting to "conduct an annual review" of the IEP and "[d]iscuss results from [FBA] and review [BIP]" was scheduled for April 10, 2024 and signed by the Parent on April 2, 2024. (D86-D87)
19. April 10, 2024 IEP amendments showed an updated present levels statement in the area of health to reflect the unilateral hearing loss and the addition of support for school personnel via consultation with the DHH Teacher for 15 minutes, one day every 4th week. The accommodations of minimizing background noise, using closed captioning, preferential seating, and getting the Student's attention before speaking to them were added to the IEP. (P17-P36)
20. April 10, 2024 Meeting Notes indicated the Parent's participation in the meeting and included the following topics of discussion:
    a. Reviewing the PWN section of the Special Education Process Handbook.
    b. Reviewing the due process resolution process and mediation.

c. Reviewing the FBA and BIP.
d. A new diagnosis of hearing impairment and the determination to amend the current IEP to add related services and accommodations.
e. "Determine whether [the Student] was denied educational benefit because of the disruption in education services and whether compensatory education is needed to make up for the denial including addressing any skills that [may] have been lost." The Team agreed to discuss this topic during mediation.
f. "[The Parent] did not want to review the draft IEP at this time. The team decided to wait to review the draft IEP until after a mediation session." (D88-D89)

21. In an interview, the Director of Special Education indicated that there was no discussion about an Augmentative and Alternative Communication (AAC) device at the April 10, 2024 meeting. (Director of Special Education Interview, P3, 7:21)
22. An April 15, 2024 PWN for the April 10, 2024 IEP meeting indicated:
    a. "Addition of the [FBA] and [BIP]."
    b. Updated present levels of performance in the areas of health to address the recent hearing loss diagnosis.
    c. An agreement to amend the IEP to reflect the above services and accommodations rather than conducting an annual review.
    d. The Team's discussion regarding the denial of educational benefits because of a disruption in services and possible compensatory services.
    e. "The team proposed determining if the nature or severity of [the Student's] disability is such that placement in the regular education environment with supplementary aids and services cannot be achieved satisfactorily." It was noted that a draft IEP documenting that the Team addressed this prompt was provided to the Parent, but the Team did not continue with the annual review of the draft IEP per the Parent's request.
    f. The Parent gave consent for the changes and signed the PWN on April 18, 2024. (D90-D95)
23. "Clinical Documentation" from the Hospital, dated May 6, 2024, described the Student's hearing testing, diagnosis, summary, findings, and recommendations. It stated, "Due to the severity of the hearing loss, traditional amplification is no longer an appropriate recommendation as the device would not provide enough power to properly aid [the Student's] loss." It was noted that the Student had "normal hearing" in one ear, which indicated "adequate auditory access for speech-language development." The report mentioned, "We reviewed communication goals, and [the Parent] understands that [the Student] may benefit from exploring multi-modal communication – especially if speech development is not progressing or is difficult to understand. [The Parent] understands that [American Sign Language] ASL or augmentative alternative communication (AAC) devices could be incorporated should [the Student] show improved communications using these resources."

Relevant recommendations for the School/District were to "continue with therapy/school support per primary therapist" and "consider multi-modal communication strategies to increase access to language." (D365-D367)

24. A May 7, 2024 Notice of Meeting indicated a meeting to conduct an annual IEP review and discuss possible IEP changes was scheduled for May 13, 2024. (P9)
25. A May 8, 2024 email indicated the Parent sent the Hearing Clinical Documentation report to the Deaf and Hard of Hearing (DHH) Teacher. (P14) The Parent confirmed in an interview that they shared the May 6, 2024 Hearing report to the Deaf and Hard of Hearing Teacher and scheduled an IEP meeting for May 13, 2024. That meeting was later rescheduled for May 21, 2024. (Parent Interview, P3, 8:12)
26. A May 9, 2024 email from the School Psychologist notified the IEP Team that the annual IEP meeting was being rescheduled from May 13, 2024 to May 21, 2024 in order to have time to receive an additional audiology report for the Student. A Notice of Meeting documented this change. (D110-D111, P5)
27. On May 13, 2024, the Mediator emailed the District and wrote that the Parent communicated to the Mediator that "they would like to end post-mediation discussions and move forward with their due process and formal complaints." (D503)
28. On May 14, 2024, the Parent confirmed in an email to the Special Education Teacher that the Student would be participating in Applied Behavior Analysis (ABA) instead of Extended School Year (ESY) during the summer. (P8)
29. On May 17, 2024, the Deaf and Hard of Hearing Teacher emailed the Parent to check if the Parent had received "any other medical records this week." The Parent replied the same day and shared, "We have an appointment next Friday to review [the Student's] results and information." (P15)
30. In a May 20, 2024 email, the Director of Special Education stated, "We are canceling the IEP meeting scheduled for tomorrow for [the Student]. As a reminder, the purpose of tomorrow's meeting was to conduct the annual review for [the Student] which includes the most recent health information, specifically, [their] hearing loss." It then listed reasons for canceling:
    a. "On April 10th we met to have the annual review, but this did not occur because both parties agreed to wait until after mediation was complete. Since we did not reach resolution via mediation, we are at the same point as at the April 10th meeting."
    b. "[The Student] has had some additional appointments regarding [their] hearing loss. When I spoke with [the DHH Teacher] last week [they] did not have the most recent report from [the Hospital]. The team will use this report to consider how to address the need in the IEP. If the report is available, please send it [the DHH Teacher's] way so that it can be reviewed and we can reschedule the annual review, which includes addressing [the Student's] hearing loss."

"If you would like to meet tomorrow to attempt to come to a resolution, please let me know. The meeting tomorrow would be an opportunity to resolve any concerns that you have documented." (D112)

The Parent responded to the Director of Special Education on May 20, 2024 stating that they had sent [the DHH Teacher] the Student's audiology report, including the diagnosis and results. They added, "We seem to be a bit confused about the request for [the Student's] medical results from [their] MRI and EKG to address [their] hearing loss. … Could you kindly clarify if these medical records are necessary for the district to provide services for [the Student]? Additionally, we are interested in knowing which qualified team member will be reviewing [the Student's] personal medical records. Could you please share the policy or law that outlines why [the District] requires access to [the Student's] private medical records for [them] to receive [Free Appropriate Public Education] FAPE?"

The Director of Special Education replied, "You are not required to provide any medical reports for the team. If you choose to share, the IEP team is required to consider the information in making decisions for [the Student]. The records that I was referencing were in regard to the hearing loss specifically and the possibility of the hearing loss being degenerative." The Director of Special Education shared that the DHH Teacher would interpret the medical information regarding the hearing loss.

The Parent responded that moving forward, they would no longer be sharing additional medical documentation because they had already provided all necessary details, such as "test results, diagnosis, and treatment options." They also stated, "The recent cancellation of [the Student's] IEP meeting after suggesting mediation and resolution has raised concerns for us. By choosing to cancel the meeting and making comments implying a need for resolution without elaboration, it has left us unsure of the direction you intend to take. We firmly believe that there is already substantial medical documentation available to facilitate the implementation of appropriate accommodations and to allow the team to assess the recent results objectively." The Parent added that they believed the Student was being targeted and that their rights were being infringed upon. (D112-D114)

31. In an interview, the Director of Special Education indicated that one of the reasons the May 21, 2024 IEP meeting was canceled was because "… we were in due process at that time and we were also in mediation. We had met on … April 10th to have an IEP meeting, but it ended up being an amendment [meeting] where we discussed the most recent results that we had regarding [the Student's] hearing loss … and made some changes to [the Student's] IEP." The Director of Special

Education indicated that at the April 10, 2024 meeting, "[The Parent] said it was degenerative hearing loss. [The Parent] states that, and so we were like … well, we will consider any of that medical information once we have it, because that's what we do. Any medical information, we take it, we consider it and how that's going to affect programming for the Student moving forward." According to the Director of Special Education, "We didn't receive any additional information regarding [the Student's] hearing loss specifically. We didn't receive anything related to it being degenerative, which could potentially impact how we programmed for [the Student] which was alluded to many times in the 4/10/24 IEP meeting."

The Director of Special Education described additional reasons they canceled the May 21, 2024 IEP meeting and referred to an email they sent the Parent detailing the reasons. The Director of Special Education said, "The first one was because on April 10th, we agreed to go to mediation because there was [sic] some trust issues. And so we said, okay, let's not do the annual review. Let's go through mediation, get some resolution, and then we can move forward from there. Well, the mediation ended without resolution, so we were in the same place there. And then, basically, the second reason was … we were going to get more information regarding that degenerative hearing loss, and we did not receive that. Therefore, there was nothing to take action on. Yes, the annual review, but we couldn't have the annual review because [the Parent] doesn't trust us. … So now we're in due process. So we did not move forward with an annual review at that time." (Director of Special Education Interview, P1, 1:05)

32. In an interview, the Parent indicated that the Student's May 13, 2024 IEP meeting was rescheduled for staffing scheduling issues. That meeting was rescheduled for May 21, 2024 and then canceled by the Director of Special Education, and, according to the Parent, "… [The Student's] IEP went noncompliant for four months over the summer and the end of the school year, partially beginning of the new school year. And we were not allowed to have that meeting because, according to the director, we did not meet a resolution in mediation and [the Director] wanted access to … [the Student's] medical doctor." (Parent Interview, P1, 1:18)
33. According to the Parent, the May 21, 2024 meeting "was an opportunity for my [Spouse] and I to bring a new diagnosis. … [The Student] was diagnosed with unilateral deafness, and that was an opportunity for us to bring that to the meeting so that we could get accommodations and set up any type of support systems for … [the Student]. [The Student] struggles with autism, ADHD, unilateral deafness, and vision issues. … And so this would give us an opportunity to kind of participate and help [the Student], and unfortunately, we were not provided that. And so we had to go through other alternatives throughout the summer and throughout … the end of the school year for assistance for children with deaf-hard of hearing. We had to go through … our hospital to learn sign language. We had to go through our insurance to help us purchase an AAC device. We had to get classes on how to help [the

Student] in public school, whether or not it was an appropriate setting for [the Student] so that when the Director allowed us to have a meeting, we could ask these questions. We could formulate a plan with the team. Unfortunately, we were not provided that opportunity … until the beginning of the school year." (Parent Interview, P1, 2:15) The Parent believed, "… When we were denied the meeting and our doctor on the prognosis said that [the Student] needed an AAC device because of [the Student's] communication issues … that would be the best outcome. And because we weren't allowed to go through [the School], we had to go through our insurance, we had to go through a private speech therapist to get an assessment done so that [the Private Speech Therapist] could send it to our insurance so that we could get approved … We had to send in all that paperwork so that [the Student] could get an AAC device … ." (Parent Interview, P4, 9:55)

34. Regarding the Student's least restrictive environment, the Parent described in an interview that "there were no concerns because we didn't know to have any concerns. We didn't know what the options were. [The Student's] in a SLC room, a structural learning classroom, and [the Student] goes to gen[eral] ed[ucation] class part of the time. But for [the Student's] diagnosis, we weren't asking for anything other than change of school, change of replacement [sic], but [the Student] was restricted in the fact that nothing was done until September, and [the Student] had this diagnosis and we had to reach out to [the] School for the Deaf to have [the Student] evaluated … ." (Parent Interview, P5, 14:10)
35. The District Calendar listed the last day of school for the 2023-2024 school year as May 24, 2024. The District Calendar listed the first day of school for the 2024-2025 school year as August 13, 2024. (District Website)
36. The Parent filed an insurance claim on behalf of the Student on July 8, 2024 that was processed on July 13, 2024. The Claim Details indicated that the Insurance company paid $3,746.25 to a company and that no money was paid to the Parent. The Claim Details section does not describe the specifics of the request. (P16)
37. The Director of Special Education shared in an interview that the May 21, 2024 IEP meeting was not rescheduled until August 15, 2024, "In August, it was scheduled … our school year ended at the end of the year in May. People were [off] duty and then we scheduled it in August. Even though Due Process was still in play, we did not come to mediation. We wanted to meet together to try to come to [a] consensus on items, and we were able to successfully do that." (Director of Special Education Interview, P3, 7:29) The Director of Special indicated that they did not receive any additional documentation or additional diagnoses for the Student between May 20, 2024 and August 15, 2024. (Director of Special Education Interview, P3, 8:40)
38. The Director of Special Education said in an interview, "… We had been advised from [the State] Department of Education that because we're in Due Process, that actually in the timeline for [the] IEP, it's on pause, so you're not in violation of not having the IEP meeting." The Director of Special Education shared, "Now we're in

Due Process, and that was not scheduled until September 16, [2024]. So, I guess in my mind … we're at a standstill right now … . Mediation, we could not come to consensus. I'm not sure what we're going to accomplish in an annual review because we're in the very same place that we ended when we tried to have the annual review before. But in the meantime, now [the Parent's] asking for an annual review. And so we did acquiesce. … So we did have an IEP review … on 8/15, which moved us into the new school year." (Director of Special Education Interview, P9, 23:23)

39. An August 13, 2024 Notice of Meeting indicated that a meeting to review the IEP and discuss possible changes was scheduled for August 15, 2024. It was signed by the Parent indicating their planned attendance and willingness to waive the 10-day notice on August 15, 2024. (D138-D139)
40. The August 15, 2024 IEP included Parent concerns, current performance in language, fine motor, reading, math, social/emotional, independence, challenging behavior, sensory, adaptive behavior, and a hearing update.
    a. The Sign Language section described, "The IEP team has identified the following situations where sign language support in the related service and/or classroom settings could be utilized in an effort to reinforce [the Student's] understanding: Signing wh- questions, signing targeted content vocabulary (such as 'all together' in the area of math), signing classroom routines & directions (sit down, stand up, line up, open your book, etc). Additionally, sign language may assist [the Student] if [the Student] is dysregulated by providing a visual mode of communication instead of bombarding [the Student] with verbal requests. [The Student] may also be more able to sign "help" rather than verbalize it if [the Student] is escalated."
    b. The Special Considerations section described that the Student required Assistive Technology devices and/or services and had communication needs that were addressed in the IEP. The Student was deaf or hearing impaired, and the IEP team has considered the student's language and communication needs, opportunities for direct communication with peers and professionals in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode in the development of the IEP."
    c. Baselines, Goals, and Benchmarks/Objectives were listed.
    d. The Related Services listed included Adapted PE, Attendant Care, OT, OT consultation, and Special Education Transportation.
    e. Special Education Services, including Speech/Language Therapy and "specials," were listed.
    f. The Student's Extent of Participation in Regular Education indicated, "… the student will not participate 100% of the time with non-disabled peers in the regular education environment. The regular education environment includes

all academic instruction as well as meals, recess, assemblies, field trips, etc. [The Student] will not participate with [their] non-disabled peers when [the Student] is receiving special education services in the special education setting. [The Student] will be away from [their] non-disabled peers during written expression, small group reading, social studies, science, whole group math." The Student will participate in regular physical education and will have an equal opportunity to participate in extracurricular activities offered.

g. The following Placement Considerations and Decisions were listed:
   i. "Alternative School";
   ii. "Regular class environment with supplementary aids and services";
   iii. Special Education Direct Services in a General Education Classroom in a[n] Elementary or Secondary Building";
   iv. "Outside regular class 21-60% of time";
   v. "Outside regular class more than 60% of time"; and
   vi. "Special Education Classroom in General Education Elementary or Secondary Building."

h. Placement Selected:
   i. "Special Education Direct Services in a General Education Classroom in a[n] Elementary or Secondary Building"; and
   ii. "Special Education Classroom in General Education Elementary or Secondary Building."

i. Placement decisions regarding possible harmful effects.

j. Placement Considerations:
   i. "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?"
      1. Marked Yes: "The team determined that [the Student] would most greatly benefit from [a] placement within a specialized program that would meet [their] social/behavioral needs more directly than the regular education environment with supplementary aids and services only. [The Student] will be away from [their] non-disabled peers during written expression, small group reading, social studies, science, [and] whole group math."
   ii. "Is the student's placement as close as possible to the student's home and/or in the school he/she would attend if nondisabled … ?
      1. Marked No: "The team determined that [the Student's] least restrictive environment was within a specialized program housed at a school that is not [the Student's] neighborhood school." (D158)

k. ESY was considered, and services were described.

l. Program Modifications, Accommodations, and Supplementary Aids and Services included access to alternative writing tools, access to a sentence

strip, access to sensory tools, access to visual schedules, alternative seating, minimized background noise, closed captioning, frequent sensory/movement breaks, and optional homework. Additionally, the Teacher for the Deaf will share the ASL signs for certain vocabulary words with the IEP team, and the Student's classroom teacher will use the classroom sound system. The Student will receive assistance during writing tasks, and modeling will be provided during writing assignments. Also, preferential seating, sign language paired with visuals, and standing with scissors were listed. Teachers will repeat or rephrase comments and will secure the Student's attention before speaking to the Student.

m. The Assistive Technology Access Help Form indicated a request to "initiate the use of a sound system in the classroom for [the Student]." According to the notes on the form, "The option of a sound system will assist with signal-to-noise ratio, and potentially improve [the Student's] ability to access language and learning." (D142-D168)

41. Meeting Notes from the August 15, 2024 meeting indicated that the IEP Team discussed various aspects of the Student's needs, including their academic performance and communication challenges. They reviewed the Student's strengths and weaknesses and noted the Student's difficulties with language at home. A key concern was determining the best way to support the Student's communication and education needs, "[The Parent] indicated that [the Student] has a personal communication device, but at this time the focus is ASL instruction. [The Parent] indicated that [the Student] is not using the device at this time. The Team determined that [the Student] does not require an assistive technology device or services." Additionally, the Team discussed the need for goals focused on improving the Student's language skills, "the school team asked [the School for the Deaf] when it is appropriate to create goals that focus on sign vs. verbal language. [The School for the Deaf] shared that this is a unique situation and given that [the Student] has hearing in one ear it would be good to capitalize on [the Student's] hearing at this time." The Team reviewed accommodations and modifications and discussed the creation of visual supports like schedules. They also discussed the Student's most appropriate placement. (D174-D175)

42. An August 15, 2024 PWN described the actions proposed or refused:
    a. "Attendant care in the general education setting for 50 minutes, 5 days per week."
    b. "Special education services in the general education setting for 125 minutes, 5 days per week and 50 minutes, 5 days per week (for specials)."
    c. "Consult Adaptive PE services for 20 minutes, 1 day every other week."
    d. "Special education transportation services for 90 minutes, 5 days per week."
    e. "Occupational therapy services in the special education setting for 20 minutes, 1 day per week, and indirect occupational therapy services for 30 minutes, 1 day every fourth week."

f. "Speech[-]language services in a special education setting for 20 minutes, 2 days per week."
g. "Supports for school personnel for deaf/hard of hearing teacher consultation for 15 minutes every 4th week."
h. BIP.
i. "[The Student] qualifies for Extended School Year [ESY] services."

The Explanation of the proposed action indicated that "Revisions to [the Student's] IEP are necessary to reflect [their] current level of academic performance, functioning, and update annual goals in order to continue to address [the Student's] individual needs. The Student was recently diagnosed with a hearing loss, and deaf/hard of hearing consultation was added to provide teachers and school staff with support and information regarding [the Student's] hearing loss, accommodations, and hearing technology."

The PWN indicated that "The team considered the input from the parent regarding the goals for verbal communication versus a focus only on sign language. The team determined that the goals are appropriate because [the Student] has hearing in one ear and it capitalizes on [the Student's] hearing and verbal communication skills at this time." The Parent signed their consent to the changes on August 22, 2024. (D169-D173)

43. A September 19, 2024 Notice of Meeting indicated a meeting to discuss possible IEP changes was scheduled for October 2, 2024, and was signed by the Parent on October 2, 2024. (D303-D304)
44. The IEP was amended on September 26, 2024 to include "[a]ccess to a speech[-]generating AAC device" in "all areas for the duration of the communication exchange." (D240-D262)
45. A September 25, 2024 IEP Amendment Between Annual IEP Meetings and a PWN indicated a proposed IEP amendment to "indicate a need for assistive technology and add an accommodation that outlines access to a speech[-]generating AAC device." The Parent signed their consent on September 26, 2024. (D265-D268, D270)
46. When asked if it was established at the September 25, 2024 meeting who would be providing the AAC device, the Director of Special Education described in an interview that while they were not at the September 25, 2024 meeting, the "communication device from home was going back and forth." (Director of Special Education Interview, P6, 15:58)
47. October 2, 2024 meeting notes indicated the Parent's participation in the meeting and supported the following amendments documented on the IEP and PWN:

a. "Special Education Services" from October 2, 2024 through August 14, 2025 for "145 minutes 5 days per week" as "Special Ed[ucation] Direct Services in a Regular Ed[ucation] Classroom."
b. "Special Education Services" from October 2, 2024 through August 14, 2025 for "165 minutes 3 days per week" as "Special Ed[ucation] Direct Services outside Regular Ed[ucation] Classrooms, programs, other locations."
c. "Special Education Services" from October 2, 2024 through August 14, 2025 for "185 minutes 2 days per week" as "Special Ed[ucation] Direct Services outside Regular Ed[ucation] Classrooms, programs, other locations." (D294, D306-D307, D308-D312)

48. An October 11, 2024 Notice of Meeting indicated a meeting to "review progress with change in service minutes, discuss reevaluation assessment tools; [and] review progress reports from March 2024 per resolution complaint 25FC458-001" was scheduled for November 19, 2024. The Parent signed the notice on November 19, 2024. (D54-D55)
49. November 19, 2024 meeting notes indicated the Parent participated in the meeting. Discussed topics included:
    a. Complaint resolution.
    b. Previous phone communication that the Parent believed "tainted [their] relationship with [them] and the school." As a result, the Director of Special Education would "plan to not be at future meetings unless there is state complaint/due process or any litigious situation."
    c. Addition of service time and accommodations to the IEP to support the Student with participation in science and social studies.
    d. A Parent request to receive sign language videos once a month instead of once a week. (D57)
50. A November 19, 2024 PWN documented changes to the IEP for science and social studies support (alternating weeks) and was signed by the Parent on December 4, 2024. The IEP was amended to include the following:
    a. Ending dates changed to November 19, 2024 for "Special Education Services" that were added October 2, 2024.
    b. "Special Education Services" from November 20, 2024 through August 14, 2025 in the regular education classroom:
        i. "125 minutes 5 days per week"; and
        ii. "145 minutes 5 days every other week."
    c. "Special Education Services" from November 20, 2024 through August 14, 2025 outside the regular education classroom:
        i. "205 minutes 2 days every other week";
        ii. "185 minutes 3 days every other week";
        iii. "185 minutes 2 days every other week"; and
        iv. "165 minutes 3 days every other week."

d. An accommodation for the Student to attend social studies in the general education classroom when their class "is working on a project or other hands[-]on activity." (D59-D62, D339-340, D346)

51. December 4, 2024, the Parent filed this complaint.
52. The Parent believed that the Student's current placement is the least restrictive for the Student and shared that the Student is excelling. (Parent Interview, P6, 15:35)

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), provided the Parent the opportunity to participate in IEP meetings. K.A.R. 91-40-17 (a).

According to K.A.R. 91-40-17 (a), Agencies (Districts) should take steps to ensure that one or more of the parents of an exceptional child are present at each IEP meeting or are afforded the opportunity to participate. Meetings should be scheduled at a mutually agreeable time and place, and parents should be provided information via written notice at least 10 days in advance of the meeting unless the 10-day notice is waived by the parent.

The Parent alleged that on May 20, 2024, the District canceled a meeting unless "certain conditions are met, including granting access to [the Student's] medical records, signing a waiver for the school to communicate with the doctor, and reaching a resolution." (Complaint, 12/17/24)

The District responded, "With respect to the issue of parent's ability to participate in IEP meetings [the District] disagrees with this complaint and feels the … parent had the opportunity to participate meaningfully in IEP meetings." (District Response, no date, D570-D572)

The Parent participated in numerous IEP meetings throughout the year, including those held in January and April of 2024 during the 2023-24 school year and in August, September, October, and November of 2024 during the 2024-25 school year. In each instance, the Parent either received proper notice, requested the meeting themselves, consented to a shorter notice period, or expressed their intention to attend.

While the March 29th, 2024 meeting was initially postponed due to a need for clarification regarding its purpose, it was promptly rescheduled for April 10th, 2024. The Parent acknowledged the revised meeting date and waived the 10-day notice requirement. The May 21, 2024 meeting was postponed due to the District's understanding of procedural timelines during the due process period.

Based on the foregoing, according to IDEA and Kansas special education regulations regarding Parent participation in IEP meetings, *the allegation is not substantiated*.

Issue Two

Whether USD # 458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to annually review the Student's IEP. K.A.R. 91-40-16.

According to K.A.R. 91-40-16, agencies must ensure that a child with special needs has an IEP in effect at the beginning of each school year and in place before receiving any special education or related services. Those services in which written consent is required by law must be implemented no later than ten school days after consent is granted unless a reasonable justification for a delay can be shown. Each teacher and provider must be informed of their responsibilities related to implementing the IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

The Parent alleged that the Student's "annual IEP was non-compliant due to [the Director of Special Education], this would be the 2nd time that year." The Parent indicated that the Student would need "ASL, AAC, and ABA services according to the treatment prognosis for [the Student]" and alleged that they were denied opportunities "… to advocate for [the Student] to modify [their] IEP to include [the Student's] diagnosis which was the direct result of parents being forced to purchase an AAC device with the LAMP communication application." (Complaint, 12/17/24)

The District responded that "the school team began attempts to start the annual IEP review process in late March of 2024 before the required due date. The IEP meeting process was started with the first meeting on 4/10/24. At this time, both parties agreed to address some aspects of the IEP while pausing on other aspects of the IEP until parents and the school team completed mediation. As noted in the timeline, communication continued between parents and the school in an attempt to resolve disagreements including responding to state complaints and participating in due process. Mediation was conducted with [the Mediator] on May 1, 2024. There was no agreement reached on that day, but [the Mediator] continued to engage both parties via email and phone until the parents ended mediation on May 13, 2024, which moved the parties into due process proceedings. These were scheduled for September 16, 2024. The team met to complete the IEP review process on August 15, 2024. The Kansas State Department of Education was consulted regarding timelines for annual IEPs during due process and were advised that once due process is filed that these timelines are paused. Despite this, the team continued to try to work in good faith to resolve issues with the parents, including scheduling IEP meetings. Of note is that [the] annual IEP meeting occurred prior to the due process hearing." (District Response, undated, D571)

The Annual Review of the IEP was due by April 30, 2024. At the March 29, 2024 IEP meeting, the Team decided to conduct the annual review in April. At the April 10, 2024 meeting, the

Parent requested to wait to review the IEP until after a mediation session. An Annual Review was scheduled for May 13, 2024 and then rescheduled to May 21, 2024. The District engaged in mediation beginning on April 10, 2024, and ending on May 13, 2024. According to the Kansas Special Education Process Handbook, Chapter 10 and K.S.A 72-3438 (b)(2), "The mediation process should not be used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under this act … ." (Kansas Special Education Process Handbook, Chapter 10, Section A; K.S.A 72-3438) The District erred by not conducting the Annual Review by April 30, 2024. By not conducting the Annual Review within the appropriate timeline, the Student did not begin the 2024-25 school year with an updated IEP. The IEP was updated on August 15, 2024, two days after the start of the school year.

Based on the foregoing, *the District violated K.A.R. 91-40-16* by failing to conduct the annual IEP review and implement an updated IEP for the Student by the beginning of the 2024-25 school year.

Issue Three

Whether USD # 458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the Student with an AAC device, the least restrictive environment, and a free appropriate public education (FAPE). K.A.R. 91-40-1.(II); K.S.A. 72-3420; K.A.R. 91-40-1(z).

According to K.A.R. 91-40-1.(II) and K.S.A. 72-3420, the least restrictive environment is the educational placement, which requires that each school district, to the maximum extent appropriate, educate children with disabilities with children who are not disabled. The LRE must be determined annually, based on the Student's IEP, and provided in the environment as close as possible to the child's home. School Districts are required to provide special classes or separate schooling. Children with disabilities are only removed from the regular education environment 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. According to K.A.R. 91-40-1(z), a "free appropriate public education" and "FAPE" mean 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.

The Parent alleged that the District's actions violated the Student's right to the least restrictive environment, the Student's annual IEP was not compliant, and that the Parent was "denied opportunities to advocate for [the Student] to modify [their] IEP to include [their] diagnosis which was the direct result of parents being forced to purchase an AAC device with the LAMP communication application." (Complaint, 12/17/24)

The District responded regarding the provision of an AAC device, "The possibility of use of an AAC device and/or sign language was prompted by an evaluation at [the Hospital]. The report

dated 5/6/24 was provided to our teacher of the deaf and hard of hearing on 5/8/24. In part, the report says ' ASL or augmentative alternative communication (AAC) devices could be incorporated should [the Student] show improved communication using these resources.' The district received the audiogram on February 1, 2024. This information was considered and addressed in the subsequent IEP meeting on April 10, 2024 through supplementary aids and services. The school team supports the use of the device, by ensuring that [the Student] has it with [them], modeling, and prompting. [The Student's] primary mode of communication is verbal. [The Student] is able to communicate for all functions of communication verbally (request, ask questions, socially interact, protest, etc.). Goals in IEPs for communication are based on [the Student's] primary communication, which is verbal communication. Data indicates continued progress. The team also supports the use of sign language in the same manner. This is noted in accommodations as well as supports for school personnel. On 9/25/24, "access to a speech[-] generating device" was added to [the] student's IEP."

The District responded regarding the least restrictive environment, "On 10/2/24 - An IEP meeting was held and [the] least restrictive environment was discussed. Adjustments to the IEP were made including a change to increasing the amount of time the student will be in the general education classroom. On 11/19/24 - An IEP meeting was held. At this meeting, follow up occurred as to the student's progress since adding additional time in the general education classroom. After [a] review of data and IEP team discussion, further adjustments were made to the amount of time the student attended the general education classroom. The team considered the student's needs, based on data in the present levels of performance, developed goals reasonably ambitious in light of [the Student's] circumstances, determined services and then placement. The team always had in mind how [the Student] could be included in the general education classroom to the maximum extent appropriate."

Regarding the provision of a FAPE, the District responded, "At all IEP meetings noted in the attached timeline, the school team reviewed data to determine reasonably ambitious goals, as well as services to address those needs in the least restrictive environment. Data has [been] reviewed IEP adjustments [sic] have been made throughout the IEP progress. First quarter progress reports on IEP goals indicate student progress." (District Response, undated, D570-D591)

At the April 10, 2024 IEP meeting, the IEP team reviewed the results of the Student's February 1, 2024 audiogram and updated present levels statement, support for school personnel, and accommodations. According to the medical report from May 6, 2024, "We reviewed communication goals, and [the Parent] understands that [the Student] may benefit from exploring multi-modal communication – especially if speech development is not progressing or is difficult to understand. [The Parent] understands that ASL or augmentative alternative communication (AAC) devices could be incorporated should [the Student] show improved communications using these resources." While the meeting to address this new information was not held until August 15, 2024, the Team did not implement the use of an AAC. The incorporation of the AAC occurred at the September 25, 2024 meeting. The Parent sought the

AAC on their own accord. The Parent did not ask the District to provide it as the Student already had one and, according to the Director, the "communication device from home was going back and forth."

The District did not complete the Student's Annual Review of the LRE prior to April 30, 2024. However, at the August 15, 2024 IEP meeting, the Student's LRE and placement were determined.

The IEP Team revised the Student's IEP on multiple occasions to make adjustments and update goals. According to the Progress Report data, the Student either met or made progress toward meeting their goals.

Based on the foregoing, the allegations regarding the provision of an Augmentative and Alternative Communication (AAC) device and Free Appropriate Public Education (FAPE) *are not substantiated.*

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. A violation occurred in the following areas:

A. The District violated K.A.R. 91-40-16 by failing to conduct the annual IEP review and implement an updated IEP for the Student by the beginning of the 2024-25 school year.

   In this case, the evidence supports the finding that USD # 458 did not conduct an IEP meeting to conduct an annual review of the Student's IEP by the annual review date.

   Based on the foregoing, USD # 458 is directed to take the following actions:

   1. Within 15 calendar days of the date of this report, USD #458 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. § 300.323 and K.A.R. 91-40-16 by conducting annual IEP reviews within 365 days.
   2. By March 15, 2025, USD #458 will complete the following submit a written statement of assurance to Special Education and Title Services (SETS) that the district's practices and procedures for annual IEP reviews have been reviewed and revised as appropriate to be responsive and compliant with the Individuals with Disabilities Education Act (IDEA) and the Kansas Special Education for Exceptional Children Act.
   3. Further, by March 15, 2025, USD #458 will provide training, pre-approved by KSDE, to all staff responsible for scheduling and conducting annual IEP reviews on the District's obligations to comply with the IDEA and Kansas State regulations for annual IEP reviews.

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
Against Unified School District No. 458
Tonganoxie/Basehor/Linwood Public Schools: 25FC458-002

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on December 17, 2024, by ----------, on behalf of her child, ----------. 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 allegations, was issued on January 14, 2025. That Complaint Report concluded that there was a violation of special education statutes and regulations on Issue 2.

Thereafter, the district filed an appeal of the Complaint Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the original complaint, the Complaint Report, the district's notice of appeal, and the parent's response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this 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.

Discussion of the Issues on Appeal

Issue Two

Whether USD # 458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to annually review the Student's IEP. K.A.R. 91-40-16.

This is the only issue under appeal.

The annual IEP review date for this student was April 30, 2024. (Report - p 27)

The findings of fact in the complaint report, from finding 7 to finding 39, describes a series of extensions for the scheduling of this student's annual IEP meeting, ranging from a March 3, 2024 Notice of Meeting scheduled for March 29, 2024 to an August 13, 2024 Notice of meeting scheduled for August 15, 2024. The Committee notes that the first proposed meeting date, on March 29, 2024, was well in advance of the annual review date of April 30, 2024. The Committee also notes that an IEP meeting was held on April 10, 2024, in advance of the April 30, 2024 due date, but was not considered a full IEP review (Report, p 29).

The reasons for the extensions included legitimate concerns of both parties, including that the parties were involved in both mediation and due process proceedings.

The first day of the 2024-2025 school was August 13, 2024, and the IEP meeting was held on August 15, 2024.

The conclusion of the investigator was that there was a violation based on Kansas statute, K.S.A. 72-3438(b)(2), saying that the mediation process may not be used to deny or delay a parents right to a due process hearing, or to deny any other rights afforded under this act…" Accordingly, the report concluded that, "The district erred by not conducting the Annual Review by April 30, 2024." (Report, Pg. 27).

Although this statute is clear that the mediation process may not be used to deny or delay any parental right, it does not mean that there can be no exceptions to any legal requirement of special education. Federal regulations regarding the mediation process, at 34 C.F.R. 300.510, do not address the issue of whether, or to what extent, parents and school districts can delay the annual review of an IEP.

The statutes and regulations are also silent on whether parents and districts may agree to extend an annual IEP review, as these parties did. However, the courts that have considered this question, have ruled that when meeting the requirement for an annual IEP review date would interfere with the right of a parent to meaningfully participate in the decision making process, the better choice for the district is to give preference to the parent's right to participate.

For example, in Doug C. V. State of Hawaii, 61 IDELR 91 (9th Cir. 2013), the United States Circuit Court of Appeals addressed a situation where a district held an IEP meeting without the parents in order to meet the annual review requirement. The court said, "The more difficult question is what a public agency must do when confronted with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, in this case parental participation and timely annual review of the IEP." It answered its own question stating, "**When confronted with the situation of complying with one procedural requirement of the IDEA or another, we hold that the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE**. In reviewing an agency's action in such a scenario, **we will allow the agency reasonable latitude in making that determination** (emphasis in bold and underlined print added)."

The court added, "the Supreme Court and this court have both repeatedly stressed the vital importance of parental participation in the IEP creation process. We have further held that delays in meeting IEP deadlines do not deny a student a FAPE where they do not deprive a student of any educational benefit. *See A.M. v. Monrovia*, 627 F.3d 773, 779 (9th Cir. 2010) ("Whether or not Defendant exceeded the thirty-day limit, A.M. suffered no deprivation of educational benefit and therefore has no claim."). Under the circumstances of this case, **the Department's decision to prioritize strict deadline compliance over parental participation was clearly not reasonable** (emphasis in bold and underlined print added)."

With this guidance from the highest level court that has considered this issue of weighing procedural timeline requirements and substantive participation rights of parents, the Committee finds as follows:

The district first proposed an annual IEP review for March 29, 2024, well in advance of the April 30, 2024 annual review date. On The parties agreed to reschedule the annual IEP review from March 29, 2024 to a date in April (Report Finding 12 & 14). A meeting actually occurred on April 10, 2024, and the prior written notice (PWN) issued April 15, 2024, stated that there was "An agreement to amend the IEP to reflect the above services and accommodations rather than conducting an annual review (Finding of fact 22)." At the April 10 IEP meeting the parent requested to wait to review the IEP until after a mediation session (Report, pg. 27)

The next proposed annual review was made in a May 7, 2024 Notice of Meeting, which indicated a meeting to conduct an annual IEP review was scheduled for May 13, 2024. (Finding of fact 24).

A May 9, 2024 email from the School Psychologist notified the IEP Team that the annual IEP meeting was being rescheduled from May 13, 2024 to May 21, 2024 in order to have time to receive an additional audiology report for the Student (Finding of Fact 26).

On May 13, 2024, the Mediator emailed the District and wrote that the Parent communicated to the Mediator that "they would like to end post-mediation discussions and move forward with their due process and formal complaints (Finding of fact 27).

The district canceled the IEP meeting scheduled for May 21, 2024 because the student had additional appointments regarding hearing loss and the team had not received the most recent report from the hospital. That report was needed to assess the student's needs. The notice of cancellation included this statement: "The team will use this report to consider how to address the need in the IEP. If the report is available, please send it [the DHH Teacher's] way so that it can be reviewed and we can reschedule the annual review, which includes addressing [the Student's] hearing loss." (Finding of fact 30).

The IEP was updated on August 15, 2024, two days after the start of the school year (Report pg. 27).

The IEP Team revised the Student's IEP on multiple occasions to make adjustments and update goals. According to the Progress Report data, the Student either met or made progress toward meeting their goals (Report, P. 29).

Findings

This is not a situation where a school district failed to track timelines and negligently let a due date slip by. The decisions to delay IEP meetings were conscious choices made largely in consultation and agreement with the parents, and for the purpose of accommodating the participation of parents, who had expressed disagreement about multiple issues and with whom it was engaged in due process and mediation procedures. Illustrating the effort to cooperate, the district and parents actually met and conducted a limited IEP meeting on April 10, 2024, in advance of the April 30, 2024 due date, but acknowledged that the team did not conduct a full IEP review at that meeting (Report, p 29).

During the period in question, the district exercised due diligence when it first scheduled an annual review of this student's IEP well in advance of the annual review date. That first scheduled IEP review did not take place, in significant part, because the parent and district agreed that holding the annual review was inappropriate in light of ongoing disputes that included the filing of a request for a due process hearing, a request for mediation, and incomplete assessments. Despite an initial readiness to schedule and proceed with an IEP meeting to meet procedural timeline requirements, the district deferred to the parent's concerns by agreeing to multiple delays of the IEP meeting. The district canceled the IEP meeting scheduled for May 21, 2024, only because the student had additional appointments regarding hearing loss and the team had not received the most recent report from the hospital. The time between May 13, 2024, when the mediator emailed the district and wrote that the Parent communicated to the Mediator that "they would like to end post-mediation discussions and move forward with their due process and formal

complaints" to the annual IEP meeting on August 15, 2024 involved a minimal number of school days (days when school is not in session during the summer months are not school days). Moreover, the report indicates that the student met IEP goals.

Conclusion

In reaching its conclusion on this matter, the Committee, gives due consideration to the foregoing findings, and to the D.C. Circuit's admonition that: "When confronted with the situation of complying with one procedural requirement of the IDEA or another, we hold that the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE. In reviewing an agency's action in such a scenario, **we will allow the agency reasonable latitude in making that determination** (emphasis in bold and underlined print added)."

The Committee, giving the district "reasonable latitude" in its decision to delay the annual IEP review for this student, concludes that the decision of the investigator on Issue 2 should be, and is reversed. Under the unique facts of this case, where the district reasonably believed that complying with a procedural timely IEP meeting requirement conflicted with the parents substantive right to meaningfully participate in the IEP process, the district did not violate the law when it reasonably deferred to the participation rights of the parent.

Because the decision in Issue 2 is reversed, and because all corrective action in the report resulted from the conclusion in Issue 2, all corrective action ordered in the report is rescinded.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 11th day of February, 2025.

NOTE: As guidance for future IEP meetings, the Appeal Committee suggests that a full annual IEP meeting be scheduled and held by the annual IEP review date, with the written commitment to meet again upon request of the parent. That could have been done by these parties by conducting a full IEP review at the meeting that occurred on April 10, 2024, with a written commitment to reconvene the IEP team at a later date, upon request of the parent.

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 #294, OBERLIN UNIFIED SCHOOL DISTRICT
ON JANUARY 2, 2025

DATE OF REPORT: JANUARY 27, 2025

This report is in response to a complaint filed with the Kansas State Department of Education against USD #294, Oberlin Unified School District on behalf of -------- by his grandmother, --------. In the remainder of the report, -------- will be referred to as "the student." -------- is the student's grandmother and will be referred to as "the complainant," or "the grandmother." -------- is the student's mother and will be referred to as "the parent" or "the mother."

The complaint is against USD #294, Oberlin Public Schools and in the remainder of the report will be referred to as "the district." The Northwest Kansas Educational Service Center (NKESC) provides special education services for USD #294 under an interlocal agreement and in the remainder of the report will be referred to as the "cooperative" . It is noted that USD #294 is ultimately the agency responsible.

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 January 2, 2025 and the 30-day timeline ended on February 2, 2025.

Evidence Reviewed

During the investigation, the Investigators Drs. Donna Wickham and Holly Morsbach Sweeney reviewed all evidence provided by the District and the Complainant. The evidence listed below was used in consideration of the investigation.

- Formal Complaint to KSDE dated January 2, 2025 made by the Student's Maternal Grandmother
- Phone call with the Complainant dated January 6, 2025
- Phone call with the Student's Mother dated January 6, 2025
- Phone call with the Director of Special Education of the Cooperative dated January 6, 2025
- Notice of Special Education Meeting dated January 10, 2025, Mother signed on January 14, 2025
- Prior Written Notice for Identification, Special Education and Related Services Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated January 15, 2025 , signed by Mother on January 16, 2025
- Draft IEP dated January 15, 2025

- District Response, dated January 16, 2025
- Email from Director of Special Education of the Cooperative to Investigators dated January 16, 2025 at 4:54 p.m.
- Phone call with the Complainant dated January 20, 2025
- Phone call with the Student's Mother dated January 20, 2025

Background Information

The student is an eleven year old sixth grader who is eligible for special education and related services under the category of Emotional Disturbance. The student returned to the district this school year for a shortened school day in a self-contained setting after being placed out of district the previous school year for behavior concerns. Parent concerns identified in the January 15, 2025 IEP focus on increasing the student's tolerance for attending a full school day and catching up to grade level academically. This IEP includes five goals addressing reading, mathematics, writing, and behavior. It additionally includes a behavior intervention plan, general education supports, accommodations, modifications and supports for school personnel. The January 15, 2025 IEP includes 105 minutes of resource room special education service five days every week, 100 minutes of special education service in the general education setting five days every week and 20 minutes of emotional behavior disorder consultant services two times every week.

Issues Investigated

1. According to 34 C.F.R. §300.322 did the district appropriately consider parental input in the development of the student's IEP specific to educational placement and services during the 2024-2025 school year?
2. According to 34 C.F.R. §300.323(c)(2), did the district follow the student's IEP specific to increasing the student's service minutes by 20 minutes after 10 days of "good" behavior from initially 20 minutes of education service daily at the beginning of the school year during the 2024-2025 school year?
3. According to 34 C.F.R. §300 114-118 did the district provide the student's education in the least restrictive environment when providing a shortened school day in a self-contained special education classroom with 2 to 3 other students receiving special education during the 2024-2025 school year? [as specified in regulation]
4. According to 34 C.F.R. §300.324 did the district include academic goals in the student's IEP during the 2024-2025 school year to address any gaps that may have occurred as a result of a shortened school day.

Analysis: Findings of Fact

In the District's Response dated January 16, 2025 it states, "The District requested a possible Resolution IEP meeting with his parents to remedy concerns about [Student's] program, placement, and plan to increase [Student's] school day participation On January 15, 2025 (sic) the meeting was held. Both parents, the grandmother (who filed the initial complaint), a mental

health case manager, and school team met and developed a new IEP. Copies of the IEP, new schedule, Behavior Intervention Plan, meeting notes, and consent have been included in the shared drive of requested documents. At the conclusion of the meeting the mother (the Grandmother and father had left the meeting prior to the conclusion) was asked if the new IEP and Plan was acceptable as a resolution to the complaint. The mother indicated it was." The call between Dr. Wickham and the mother dated January 20, 2025 confirmed this statement. The call on January 20, 2025 between the complainant and Dr. Wickham reported that the complainant wished to continue the investigation to ensure that the decisions made during the meeting were implemented.

Conclusion

It is found that the mother and grandmother verified that the concerns identified in the Formal Complaint dated January 2, 2025 were resolved by the January 15, 2025 IEP meeting. It is noted that the grandmother expressed concern on January 20, 2025 that the district would follow through with the decisions recorded in the January 15, 2025 IEP and Prior Written Notice dated January 15, 2025 and signed by the mother on January 16, 2025.

Summary of Conclusions/Corrective Action

ISSUE ONE: A violation of 34 C.F.R. §300.322 was not found, based on the IEP Team documentation, emails from the district and phone conversations with the complainant and mother that resolved this issue. Corrective action is not required.

ISSUE TWO: A violation of 34 C.F.R. §300.323(c)(2) was not found, based on documentation from the IEP meeting held on January 15, 2025 that discussed and resolved this issue. Corrective action is not required.

ISSUE THREE: A violation of 34 C.F.R. §300 114-118 was not found, based on documentation and record of the decisions made during the January 15, 2025 IEP meeting that resolved this issue. Corrective action is not required.

ISSUE FOUR: A violation of 34 C.F.R. §300.324 was not found, based on the records of the discussion and documentation from the IEP dated January 15, 2025 that resolved this issue. 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 #459, BUCKLIN PUBLIC SCHOOLS
ON JANUARY 10, 2025

DATE OF REPORT: FEBRUARY 3, 2025

This report is in response to a complaint filed with the Kansas State Department of Education against USD #459 (Bucklin Public Schools) 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 mother" or "the complainant".

The complaint is against USD #459 (Bucklin Public Schools). In the remainder of the report, USD #459 will be referred to as "the district." The Southwest Kansas Area Cooperative District (SKACD #613) provides special education support for the district and will be referred to as "the cooperative" in the remainder of the report. The student currently attends the fifth grade at Bucklin Elementary School which will be referred to as the "elementary school" in the remainder of the report. In the remainder of this report, school and district staff will be referred to as follows:

- Trina Schmidt, Executive Director at the cooperative
- Jason Wright, Deputy Director at the cooperative
- Lori Lindeman, Interrelated (IR) teacher, the student's classroom teacher at the elementary school
- Jessical Ralston, Principal at the elementary school
- Janae Powell, Speech Language Pathologist (SLP) at the cooperative
- Lynn Simpson, Certified Occupational Therapy Assistant (COTA) at the cooperative
- Megan Carson, Occupational Therapist (OT) at the cooperative
- Lee Stickle, TASN Director and team member on the TASN-Autism and Tertiary Behavior Supports (ATBS) team
- Krysten Clay, Licensed Professional Counselor (LPC), member of the Emotional Support Team (EST) at the cooperative
- Jennifer Eitel, Mixed Abilities coach at the cooperative
- Saundra Unruh, Instructional coach at the cooperative

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 10, 2025.

Evidence Reviewed

USD #459 made the following staff available for interviews on January 24 and 27, 2025 as part of this investigation.

- Executive Director at the cooperative
- Deputy Director at the cooperative
- IR teacher at the elementary school
- SLP at the cooperative
- COTA at the cooperative
- OT at the cooperative

During the investigation, the Complaint Investigator, Nikki Crawford, reviewed all evidence and documentation provided by the district and the mother. Additionally, the complaint investigator contacted the district, elementary school principal and mother on January 13, 14, 17, 21, 22, 24, 26, 27 and 28, 2025 by phone and email to clarify evidence and documentation.

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:

1. Progress Report legend, no date
2. Student's most current daily schedule including annotation from IR teacher, no date
3. Record of consultation and email supports provided by the mixed abilities coach to the IR teacher provided by the dated June 2024 through December 2025
4. Log of meetings and consultations provided by the school psychologist to support the student and his team dated August 12, 2024 through January 22, 2025
5. Student attendance record dated August 15, 2024 - January 10, 2025
6. Log of LPC services related to EST support dated August 17, 2024 through January 16, 2025
7. Medicaid Service Log Report of SLP services dated August 19, 2024 through January 17, 2025
8. Medicaid Service Log Report of OT services dated August 21, 2024 through January 15, 2025
9. Record of supports provided by the instructional coach to the IR teacher dated August 23, 2024 through January 17, 2025
10. Email from TASN director reflecting day-long consultation with IEP team on September 12, 2024 and follow-up meeting with the principal and IR teacher on October 23, 2024
11. Most recent IEP dated September 17, 2024
12. Prior Written Notice (PWN) dated September 17, 2024
13. Walk-Through Observation record with IR completed by cooperative's deputy director dated November 12, 2024

14. Progress report including progress data for October 15, 2024 and December 13, 2024, filed December 17, 2024
15. Phone call between the mother and investigator on January 13, 2025
16. Phone call between the cooperative executive director and investigator on January 13, 2025
17. Email exchange between the mother and investigator on January 14, 2025
18. District response to the complaint dated January 15, 2025
19. Phone call between the cooperative executive director and investigator on January 17, 2025
20. Email exchange between the cooperative deputy director and investigator on January 24, 2025
21. Email exchanges between the SLT and investigator on January 24 and January 26, 2025
22. Email exchanges between the cooperative executive director and investigator dated January 24 and January 27, 2025
23. Email exchanges between the IR teacher and investigator on January 26 and January 27, 2025.
24. Email exchange between the COTA and investigator on January 27, 2025
25. Phone call between the COTA and investigator on January 27, 2025
26. Phone call between the OT and investigator on January 27, 2025

Background Information

The subject of this complaint is an 11 year old young man enrolled in the 5th grade at the elementary school during the 2024-2025 school year. He lives at home with his family including five siblings. The student was diagnosed with high functioning autism at 18 months. He attended preschool in the current district with typically developing peers for three years prior to starting kindergarten. The student uses a communication device and also types with a keyboard as his primary means of communication.

According to the most recent reevaluation conducted March 19, 2024, the student's primary qualifying exceptionality is autism and secondarily, communication, he also qualifies for academic support in the general education setting, Occupational Therapy and Speech/Language Therapy. Additionally, the student has an Individualized Healthcare Plan for a seizure disorder and asthma. Although not included as an IEP goal the following is noted as a need in his September 17, 2024 IEP, "Due to concerns with safety, [student] needs adult supervision. He will often elope from the classroom and needs prompting to return to the appropriate setting".

Issues Investigated

Based on the written complaint and an interview with the complainant, two issues were identified and investigated.

Issue One

Did the district follow the student's IEP specific to minutes of educational services during the 2024-2025 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. 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.

Parent Position

The parent reported in the January 10, 2025 complaint and the January 13, 2025 phone call that her son is not receiving the number of minutes of special education services as stated in his IEP, she shared, "his minutes hardly ever get met."

District Position

The district stated in the January 15, 2025 response, "We assert that [student's] services have been provided consistently all school year. We acknowledge that there have been infrequent disruptions to scheduling which result in deviations from the daily route. However, [student] continued to have his services provided in the appropriate setting."

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 September 17, 2024 IEP states that the student is to receive 214 minutes of instruction in the resource room per day, five days per week for English/Language Arts (ELA), math and daily living skills.
2. The student's schedule reflects 215 minutes of special education services each day related to ELA, Math and Daily Living Skills.
3. The IR teacher who is responsible for instruction commented in an email, "I basically just work off of the schedule each day. It fluctuates depending on his day. (if he is feeling well, gets enough sleep, etc). However, all his schedule is followed for meeting the minutes in the Special Ed class and regular ed class."
4. Walk-Through Observation record of the IR teacher, dated November 12, 2024 reflected that the "Student completed about eight minutes of academic work during the 30 minute observation". It is noted that during the observation there was a fire drill.
5. The September 17, 2024 IEP states that the student is to receive speech therapy twice per week for 30 minutes and OT once per week for 20 minutes.

6. The Medicaid Service Log Report reflects that the student received speech therapy twice per week for 30 minutes when the student was in attendance, all but three sessions when the provider was absent between August 19, 2024 and January 17, 2025. Missed minutes have been delivered through extended sessions during the 20 week period as reflected in the log.
7. The Medicaid Service Log Report reflects that the student received OT once per week when the student was in attendance for all but 4 sessions when the provider was absent between August 21, 2024 and January 15, 2025. Missed minutes have been delivered through extended sessions during the 20 week period as reflected in the log.

Conclusion

The LEA is responsible to ensure minutes of services noted in the IEP are delivered. In this case, the IR teacher reports that the 214 minutes per day she is responsible to provide including ELA, Math and Daily Living Skills are delivered through following the student's daily schedule, although there is no documentation available to support her statement as she is not required to keep a log of activities related to each student in her classroom. The district shared an observation record that reflected the student was academically engaged for 8 out of 30 minutes during the observation, although there was a fire drill during the observation. The district shared the Medicaid Service Log Reports for both OT and SLP providers who are responsible for two or the four IEP goals. These records and provider interviews reflect that although there were missed sessions due to provider absences, the minutes of services stated in the student's IEP are more than accounted for through extended therapy sessions.

Based on the foregoing, USD #459 did follow the student's IEP minutes of educational services during the 2024-2025 school year and is *IN compliance* with IDEA regulations.

Issue Two

Did the district address lack of academic progress on IEP goals during the 2024-2025 school year?

Applicable Law

Federal regulations at 34 C.F.R. §300.324(b) mandates that the IEP team must review the IEP periodically, but not less than annually, to ensure that it is effective in addressing the student's needs. If the IEP is not working, the team is required to revise it to address: 1) any lack of expected progress toward the annual goals; 2) the results of any reevaluation; 3) information about the child provided to, or by, the parents; and 4) the child's anticipated needs.

Parent Position

The parent reported that her son is not making expected progress on his IEP goals in the 2024-2025 school year. In the parent interview the mother stated, "We have backtracked instead of moving forward. It seems like he gets more testing than educating".

District Position

The district stated in the January 15, 2025 response, "We find no fault in the IEP's team's ability to provide an opportunity for [student] to make progress in light of his circumstances.". The district more specifically stated, "According to [student's] December 2024 progress report, he made improvement, maintained his performance or experienced slight regression on each associated benchmarks measurement. While individual benchmarks may not have met their targets, his overall progress is always measured toward the underlying goals. Therefore, even when a slight regression is reported, this does not indicate that the overall goal is expected to be unmet or that a sufficient education is not being provided. His service providers all indicated that he has demonstrated sufficient progress to meet the goal's objective within the timeframe identified."

Analysis: Findings of Fact

The following finding of facts is based upon a review of the documentation and interviews with both parties. The findings of Issue One are incorporated herein by reference.

1. IEP meeting dates that fall within the investigation period include; March 19, May 14, and September 17, 2024.
2. The district response states, "On August 28, 2024, [mother] requested an IEP meeting to discuss her son and to ensure that the new staff understood his IEP. As a result, an IEP team meeting was held on September 17, 2024 to address the parent's concerns. This meeting also included staff from the TASN-ATBS team." An email from the TASN director confirms her attendance as a member of the TASN-ATBS team as well as a follow-up consultation with the IR teacher and elementary school principal on October 23, 2024.
3. According to the student's most recent IEP dated September 17, 2024 there are four goals: visual motor skills, communication, math and reading.
4. According to the student's most recent progress report:
    a. Progress reported for goal #1 visual motor skills, reflects a slight regression on October 11, 2024 as well as a slight regression on December 13, 2024. It is noted that although "slight regression" was entered for the December 13, 2024 progress status, progress is mentioned in the Progress Report Comments, "He has sat in a chair and wrote his name which is an improvement."
    b. Progress reported on goal #2 communication, reflects a slight improvement of on October 15, 2024 and December 15, 2024.
    c. Progress reported on goal #3 math, reflects a maintenance of performance on October 15, 2024.
    d. Progress reported on goal #4 reading, reflects a maintenance of performance on October 15, 2024.
5. The district response states, "The [cooperative] Autism team and Emotional Support Team have observed and met with the special education staff on a regular basis this

past semester to help support his special education programming to ensure that [student] is making progress." It is noted that the EST was utilized by the classroom teacher due to behavioral challenges the student experienced which interfered with instruction as shared in interviews with school and cooperative staff.

   a. The cooperative website shares, "The Emotional Support Team (EST) at [cooperative] provides a school-based team of mental health professionals to assist students (and teachers) in methods to better manage emotions. We provide direct mental health services to students with exceptionalities and we provide on-site training for their teachers and parents."
   b. Dates of EST support provided by the Licensed Professional Counselor (LPC) includes, in person support, email or phone consultation on the following dates: August 27, September 3, 10, 13, 24, 25, October 2, 8, 15, 29, November 5, 8, 12, 20, 26, December 3, 4, 10, 11, 2024 and January 7, 16, and 21, 2025.

6. In the interview with the cooperative's executive director she stated that the, "IR teacher actually started working with [student] over the summer since she was a new teacher to him and mom was concerned about how he would respond".
7. The IR teacher shared in an email that she met with the student whenever he was in attendance over the summer but that he attended only, "5-6 times of the 15 days…". She also shared, "There were multiple times that I would drive to the school to meet with [student], but he and his mother did not attend ESY. I was ready to provide him services, but he was absent…". She also shared in the interview, "I think he is doing really well, since Christmas he has done especially well. He and I are really starting to bond and work well together. He is catching on really fast, but there are days when he doesn't want to. He's come a long way since the summer."
8. The school psychologist provided a log which included 16 consultations from August 12, 2024 through January 22, 2025 in person, by email or phone to support the student's transition to new teaching staff and as well as address behavioral support for elopement behaviors. These consultations included activities such as team meetings with the parents, working on the student's daily schedule with the IR teacher, and offering strategies for behavioral and academic support.
9. The district response shares, "[the cooperative] has a Mixed Abilities coach who has worked with the IR teacher to ensure that instructional practices are aligned with his IEP goals to ensure academic progress." The documented support shared by the mixed abilities coach primarily includes in person consultation along with emails 8 times in the first semester of the 2024-2025 school year beginning in June 2024. The mixed abilities coach shared, "I was there in person assessing and training for the curriculum."
10. Lastly, the district response states, "[the cooperative] has an instructional coach assigned to [elementary school] which has also been assisting on a weekly basis with instructional practices to ensure that [student] is getting appropriate instruction and has materials and lessons that are aligned with his IEP goals." The instructional coach shared a record of support provided to the IR teacher dated August 23, 2024 through

January 17, 2025. This record reflects 11 instances of in person contact, 47 phone calls, 22 texts and 5 emails.

11. In the interview with the Certified Occupational Therapy Assistant (COTA) she stated that although the student is not making progress as measured by his IEP benchmark, the student is able to sit in a chair and write his name and that paraprofessionals report that the student is writing more during class and they share these examples with the COTA. She stated, "I feel like he is progressing but it may not be captured by the benchmark he is working on." The COTA also shared that the student has had many changes this fall including a new IR teacher and new paraprofessionals which may be impacting progress.

Conclusion

IDEA requires that the IEP team must review the IEP periodically, but not less than annually, to ensure that it is effective in addressing the student's needs.

In this case, the IEP team met on March 19, May 14, and September 17, 2024 to address the student's needs. While the student's lacks of progress particularly in goal #1 is noted, the evidence of progress is also noted.

Additionally, the district has made good faith efforts to support this student including; IR teacher availability prior to the beginning of the 2024-2025 school year, the TASN director's engagement, instructional coach support, mixed abilities coach support and the EST support.

Based on the foregoing, USD #459 is addressing academic progress and is found to be ***IN compliance*** with IDEA regulations.

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 evidence that the student's IEP minutes of educational services during the 2024-2025 school year were delivered. Corrective action is not required.
2. ISSUE TWO: A violation of 34 C.F.R. §300.324(b) was not found based on the regular review and provision of multiple supports to address academic progress. 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 #501
ON JANUARY 14, 2025

DATE OF REPORT: FEBRUARY 11, 2025

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 USO 501. In the remainder of the report, USO 501 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 January 14, 2025, and the investigation ends with the publication of this report on February 11, 2025.

Evidence Reviewed

During the investigation, the Complaint Investigator, Gwen Beegle, 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. Multidisciplinary Evaluation Report for the student dated October 21, 2022
2. IEP for the student dated January 23, 2024
3. IEP Meeting notes dated January 23, 2024
4. Prior Written Notice dated January 23, 2024
5. Progress Reports with entries dated March 27, 2024; May 20, 2024; October 17, 2024, and January 8, 2025.
6. The student's schedule of classes, 2024-25 school year
7. Parent Access Report Log History, 2023-2024 and 2024-25 school years, dated between January 29, 2024 at 8:50 a.m. and January 14, 2025 at 3:57 p.m.
8. Student Access Report Log History, 2023-2024 and 2024-25 school years, dated between January 22, 2024 at 10:44 a.m. and January 15, 2025 at 1:51 p.m.
9. Student class schedule and grades, Fall 2024-2025 school year
10. District High School Complaint Policy written December 5, 2013, revised September 3, 2020
11. The district's response to the complaint dated January 28, 2025

12. Emails exchanges
    a. Email from the special education teacher to the student and parent with an exchange of emails with the mother, beginning August 13, 2024 at 1:00 p.m. and ending on August 15, 2024 at 9:21 a.m.
    b. Email from the parent to the special education teacher dated September 6, 2024 at 3:14 p.m. with the special education teacher's reply dated September 9, 2024 at 8:37 a.m.
    c. Email from special education teacher to the math/geometry teacher dated September 9, 2024 at 8:17 a.m. with the math/geometry teacher's reply the same day at 10:31 a.m.
    d. Email from the special education teacher to the English teacher dated September 9, 2024 at 8:25 a.m. with the English teacher's reply the same day at 8:52 a.m.
    e. Email from the history teacher to the special education teacher dated September 9, 2024 at 12:43 p.m.
    f. Email from the English teacher to the parent dated September 17, 2024 at 3:18 p.m.
    g. Email exchanges between the English teacher and the parent dated September 19, 2024 between 11:42 a.m. and 2:32 p.m.
    h. Email from the student's seminar teacher to the special education teacher and the English teacher dated October 23, 2024 at 5:11 p.m. with the English teacher's reply on October 24, 2024 at 7:24 a.m.
    i. Email from the parent to the special education teacher dated December 10, 2024 at 4:17 p.m.
    j. Email from the special education teacher to the science, English and math teachers with replies from the English and the science teachers, beginning December 11, 2024 at 11:10 a.m. and ending 12:04 p.m.
    k. Email exchange between the parent and the English teacher and copied to the student and the special education teacher beginning December 11, 2024 at 12:04 p.m. and ending the same day at 12:10 p.m.
    l. Email from the school psychologist to the special education teacher dated December 18, 2024 at 11:31 a.m.
    m. Email from the special education teacher to school administrator dated December 18, 2024 at 12:16 p.m. with school administrator reply on the same day at 12:18 p.m.
    n. Email from the special education teacher to the counselor for division 3 dated January 2, 2025 at 11:56 a.m. with the counselor's reply on the same day at 11:57 a.m.
    o. Email from Mother to special education teacher dated January 13, 2025 at4:04 p.m.

p. Email from Print Illustration teacher to parent dated January 13, 2025 at 5:27 p.m.

q. Email exchange among special education teacher, school administrator, Print Illustration teacher, and High School Principal dated between January 13, 2025 at 4:41 p.m. and January 16, 2025 at 9:15 a.m.

r. Email exchanges between special education teacher and assistant principal dated between January 14, 2025 at 12:11 p.m. and 3:37 p.m.

s. Email from the special education teacher to the student's teachers dated January 15, 2025 at 9:15 a.m. with replies from the science, Spanish, Print illustration, PE/Health, Geometry, and history teachers ending on the same date at 3:33 p.m.

t. Email from the math teacher to the special education teacher dated January 15, 2025 at 3:33 p.m.

u. Email exchange between parent and complaint investigator dated between January 16, 2025 at 1:58 p.m. and January 31, 2025 at 3:32 p.m.

v. Email from Print Illustration teacher to District Legal Counsel dated January 24, 2025 at 3:20 p.m.

w. Email exchange between special education director and parent dated between January 30, 2025 at 1:58 p.m. and January 31, 2025 at 3:12 p.m.

x. Email from District Legal Counsel to complaint investigator dated February 3, 2025 at 10:04 p.m.

Background Information

The student is a 14-year-old student who attends USD 501 at Topeka High School. His last special education evaluation in 2022 stated that the student was diagnosed in 2017 with dyslexia and ADHD. The student's current IEP stated needs in the area of reading comprehension with good progress being made during the past (2023) year, with the student being on grade level. The student was described as friendly, personable, hardworking, and quite concerned about grades. The student intends to pursue higher education upon graduation from high school with a regular degree.

Issues Investigated

Issue One

Did the district implement the student's IEP, specifically by providing the accommodations and special education services related to grade monitoring and support to the general education teachers as specified in the IEP?

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. 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 complainant alleged that "The cornerstone of [the student's] IEP is the SPED teacher is to check in with regular teachers weekly to monitor grades to ensure if they drop immediate support can be given to [the student] or [the] teacher. This has not been followed and despite assurances that the SPED teacher would "do better" that were given to me at the fall mid-term parent teacher meetings, this has not happened. Very few of [the] teachers report being contacted more than once all term by [the] SPED teacher, and no intervention or help was

given to [the] teachers (or to [the student]) to help improve [the student's] grades once they went below the agreed- upon threshold that was put in [the student's] IEP. After a semester, it is apparent that the school is not following the IEP, and the burden has been heavily put on [the student's] gen-ed teachers when they are the ones who need support to best teach [the student]. Also, when pointed out that the SPED teacher has dropped the ball in one specific class (owing to a grade drop on [the] report card), the SPED teacher emailed to say she only needs to support [the student's] core classes - which is not written in [the] IEP and this is the first I've heard of this." Further, the parent requested "a new special education teacher who will actually keep in contact with [Student's] teacher" and the Principles of Illustration grade "should be changed to reflect the work that was done (3 pieces were not submitted, despite being in Google classroom, and if the [special education teacher[had followed up when the grade dropped, [the teacher] could have determined the problem quite easily..."

The district responded in its January 28, 2025 response letter that the district had implemented the student's IEP as written in partnership with the parents and provided the accommodations and special education services. The district asserted the IEP goal and services refer only to grade maintenance for the student's core classes and state that grade maintenance is a goal rather than an assured outcome. They reference the student's recent grades as "A" in Honors Biology, Honors Geometry, Honors World History, and Honors English. The student had two elective classes, Spanish (grade A) and Principles of Illustration (grade B). In spite of the IEP not addressing grade maintenance for elective classes the district is working with the parent to grade materials not previously considered. The district also refutes that the special education teacher did not support the general education teachers and an interview and emails show that the special education teacher was in communication with the student's general education core and elective teachers. Also, the special education teacher set up a meeting in response to a parent request concerning workload with Honors courses. Finally, the district responded that assigning a new teacher is not in the best interest of the student and is a remedy outside the parameters of both state and federal special education requirements as the district makes personnel decisions.

The student's IEP dated January 23, 2024, stated that the student would be in general education classes all his school day. This IEP included one goal (Study Skills): "The student will maintain a grade of 90% or higher in core classes." Supplementary aids and services (accommodations and modifications) per the IEP included: small group or individual settings for assessments, chunking of larger assignments, extended/double time on assessments with full credit, frequent breaks during assignments and assessments, copy of notes when note taking is required, extended time (10 additional days) on assignments with full credit, spelling errors not counted against the student, modified curriculum /assessments to be determined by case manager and classroom teacher in consultation with parent to meet student's dyslexia needs, and preferential seating. The student services recorded 42 minutes of direct special education services in the special education setting three times every week from January 23,

2024 through the end of the 2023-2024 school year and 20 minutes of indirect special education services one time every week by the special education teacher beginning the 2024-2025 school year as recorded on a PWN dated January 23, 2024 and parent signed consent on January 26, 2024. The parent attended the IEP conference and signed as a participant.

The first report of student progress on October 17, 2024, showed "[The student] currently has two Bs in core classes. It is recommended that [the student] works with teachers to see what [the student] can do to get [the] grade[s] to an A Maybe next semester, [the student] shouldn't take honors classes. Honors Biology 91%, Honors Geometry 89%, Honors World History100%, Honors English 9 84%." A second progress report dated January 8, 2025, stated: "[The student will be taking regular English 9 for Spring semester. Honors Biology 90%, Honors Geometry 90%, Honors World History 95.7%, Honors English 9 87.1%." For both progress reports, the student's progress was rated as: "2 - Prog - Progress has been made towards the goal, but the goal may not be met by the annual IEP. Goal, Instructional strategies, and student supports may need to be reviewed." Progress reports were disseminated through the school's parent Vue grading system.

The Semester 1, 2024-2025 grades reported the following core grades: Honors Biology 90% (A), Honors Geometry 90%(A), Honors World History 95.71%(A), Honors English 9 87.6% (A).

The special education teacher stated that the student did well in his classes without the need of curriculum modifications that would alter the curriculum of the honors classes' curriculum. The special education teacher stated that the student was offered accommodations in classes and allowed choice in settings for working or testing, extended time on assignments, which he generally did not need to use. Feedback from the teachers was that the student might become focused on one aspect of the assignment and spend too much time there, then rush through the remaining work or run out of time to complete it.

Email interactions between the special education teacher and core teachers were recorded on September 9, 2024 (3 teachers); October 23, 2024 (3 teachers); October 24, 2024 (1 teacher); November 25, 2024 (1 teacher); December 11, 2024 (2 teachers) January 2, 2025 (1 teacher); January 15, 2025 (5 teachers); January 16, 2025 (2 teachers). The special education teacher stated that she did not track informal interactions with teachers regarding the student.

A spreadsheet entitled [Student] Fall Grade Check showed 8 grade check entries for each of the student's classes dated September 18, September 25, October 8, October 18, November 1, November 20, and December 10, and December 16, 2024. The principal stated that in addition to the special education grade checks the student's seminar class regularly checked grades and discussed weekly goals for classwork with the students as part of the curriculum.

The special education teacher stated during her interview with the Complaint Investigator that in addition to these grade checks, she met weekly with one of the student's teachers as part of a teaching team, responded to and offered resources for another teacher who asked for

differentiation options for honors assessments, and followed up with teachers when the parent made an inquiry regarding the student's grade. The special education teacher provided an example of how she spent her indirect service minutes with the biology teacher who had not worked with students with IEPs before during the interview. She coached the biology teacher on how to correctly use the accommodation, "utilizing verbal assessment" during biology and discussed the possibilities of record student giving answers, speech to text, read aloud, and text to speech.

An email from the mother to the special education teacher on December 10 stated, "I'm just following up to make sure that you're working with the teacher's where [student's] grade is below a 90. I've asked a couple teachers and they both said they haven't heard from you, so I thought I better check in with you. He's got mostly As, but it looks like you'll need to work with [English teacher] and at least 1 other to see what supports you can give them and if differentiated assessments or limiting the assessments that count to his GPA, etc. are appropriate."

An email in December from the English teacher to the student, parent and the special education teacher stated, "*He is at an 86% currently. He is working on a research paper that is worth multiple grades due to multiple standards being assessed. My policy is that if a student has an 88% at the end of the semester, I bump them to an A because the highest grade given on any standard is 95%. So he is closer to the A than it looks. He can also take the final to raise his grade, even though he has the attendance and the grade to be exempt. He was coming in after school every day for help from me. He has not done that the last couple of weeks. He can continue to do that.*"

Email exchanges during January show the parent and district staff answering questions and discussing the student grade of Bin an elective class.

According to the principal during the interview with the investigator, the school's electronic system includes an icon by the student's name that links to an IEP at a glance that shows the students goals and accommodations. This system was introduced during the 2023-2024 school year and replaced a less efficient pencil and paper notification system. The principal stated that the student's teachers were alerted to the student's IEP using this system. The Student Access Log showed the student accessed the Student Vue 93 times from August 21, 2024 through January 15, 2025.

The parent accessed the electronic system 117 times between August 3, 2024, and January 14, 2025.

An email from the District Legal Counsel to the Complaint Investigator on February 3, 2025 at 10:04 stated, "[Principal], [Director of Special Education] and I have visited based on [Principles of Illustration teacher's] testimony on Friday that [teacher] had received [student's] work and gave all the students the opportunity to make it up, [Principal] will ask [Principles of Illustration

teacher] to grade the work and adjust [student's] grade if the two assignments change the grade."

Conclusion

The parent's concern was that the IEP was not followed in regard to grade monitoring and support to the general education teachers as specified in the IEP. Regulations at 34 CFR 300.320(a)(4) and 34 C.F.R. 300.323(c)(2) require the IEP to outline the services and supplementary aids and supports and to implement the services as soon as possible after the IEP occurs. The IEP in effect during the 2024-2025 school year contained one goal to maintain a grade of 90% or higher in core classes. The student received small group or individual settings for assessments, chunking of larger assignments, extended/double time on assessments with full credit, frequent breaks during assignments and assessments, copy of notes when note taking is required, extended time (10 additional days) on assignments with full credit, spelling errors not counted against the student, modified curriculum /assessments to be determined by case manager and classroom teacher in consultation with parent to meet student's dyslexia needs, and preferential seating. These services were provided through 20 minutes of indirect special education services once every week by the special education teacher. Documentation showed that the student was maintaining grades, 90% or higher in core classes. An interview with the school staff, emails among and between the special education teacher, school counselors and general education teachers showed that the special education teacher communicated regularly with the general education teachers regarding the student's progress, use of accommodations and discussed the student's progress and participation in the core classes. Although the special education teacher was not able to provide a log of each communication with general education teachers, the nature of the emails and detail the school staff provided to the investigator during interviews demonstrated that the special education teacher was communicating with the general education teachers to implement the indirect service minutes.

Based on the foregoing, *it is not substantiated* that USD #501 failed to implement the student's IEP, specifically by providing the accommodations and special education services related to grade monitoring and support to the general education teachers as specified in the IEP.

Summary of Conclusions/Corrective Action

ISSUE ONE: A violation of CFR 300.39 CFR 300.320(a)(4), 34 C.F.R. 300.323(c)(2) and 34 C.F.R. 300.503(a) was not found, based on an interview with the district and parent and review of the IEP and evidence 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.gov 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 DECEMBER 6, 2024

DATE OF REPORT: FEBRUARY 12, 2025

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" and --------- will be referred to as the "complainant", the "parent", or the "mother".

The complaint is against USD #229 (Blue Valley Public Schools). In the remainder of the report, this responsible 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 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 December 6, 2024; however, due to a technology glitch, the child complaint was not processed until January 16, 2025. The KSDE determined to allow an extension to the 60-day timeline but to have the investigation expedited to be completed as close as possible to the original due date of February 4, 2025.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all the documentation provided by both the complainant and USD #229.

Interviews were conducted with both parties. The parent was interviewed by telephone on January 17, 2025 and again on January 28, 2025. USD #229 made the following staff available for an virtual Zoom interview on February 3, 2025:

Jimmie Cosby, Special Education Consultant for Intensive Resource Classrooms
Mikayla Dreyer, Board Certified Behavior Analysist (BCBA)
Mark Schmidt, Assistant Superintendent Special Education

The following written documentation was used in consideration of the issues:

1. Special Education Evaluation Report dated October 21, 2022
2. Parent Calendar dated October 2023 through July 2024 with handwritten notes
3. Individual Education Program (IEP) dated October 16, 2023
4. IEP Team Meeting Notes dated October 16, 2023
5. Positive Behavior Interventions and Support Plan dated October 16, 2023

6. Email exchange dated December 7 and 8, 2023 between the parent and Natalie Shepherd, Special Education Teacher
7. Prior Written Notice (PWN) for Reevaluation and Request for Consent dated December 12, 2023 for a functional behavioral assessment (FBA)
8. Email dated December 14, 2023 written by Kyle Braden, Assistant Principal, to the parent
9. Email dated February 1, 2024 written by the parent to Eric Remhold, Principal
10. Email dated February 1, 2024 written by the parent to the Special Education Teacher
11. Email dated February 2, 2024 written by the Special Education Teacher to the parent
12. Notes from February 13, 2024 Parent Meeting written by the Special Education Consultant for Intensive Resource Classrooms
13. Email dated February 20, 2024 written by the parent to the Assistant Principal
14. Email dated February 20, 2024 written by Mikayla Dreyer, Board Certified Behavior Analyst (BCBA), to the parent
15. Email dated February 20, 2024 written by the parent to Tonya Merrigan, Superintendent
16. Email exchange dated February 21 and 22, 2024 between the parent and the Assistant Principal
17. Email dated February 28, 2024 written by the parent to the Assistant Principal
18. Email dated February 28, 2024 written by the Special Education Teacher to the parent
19. Email dated March 6, 2024 written by the Assistant Principal to the parent
20. Email dated March 7, 2024 written by parent to the Superintendent
21. Email dated May 2, 2024 written by the parent to Christina Farquhar, School Resource Officer
22. Email dated January 25, 2025 written by the Assistant Principal to the Assistant Superintendent Special Education
23. Email dated January 28, 2025 written by the Principal to the Assistant Superintendent Special Education
24. Email dated January 30, 2025 written by the BCBA to the Assistant Superintendent Special Education
25. Response to the Allegations dated February 3, 2025 written by the Assistant Superintendent Special Education
26. Copy of Kansas Teaching License for Natalie Shepherd
27. Attendance record for the 2023-24 school year
28. Copy of the Student's Daily Schedule
29. Reinforcement List
30. Copy of Sensory Visual titled "Things to do when mad, upset, frustrated"
31. Copy of Sensory Visual titled "In Class"
32. Copy of Sensory Visual titled "Out of Class"
33. Copy of Sensory Visual titled "Sensory Choices"
34. Copy of Sensory Visual titled "My Body Needs"
35. Copies of Taylor Swift Token Reward Boards

Background Information

The student is a 14-year-old girl who is currently enrolled in in the 7th grade at Leawood Middle School in USD #229 for the 2024-25 school year. The student has a medical diagnosis of Down's Syndrome. Her most recent reevaluation was conducted on October 21, 2022. At

that time, the student was found to continue to be eligible under the primary exceptionality category of Intellectual Disability and the secondary exceptionality category of Speech/Language Impairment.

The student initially received early intervention services until age three and early childhood special education services until age 5 in the state of Texas. The student has attended USD #229 since kindergarten with an IEP in place to provide special education and related services. At the beginning of the 6th grade, the student transferred to the Prairie Star Middle School for the 2023-24 school year. After a disciplinary incident involving the School Resource Officer in February 2024, the parent requested an in-district transfer for the student to attend Leawood Middle School. This request was granted and the student transferred to the new building on March 19, 2024.

Issues Investigated

Based on the written complaint and an interview with the complainant, three issues were identified and investigated.

It is noted that the IDEA only allows child complaint investigations to consider allegations that have occurred within the preceding 12 months from the date of the filing of the allegations. In this case the allegations were filed with the KSDE on December 6, 2024 and, as such, the investigation window started on December 6, 2023.

It is further noted that the parent only made allegations regarding issues that occurred when the student was enrolled at Prairie Star Middle School during the 2023-24 school year. The parent reported she believes USD #229 is in compliance with the requirements of the IDEA with the special education program provided at Leawood Middle School subsequent to her in-district transfer which occurred on March 19, 2024.

Issue One

USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to employ an appropriately certified special education teacher to provide special education services to the student between December 6, 2023 and March 18, 2024 while enrolled at Prairie Star Middle School.

Applicable Law

Federal regulations at 34 C.F.R. 300.156 require that 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.

In Kansas, special education teachers must meet the requirements outlined in the "Special Education Reimbursement Guide State Categorical Aid". Appendix B contains a chart which describes the various classroom assignments and the required licensure requirements for each setting. Teachers who hold the appropriate licensure for their teaching assignment are considered to be adequately prepared and trained in the state of Kansas.

Analysis: Findings of Fact

The following findings of fact are based upon interviews and record review.

The parent believes the special education teacher, Natalie Shepherd, was not appropriately licensed for teaching the student during the 2023-24 school year. The parent reported the student started having behavioral problems and did not like going to school once she transferred into Ms. Shepherd's classroom at Prairie Star Middle School. She indicated the situation became so bad that the student was placed on medication. However, the parent noted once the student transferred to Leawood Middle School in mid-March 2024, the student's behavior dramatically improved.

USD #229 assigned the student to a low incidence special education classroom at Prairie Star Middle School for the 2023-24 school year. Ms. Shepherd was assigned as the special education teacher and special education case manager for the student's classroom. Documentation showed that she held a valid Limited Apprentice License to teach special education (PreK-12), and an Emergency Substitute License between the dates of December 6, 2023 and March 18, 2024.

Appendix B in the "Special Education Reimbursement Guide State Categorical Aid" requires a teaching license with an endorsement in any of the following areas for the teacher to be considered adequately prepared and trained for an assignment in a low incidence classroom: Low Incidence; Functional; Intellectually Disabled – Functional; Severely Multiply Handicapped; Intellectually Disabled; or Elementary Ed. Unified. Appendix B also allows for substitutes to fill a teaching assignment in a low incidence classroom.

USD #229 stated:

> *In the spring of 2023 the district needed to fill 10 low incidence teaching vacancies. Unfortunately, we were not able to fill all of these with teachers holding low incidence licenses. Rather, as with many other districts in Kansas, we identified individuals who had other teaching licences and relevant experience to fill in as long-term substitutes. In Natalie's case, she was hired as a teacher with the expectation she earns the low incidence license or move to a high incidence position (which she did in fall 2024). The alternative was to place a sub teacher with no experience in special education. Please note that Natalie has lots of support from Jimmie Cosby, special education consultant (instruction), and Mikayla Dreyer, BCBA (behavior) to ensure sound instructional practices.*

In the case of Natalie Shepherd, she was qualified to fill this position with her emergency sub license, later earning her high incidence Limited Apprenticeship License. Either of those licenses qualified her for the position. In addition, she had served as a long-term substitute in a low incidence elementary classroom for the previous school year.

Conclusion

Federal and state regulations require that 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. In Kansas, the requirements for a special education teacher to be considered appropriately and adequately prepared and trained are found in Appendix B of the "Special Education Reimbursement Guide State Categorical Aid".

In this case, interviews and documentation found that between the dates of December 6, 2023 and March 18, 2024, Ms. Shepherd was assigned as the case manager and special education teacher in a low incidence classroom where the student was assigned.

During that timeframe, Ms. Shepherd had a valid Limited Apprentice License to teach special education (PreK-12), and an Emergency Substitute License. Either of those licenses allow for Ms. Shepherd to serve as a substitute in a low incidence classroom, when a teacher with a low incidence license is not available.

Based on the foregoing, the district is found to be *IN compliance* for this issue.

Issue Two

USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the behavior intervention plan (BIP), which resulted in the student being removed from the classroom setting for more than 20 minutes between December 6, 2023 and March 18, 2024 while enrolled at Prairie Star Middle School.

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.

Federal regulations at 34 C.F.R. 300.300.324(a)(2)(i) requires the IEP team to consider the use of positive behavioral interventions and supports, and other strategies, to address any behavior that impedes the learning of the student or that of others.

Analysis: Findings of Fact

The following findings of fact are based upon interviews and record review.

The parent reported that the student's IEP was not implemented while the student attended Prairie Star Middle School during the 2023-24 school year. The parent noted that the student's attendance was often coded as yellow for class periods during the school year indicating an "undetermined absence" from that particular class period. During these "undetermined absences", the parent reported the student was secluded in the special education classroom due to behavioral issues as a result of staff not implementing the BIP and thus preventing the inappropriate behavior from happening in the first place. The parent believes that the yellow "undetermined absences" resulted in the student being denied access to general education on December 12, 2023; January 23 and 29; February 1, 2, 5, 6, 20, and 28; and March 4 and 6, 2024.

The parent indicated that the student's IEP included a behavior intervention plan (BIP) which contained a number of positive supports and strategies which were not being provided. This lack of implementation resulted in the student exhibiting inappropriate behavior during the school day which culminated in the student being removed from her general education classroom setting for greater than 20 minutes at a time and secluded in the special education setting. The parent reported the student was traumatized, felt unsafe, and became unwilling to go to school as the result of the seclusion.

The parent reported that this lack of implementation also resulted in the student being medicated and ultimately led to a situation in February 2024 when the school resource officer was required to intervene and the parent was forced to request a transfer for the student to attend a different middle school within the district. The parent noted that the student has not displayed the same types of inappropriate behavior since transferring to Leawood Middle School in March 2024 and is no longer taking medication.

The IEP in effect between December 6, 2023 and March 18, 2024 was developed on October 16, 2023. The IEP notes that the student's behavior does impede her learning and that of others. The IEP states,

> *The student occasionally demonstrates avoidance and attention seeking behaviors including: avoiding non-preferred tasks, throwing materials, drawing on herself with markers/ink, and hiding under tables. The student also periodically demonstrates unexpected behaviors interfering with others including: messing with / taking other student's materials, hitting, and kicking. Hitting/kicking/other physical behaviors are very rare.*

The IEP includes a BIP which describes the positive behavioral interventions and supports that are needed to support the student throughout the school day. These include visual support such as visual schedules and timers; reinforcement for appropriate behavior based on student preferences; and sensory input including fidgets and sensory breaks. The BIP also describes prompting and instructional strategies such as giving choices, priming the student for transitions, sandwiching more difficult tasks between two easier tasks, etc.

The Present Level of Academic and Functional Performance (PLAAFP) also describes the environmental supports required to support the student's appropriate behavior including an alternate work space, and peer mentoring.

During an interview, the BCBA and the Special Education Consultant for Intensive Resource Classrooms noted that the student transferred from the elementary school setting to the middle school setting at the beginning of the 2023-24 school year which involved new staff, new peers, and a new schedule which involved class changes for each period of the school day. Both staff reported the student had a difficult time adjusting to these changes and there was an escalation in the student's inappropriate behaviors when the student transferred to Prairie Star Middle School. Both staff indicated they consulted with and provided extra support to the Special Education Teacher. They stated that the district proposed a functional behavior assessment (FBA) and the parent provided written consent for the FBA on December 12, 2023. These staff noted that they continue to work with the student at her new school of attendance, Leawood Middle School and have seen a significant decrease in inappropriate behaviors since the transfer.

USD #229 provided copies of a variety of visuals showing a variety of sensory choices the student could make when feeling dysregulated. During the interview, school staff described how these visuals were used in the school setting to provide the student with options when her behavior began to escalate.

School staff also reported and documentation showed that a student specific reinforcement list was created with at least two options for each sensory modality for the student to choose from during daily scheduled sensory breaks. In addition, a reinforcement system was established where the student earned a puzzle piece to complete a Taylor Swift picture of her choice each school day for exhibiting appropriate classroom behavior.

The Present Level of Academic and Functional Performance (PLAAFP) states, "*It is best when the student has a behavior to allow her some time by herself so that she can calm down and apologize for her actions.*"

The District's Response to the Allegations states,

> *The district acknowledges that the student's behaviors were at times disruptive to the educational environment and interfered with her ability to learn alongside peers in general education classrooms. These behaviors were a known aspect of her disability that were acknowledged and interventions identified in the student's IEP dated 10/16/2023.*
>
> *The summary of present levels of academic achievement and functional performance, includes a section on behavior. The section notes that "(i)t is best when the student has a behavior to allow her sometime by herself so that she can calm down and apologize for her actions." As it is impossible to "(provide) time by herself" in a classroom with 20+ peers, this accommodation would occur in the special education classroom.*

An email written by the Special Education Teacher to the parent dated February 2, 2024 describes the interventions provided on February 1, 2024, one of the days when the student's attendance was coded yellow for "undisclosed absence" for her Social Studies and Science classes. The email states,

> *I was absent on Wednesday, so I was not present for the behavior that occurred on that day. I was told yesterday morning that she had a rough Social Studies on Wednesday. Yesterday Allie told the student that it was time to head to Science and she refused to leave the IR room until Murphy, her peer mentor, came before she would go to class. So, there was a lot of non-compliance. Mrs. Gabel has been out all week sick and with the refusal to leave IR with a sub in class we decided to work in IR [Intensive Resource Room] for Science and have her peer mentor come to IR room to work with her. After science was over, she refused to go to Social Studies wanting to wait on peers again, but we were able to get her to begin social studies work in IR room, her peers then showed up and worked with the student on her work for the remainder of her day. She has done this a few times this week, wanting to wait for her peers before going to class. She actually worked pretty well in IR and was able to get her work done with no issues and earn her end of day activities, it was just refusal to leave IR room. To end her day on a good note and not escalate her further we let her be by herself and allowed her to calm herself on her own, which she did and began work in IR for her end of day. Today she will be in class. If that changes, I will email you an update. Please let me know if you have any other questions.*

Conclusion

In this case, the student's IEP and BIP required a number of sensory accommodations and environmental supports to assist the student in demonstrating appropriate behavior in the school setting. Interviews and documentation show that the student displayed an increase in inappropriate behavior upon enrollment in the sixth grade at Prairie Star Middle School.

However, It is also noted that the student experienced a significant transition from a familiar elementary school building to a new middle school setting at the beginning of the 2023-24 school year. On October 16, 2023, the IEP team determined that the student's behavior impeded her learning and the learning of others and developed a BIP to address the behavior. Documentation and interview show that the student continued to exhibit these behaviors and the district responded by providing additional consultation and support for the Special Education Teacher from the BCBA and the Special Education Consultant for Intensive Resource Classrooms.

Interviews and documentation found evidence to support a finding that the sensory accommodations and environmental supports described in the student's IEP and BIP dated October 16, 2023 were available to the student while enrolled at Prairie Star Middle School between the dates of December 6, 2023 and March 18, 2024.

Based on the foregoing, USD 229 is found to be ***IN compliance*** in regards to this issue.

Issue Three

USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the sensory accommodations including breaks, between December 6, 2023 and March 18, 2024 while enrolled at Prairie Star Middle School.

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. 300.300.324(a)(2)(i) requires the IEP team to consider the use of positive behavioral interventions and supports, and other strategies, to address any behavior that impedes the learning of the student or that of others.

Analysis: Findings of Fact

The findings of Issue Two are incorporated herein by reference.

The parent believes the student was not allowed to take the required sensory breaks while attending Prairie Star Middle School which resulted in the student becoming dysregulated and displaying inappropriate behavior in the school setting.

The October 16, 2023 IEP and BIP includes an accommodation for "sensory breaks – as needed".

Interviews and documentation showed the BCBA consulted with the Special Education Teacher and incorporated scheduled sensory breaks into the student's schedules beginning in January 2024.

Interviews and documentation show that an IEP Team Meeting was held on February 13, 2024 to discuss the parent's concerns regarding the sensory breaks. Attending the meeting were the Special Education Teacher; the BCBA; the Special Education Consultant for Intensive Resource Classrooms; the Principal; Emily LaBelle, the Regular Education Teacher; the parent; and Yvette Nguyen, the family advocate.

The notes from this meeting document that the team discussed parent concerns regarding the sensory breaks. It was reported that currently there were three sensory breaks built into the student's daily school schedule. However, it was reported that the student had been resistant to take these breaks because she preferred to be with her peers. It was suggested to allow the student to invite a peer to join her for the sensory breaks.

The notes also reflect that the parent disagreed with the student being assigned to lunch detention for pulling a peer's hair and arm and that she does not want the student to be secluded. The notes state, "Mom said her trust is broken".

An email dated February 21, 2024 written by the Assistant Principal to the parent states,

> *9:20-9:30, 1:45-2:00, and 2:45-3:00 are her scheduled break times. In addition to those, she has flex from 8:49-9:14 in which she typically has the opportunity to read, color, or play games with peers and lunch from 12:40-1:05.*
>
> *Johnnea [the Occupational Therapist] completed a preference inventory with the student earlier in the year which identified that the student prefers tangible items such as silly putty, stickers, and coloring books, movement such as swing, spinning, and running, and miscellaneous items such as board games and listening to music. That is not the full list (just a representation) but we've utilized that list for options during break times. Additionally, Johnnea has completed the sensory profile for the student and is looking at those results for specific recommendations.*

During the interview with the BCBA and the Special Education Consultant for Intensive Resource Classrooms, both staff indicated they had observed the student taking both her scheduled and "as needed" breaks in multiple informal observations in the classroom setting at Prairie Star Middle School.

Conclusion

In this case, the student's IEP and BIP required the student to take sensory breaks on an as needed basis. After the student's inappropriate behavior increased during the first semester, the BCBA consulted with the Special Education Teacher and developed a schedule for the student to take three scheduled sensory breaks throughout the school day. Based upon the documentation and interviews with school staff, evidence supports a finding that the student was provided with sensory breaks, both scheduled and "as needed".

Based on the foregoing, USD 229 is found to be *IN compliance* in regards to this issue.

Summary of Conclusions/Corrective Action

ISSUE ONE: Interviews and documentation support a finding that the district did employ an appropriately certified special education teacher to provide special education services to the student between December 6, 2023 and March 18, 2024 while enrolled at Prairie Star Middle School. Based on the foregoing, no corrective action is required.

ISSUE TWO: Interviews and documentation support a finding that the district did implement the student's IEP, specifically the behavior intervention plan (BIP). In this case, the student was removed from the classroom setting for more than 20 minutes on several occasions between December 6, 2023 and March 18, 2024 in order to allow her to use the sensory strategies to regulate herself prior to returning to the general education classroom. The IEP states, "It is best when the student has a behavior to allow her some time by herself so that she can calm down and

apologize for her actions." Based on the foregoing, no corrective action is required.

ISSUE THREE: Interviews and documentation support a finding that the district did implement the student's IEP and BIP which require sensory breaks "as needed". In this case, the student was provided with both scheduled and "as needed" sensory breaks between December 6, 2023 and March 18, 2024. Based on the foregoing, no corrective action is required.

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.gov 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: 25FC229-002

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on December 6, 2024, by ----------, on behalf of her child, ----------. In the remainder of this decision, ---------- will be referred to as the "complainant" or 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 allegations, was issued on February 12, 2025. That Complaint Report concluded that there were no violations of special education statutes and regulations

Thereafter, the complainant filed an appeal of the Complaint Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the original complaint, the Complaint Report, and the complainant's notice of 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.

Discussion of Issues on Appeal

From Complainant

The complaint report addressed three issues. The appeal does not specify which issues are being appealed. However, it appears that the complainant is appealing all three issues and so the committee will address each of the three issues separately.

Issue One

USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to employ an appropriately certified special education teacher to provide special education services to the student between December 6, 2023 and March 18, 2024 while enrolled at Prairie Star Middle School.

The investigator concluded that the district was in compliance with Kansas standards, reporting that, "the requirements for a special education teacher to be considered appropriately and adequately prepared and trained are found in Appendix B of the "Special Education Reimbursement Guide State Categorical Aid"," and that the teacher subject to this complaint met those requirements (Report p. 6), because the student's teacher was an appropriately certified special education teacher (Report p. 13).

Issue Two

> USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the behavior intervention plan (BIP), which resulted in the student being removed from the classroom setting for more than 20 minutes between December 6, 2023 and March 18, 2024 while enrolled at Prairie Star Middle School.

The investigator cited interviews and documentation supporting that "the sensory accommodations and environmental supports described in the student's IEP and BIP dated October 16, 2023 were available to the student while enrolled at Prairie Star Middle School between the dates of December 6, 2023 and March 18, 2024," in concluding that the student's IEP and BIP were implemented (Report, p. 11).

Issue Three

> USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the sensory accommodations including breaks, between December 6, 2023 and March 18, 2024 while enrolled at Prairie Star Middle School.

The investigator cited documentation and interviews with school staff members to conclude that "the student was provided with sensory breaks, both scheduled and "as needed" (Report, p. 13)."

In her appeal of this complaint report, the complainant does not describe how any of the findings or conclusions of the investigator are incorrect.

Instead, the appeal asserts:

- For a number of reasons, "the use of seclusion in the manner described within the investigation is in conflict with the foundational principles of the Individuals with Disabilities Education Act, including a Free Appropriate Education (FAPE) and Least Restrictive Environment (LRE)."
- The investigation conclusion does not adequately address how the use of seclusion may have violated IDEA's requirement for an individualized, supportive approach to education. The failure to provide timely communication with parents, inadequate documentation, and the improper use of seclusion all represent serious concerns that require corrective action, rather than a simple dismissal.
- The report seems to minimize the severity of the misuse of seclusion.
- Seclusion should never be considered a substitute for adequate training, resources, and individualized interventions tailored to each child's needs.
- Some individuals who interacted with the student daily not interviewed?
- There are specific advantages in using certified personnel.

The Appeal Committee has already noted, above, that Kansas regulations specify minimum requirements for appeal of a complaint report, namely: "Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect."

Again, the burden for supplying a sufficient basis for appeal is on the party submitting the appeal. The appeal process is a review of the Complaint Report. The Appeal Committee's function is to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report.

With regard to this appeal, the Appeal Committee notes that:

(1) Special education complaints, such as this one must allege a violation of special education laws and regulations, 34 C.F.R. 300.153(b)(1) and K.A.R. 91-40-51(a).
(2) Neither the federal nor state special education laws or regulations prohibit the use of seclusion in appropriate circumstances and, for that reason, complaints alleging a misuse of seclusion are more appropriately made in accordance with the Kansas regulations on the use of Emergency Safety Interventions, at K.A.R. 91-42-1 through 91-42-7.
(3) Complainants cannot be expected to know the legal requirements for filing an appeal, such as the duty to provide a "detailed statement of the basis for alleging that the report is incorrect". It is for that reason that every complaint report includes both a statement at the

end of the report on how to file an appeal and a copy of the appeal regulation, K.A.R. 91-40-51(f).

The Appeal Committee has reviewed all of the material submitted in this appeal, and has identified no basis in this appeal to conclude that any finding or conclusion in the report is incorrect or to overturn any portion of the report. Therefore, the Appeal Committee finds that there is sufficient evidence to support the findings and conclusions in the report.

Conclusion

For the reasons stated herein, the Complaint Report is sustained in full.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 4th day of March, 2025.

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 #501
ON JANUARY 15, 2025

DATE OF REPORT: FEBRUARY 14, 2025

This report is in response to a complaint filed with our office on behalf of a student, ----------, by their parents, ----------. 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 # 501, Topeka Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #501.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint. 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 January 15, 2025, and the 30-day timeline ended on February 14, 2025.

Allegations

The following five issues will be investigated:

ISSUE ONE: Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to schedule an IEP meeting at a mutually agreeable time. K.A.R. 91-40-17(a-c)(e), K.A.R. 91-40-21, K.A.R. 91-40-25; 34 CFR §§ 300.328, 300.322(a-d), 300.501(b)(c).

ISSUE TWO: Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP, including accommodations, after[-]school support and providing the Parent with IEP progress reports. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

ISSUE THREE: Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to convene an IEP meeting requested by the Parent to consider their concerns for the Student's needs. K.S.A. 72-3429(f); 34 C.F.R. § 300.324.

ISSUE FOUR: Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP for the Student that met their behavioral needs. K.A.R. 91-40-18(b); 34 C.F.R. § 300.320.

ISSUE FIVE: Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to offer the Student an alternate school arrangement [placement] and the Parent an opportunity to participate in decision[-]making regarding the School the Student would attend. K.A.R. 91-40-21(c)(1) ; 34 CFR § 300.116.

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video call on February 5, 2025. District Staff were interviewed on February 7, 2025.

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 Materials:

1. Complaint, 01/15/25
2. Message Screenshot, 01/13/25
3. Gradebook Screenshot, 12/18/24-12/20/24
4. Message Screenshots, no date
5. Parent's Rights and Notice of Meeting Forms Screenshots, 01/13/25
6. Notice of Meeting, 01/13/25
7. Message Screenshots, no date
8. Gradebook Screenshots, 10/15/24-12/20/24
9. Email Screenshot, no date
10. Email, re: [Student], no date
11. Email, re: [School] and transfer information, no date
12. Email, re: [Student], 11/05/24
13. Email, re: [Student], 11/15/24
14. Email, re: [Student], 12/18/24
15. Email, re: today's assignment in math, no date
16. Email, re: [Parent], 11/08/24
17. Email, re: request, 11/07/24
18. Email, re: school, 11/06/24
19. Email, re: conversation, 09/26/24
20. Call Log Screenshot, 01/13 no year
21. Email, re: [Student], 11/15/24
22. Email, re: [Student], 12/12/24

District Materials:

1. Complaint Response, 01/29/25
2. Individualized Education Program (IEP), 01/30/24
3. Evaluation Report, 01/30/24
4. IEP Progress Report, 01/08/24
5. IEP Progress Report, 01/06/25
6. Contact Log, 09/25/24-01/13/25
7. Email, re: [Student], 09/24/24
8. Email, re: [Student]… - SEL [Social Emotional Learning] needs …, 09/25/24
9. Email, re: [Student], 09/25/24
10. Letter from Special Education Teacher, 10/23/24
11. Email, re: [Student], 10/23/24-01/16/25
12. Email, re: [Student], 10/28/24
13. Attendance Profile, 2024-2025 school year
14. Email, re: [Student], 10/02/24-01/13/25
15. Email, re: [Student] today, 11/22/24
16. Email, re: missing work after help session …, 12/04/24
17. Email, re: [Student's] question, 12/06/24
18. Email, re: [Student] absences, 12/11/24
19. Email, re: parent complaint …, 12/16/24-01/13/25
20. Email, re: meeting, 01/13/25
21. Letter of Concerns from Parent, no date
22. Synergy Contact Logs, various dates
23. Email, re: parent complaint, 11/06/24-01/15/25
24. Letter from Virtual School Special Education Consulting Teacher, no date

Findings of the Investigation

The following findings are based on a documentation review and interviews with the Parent and the District.

1. The Student is 13 years old, in the eighth grade, and attends a District middle school that is not the Student's resident middle school. (D1)
2. The Student is eligible for special education services under the exceptionality of Other Health Impairment. (D1)
3. According to an Evaluation Report dated January 30, 2024, the Evaluation team conducted a re-evaluation to determine if the Student continued to need special education services. The Student had a diagnosis of Other Specified Disruptive, Impulse-Control, and Conduct Disorder and Attention Deficit/Hyperactivity Disorder. The Student "struggles with social situations, (at times), [the Student] can become physically

aggressive when angered or triggered, [the Student] has done better with using [their] coping skills at home and school." (D32)

Classroom Observations indicated the Student was observed by the School Psychologist on January 26, 2024. The Student finished their work and asked if they could play games. The teacher told the Student "no" and handed out a paper that the Student was to read and answer questions. The Student immediately started to read the assignment. The Student sat at a table by themself in a class of seven students. The Student worked quietly for the full 15-minute observation.

No standardized norm-referenced assessments were conducted. The Parent reported, "[The Student] has grown a lot during this last year, [the Student] has always had a struggle with school and homework. [The Parent] has seen a significant improvement. … [The Student] does not know who [they] can trust anymore. [The Parent] would also like to focus on trauma symptoms. The SW [social worker] will focus on tools and strategies to help, but can not due [sic] therapy for trauma in a school setting." (D34)

"Based on observations, teacher input, record review, Parent input, and behavioral assessments, [the Student] continues to qualify under the descriptive category of Other Health Impairment. [The Student] continues to show ADHD-like symptoms (distraction, unfocused, inattention, etc.) which is adversely affecting [the Student's] education[.] [The Student] is struggling to retain information as [the Student] is constantly unfocused." The Evaluation team "recommends continuing [the Student] under the descriptive category of Other Health Impairment and continuing specially designed instruction with the Social Worker and Special Education Teacher." (D33)

4. Relevant items from the IEP dated January 30, 2024 indicated the following:
    a. The re-evaluation for the Student was due on January 29, 2027.
    b. The Student's Current Academic Achievement and Functional Performance included:
        i. Student strengths: The Student had a relative strength in reading. The Student was especially strong in language, craft, and structure of both fiction and non-fiction text. The Student was strong across most areas in math. The Student interacted with others and worked in groups if required.
        ii. Parent Input: The Parent wanted to make sure the School is not just focusing on Attention Deficit Hyperactivity Disorder (ADHD) but also focusing on the trauma.
    c. The Student performed at grade level in reading, writing, and math and did not exhibit needs in those areas. It was noted that in the area of geometry, the Student needed "to work on it as they progressed through the math curriculum." The Student was described as struggling with social skills in the

classroom. The Student withdrew, ignored others, and was not working in groups.

d. The Student was given the [District] Public Schools Social Emotional Skills Assessment (TPS SESA). The assessment had five domains. The Student scored:
    i. "Behavior with adults-78%, and 48% for special education students with social work."
    ii. "Behavior with peers-76% for a general education, and 48% for a special education student with social work."
    iii. "Emotional regulation -80% for a general education student, and 40% for a special education student with social work."
    iv. "Engagement -80% for a general education student, and 42% for a special education student with social work."
    v. "Social skills-80% for a general education student, and 42% for a special education student with social work."
    vi. "Overall Average- 80% for a general education student and 46% for a special education student with social work." (D16-D17)
    vii. "The Student's behavior impedes their learning, that of others, and the Student's ability to access the general curriculum." (D18)
e. The Student's social-emotional goal was, "By the end of the IEP year, [w]hen interacting with peers, [the Student] will demonstrate age-appropriate interaction skills and understanding of social rules (eye contact, sharing, courtesy, taking turns, listening to others) as evidenced by a 28% on the Social Skills domain of the [District] Public Schools Social Emotional Skills Assessment." The Service Provider is the Social Worker assisted by the Special Education Teacher. The following objectives were listed:
    i. Objective 1: "By the end of the IEP year, [w]hen interacting with peers, [the Student] will demonstrate age-appropriate interaction skills and understanding of social rules (eye contact, sharing, courtesy, taking turns, listening to others) as evidenced by a 22% on the Social Skills domain of the [District] Public Schools Social Emotional Skills Assessment, by March 25, 2024."
    ii. Objective 2: "By the end of the IEP year, [w]hen interacting with peers, [the Student] will demonstrate age-appropriate interaction skills and understanding of social rules (eye contact, sharing, courtesy, taking turns listening to others) as evidenced by a 24% on the Social Skills domain of the [District] Public Schools Social Emotional Skills Assessment, by April 23, 2024."
    iii. Objective 3: "By the end of the IEP year, [w]hen interacting with peers, [the Student] will demonstrate age-appropriate interaction skills and understanding of social rules (eye contact, sharing, courtesy, taking turns, listening to others) as evidenced by a 26% on the Social Skills

domain of the [District] Public Schools Social Emotional Skills Assessment, by October 14, 2024."

iv. Objective 4: "By the end of the IEP year, [w]hen interacting with peers, [the Student] will demonstrate age-appropriate interaction skills and understanding of social rules (eye contact, sharing, courtesy, taking turns, listening to others) as evidenced by a 28% on the Social Skills domain of the [District] Public Schools Social Emotional Skills Assessment, by January 6, 2025." (D20)

f. The Statement of Special Education/Related Services indicated:

i. Special education services would be provided by the Special Education Teacher with direct service in the general education setting for 90 minutes five times a week, beginning on January 30, 2024 and ending on January 29, 2025.

ii. Social Work Services would be provided by the Social Worker with direct services in the special education setting for 20 minutes, 1 time, every fourth week beginning on January 30, 2024 and ending on January 29, 2025. (D21)

g. The following Supplementary Aids and Services would be provided (Accommodations and Modifications) during all core and elective classes with a start date of January 30, 2024 with no end date noted:

i. "Speech to text (when available and/or when requested), for lengthy writing tasks that exceed two paragraphs, [the Student] may utilize, when it is available, the speech to text feature in order to complete the written text, for the length of the written assignment."

ii. "Separate, quiet, individual setting (when requested) [during] those times that [the Student] is distracted from noises or things that [their] peers are doing that prohibit [them] from completing an assignment or assessment, for the duration of the assignment or assessment."

iii. "Extended time, [the Student] may need additional time to complete an assignment or assessment because time in class isn't enough time. [The Student] may utilize additional time to complete work when [they] has [sic] been responsible for the time that [the Student] was given originally, 1.5 times the allotted time." (D22)

h. Least Restrictive Environment (LRE) indicated, "[The Student] attends [their] local public school, where [the Student] is in the general education classroom. [The Student] will receive special education inclusion (in class) support, and [they] will have time in a special education setting for time with the Social Worker. … [The Student] will not participate in the general education curriculum for 20 minutes, one day every 4 weeks when [they] are pulled out to receive one one-on-one Social Work services." (D24)

5. According to meeting notes dated January 30, 2024, the Parent agreed with the goals, the accommodations, and the modifications. (D28)
6. The Special Education Instructor described the Student's academic skills and behaviors in an interview. They indicated that the Student had strong math scores and average reading scores. They shared that the Student was capable of independent work. However, the Student exhibited task avoidance behaviors, which sometimes required encouragement to complete assignments. The Special Education Instructor shared that last year they noticed work refusal behaviors and the Student withdrawing, and noted that those behaviors, "seemed a lot more intense this year." Additionally, the Special Education Instructor noticed that this year, "[The Student] was not arriving on time. [The Student] was showing up very late. [The Student] [would] miss half the class, or sometimes [The Student] [would] miss all of the class. I do remember there were days where [the Student] would show up and [they] would not want to go to math class in the morning because it had already started and it has started so long ago that [the Student] was like, 'I can't go.'" (Special Education Instructor Interview, P5, 10:29; 14:33)
7. The Parent described that regarding the Student's accommodations, "I know that we had made it where [the Student] would be able to stay after school once or twice a week to get caught up in the beginning. And it worked for the first quarter. And once we got [the Student] caught up, then it kind of eased up. No more staying after school. But then the second quarter, when I had attempted to try and get [the Student] to stay after school to catch up on assignments and everything, they were always too busy and never wanted to make time for getting [the Student] caught up." The Parent shared that, regarding the IEP meeting the Student's behavioral needs, "I know [the Student] has stated that [the Student] feels like [they] hover and do the work for [the Student]. [The Student] says they give [the Student] the answers, so [the Student] doesn't learn it right." (Parent Interview, P5, 18:37)
8. An email exchange between the Special Education Instructor and the District Public Schools Social Worker on September 24, 2024 noted Parent concerns that needed to be addressed, "[The Student] has a failing grade in Math. [The Parent] said [the Student] has expressed frustration that [the Student] does not understand. [The Student] is trying to catch up on missing work. [The Special Education Instructor], who is [the Student's] PI? Is this something that they can help with? [The Student's] also now failing ELA." The Special Education Instructor emailed the 8th Grade Special Education Teacher in response to the email exchange. The 8th Grade Special Education Teacher indicated the Student's low grade in math was due to attendance. (D49-D50)
9. On September 25, 2024, an email exchange between the Special Education Instructor and the 8th Grade Special Education Teacher stated, "[The Student] has a lot of math homework and I know [the Student] has several missing assignments in other classes, too. [The District Public Schools Social Worker] and I are wondering if we can come up with a plan for [the Student] to have some of [their] assignments either excused or reduced to ½ or less (depending on the content area), so the [the Student] feels that it is doable to get through this situation." (D53)

10. On September 25, 2024, the 8th Grade Special Education Teacher emailed the Special Education Instructor, "Can we have a meeting regarding [the Student]? And I would like to invite [Classroom Teacher 1 and Classroom Teacher 2] because it seems like there is a MISCOMMUNICATION concerning accommodations/modifications provided in the classrooms." (D54) In an interview, the 8th Grade Special Education Teacher said they noticed that the Student was frequently late, missing all or parts of classes. They requested a meeting "to clarify that with the gen[eral] ed[ucation] teachers, that the Student has an extended time when it comes to assignments and tests." The 8th Grade Special Education Teacher was not aware of any instances where this accommodation was incorrectly implemented. The 8th Grade Teacher also described that when they check the Student's grades, they remind teachers of the Student's accommodations and modifications on their IEP. (8th Grade Special Education Teacher Interview, P3, 07:35; P5-P6, 14:59)
11. On September 25, 2024, the Principal emailed the Special Education Instructor and the Assistant Principal, "Please let me know the outcome of the meeting with [the Student's Parent]. I am seriously considering revoking [the Student] transfer due to attendance concerns." The Assistant Principal responded, "[The Student] will go into [the behavior, social, and academic room] BASR 2nd and 8th hour to work on math and ELA. [The Parent] was supportive. We can revisit the week before [the] quarter and revoke then if [the Student] doesn't shape up." (D61)
12. The Parent emailed the District on September 26, 2024 to request the names and email addresses of the individuals involved in the Student's daily schedule. The Parent questioned the decision to refrain from sending late work home, which was intended to alleviate some of the Parent's responsibilities. The Student had expressed frustration regarding the inability to bring work home for completion. The Parent believed that staying after school once or twice a week would help the Student manage their workload more effectively. (P60)
13. According to a Synergy Contact Log, on October 8, 2024, the 8th Grade Special Education Teacher contacted the Parent concerning the Student's attendance and stated the Student's math work was posted on Google Classroom. (D173) The 8th Grade Special Education Teacher shared in an interview they did not understand the Parent's comment about the Student not being allowed to bring work home because all of the materials for the class were in Google Classroom, and if there were copies provided, they wrote the Student's name on them.to provide them at a later time. (8th Grade Special Education Teacher Interview, P4, 11:54)
14. On October 23, 2024, the 8th Grade Special Education Teacher suggested to the Parent "the idea of virtual schooling." The Parent mentioned that the Student had expressed interest in online education, "Since I have limited knowledge about the [D]istrict's virtual school, I accompanied [the Parent] to the principal's office to explore this option further. … However [the Parent] noted that gaining approval for virtual schooling might be challenging, [the Foster Care Support Program] may deny [the Parent's request]." The Principal stated during conferences that the Parent requested to move the Student

to virtual learning because the family was going through a lot. Feedback from the teachers was that the Student was highly distracted at school. (D81,D86) (8th Grade Special Education Teacher Interview, P3, 09:08)

15. During an email exchange on October 28, 2024 between a staff member and the Principal, "[The Student's] Parent showed up this morning wanting to talk to someone. … [The Parent] was telling me that [the Foster Care Support Program] is not on board with [the Student] doing virtual and said [the Parent] wants help from [the] school to advocate for virtual school. [The Parent kept saying this wasn't [their] idea and [the 8th Grade Special Education Teacher] was the one who brought up virtual." (D89; Parent Interview, P1, 02:24)
16. The District Virtual School Special Education Consulting Teacher called the Parent three times between October 28, 2024 and November 5, 2024 regarding the Student's referral to the District Virtual School. The phone conversations included the following:
    a. Call #1: Established the Parent was concerned about the Student's attendance, and when discussing the concerns with the Student's Case Manager, the Parent was told about the District Virtual School. A discussion occurred regarding special education services and how the Student could access those services. When asked if the Parent would like to enroll the Student, the Parent replied that they would have to discuss the change of schools with the Foster Care Support Program.
    b. Call #2: A follow-up with the Parent about enrollment occurred. The Parent shared that the Foster Care Support Program was "being difficult and was not in favor of [the Student's] changing schools. [The Parent] was going to speak to the guardian ad litem." The District Virtual School Special Education Consulting Teacher agreed to call the Parent back on Friday.
    c. Call #3: In a follow-up conversation with the Parent about how the conversation with the guardian ad litem went, the Parent stated that they were told the Student needed to remain at the Current Middle School. The Parent shared that they were evicted from their home and staying at the hotel across from the Current Middle School. The Parent was waiting one week to get into a new place. The District Virtual School Special Education Consulting Teacher let the Parent know the Student's name would be removed from the transfer list. (D293)
17. On November 5, 2024, the Parent emailed the 8th Grade Special Education Teacher, "I have the CASA worker asking me to see when [the Student] is due for [their] next IEP meeting [sic] can I get some clarification on this please." (P37) The 8th Grade Special Education Teacher replied, "[The Student's] IEP is due [at] the end of January 2025." (P38)
18. On November 6, 2024, the McKinney-Vento (Homeless) Coordinator emailed the Parent to let the Parent know, "Under the McKinney-Vento Act, [the Student] has the option to remain at [their] school of origin, [the Current Middle School], or to attend the school assigned to [their] residential area." (P54)

19. On November 6, 2024, the Parent emailed the District, "I did not decline transportation[.] I would like to set the record on that as I have been fighting for help getting [the Student] transportation since these other issues became a concern[.] I did say I was concerned about [the Student] refusing to go because [they have] stated [they] wouldn't ride the bus which would lead to more difficulties." (P56) The Parent confirmed in an interview that the Student refused to ride the bus. (Parent Interview, P4, 14:09)
20. The District emailed the Parent on November 8, 2024 to let the Parent know that their request for a transfer to another school, not the resident middle school, was denied. (P49) The Parent emailed the District, "I am writing to formally appeal the decision regarding [the Student's] school placement. While I understand that transfers are currently per case, I would like to emphasize that placing [the Student] at [the Home Middle School] would not be in [their] best interest, and I have serious concerns about the potential challenges [the Student] would face there. Currently, I transport my other child to school and [the Third Middle School] is on the way, which is why I feel this would be a better option for both of my children, rather than placing [the Student] at [the Home Middle School], where I am aware of numerous issues that could arise." (P53)
21. When asked about their understanding of special education placement and school location, the Parent shared, "I don't know what the difference is, honestly. I know with [the Student's] specific behavioral needs, [the Student's] not hard. … [The Student] can adapt pretty much anywhere. [The Student] probably could even adapt to [the Home School]. It's just with everything else going on in our lives, I was trying to make it easier. And so I was trying to do [the Third School] because [the Student's] already got a friend there. I felt the transition would be easier. It would be easier to get [the Student] to go to school." (Parent Interview, P9, 37:06)
22. In an interview, the Parent shared that the Student experienced "… a lot of anxiety around the [Current School], and it's not just [the Student]. I have anxiety around [the Current School] too. I don't even [like] calling to let them know [the Student's] not going to be there because there's a tone of prejudice." (Parent Interview, P2, 07:26)
23. On November 15, 2024, the 8th Grade Special Education Teacher emailed the Parent that students were working on their missing assignments in class. "However, [the Student] said [they] left [their] [C]hromebook at home. I gave [the Student] my school laptop just so [the Student] could work on some of it. Also, [the Student] has assignments that were supposed to be turned in yesterday (extended time already)." (P66)
24. On November 22, 2024, the Parent emailed the 8th Grade Special Education Teacher and the Special Education Instructor, "In retrospect, I tried to get [the Student] into a different school as requested and with the school suggesting that [the Student] was better off there that became impossible so if I would have had the school's support in moving [the Student] as we felt would be more beneficial as well as the guardian ad litem of our case felt would be more beneficial then we might be seeing a little more

progress [sic] something is bothering [the Student]. … This has been one of the issues that I have brought up a couple of times is the lack of communication does not help in me helping [the Student] if I don't know there's issues. … I had stressed assistance for getting [the Student] more reliable transportation because now we are running into the issue of a bus situation." (D115-D116)

25. The Career and Life Planning Teacher emailed the Parent on December 4, 2024, "I wanted to make you aware of an opportunity I am offering to get help to make up missing work in Career and Life Planning. Anyone that needs help completing their work would be able to stay after school tomorrow (Thursday) from 2:45-3:30, and I will have my room open to offer that help. … Of course, I am available to help students during class time as well." (D123)
26. In an email exchange between the 8th Grade Special Education Teacher and the Special Education Instructor on December 6, 2024, an alternative breakfast location was discussed, "[The Student] is asking me this morning as to what [the Student] can do if [they] come in on time? [The Student] doesn't want to eat breakfast/stay in the cafeteria with all [the] other students. I am not sure if BASR room is an option." The Special Education Instructor replied, "BASR opens up at 7:30 and [the Student's] on the guest list." (D127)
27. On December 11, 2025, the counselors and Principal were notified that the Student was absent "4 or 5 days." The Principal indicated that if the Student was not at school today, "I will make a phone call home and home visit if needed." (D129)
28. The 8th Grade Special Education Teacher emailed the Parent on December 12, 2024, "[The Student] has several assignments in IXL that remain incomplete, despite having full access to it. … The other option I am thinking is to pull [the Student] out of [their] electives today so that [the Student] can do some of those missing assignments in Math. However, the drawback to this is that [the Student] will miss elective classes that are high school credits as well." (P67)

    The Parent responded, "[The Student] is more than capable of achieving excellent grades when given the right tools and support. Unfortunately, I feel that these supports are not being offered at the level they should be, and I am concerned about the long-term impact on [the Student's] education. I have requested that [the Student] be allowed to bring [their] late work home to complete it, but this request was initially refused in person … I have also been informed that the [P]rincipal believes it would be in [the Student's] best interest to remain at [the Current School]." The Parent indicated that they thought that recommendation was contradictory since the staff suggested virtual schooling for the Student. (P68)
29. In an email exchange on December 16, 2024, the Communication Specialist from the Third Middle School in the District indicated the Parent wanted to "see what could be done to grant [the Student] a transfer to [the Third Middle School]. [The Parent] stated that [the Student] started at the [Current Middle School] while [the Student] was in foster care, and since [the Student] was doing okay, [the Parent] kept [the Student]

there this year while [the Parent] worked on getting housing. … Early in the school year, no one told [the Parent] that [the Student] was failing classes, [the Parent's] after[-]school care person told [the Parent] that." (D131)

The Current Middle School Principal replied, "There is far more to this story than what [the Parent] is sharing. … I am in daily conversation with [the Student's] case manager from [the Foster Care Support Program] as well. [The Parent] tells each person a different story. [The Parent] asked to transfer [the Student] to virtual, so I provided the paperwork. [The Foster Care Support Program] became involved at that time and stated it was not in [the Student's] best interest. [The Student] will go several days without coming to school and when [the Student] does, [the Student] has doctor notes from multiple doctor's offices in a week. We have followed protocol with filing truancy and that is what has upset [the Parent] as [the Parent] is ordered by [the Foster Care Support Program] to have [the Student] at school." (D131)

30. In an interview, the Principal indicated that they wrote a letter to the Agency "stating that the Parent had requested … [the Virtual School], but that we believe that [the Student] needed to attend in person, that we were concerned with [the Student's] number of absences. And academically, we felt like being in person, [the Student] would receive the best supports, the special education piece, and then just overall, instructionally, would be better than if [the Student] were doing it behind a computer with a self-guided independent program." The Principal indicated that the Agency had the educational decision-making power and determined that the virtual setting was not appropriate for the Student. (Principal Interview, P4, 10:07)
31. The Parent shared they had requested a meeting with the School, "I had request[ed], so when I pulled [the Student] from the School, I want to say, two days after I had called and asked for a meeting with [the Current School], and instead I was told about [the Student's] truancy. … instead of offering a meeting." (Parent Interview, P7, 27:11)
32. The Parent shared in an interview that the Home School does not "… communicate with me. They communicate with the agency. I'm the Parent. I don't know when [the Student's] grades are bad, but the State does." (Parent Interview, P3, 09:10)
33. The Lead Principal for the District emailed the Student's current Principal on December 16, 2024, "Please reach out to the Parent and set up a meeting. [The Student] is not required to attend virtual. I feel like [the Parent's] choices are [to] remain at [the Current Middle School] where the Student is currently enrolled or attend [the Home Middle School]." (D132)
34. According to an email exchange between the Principal and the Parent without a date, the Principal stated, "I understand you do not feel [the Current Middle School] is a good fit for [the Student]. I am sorry you feel that way and want you to know the teachers and staff have worked very hard for [the Student]. … When it comes down to [the Student's] grades and missing work, [the Student's] attendance has greatly affected those areas. The District has stated they would grant [the Student] a transfer to [their Home Middle School] if you do not want [the Current Middle School]. [The Third Middle

School] is not an option." (P18)

The Parent stated, "I am writing to follow up regarding [the Student's] schooling and the ongoing efforts to transfer [the Student] out of [the Current Middle School], as I understand this process has encountered significant delays. … there is an urgent need to address [the Student's] educational and behavioral needs in accordance with [the Student's] IEP. As you know, I have been advocating for an alternative to [the Home Middle School], as [the Student] has made it clear that [they] would refuse to attend, which I fear would lead to ongoing issues. … I have raised these concerns in multiple communications but have not yet seen a viable solution that considers [the Student's] behavioral needs." (P22)

35. On December 18, 2024, the Parent emailed the 8th Grade Special Education Teacher, "I just wanted to reach out about [the Student's] IEP and let you know I'm not sure about scheduling until I hear back from the people I have been talking to over the week." The 8th Grade Special Education Teacher responded, "Okay. [The Student's] IEP is not due till 01/29/2025." (D107, P42)
36. According to a grade book update with a date range of December 18, 2024 through December 20, 2024, the Student scores were listed:
    a. Math 8, F.
    b. Science 8, F.
    c. FACS 8, C and D.
    d. Phys Ed 6, A.
    e. Language Arts 8, D. (P2-P3, P17)
37. According to an email from the 8th Grade Special Education Teacher (no date) to the Parent, the Student was given an extra 30 minutes to complete a math assignment but only finished 1 out of 4 problems. Additionally, the student still had several math assignments missing. (P44)
38. In an interview, the Parent shared that the Current Middle School is not meeting the Student's needs because "… they're not communicating with me to let me know that [the Student's] not getting things turned in. [The Student's] grades aren't sufficient. … I've asked for [the Student] to stay after school, but they don't have time, and they don't make any accommodations or any other suggestions of other times [the Student] could stay after school to make up school work, and they're letting [the Student] fall behind and it feels more so that they can paint a portrait of me." (Parent Interview, P3, 11:16)

    The Parent shared, "I know that I've had my worker, my Current Worker, tell me that [the Current School] has reached out to [the Current Worker] to let [the Current Worker] know when [the Student] wasn't there. And, I'm like … they have yet to contact me. Obviously, I knew [the Student] wasn't there, but what if I had dropped [the Student] off and then [the Student] skipped? What if that was a thing? Nobody contacts me." (Parent Interview, P4, 13:05)

39. The Parent shared in an interview that their impression was that the Parent had to initiate communication with the Current School. When asked about the communication they received from teachers about the Student's progress, the Parent shared that only one teacher reached out to the Parent regarding a high school credit course, "And [the Student] was behind on a couple assignments and [the Teacher] asked if [the Student] could stay after. And I was like, 'Of course.' That was the only time I've had a teacher specifically reach out to me." (Parent Interview, P4, 15:23)
40. The January 6, 2025 IEP Progress Report described the Student's progress toward meeting their goals on several different reporting dates.
    a. On March 25, 2024, the Student met their social-emotional objective.
    b. On May 23, 2024, the Student met their social-emotional objective.
    c. On October 15, 2024, the Student met their social-emotional objective.
    d. On January 6, 2025, "Progress has been made towards the goal, but the goal may not be met by the annual IEP. Goal, Instructional strategies and student supports may need to be reviewed." (D41)
        i. The Student had a baseline average of 20% on the social skills assessment.
        ii. The short-term objective related to the goal indicated, "By the end of the IEP year, [w]hen interacting with peers, [the Student] will demonstrate age-appropriate interaction skills and understanding of social rules (eye contact, sharing, courtesy, taking turns, listening to others) as evidenced by a 28% on the Social Skills domain of the [District] Public Schools Social Emotional Skills Assessment."
        iii. The Student scored 27% in the social skills domain. "[The Student] is close to meeting [their] goal. [The Student's] comfort level with some staff has clearly improved but this is not generalizing to all staff and peers. [The Student] is introverted and that is just part of [their] personality. The Teacher's biggest concern is attendance." (D44)
41. A Notice of Meeting dated January 13, 2025 indicated a meeting to develop, review, or revise the IEP had been scheduled. The meeting was scheduled for January 28, 2025. A social worker was invited to the meeting. (P11-P12) According to a telephone message, the 8th Grade Special Education Teacher left a message which stated there was an attempt to schedule an IEP meeting and the District was told to wait. (P62)
42. On January 13, 2025, the District Communication Specialist emailed the Homeless Coordinator and the Principal, "[The Parent] was back … [The Parent] said [they] hadn't heard anything back from [the School] previous from right before the break. [The Parent] stated [they] received contact from [the 8th Grade Special Education Teacher] to set up the IEP meeting. [The Parent] said on the phone [the Parent] requested a couple of days before the time and date of the IEP not to be set as [the Parent] wants to have someone attend with [the Parent]. [The Parent] doesn't trust the school. Within an hour, [the 8th Grade Special Education Teacher] scheduled the meeting. [The

Parent] responded with an email telling [the 8th Grade Special Education Teacher] how disrespectful it was to schedule a meeting when [the Parent] asked to wait. … [The Parent] feels like [their] rights to decisions for [their] children are being taken away." (D134, P2, Parent Interview, P8, 30:48)

The current Principal responded, "My SPED teacher reached out on December 18 that they needed to get a date set. [The Parent] wasn't sure so my teacher went ahead and penciled in Jan.10. Obviously that did not happen so my teacher called [the Parent] back this morning proposing [the meeting]." (D134, D209)

43. In an interview, the Parent shared, "I have been a part of every IEP meeting when they're in foster care, [and] when they're not in foster care. I've been in every IEP meeting." Regarding the scheduling of the IEP meeting in December/January, the Parent shared they had previously requested an advocate to help navigate a situation due to past tensions. After a three-week communication gap due to winter break and weather, they were ready to schedule a meeting but wanted to reconnect with people they'd already consulted on the matter. According to the Parent, they indicated they would communicate with the school within a day or two to schedule, but the meeting was scheduled immediately "before I even made it out of the house for the day." The Parent indicated that "… because they went and scheduled the appointment that goes against my rights and my consent." The Parent indicated they "… pulled [the Student] from school, and I was trying to get [the Student] transferred out of there because of that." (Parent Interview, P5, 20:36)
44. In an interview, the 8th Grade Special Education Teacher shared that they attempted to schedule the Student's IEP meeting multiple times. Their first attempt, in December, involved an email and phone call to the Parent. The Parent stated they were seeking an advocate and could not commit to the proposed date. According to the 8th Grade Special Education Teacher, subsequent attempts to contact the Parent after winter break, including calls after a snow day, were also unsuccessful. The Parent had not found an advocate. The 8th Grade Special Education Teacher explained the IEP deadline and the 14-day notice requirement. Finally, after consulting with the Special Education Instructor, the 8th Grade Special Education Teacher scheduled the IEP meeting for January 28th, the day before the IEP was due. (8th Grade Special Education Teacher Interview, P1-P2, 02:43)
45. Communication Log entries included the following:
    a. The District contacted the Parent on September 25, 2024 by phone and in person regarding missing assignments, attendance, and tardies.
    b. The District emailed the Parent regarding the Student's absences on October 2, 2024 and October 3, 2024, and called the Parent on October 18, 2024.
    c. The Parent requested supervision for the Student due to a late pick-up on October 11, 2024.
    d. The Parent asked about the IEP due date in an email on November 5, 2024.

e. The Parent requested after-school supervision for the Student on November 15, 2024, and November 20, 2024.

f. The District proposed an IEP meeting schedule by email on December 17, 2024 and December 18, 2024.

g. On January 13, 2025, the District emailed and called the Parent regarding a proposed IEP meeting date. (D47-D48)

46. According to a Synergy Contact Log, on January 13, 2025, the 8th Grade Special Education Teacher contacted the Parent for an IEP meeting date. The Parent was still undecided due to the "request to transfer [the Student] to another middle school." (D171, D173) In an email exchange between the Principal, the Special Education Instructor, and the 8th Grade Special Education Teacher, dated January 13, 2025, the Special Education Instructor stated, "I was hoping the last email that I sent would cover it; I can respond to [the Parent] letting [the Parent] know that we are obligated to schedule a meeting 10 or more days before, as previously stated, but that we can always change the date with the 10 day waiver if [the Parent] would like to move to a different day." The Principal responded, "That is exactly what you should do-Continue documenting your attempts to schedule the meeting and pick a date and time. If [the Parent] does not attend, services will revert back to [the] current IEP." (D109)
47. On January 13, 2025, the Principal emailed the Parent, "We will take the meeting off of that date since it doesn't work with your schedule. We look forward to talking with you about a date and a time that works for you and [the Student's] school team. … We are obligated by law to schedule a meeting 10 days before the IEP is due, and as you noted, we can definitely create a Notice of Meeting to waive those 10 days, if necessary, we just have to show the state that we are following the law on our end. We will do our best to have the meeting on a day/time that works best for you. Reach out by phone or email when you are able to and we will go from there." (D143, P13)
48. According to a Synergy Contact Log, on January 22, 2025 and January 23, 2025, the District contacted the Parent to follow up, confirm the agenda, and confirm that the Guardian Ad Litum and a Foster Care Support Program representative would be attending via Google Meet. (D163-D165)
49. In an undated, Parent-created document, the Parent noted a concern about scheduling an IEP meeting against their wishes. In the document, the Parent expressed their discomfort with talking to anyone from the Current Middle School the Student attends and felt the School staff was staging their emails to the Parent. (D152)
50. An undated email indicated the Parent emailed the District, "The focus should be on finding constructive solutions that will help [the Student] move forward, rather than continuing to focus on punitive measures that do not address the root of the problem. I kindly request that a constructive and timely solution be provided, or that we schedule a meeting as soon as possible to address these concerns diligently. It is important that we work together to find a resolution that allows [the Student] to get back into school and continue [their] education in a supportive and effective environment. A prompt

response and action on this matter would be greatly appreciated, so we can move forward and ensure [the Student's] success." (P7)

51. According to a 2024-2025 Period Student Attendance Profile, the Student was absent:
    a. "Unexcused absences -10 times."
    b. "Left early absences - 5 times."
    c. "Late arrival absences - 32 times."
    d. "Unexcused absences - 9 times."
    e. "Excused absences - 135 times." (D93-D94)
52. The Parent shared in an interview that the Student's reasons for not wanting to attend school were primarily related to the Student's anxiety, "You can tell there's a lot of anxiousness about it at this point. I don't know if it's because of how the school and me [sic] are together, or if there's something going on." (Parent Interview, P4, 16:18)

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to schedule an IEP meeting at a mutually agreeable time. K.A.R. 91-40-17(a)(b1)(b4)(c)(e), K.A.R. 91-40-21, K.A.R. 91-40-25; 34 CFR §§ 300.328, 300.322(a-d), 300.501(b)(c).

According to K.A.R. 91-40-17(a)(b1)(b)(4)(c), 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. These steps shall include the following: 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, and 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. 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. Parents have the right to invite individuals to the IEP team meeting whom they believe to have knowledge or special expertise about their child. If neither parent of an exceptional child can be physically present for an IEP team meeting for the child, the agency shall attempt other measures to ensure parental participation, including individual or conference telephone calls.

K.A.R. 91-40-17(e) An agency may conduct an IEP team meeting without parental participation if the agency, despite repeated attempts, has been unable to contact the parents to convince the parents that they should participate. If an agency conducts an IEP team meeting without parental participation, the agency shall have a record of the attempts that the agency made to

contact the parents to provide them notice of the meeting and to secure the parents' participation. The record shall include at least two of the following: detailed records of telephone calls made or attempted, including the date, time, and person making the calls and the results of the calls; detailed records of visits made to the parent's home or homes, including the date, time, and person making the visit and the results of the visit. Also required are copies of correspondence sent to the parents and any responses received, as well as detailed records of any other method attempted to contact the parents and the results of that attempt.

The Parent alleged that the District scheduled an IEP meeting even though the Parent requested time to invite an additional IEP team member who knew the Student.

According to the District, the Current Middle School staff scheduled an IEP meeting at a mutually agreeable time.

The core issue was the lack of mutual agreement between the Parent and the District regarding the IEP meeting time. While the District communicated with the Parent, the Parent explicitly stated they needed time to consult with others before scheduling and asked the District to wait. The District's subsequent scheduling of the meeting contradicts the requirement for a mutually agreeable time. The District's argument that they needed to schedule the meeting due to the impending IEP deadline does not justify overriding the Parent's request to wait. The law prioritizes parental participation and mutual agreement. While deadlines are important, they shouldn't impact the Parent's right to participate meaningfully in the process. The District's documentation does not demonstrate sufficient attempts to collaborate with the Parent on scheduling after the Parent requested time to consult with others.

Rescheduling the meeting on January 13, 2025, after the initial problematic scheduling was an attempt by the District to rectify the scheduling situation. The Principal's email indicated a willingness to reschedule, but it does not, on its own, demonstrate the repeated attempts to contact the Parent specifically about scheduling that is required by the regulations. The District still needed to show they made genuine efforts to find a mutually agreeable time after the parent expressed their need to consult with others.

The statutes and regulations are also silent on whether parents and districts may agree to extend an annual IEP review, as these parties did. However, the courts that have considered this question, have ruled that when meeting the requirement for an annual IEP review date would interfere with the right of a parent to meaningfully participate in the decision making process, the better choice for the district is to give preference to the parent's right to participate. For example, in Doug C. V. State of Hawaii, 61 IDELR 91 (9 th Cir. 2013), the United States Circuit Court of Appeals addressed a situation where a district held an IEP meeting without the parents in order to meet the annual review requirement. The court said, "The more difficult question is what a public agency must do when confronted with the difficult situation

of being unable to meet two distinct procedural requirements of the IDEA, in this case parental participation and timely annual review of the IEP. The court added, "the Supreme Court and this court have both repeatedly stressed the vital importance of parental participation in the IEP creation process. We have further held that delays in meeting IEP deadlines do not deny a student a FAPE where they do not deprive a student of any educational benefit. See A.M. v. Monrovia, 627 F.3d 773,779 (9th Cir. 2010).

Based on the foregoing, according to IDEA and Kansas special education regulations, it ***is substantiated*** that the District failed to schedule an IEP meeting at a mutually agreeable time. (RELATED FACTS: 37, 43-52)

> *NOTE: When school officials are confronted with this "difficult situation " of meeting both the annual IEP review requirement and the parent participation requirement, they may attempt to meet both requirements by offering (and requesting agreement) to schedule an IEP meeting that meets the annual review requirement and also agrees, in writing, to promptly schedule another full or supplemental IEP meeting at a later date upon request of the parent.*

Issue Two

> Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP, including accommodations, after[-]school support and providing the Parent with IEP progress reports. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

According to K.A.R. 91-40-16 (b)(3), except as otherwise provided in subsection (c), each agency shall ensure that the following condition is met: an IEP is in effect for each exceptional child at the beginning of each school year.

The Parent alleged that the District created a plan with the Parent for after-school support to help the Student, but the plan was not followed.

The District asserted that the Current Middle School staff had implemented the Student's IEP, including "accommodations, after[-]school support, and provided the parent with IEP progress reports." (D4)

The District implemented the IEP as written. Accommodations were available to the Student, and the School made efforts to address the Parent's concerns. While after-school support was not a specific IEP requirement, the School explored other options and provided additional help. Communication home regarding the Student's grades and attendance, as well as an IEP Progress Reports from the 2023-25 school years indicated the School was fulfilling its reporting obligations.

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, including accommodations

and after[-]school support, and providing the Parent with IEP progress reports. (RELATED FACTS: 1-13, 23, 25, 28, 38-42, 47, 53, 54)

Issue Three

Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to convene an IEP meeting requested by the Parent to consider their concerns for the Student's needs. K.S.A. 72-3429(f); 34 C.F.R. § 300.324.

According to K.S.A.72-3429(f), each agency shall ensure that the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved. The IEP team may revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum. Where appropriate, the IEP team should include the results of any reevaluation conducted under this section, information about the child provided by the parents, the child's anticipated needs, or other matters.

The Parent alleged that the District did not respond to the Parent's request to set up a meeting to discuss support for the Student's poor academic performance.

The District explained that the Current Middle School "attempted to convene an IEP meeting requested by the Parent to consider concerns for the [S]tudent's needs." (D6)

It is the obligation of the District to review and revise a Student's IEP periodically to address a lack of expected progress toward the annual goals and in the general education curriculum and should consider information about the child provided by the parents, the child's anticipated needs, or other matters. While the Parent didn't overtly communicate, "Please schedule an IEP meeting to address my Student's needs," the information communicated to the school by the Parent and the School's internal communications around the Student's behaviors, grades in math and ELA, along with the Student's attendance clearly indicated a need for a review and revision of the Student's IEP prior to the January 2025 annual review deadline.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is substantiated*** that the District failed to convene an IEP meeting to review and revise the Student's IEP to address their unique needs. (RELATED FACTS: 6, 8-13, 15, 17, 33)

Issue Four

Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP for the Student that met their behavioral needs. K.A.R. 91-40-18(b); 34 C.F.R. § 300.320.

According to K.A.R. 91-40-1,8(b), if, as a result of its consideration of the special factors described in K.S.A. 72-3429(c) and amendments thereto, an IEP team determines that a child needs behavioral interventions and strategies, accommodations, assistive technology devices or services, or other program modifications for the child to receive FAPE, the IEP team shall include those items in the child's IEP.

The Parent alleged that the district did not implement behavioral support to increase the Student's attendance at school.

The District asserted that the Current Middle School staff "were implementing an IEP for the Student that met [their] behavioral needs." (D7)

Despite implementing the January 2024 IEP, the District failed to convene an IEP meeting to address the Student's evolving needs. This failure occurred even after the Parent provided information regarding the Student's academic, behavioral, and attendance challenges during the 2024-25 school year, and the District itself documented an increase in the intensity of the Student's behaviors.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is substantiated*** that the District failed to develop an IEP for the Student that met their behavioral needs. (RELATED FACTS: 6, 8-13, 15, 17, 33)

Issue Five

Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to offer the Student an alternate school arrangement [placement] and the Parent an opportunity to participate in decision-making regarding the School the Student would attend. K.A.R. 91-40-21(c)(1) ; 34 CFR § 300.116.

According to K.A.R. 91-40-21(c)(1), in determining the educational placement of a child with a disability, each agency shall ensure that the placement decision meets the following requirements:

a. The decision shall be made by a group of persons, including the parent and other persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options.
b. The decision shall be made in conformity with the requirement of providing services in the LRE.

The Parent alleged that the District failed to include them in the discussion of alternative school placement options and the District did not offer options.

The District responded that the Current Middle School Staff "offered the Student an alternate school arrangement [placement] and the Parent had an opportunity to participate in decision[-]making regarding the School the Student would attend." (D8)

There are three prongs in this allegation: Educational Placement/Least Restrictive Environment, School Location, and Parent Participation.

1. The educational placement and Least Restrictive Environment (LRE) of the Student was determined in the January 2024 IEP meeting to be the general educational classroom with inclusion support, with periodic pull-out time with the Social Worker. The location was a local public school.
2. The Parent wanted to discuss an alternative location where the Student could receive services. They pursued virtual school and the school transfer process.
3. The virtual schooling option was denied by an outside agency, and the Transfer request was denied by the District. However, the District offered the Student two location options: the school of origin or the Current School.

While the Parent's understanding of the nuances between educational placement and LRE and school location may have been unclear, the District's decision-making process lacked the required collaboration. Given the Parent's expressed concerns regarding the Student's academic and behavioral progress, the District should have proactively convened an IEP meeting. This meeting would have provided an opportunity to review and, if necessary, revise the Student's IEP, including a discussion of potential adjustments to their educational placement and LRE. This meeting would have also allowed the District to clarify the distinction between placement/LRE and school location, ensuring the Parent had a clear understanding of these concepts.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is substantiated*** that the District failed to offer the Parent an opportunity to collaboratively participate in decision-making regarding the Student's educational placement/LRE.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. A violation occurred in the following areas:

A. Federal regulations at 34 CFR §§ 300.328, 300.322(a-d), 300.501(b)(c) and K.A.R. 91-40-17(a)(b1)(b4)(c)(e), K.A.R. 91-40-21, K.A.R. 91-40-25) specify the 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.

   In this case, the District failed to schedule an IEP meeting at a mutually agreeable time that allowed for the Parent to meaningfully participate.

B. Federal regulations at 34 C.F.R. § 300.324 and K.S.A. 72-3429(f) specify the District's obligation to convene an IEP meeting to review and where appropriate, revise, a student's IEP due to lack of expected progress or information about the child provided by the parents.

In this case, the District failed to convene an IEP meeting requested by the Parent to consider their concerns for the Student and to review and revise the Student's IEP to address their unique needs.

C. Federal regulations at 34 C.F.R. § 300.320 and K.A.R. 91-40-18(b) specify when an IEP team determines that a child needs behavioral interventions and strategies, accommodations, assistive technology devices or services, or other program modifications for the child to receive FAPE, the IEP team shall include those items in the child's IEP.

   In this case, the District failed to develop an IEP for the Student that met their behavioral needs.

D. Federal regulations at 34 CFR § 300.116 and K.A.R. 91-40-21(c)(1) specify each agency shall ensure that placement decisions shall be made by a group of persons, including the parent and other persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options.

   In this case, the District failed to offer the Parent an opportunity to collaboratively participate in decision-making regarding the Student's educational placement/LRE.

Based on the foregoing, USD # 501 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #501 shall convene an IEP meeting to review the IEP, including information from the Parent. As appropriate, the IEP team shall revise the IEP and consider any appropriate special education placements that allows the District to implement special education and related services, as described in the Student's IEP and affords the Student a FAPE. The District shall submit a copy of the IEP, IEP amendments, meeting notes, and prior written notices to to Special Education and Title Services (SETS).
2. Within 15 calendar days of the date of this report, USD #501 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at:
   a. 34 CFR §§ 300.328, 300.322(a-d), 300.501(b)(c) 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.
   b. 34 C.F.R. § 300.324 district's obligation to convene an IEP meeting to review and where appropriate, revise, a student's IEP due to lack of expected progress or information about the child provided by the parents.
   c. 34 C.F.R. § 300.320 when an IEP team determines that a child needs behavioral interventions and strategies, accommodations, assistive technology devices or services, or other program modifications for the child to receive FAPE, the IEP team shall include those items in the child's IEP.

   d. 34 CFR § 300.116 each agency shall ensure that placement decisions shall be made by a group of persons, including the parent and other persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options.

3. Further, by March 14, 2025, USD #501 will submit a written statement of assurance to Special Education and Title Services (SETS) that the District's practices and procedures for the following have been reviewed and revised to align with federal and state requirements:
   a. IEP meetings and parent participation,
   b. IEP review and revisions,
   c. Content of IEP, and
   d. Special education placement determination.

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.gov 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. 501,
Topeka Public Schools: 25FC501-003

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on January 15, 2025, by ----------, on behalf of her child, ----------. 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 allegations, was issued on February 14, 2025. That Complaint Report concluded that there were violations of special education statutes and regulations

Thereafter, the school district filed an appeal of the Complaint Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the original complaint, the Complaint Report, the school district's notice of appeal, and the parent's response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

Preliminary Matters

A copy of the regulation regarding the filing of an appeal [K.A.R. 91-40-51(f)] was attached to the Complaint Report. That regulation states, in part, that: "Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect." Accordingly, the burden for supplying a sufficient basis for appeal is on the party submitting the appeal. When a party submits an appeal and makes statements in the notice of appeal without support, the Committee does not attempt to locate the missing support.

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

Discussion of Issues on Appeal

From Complainant

The appeal addresses the findings and conclusions for Issues 1, 3, 4, and 5.

Issue One

> Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to schedule an IEP meeting at a mutually agreeable time. K.A.R. 91-40-17(a)(b1)(b4)(c)(e), *K.A.R. 91-40-21, K.A.R. 91-40-25; 34 CFR §§ 300.328, 300.322(a-d), 300.501(b)(c).*

The investigator concluded that, in violation of Kansas regulation K.A.R. 91-40-17(a)(1) and federal regulation 34 C.F.R. 300.322(a)(2) the district failed to schedule an IEP meeting at a "mutually agreed upon time."

The findings of fact, from finding 41 on page 20 of the report to finding 49 on page 23 adequately supports that conclusion.

This a perplexing area of the law, where legal requirements clash. The IEP meeting scheduled for January 28, 2025 was indisputably not an agreed upon time. Yet, it is clear from the report findings (41 to 49) that school officials were willing to be flexible on the meeting date, as long as the meeting took place within the timeline of another regulation that requires IEP meetings to occur at least annually. Finding-of-fact 47, on page 23 illustrates the district's good faith attempt to comply with both the requirement to meet at a mutually agreed upon time and to meet within the annual timeline, quoting the principal's January 13, 2025 e-mail, saying,

> *We will take the meeting off of that date since it doesn't work with your schedule. We look forward to talking with you about a date and a time that works for you and [the Student's] school team. … We are obligated by law to schedule a meeting 10 days before the IEP is due, and as you noted, we can definitely create a Notice of Meeting to waive those 10 days, if necessary, we just have to show the state that we are following the law on our end. We will do our best to have the meeting on a day/time that works best for you. Reach out by phone or email when you are able to and we will go from there.*

What are school officials to do when these two legal requirements clash? The regulations do not address that question. When there is ambiguity in the law, we look to how the courts have interpreted the ambiguity. That is precisely how the investigator handled this conflict in the investigation report. On page 26 of the report, the investigator cited the highest level court (the United States Circuit Court of Appeals) to ever rule on this exact issue: choosing between parent participation in an IEP meeting or meeting the annual IEP review requirement. There the investigator explained that:

> *The statutes and regulations are also silent on whether parents and districts may agree to extend an annual IEP review… However, the courts that have considered this question, have ruled that when meeting the requirement for an annual IEP review date would interfere with the right of a parent to meaningfully participate in the decision making process, the better choice for the district is to give preference to the parent's right to participate. For example, in Doug C. V. State of Hawaii, 61 IDELR 91 (9th Cir. 2013), the United States Circuit Court of Appeals addressed a situation where a district held an IEP meeting without the parents in order to meet the annual review requirement. The court said, "The more difficult question is what a public agency must do when confronted with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, in this case parental participation and timely annual review of the IEP.*

This court answered its own question, saying:

> *When confronted with the situation of complying with one procedural requirement of the IDEA or another, we hold that the agency must make a* ***reasonable*** *determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE.* ***In reviewing an agency's action in such a scenario, we will allow the agency reasonable latitude in making that determination*** *(emphasis added)."*

The court added:

> *"the Supreme Court and this court have both repeatedly stressed the vital importance of parental participation in the IEP creation process. We have further held that delays in meeting IEP deadlines do not deny a student a FAPE where they do not deprive a student of any educational benefit. See A.M. v. Monrovia, 627 F.3d 773, 779 (9th Cir. 2010) ("Whether or not Defendant exceeded the thirty-day limit, A.M. suffered no deprivation of educational benefit and therefore has no claim."). Under the circumstances of this case, the Department's decision to prioritize strict deadline compliance over parental participation was clearly not reasonable."*

Based on this guidance, the investigator concluded that the district made the wrong choice by proceeding with scheduling the IEP meeting to meet the annual IEP review date instead of scheduling the meeting at a mutually agreed upon time. The Appeal Committee has reviewed all the evidence it received from these parties and agrees with the conclusion of the investigator.

Although, the Circuit Court instructed that school districts are to be given "reasonable latitude" when making this decision, the background for that instruction is that the agency must "make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE." The Appeal Committee interprets this instruction to mean that the better choice for school districts is to give reasonable preference to the parent's right to participate. Thus, when balancing these two requirements, the greater weight must be

applied to parent participation. This means that the "reasonable latitude" to be afforded to school districts that choose the option of meeting the annual review date over parent participation rights applies only when districts have given parents multiple options to participate and the parents have unreasonably rejected all the options presented to them. That is not what happened in this case.

The report indicates that the district proposed an IEP meeting by e-mail on December 17 and 18, 2024, but makes no further reference of that request (Finding 45(f). On January 13, 2024, a Notice of Meeting was issued indicating a meeting to develop, review, or revise the IEP had been scheduled for January 28, 2025, the day before the annual review date (Finding 41 & 44). Thereafter, on the same date (January 13, 2024), there were a series of e-mail exchanges ending with the district agreeing to remove the scheduled meeting (Finding 46, 47). Nevertheless, on January 22 and 23, the district contacted the parent to confirm the meeting agenda (Finding 48), and the meeting was held on January 28, 2025.

The Appeal Committee believes the district officials acted in good faith. They did what they believed they were legally required to do under difficult circumstances. However, the Appeal Committee finds that the district erred by placing greater weight to the IEP timeline requirement than to the parent participation requirement when it scheduled this IEP meeting without first giving parents multiple options to participate and the parents unreasonably rejected all the options presented to them. Under the specific facts of this case, the Appeal Committee concludes that the district did not meet the requirements for "reasonable latitude" in making its decision.

*The Appeal Committee is aware that the relevant regulations, K.A.R. 91-40-25(b)(1) and 34 C.F.R. 300.322(a)(2) require that districts are to schedule IEP meetings at a "mutually" agreed upon time, not at the parent's sole discretion. The conclusion on this issue reflects the Committee's view that the district failed to sufficiently try to find a "mutually" agreed to meeting date, and not that parents have sole discretion over the decision.

*The Appeal Committee also agrees with the investigator's note on page 27 of the report, where she advises:

> *When school officials are confronted with this "difficult situation " of meeting both the annual IEP review requirement and the parent participation requirement, they may attempt to meet both requirements by offering* ***(and requesting agreement)*** *to schedule an IEP meeting that meets the annual review requirement and also agrees, in writing, to promptly schedule another full or supplemental IEP meeting at a later date upon request of the parent.*

Issue Three

Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to convene an IEP meeting requested by the Parent to consider their concerns for the Student's needs. *K.S.A. 72-3429(f); 34 C.F.R. § 300.324.*

The investigator determined that the district was in violation of federal regulation 34 C.F.R. § 300324(b)(i) and state statute K.S.A. 72-3429(f), which requires periodic review of the IEP to determine whether IEP goals are being met and to address "any lack of expected progress toward the annual goals and in the general education curriculum." This requirement is in addition to the annual review requirement and is conditioned on the extent to which a student is making appropriate progress.

The reason given in the report for concluding that the district was in violation of this additional requirement was,

> *While the Parent didn't overtly communicate, "Please schedule an IEP meeting to address my Student's needs," the information communicated to the school by the Parent and the School's internal communications around the* ***Student's behaviors, grades in math and ELA, along with the Student's attendance clearly indicated a need for a review and revision of the Student's IEP prior to the January 2025 annual review deadline*** *(emphasis added). See p. 28 of Report.*

The district's appeal cites multiple attempts it made to help the student catch up on his school work. Ultimately, the plans were not successful, in large part because of excessive absences.

Finding 51, on page 24 of the Report says:

1. According to a 2024-2025 Period Student Attendance Profile, the Student was absent:
    a. "Unexcused absences -10 times."
    b. "Left early absences - 5 times."
    c. "Late arrival absences - 32 times."
    d. "Unexcused absences - 9 times."
    e. "Excused absences - 135 times." (D93-D94)

Finding 36, on page 18 of the report says:

1. According to a grade book update with a date range of December 18, 2024 through December 20, 2024, the Student scores were listed:
    a. Math 8, F.
    b. Science 8, F.
    c. FACS 8, C and D.
    d. Phys Ed 6, A.

e. Language Arts 8, D. (P2-P3, P17)

The Appeal Committee agrees with the investigator's conclusion that the combination of severe absenteeism and poor grades were ample cause for early intervention by this student's IEP Team well in advance of the annual IEP review date.

Issue Four

Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP for the Student that met their behavioral needs. *K.A.R. 91-40-18(b); 34 C.F.R. § 300.320.*

The student's behavior was addressed in Finding of Fact 4(d) as follows:

a. The Student was given the [District] Public Schools Social Emotional Skills Assessment (TPS SESA). The assessment had five domains. The Student scored:
   i. "Behavior with adults-78%, and 48% for special education students with social work."
   ii. "Behavior with peers-76% for a general education, and 48% for a special education student with social work."
   iii. "Emotional regulation -80% for a general education student, and 40% for a special education student with social work."
   iv. "Engagement -80% for a general education student, and 42% for a special education student with social work."
   v. "Social skills-80% for a general education student, and 42% for a special education student with social work."
   vi. "Overall Average- 80% for a general education student and 46% for a special education student with social work." (D16-D17)
   vii. "The Student's behavior impedes their learning, that of others, and the Student's ability to access the general curriculum." (D18) (Emphasis added).

Finding of Fact 6 is as follows:

> *The Special Education Instructor described the Student's academic skills and behaviors in an interview. They indicated that the Student had strong math scores and average reading scores. They shared that the Student was capable of independent work. However, the Student exhibited task avoidance behaviors, which sometimes required encouragement to complete assignments. The Special Education Instructor shared that last year they noticed work refusal behaviors and the Student withdrawing, and noted that those behaviors, "seemed a lot more intense this year." Additionally, the Special Education Instructor noticed that this year, "[The Student] was not arriving on time. [The Student] was showing up very late. [The Student] [would] miss half the class, or sometimes [The Student] [would] miss all of the class. I do remember there were days where [the Student] would show up and [they] would not want to go to math class in the morning because it had already*

> ***started and it has started so long ago that [the Student] was like, 'I can't go.'"*** *(Special Education Instructor Interview, P5, 10:29; 14:33) (Emphasis added).*

Finding of Fact 34 (in relevant part), is a portion of an undated e-mail from the parent to the principal as follows:

> ***"there is an urgent need to address [the Student's] educational and behavioral needs in accordance with [the Student's] IEP*** *(Emphasis added). As you know, I have been advocating for an alternative to [the Home Middle School], as [the Student] has made it clear that [they] would refuse to attend, which I fear would lead to ongoing issues. … I have raised these concerns in multiple communications but have not yet seen a viable solution that considers [the Student's] behavioral needs."*

The district's appeal says that "The evidence suggests the student did not have behavioral needs and that when he attended school, his behavior was appropriate." The Appeal Committee disagrees. Instead, the evidence supports the investigator's finding on page 29 of the report that, "Despite implementing the January 2024 IEP, the District failed to convene an IEP meeting to address the Student's evolving needs. This failure occurred even after the Parent provided information regarding the Student's academic, behavioral, and attendance challenges during the 2024-25 school year, and the District itself documented an increase in the intensity of the Student's behaviors (emphasis added)."

The Appeal Committee agrees with the investigator's conclusion that, "the District failed to develop an IEP for the Student that met their behavioral needs (Report, p. 29).

Issue Five

> Whether USD #501 in violation of state and federal regulations implementing the individuals with disabilities Education Act (IDEA) failed to offer the student an alternate school arrangement [placement] and the parent an opportunity to participate in decision making regarding the school the student would attend.

The alternate school arrangement involved whether the student would attend school at either the school of origin or the "current middle school" (Report, p. 13, 17, 18, 30). The investigator treated this issue as a "change of placement" issue that included least restrictive environment (LRE) components, and concluded that "the district should have proactively convened an IEP meeting (Report, P. 30). The district appeals this conclusion, characterizing the request as a "building transfer" request.

The Appeal Committee agrees with the district. This was not a placement or LRE dispute because it did not involve educational environment issues such as whether the student would be educated in a regular education or a special education environment. It involved only physical location issues,

principally what school building the student will attend. That kind of decision, relating only to the physical location of attendance, is made by school administration officials, not by IEP teams.

The report is reversed on this issue.

Conclusion

For the reasons stated herein, the conclusions in the Complaint Report are sustained on issues one, three and four.

The conclusion in the Complaint Report is overturned on Issue five. Corrective Action ordered for Issue 5 is rescinded, meaning any corrective action related to the placement issue is rescinded. That specifically includes the "placement" considerations in Corrective Action 1, paragraph d. of Corrective Action 2, and Line-d. of Corrective Action 3. All other Corrective Actions remain in effect.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 4th day of March, 2025.

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 #458
ON JANUARY 28, 2025

DATE OF REPORT: FEBRUARY 27, 2025

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 #458, Basehor-Linwood Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #458.

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 January 28, 2025, and the 30-day timeline ended on February 27, 2025.

Allegations

The following issue will be investigated:

Issue One

Whether USD #458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), disclosed confidential mediation information and provided this confidential information in subsequent proceedings. K.S.A. 72-3438(g); 34 CFR(b)(6)(8).

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video on February 13, 2025. The District's Director of Special Education and the Mediator were interviewed on February 14, 2025.

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 relevant materials were used as the basis of the findings and conclusions of the investigation:

1. Complaint (25FC458-003), 1/28/25
2. District Response, 1/31/25

3. KSDE Special Education Services, re: formal complaint request form, 01/27/25
4. NOTICE OF MEETING, 04/01/24
5. Meeting Notes, 04/10/24
6. Prior Written Notice, 04/15/24
7. Investigation Finding Appeal, 01/24/25
8. Email, re: 24MN458-001 Mediation Request, 05/13/24
9. REQUEST FOR MEDIATION, 04/11/24

Background Information

This investigation stems from a prior Complaint (25FC458-002) filed by the Parent, which the District appealed. While the District's appeal successfully overturned the initial decision on one allegation, the District submitted a Mediator's email as evidence that mediation had concluded. Following the reversal of the initial decision, the Parent filed this Complaint in response to the documentation the District provided during the appeal of Complaint 25FC458-002.

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Parent, the Director of Special Education, and the Mediator.

1. A Notice of Meeting dated April 1, 2024 indicated:
    a. A proposed meeting for April 10, 2024 to discuss possible changes to the IEP, conduct an annual review of the IEP, and discuss results from the Functional Behavior Assessment (FBA) and the review of the Behavior Intervention Plan (BIP).
    b. The Parent signed the document on April 2, 2024 and indicated they would attend the meeting.
2. Meeting Notes dated April 10, 2024 indicated:
    a. The Director of Special Education requested mediation, and the Parent agreed.
    b. The team reviewed the FBA and BIP.
    c. The Parent did not want to review the draft IEP at the time of the meeting.
    d. The team agreed to have a mediation session prior to reviewing the draft of the annual IEP.
3. A Prior Written Notice (PWN) dated April 15, 2024 indicated:

a. The team met on April 10, 2024 to review special education and related services needed by the Student and any additions, changes, or modifications required for the Student to meet their IEP goals.

b. The Parent proposed, and the team agreed, to amend the IEP to reflect new services and accommodations rather than conduct an annual review.

    i. The team wanted to participate in mediation before moving forward with an annual review to hopefully resolve confusion about data being used in the progress reports.

c. In the section titled "Explanation of Why the Action is Proposed or Refused," the PWN stated, "The team agreed to amend the IEP rather than conduct the annual review per the parent's request because there is confusion about the data being used via the progress reports. The team would like to participate in mediation to resolve this prior to moving forward with the annual review."

d. A draft IEP was provided to the Parent before the meeting, but the team did not continue with the annual review per the Parent's request.

4. In an interview with the Complaint Investigator, the Mediator indicated that the parties engaged in an "… in-person mediation on May 1st, 2024, and then I was engaged with the parties with, I would call them informal post-mediation communications through email and telephone … . I know that at some point, the Parents asked me to end the mediation process, and then I sent an email telling the State Department basically that I'm stopping the post-communications, and so we ended in an impasse. … On May 13, 2024, I sent an email talking about that the Parents had communicated to me that they would like to end the post-mediation discussions, and so I let the School District and my contact at the State know that information, and I considered my file closed at that point."

5. Regarding the sharing of confidential information in the email that the Mediator sent to the District on May 13, 2025, the Mediator shared in an interview with the Complaint Investigator that "… so I think I can tell you, so I told the School District that the [Parents] communicated to me that they would like to end post-mediation discussions and move forward with their due process, and formal complaints. So I don't consider that confidential information, but I did communicate that to them."

6. In an interview with the Complaint Investigator, the Mediator described the communication process to end mediation and indicated that "I wouldn't say it's standard. … I thought this was a little bit unusual … unusual that I get this abrupt, "I want to end the mediation now," and I don't remember specifically the details of what was going on, but it looks like from my emails that I felt like I needed to let the State and the School District know. … I know in my email I say I was in another mediation today, so I think what happened is somehow I got this message from the Parents that day, and so

in the evening, I sent these emails because I felt like it was important communication that I needed to pass along."

7. An email dated May 13, 2024, from the Mediator to the Director of Special Education stated, "… the [Parents] communicated to me that they would like to end post-mediation discussions and move forward with their due process and formal complaint(s)."

8. The Confidentiality Pledge, signed by the parents on April 11, 2024 and the Director of Special Education on April 10, 2024, indicated:

    a. "The parties are not allowed to tell anyone about discussions which occur during the mediation process. This includes statements made, settlement proposals made or rejected, and the reasons an agreement was not reached … . … However, the parties may discuss information, on a need[-]to[-]know basis, with appropriate staff and professional advisors."

9. The District's Investigation Finding Appeal, dated January 24, 2025, indicated:

    a. While the District contended the annual IEP was not completed by the IEP due date, it was not a violation of state and federal regulations because:

        i. The District held an annual IEP review meeting on April 10, 2024, which demonstrated a good faith effort to meet the required time frame. During this meeting, both parties agreed to mediation, which took place on May 1, 2024, and was ended by the Parent on May 13, 2024; and

        ii. "The district scheduled the IEP meeting for August 15, 202[4], which is 10 school days after the parents chose to end post-mediation discussions and move forward with due process and state complaints (see email from [the Mediator] dated May 13, 202[4])."

10. On January 27, 2025, the Parent alleged in their Complaint that the "… District's appeal includes references to confidential communications from the mediation process [the Director of Special Education] authorized and included these references." In an interview with the Complaint Investigator, the Parent specified that the District "used an email from our mediator … the KSDE mediator that we had. [The Director of Special Education] used that as evidence as to why the KDSE found [it] wrong, that it was not an appropriate finding." The Parent's understanding was that neither party "that agrees to be in mediation is allowed to use any type of communication of mediation in any subsequent cases, appeals court cases, anything along those lines because it's protected communication for all parties."

    The Parent indicated in an interview with the Complaint Investigator that to enter into mediation, "There's a contract that we signed … [and] … mediation communication was very protected for just that duration."

11. In an interview with the Complaint Investigator, the Director of Special Education shared, "I just included the email … from the mediator that mediation has ended, and I think that upset [the Parent]. … I did not state anything that occurred during mediation. I just stated that I … included the email from [the Mediator]. The Director of Special Education indicated that their only experience regarding the notification of changes during the mediation process was … "with [the Mediator] and [the Mediator] responded. [The Mediator] let us know that mediation ended via email."

12. The Director of Special Education shared in an interview with the Complaint Investigator that they did not share the Mediator's email dated May 13, 2024 with anyone else or in any other documents or communications, "I did not violate the confidentiality agreement, and I don't know what the regular course of action is to indicate that a mediation has ended because I've only done this once and the mediator responded via email without disclosing any additional information." The Director of Special Education indicated that their reasoning for providing the May 13, 2024 email in the appeal communication was to show that mediation ended on that date.

Positions of the Parties, Applicable Regulations, and Conclusions

ISSUE ONE: Whether USD #458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), disclosed confidential mediation information and provided this confidential information in subsequent proceedings. K.S.A. 72-3438(g); 34 CFR(b)(6)(8).

According to K.S.A. 72-3438(g), "Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process."

The Parent alleged that on May 13, 2024, the Mediator emailed the Director of Special Education and shared that the Parents "had decided to terminate post-mediation discussions and proceed with due process and formal complaints." The Parent indicated they believed that the information "disclosed in this email reflects substantive discussions and decisions directly connected to the mediation process," violating confidentiality protections afforded during the mediation process.

The District alleged the email they shared from May 13, 2024, did not reveal any details about mediation discussions. The District stated the email only indicated the Parent's desire to conclude the post-mediation process. According to the District, nothing was shared regarding statements made, settlement proposals made or rejected, or the reason an agreement was not reached. The District indicated this did not violate confidentiality. The District stated the email was sent to the KSDE, which appointed the special education mediator and already knew who the mediator was. The District alleged the email was sent as evidence in an appeal to the findings of a complaint lodged by the Parent. The District stated a response to a state complaint was not a due process hearing or a civil proceeding.

Kansas law K.S.A. 72-3438(g) states that mediation discussions are confidential and cannot be used as evidence in later civil proceedings or due process hearings. Participants may be required to sign a confidentiality agreement before mediation begins.

The purpose of mediation confidentiality is to foster open communication and encourage settlement by protecting all aspects of the mediation process from later use in specified proceedings. The statute explicitly states that mediation discussions "cannot be used as evidence in later civil proceedings or due process hearings," both of which are formal legal processes. A special education appeal is neither a civil proceeding nor a due process hearing. The appeal was an administrative process within the Kansas education system. Additionally, the District's use of the Mediator's email from May 13, 2024 was limited to establishing a timeline of events for the appeal. The date on which the mediation process ended was a relevant fact for demonstrating the District's efforts to comply with procedural timelines. The District did not use the email to gain any strategic advantage or to reveal any protected information about the mediation itself.

Finally, the statute needs to be read carefully. The statute (K.S.A. 72-3438(g)), as indicated earlier in this report, says, "Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings… ." Accordingly, it is only the "discussions" that occur during the meeting that are confidential. For example, a participant could not allege in a later civil proceeding that in the conversation during the mediation session a school official admitted that certain IEP services were not provided or that a parent admitted his/her child did not need a particular service. it is these kinds of "discussions" that cannot be used in a subsequent proceeding. This statute does not make any other information confidential, including the agreement itself (which is certainly admissible in a court proceeding seeking to enforce the mediation agreement), as contemplated by paragraph(f)(4) of the very same statute, stating that "the agreement may be enforced in state or federal court." How could that occur if the agreement could not be used later in court. For the purpose of this complaint, there is nothing that prohibits the parties or the "mediator" from reporting the results of the mediation to the parties or to the state department of education. Indeed, the Kansas State Department of Education (KSDE) is required to report mediation resolution data to the United States Department of education (USDE), and routinely asks the mediator to send KSDE a copy of any mediated agreement so that it can verify that resolution was achieved. Moreover, in order to ensure that special education mediations are completed as required by law, KSDE requires state mediators to inform it, at minimum, whether the mediations they handle are successful or unsuccessful.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the District disclosed confidential mediation information and provided this confidential information in subsequent due process or civil proceedings.

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.gov 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 #253, EMPORIA PUBLIC SCHOOLS
ON JANUARY 30, 2025

DATE OF REPORT: FEBRUARY 26, 2025

This report is in response to a complaint filed with the Kansas State Department of Education against USD #253 (Emporia Public Schools) 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 parent", "the father" or "the complainant" and ---------, --------- mother will be referred to as "the parent", "the mother" or "the complainant".

The complaint is against USD #253 (Emporia Public Schools). In the remainder of the report, USD #253 will be referred to as "the district" and the Flint Hills Special Education Cooperative provides special education support for the district and will be referred to as "the cooperative". The student currently attends the eighth grade at Emporia Middle School which will be referred to as the "middle school" in the remainder of the report. In the remainder of this report, school and district staff will be referred to as follows:

- Tara Glades, Director of Student Services at the cooperative
- Morgan Pearson, Assistant Principal
- Christine Dragonas, School Counselor
- Marni Downing, Special Education Instructional Coach (IC)
- Deirdre Deiter, School Psychologist
- Zak Brandon, Intensive Resource (IR) special education teacher and student's case manager
- Judy Smith, 2nd Intensive Resource (IR) special education teacher
- Signe Truelove, student's special education teacher in 2023-2024
- Chris Lyman, English Language Arts (ELA) teacher

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 30, 2025.

Evidence Reviewed

USD #253 made the following staff available for interviews on February 12, 13 and 20, 2025 as part of this investigation.

- Director of Student Services at the cooperative

- Intensive Resource (IR) special education teacher/case manager
- 2nd Intensive Resource (IR) special education teacher

During the investigation, the Complaint Investigator, Nikki Crawford, reviewed all evidence and documentation provided by the district and the parents. Additionally, the complaint investigator contacted the cooperative, parents, general education ELA teacher, IR special education teacher/case manager, 2nd IR special education teacher and assistant principal on February 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 19 and 20, 2025 by phone and email to clarify evidence and documentation.

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:

1. Screenshots of autism evaluation recommendations from psychologist and speech language therapist sent by the mother, no date
2. Template of the student's daily behavior tracking sheet, no date
3. Most current Functional Behavioral Assessment (FBA) dated February 28, 2023
4. Student attendance record from January 2024 through February 6, 2025
5. Student's Behavior Log Entries screenshot dated January 19, 2024 - January 28, 2025
6. Annual IEP and signed PWN dated February 20, 2024
7. Team meeting notice for annual IEP dated February 20, 2024
8. IEP At-a-Glance dated February 20, 2024
9. Behavior Intervention Plan (BIP) dated February 20, 2024
10. Progress report for behavior intervention plan (BIP) dated May 15, 2024
11. IEP Amendment, team meeting notes documenting movement to intensive resource (IR) classes and, signed PWN dated September 4, 2024
12. Screenshot of special education instructional coach's calendar reflecting a team meeting to discuss the student's IEP on September 9, 2024
13. Progress report for behavior intervention plan (BIP) dated October 8, 2024
14. IEP Amendment, team meeting notes and signed PWN dated October 14, 2024
15. Progress report for behavior intervention plan (BIP) dated December 11, 2024
16. Written Notice of Short-term Suspension After Informal Due Process Hearing dated January 28, 2025
17. Email from the mother to school administrators requesting a manifestation determination dated January 28, 2025
18. Narrative of January 28, 2025 behavior event written by the assistant principal, resulting in three days of OSS and one day of ISS, dated February 4, 2025
19. Phone call between the cooperative's director and investigator on February 4, 2025

20. Phone call between the parents and investigator on February 4, 2025
21. Email from assistant principal to director noting the number of times the parents were requested to pick their daughter up early in the past 12 months, sent on February 5, 2025
22. Email exchange between the mother and investigator February 6, 2025
23. District response to the formal complaint allegations dated February 7, 2025
24. Drafted IEP dated February 10, 2025
25. Drafted BIP dated February 10, 2025
26. Interview with the IR teacher/case manager on February 12, 2025
27. Email exchange with the ELA teacher on February 13, 2025
28. Interview with the director on February 13, 2025
29. Email exchange with the assistant principal on February 17, 2025
30. Email exchange with the assistant principal on February 18, 2025
31. Phone interview with the 2nd IR teacher on February 20, 2025

Background Information

The subject of this complaint is a 13 year old young woman enrolled in the 8th grade at the middle school during the 2024-2025 school year. She lives at home with her family including three siblings. The student attended a Head Start program in the community where she also attended elementary school. In November of 2022 the student was formally diagnosed with level 2 autism and a receptive speech delay. According to the mother, she first qualified for an IEP in third or fourth grade with other learning disabilities as the qualifying exceptionality. It is also noted in her 2022 IEP that the student has a diagnosis of ADHD and essential tremors. The student entered the current middle school in December of 2022, transferring from a cooperative member district.

The student's current IEP as of the filing of this complaint is dated February 20, 2024. It states that she has a math goal and a behavior goal. She qualifies for 232 minutes per day, 5 days per week of special education support outside of the general education setting for specially designed instruction in math, language arts, science and social studies. Additionally the student receives special transportation 5 days per week. There are 14 supplementary aids and services noted in the current IEP including; 1) checking for understanding, 2) frequent breaks, 3) extended time for assignments, 4) audio/visual cues or prompts, 5) alternative setting for testing, 6) text-to-speech for district and state assessments, 7) guided notes during note taking, 8) assignments read aloud, 9) use of music as a sensory aid, 10) chunking assignments, 11) calculator and multiplication chart, 12) folder to organize paperwork, 13) use of fidgets and 14) permission to doodle during class. The student also has access to school counselors and emotional check-ins with her case manager.

Issues Investigated

Based on the written complaint and an interview with the complainant, three issues were identified and investigated.

Issue One

Did USD #253 follow the student's IEP specific to the implementation of the behavior intervention plan during the past 12 months?

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. 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.

Parent Position

The parents expressed concern that their daughter's BIP is not being consistently implemented and reported in the January 30, 2025 complaint that "I have on record that administration/teachers did not follow the BIP" and "The school did not follow the BIP today per the admission on [phone] recording by the assistant principal." In the February 4, 2025 interview the mother shared, "the crisis intervention part of the BIP was not implemented at all in this current OSS [Out of School Suspension] issue".

District Position

In the district response dated February 7, 2025 they stated, "The district believes they have followed the BIP for this student over the past 12 months. We believe that the fidelity of the implementation of the BIP is one of the primary reasons this student is experiencing her current level of success. This student has had few, if any behavioral issues during the past 12 months".

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. It is noted that the behaviors of "severe disrespect to adults and inappropriate language" as they are defined in the Written Notice of Short-term Suspension document, which resulted in ISS and OSS are not included as a BIP goal nor is there mention of these behaviors anywhere in the IEP.

2. The most current FBA was completed on February 28, 2023 and states that the behavior being evaluated was "not following directions".
3. In the current IEP, February 20, 2024, in the Goal and Benchmarks/Objectives section the behavior goal states, "By the end of the IEP year, when presented with a classroom task, [student] will comply with teacher requests with 2 or fewer prompts 90% of the time". In the Positive Behavioral Intervention Plan (BIP) the goal is listed as, "Tend to task (tending to task looks like following directions given from an adult). For clarity, in the remainder of the report the behavior goal will be noted as tending to task/following requests.
4. In the interview with the director on February 13, 2025 she stated that tending to task/following requests was the behavior chosen by the IEP team at the February 2024 IEP because "it was the most troubling behavior the student was dealing with at the time".
5. The February 20, 2024 IEP recorded parent and teacher concerns supported by classroom observations that the "chromebook continues to be a problem", particularly when related to transitioning from the use of her chromebook.
6. In the BIP, under the header Crisis intervention and Supports for the targeted behavior of tending to task/following requests, is a list of "options to offer for de-escalation" include; offering a cool down space, giving her space to regulate, adults limiting interactions, and positive praise from adults when the student makes a positive choice. Additionally, strategies to use during a crisis include; no staff talking to the student, providing the student with space and avoiding power struggles.
7. Also in the Crisis intervention and Supports sections is guidance for "Instances of chromebook misuse" which include; redirection if she is not using her chromebook appropriately, loss of chromebook for the remainder of class if behavior continues, return of chromebook before leaving the classroom and paper copy or alternative materials so she can complete her work.
8. In the interview with the IR teacher/case manager, he shared that he was "well trained on the student's BIP by the previous case manager, the special education director, school administrators and the counselor". Additionally he met with the general education teachers who had worked with the student to gather additional information.
9. The student's IR special education teacher also reported that prior to the student's first day in his classroom he met with the paraprofessionals who work in his classroom to review the student's BIP, ensured they each had the student's IEP Snapshot and took primary responsibility for the student until the paraprofessionals had an opportunity to build relationships with the student.
10. In the email exchange with the ELA teacher on February 12, 2025 when asked whether he implemented and trained on the student's BIB he stated, "I have always done my best to follow her behavior plan, though I have never had to progress beyond offering a place to cool down. I feel [current IR teacher] and [special education teacher for 2023-2024] explained her plan to me and helped me put it into practice.

11. In a phone interview on February 20, 2025 the 2nd IR special education teacher stated that she knew the student had a BIP and that she was trained on the BIP.
12. A screenshot of the special education instructional coach's calendar reflects a team meeting to discuss the student's IEP on September 9, 2024. In attendance were the assistant principal, school counselor, general education teachers and the IR teacher.
13. In the interview with the director she shared that each grade level has a "color team" who meet regularly to discuss curriculum modifications and accommodations and that special education teachers are members of these teams.
14. In an email from the assistant principal when asked how the school administrators ensure implementation of BIPs, she replied, "BIPS are shared with all staff. We know all staff are implementing BIPs by observing through classroom walk throughs, team and individual discussions, and through classroom data tracking sheets created by teachers."
15. In the parent complaint and during the interview with the parents, they shared that the school did not follow the BIP strategies during the January 28, 2025 incident resulting in three days of OSS and one day of ISS.
16. When asked if the January 28, 2025 incident had anything to do with use of the student's chromebook or following staff instructions, the assistant principal replied, no.
17. In a phone interview on February 20, 2025 the 2nd IR special education teacher, the teacher who initially notified the counselor that the student was struggling behaviorally on February 28, 2025, that the incident was not related to use of the chromebook. She also shared that the student was not using her chromebook that day.
18. In email communication with the assistant principal she stated that the use of OSS and ISS for the student on January 28, 2025 was inline with the consequences for any student exhibiting these types of behaviors.

CONCLUSION

The LEA is responsible to ensure the IEP is followed and in this case the BIP goal of attending to task/following requests was not the presenting behavior for the behavior incident of concern in the parent's complaint. Teacher reports and school training documentation reflect appropriate training and implementation of the stated BIP goal.

The parent's claim that the BIP was not followed during the January 28, 2025 incident resulting in OSS and ISS. While it is certainly understandable that the parents were concerned about their daughter missing instruction, the behavior goal stated in the IEP of tending to tasks/following requests, was not related to the behaviors (severe disrespect to adults and inappropriate language) for which the student received OSS and ISS. Nowhere in the IEP does it discuss severe disrespect to adults and inappropriate language, the behaviors noted in the January 28, 2025 incident, but rather references the student's difficulty transitioning from the use of her chromebook and attending to task/following requests. It does not appear that the BIP was in any way meant to address severe disrespect and inappropriate language. Per IDEA,

staff are responsible to follow the strategies stated in the BIP for the behavior goal stated in the BIP, however staff are not responsible to follow the strategies in the BIP for any challenging behavior the student might exhibit. IDEA protections specifically include implementation of behavior goals stated in the BIP, not all challenging behaviors.

It is also important to note that, unless specifically excluded by an IEP, nothing in the law of special education removes the authority of school administrators to impose an OSS or ISS when deemed appropriate. While a BIP must be implemented as written in an IEP, school officials retain their authority to suspend students who violate school rules, even for behavior that is specified in a BIP. This authority is limited only to the extent that the law limits the number of days of suspension for any student with a disability who has an IEP.

Based on the foregoing, it is found that the student's behavior intervention plan was not developed to address the behavior that resulted in the disciplinary action on January 28, 2025 and therefore the district is found to be *IN compliance* with IDEA regulations for this incident.

Issue Two

Did USD #253 address lack of progress on the student's IEP specific to the behavior intervention plan during the past 12 months?

Applicable Law

Federal regulations at 34 C.F.R. §300.324(b) mandates that the IEP team must review the IEP periodically, but not less than annually, to ensure that it is effective in addressing the student's needs. If the IEP is not working, the team is required to revise it to address: 1) any lack of expected progress toward the annual goals; 2) the results of any reevaluation; 3) information about the child provided to, or by, the parents; and 4) the child's anticipated needs.

Parent Position

The parents feel their daughter is not making sufficient progress on her BIP and reported in the January 30 2025 complaint that, "we are in the third year and no change in her behaviors". In the February 4, 2025 interview the mother stated, "This has been an ongoing, consistent issue and has taken too much time. I have been called out of work repeatedly and actually not able to have a job due to the number of times I've been called away from work".

District Position

The district stated in the February 7, 2025 response, "There has been no lack of progress on the student's IEP that has been specific to the behavior intervention plan", and that according to the student's progress reports she is showing consistent progress on her current behavior goal of "complying with teacher requests". Additionally, the district notes they are proposing to add a behavior goal at the upcoming IEP meeting on February 10, 2025 to address the socially

inappropriate language which was the reason for "3 of the 5 behavior log entries" in the past 12 months.

Analysis: Findings of Fact

The following finding of facts is based upon a review of the documentation and interviews with both parties. The findings of Issue One are incorporated herein by reference.

1. The most recent annual IEP meeting at the time of the filed complaint was held February 20, 2024 with meetings to update and amend the IEP on September 4, 2024 and October 21, 2024. The annual IEP meeting was held February 10, 2025.
2. According to the IR teacher/case manager, data are collected daily as to whether the student was on task and followed directions.
3. The district shared the student's progress reports for the student's behavior goal of tending to task/following requests for May 2024, October 2024, and December 2024, each of which reflect progress on the behavior goal.
4. According to the student's behavior log entries in the past 12 months there have been six documented behavioral issues which include; one refusal to give up her computer, two instances of taking something without asking, and three instances of inappropriate language, the last of which occurred on January 28, 2025 resulting in the three days of OSS and one day of ISS.
5. According to email communication from the assistant principal, the parents have been asked to pick-up their daughter from school once in the past 12 months, which was on January 28, 2025.
6. It is noted that the drafted BIP prepared for the February 10, 2025 IEP meeting includes the following new behavior goal, "By the end of the IEP year (February 2026), [student] will use school-appropriate language in social situations and academic settings 90% of the time as measured by staff observation".

Conclusion

IDEA requires that the IEP team must review the IEP periodically, but not less than annually, to ensure that it is effective in addressing the student's needs.

In this case, data was collected and progress reports shared with the family in a timely manner. Additionally, the student made sufficient progress on the IEP behavior goal in the past 12 months.

It is also noted that in the IEP meeting held during this investigation period, on February 10, 2025, the team agreed to include "use of school-appropriate language" as an IEP behavior goal as a response to the January 28, 2025 incident.

Based on the foregoing, USD #253 did address behavioral progress and is found to be ***IN compliance*** with IDEA regulations.

Issue Three

Did USD #253 fail to hold a manifestation determination meeting as required by IDEA in the past 12 months?

Applicable Law

§300.536(a)(1)(2)(i) Change of placement because of disciplinary removals. (a) For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if—(1) The removal is for more than 10 consecutive school days; or (2) The child has been subjected to a series of removals that constitute a pattern—(i) Because the series of removals total more than 10 school days in a school year;

Parent Position

The parents reported that their daughter has experienced a change of placement as a result of multiple Out of School Suspensions (OSS) and is due a manifestation determination review. In the January 30, 2025 complaint report they stated, "I have a right to request a manifestation determination and I am".

District Position

The district stated in the February 7, 2025 response, "This student has experienced no Out of School (OSS) or In School (ISS) Suspensions, aside from the consequence that was implemented as a result of the 1/28/2025 behavior incident".

Analysis: Findings of Fact

The following finding of facts is based upon a review of the documentation and interviews with both parties. The findings of Issues One and Two are incorporated herein by reference.

1. The February 7, 2025 district response states, "After reviewing all behavior documentation, there were a total of 3 days of OSS for the student so far for the 24-25 school year." They also shared, "There were also no ISS or OSS days for this student from January 2024 to December 2024".
2. Behavior log entries shared by the district confirm the district's statement above.

Conclusion

In this case, the student has only received three days of OSS in the 2024-2025 school year, nor were there removals in the 2024 spring semester. The removal of the student for three days of OSS does not meet the IDEA definition of change of placement because the student was not removed for more than 10 consecutive school days in a school year, or subjected to a series of removals that constitute a pattern within a school year.

According to IDEA, change of placement is necessary to require a manifestation determination review.

Based on the foregoing, USD #253 was not required to hold a manifestation determination meeting as required by IDEA in the past 12 months and is found to be *IN compliance* with IDEA regulations.

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 evidence of the implementation of the behavior intervention plan during the past 12 months. Corrective action is not required.
2. ISSUE TWO: A violation of 34 C.F.R. §300.324(b) was not found based on the regular review and documented progress on the behavior intervention plan during the past 12 months. Corrective action is not required.
3. ISSUE THREE: A violation of §300.536(a)(1)(2)(i) was not found based on the number of days the student was removed within the 2024-2025 school year. 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.gov 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 #418
ON JANUARY 15, 2025

DATE OF REPORT: MARCH 3, 2025

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 #418, McPherson (McCSEC) Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #418.

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 January 15, 2025. Mediation paused the timeline on January 23, 2025, and the investigation resumed on February 5, 2025. The 30-day timeline ended on March 3, 2025.

Allegations

The following six issues will be investigated:

ISSUE ONE: Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), provided the least restrictive environment when the Student was "separated and secluded in a room … " and not able to participate in the general education classroom. K.A.R. 91-40-1.(II); K.S.A. 72-3420; 34 CFR § 300.116.

ISSUE TWO: Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's healthcare plan or accommodations related to the Student's Type 1 Diabetes and other health needs, including not allowing the Student to drink water or use the restroom, and failing to offer restroom breaks or change the Student's pull-ups. Further alleged was that the Student was receiving occupational and physical therapy from a paraprofessional, the online speech therapy was not effective for the Student, the behavior intervention plan was not being implemented, and the social skills instruction was not being provided. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

ISSUE THREE: Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), offered the Student access to non-academic and extra-curricular activities such as recess. K.A.R. 91-40-1(ttt); 34 CFR § 300.117.

ISSUE FOUR: Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), developed an IEP that included accurate data regarding the Student's behavior, positive behavioral supports, or an accurate behavior intervention plan. The Complaint further alleged that the staff working with the Student were not appropriately trained to work with the Student. K.A.R. 91-40-18; 34 CFR §300.320.

ISSUE FIVE: Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), provided the Student with the special education placement as described in the Student's IEP. Further, the Complaint alleged that the Parent has requested an alternate placement, and the District had not considered this request. K.A.R. 91-40-21 ; 34 CFR §§ 300.224, 300.116.

ISSUE SIX: Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), provided the Student with a free appropriate public education (FAPE). The Complaint alleged that "[the Student] has regressed academically, behaviorally, and on [their] potty training, and now shows signs of P.T.S.D., anxiety, and stress." K.A.R. 91-40-1(z); 34 C.F.R. § 300.101.

Investigation of Complaint

The Complaint Investigator interviewed the Parent by video on February 19, 2025. District staff were interviewed on February 24, 2025 and February 25, 2025.

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

1. Complaint, 02/6/25
2. District Response, 02/26/25
3. Behavior data and graphs, 09/9/24
4. Training schedule, 01/18/25 rescheduled for 2/3/25
5. Behavior consultant log, 08/20/24-12/20/24
6. Data summary, no date
7. BIP, no date
8. Crisis plan, no date
9. Evaluation and Eligibility Report, 05/15/24
10. IEP, 05/15/24
11. PWN re: eligibility ... CONSENT, 05/15/24

12. Teacher information page, 05/17/24
13. Doctor's note, 04/19/24
14. Ambulatory clinic notes from [Hospital], 8/14/20
15. Medical management for Diabetes, 08/24
16. Checklist for Proper Documentation of Initial Placement, 08/13/24
17. Communication log, 08/02/24-01/16/25
18. Consult log for OTR, 09/19/24-12/03/24
19. Student Observation Summary, ATBS Technical Assistance Consultant, 10/25/24
20. TLC Notice of Meeting, re: develop IEP, parent signed to waive rights for 10-day PWN of meeting, 08/06/24
21. TLC PWN, re: amending IEP and parent consent, 08/12/24
22. Team meeting notes, re: PT, OT, busing, heath care plan, 09/11/24
23. IEP Amendment, 08/13/24
24. Skill point log, 08/09/24
25. Emergency Safety Intervention Documentation Form (ESODF), TLC Incident Reports, skills charts re: biting, kicking, aggressive behavior, 08/19/24, 08/26/24, 08/27/4, 08/28/24
26. TLC meeting notice, re: discussing changes to IEP, 09/03/24
27. TLC PNW and Consent, re: Spec Ed, related service, placement, addition, modification, 09/11/24
28. TLC meeting notes, 09/11/24
29. TLC IEP, 08/12/24
30. ESODF, TLC Incident Reports, skills charts re: biting, kicking, aggressive behavior, 09/03/24, 09/05/24-09/30/24
31. TLC Notice of Meeting, re: changes to IEP, 09/23/24
32. ESODF, TLC Incident Reports, skills charts re: biting, kicking, aggressive behavior, 10/03/24-10/30/24
33. [Student] NOM Audit Report, 11/07/24
34. Notes, re: behavior, 11/14/24
35. Notes for IEP team meeting, 11/18/24
36. TLC team notes, 12/9/24
37. TLC team meeting notes, 01/15/25
38. Team meeting notes, 01/15/25
39. Daily Log, 08/12/24-01/17/[25]
40. [Student] attendance log, 08/14/24-01/29/25
41. TLC progress report, 12/20/24
42. School text communication, 12/02/24-12/20/24

43. School text communication, 01/06/25-01/17/25
44. Field Trip Documentation, re: Student, 09/12/24-01/12/25
45. Emails from 08/01/24 through 02/26/25

Background Information

This investigation involved a third-grade student enrolled at the Transitional Learning Center (TLC) on a shortened day schedule in USD #418. The Executive Director described the TLC, "… The TLC is a special purpose day school. This is the most restrictive setting available for students. There are no students that attend TLC without a disability. The special purpose day school does not offer all of the same opportunities to students in a typical general education setting due to the nature and focus of the program. The goal is to always work with students to support the development of emotional regulation skills and student success in order to begin a transition back to a less restrictive environment."

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 Student is nine years old and attends third grade at the TLC at a non-school location. The Student is on a shortened day schedule.
2. A medical report dated April 19, 2024 indicated, "[The Student] … needs special educational services due to a complex genetic neurological disability."
3. On May 15, 2024, the Student was found eligible for special education services under the category of Other Health Impairment (OHI) and Speech Language Disabilities (SL). The Student was diagnosed with the following:
    a. Cerebellar Cortical Dysplasia;
    b. Dystonia;
    c. Joubert Syndrome with ocular defect;
    d. Oculomotor Apraxia; and
    e. Type 1 Diabetes.
4. According to an Evaluation and Eligibility Report (Re-evaluation) dated May 15, 2024, the re-evaluation indicated that additional modifications to services were needed to enable the Student to meet IEP annual goals and participate as appropriate in the general curriculum. Gross and fine motor concerns were noted. The following assessments and results were listed:
    a. The Test of Visual-Motor Integration (VMI): average visual attention.
    b. Fine Motor: No dominant hand preferred, struggled with cutting; can dress themself.
    c. The Student did not attempt any handwriting trials.

d. Physical Therapy: Test of Gross Motor Development-3rd Edition (TGMD-2) indicated the following results:
    i. "Locomotion-25%."
    ii. "Ball Skills-1%."
    iii. "Gross Motor Quotient-4%."
e. Social/Emotional Behavior: The Behavior Assessment System for Children-Third Edition (BASC-3) listed the following results:
    i. "Externalizing Problems-Clinically Significant, Parent 85, Teacher 88."
    ii. "Hyperactivity-Clinically Significant, Parent 76, Teacher 79."
    iii. "Aggression-Clinically Significant, Parent 90, Teacher 89."
    iv. "Conduct problems, Clinically Significant, Parent 76, Teacher 88."
    v. "Learning problems, Clinically Significant, Teacher 70."
    vi. "Behavioral symptoms index, Clinically Significant, Parent 77, Teacher 79."
    vii. "Atypicality, Clinically Significant, Parent 77, Teacher 93."

5. Relevant items from the IEP from the Student's previous school dated May 15, 2024 indicated the following:
    a. The Student's re-evaluation was on May 15, 2024.
    b. Student Strengths: The Student could identify when they were getting angry in three out of five situations before showing physical aggression. The Student was curious and interested in trying new things. The Student made progress in reading. Additional Student strengths were:
        i. Could spell the words cat, fat, mat, bat, hat, rat, sat, pat, wet, bet, set, met, mop, and top, using phonemic hand gestures to prompt in sounds in 4 out of 5 sessions. The Student could give a verbal sentence independently with practiced words in 2 out of 5 sessions.
        ii. Could write their name without assistance.
        iii. Could add or subtract lower-level numbers with the answer being five or less using mental math and can add or subtract using manipulatives with the answer being 10 or less.
        iv. Could identify numbers 0-20 in 2 out of 5 learning sessions.
        v. Could be very sweet and hardworking when they were up to it.
        vi. Had some good receptive language skills.
    c. The Student's Present Levels of Academic and Functional Performance included:
        i. Health: The Student was diagnosed with diabetes mellitus type 1 on December 15, 2023.
        ii. Motor: The Student did not require specially designed adaptive physical education.

iii. Fine Motor: The Student demonstrated average visual attention on the Visual Motor Integration but had difficulty cutting and holding scissors.

iv. General Intelligence: The Student was not administered any formal cognitive assessment "owing to [their] reluctance to engage and the manifestation of extreme behaviors in situations where the Student feels overwhelmed." The Special Education Teacher completed a comprehensive Kindergarten Readiness Checklist. It was noted that "[The Student] can complete simple puzzles, focuses and pays attention during an activity such as story time, and engages in memory games."

v. Social-Emotional: The Student's behavior impeded the learning of themself and others. The Student had shown extreme physical aggression, resulting in being placed in the safe room for [their] safety, the staff, and other students' safety. "The Student has spit at the window, urinated on the floor, taken off [the Student's] clothes, made threats to kill staff, curses and other verbal aggression."

d. The Student's goal in behavior was "In 36 instructional weeks, [the Student] will be able to refocus, use safe hands, calm body while choosing a calming technique (deep breathing, calming corner, safe room, asking for one more minute) when given a verbal prompt (green day behavior) by staff and or adult, in 4 out of 5 situations."

e. The Student's goal in reading was, "In 36 instructional weeks, [the Student] will be able to identify the letter names and sounds of all 26 letters in 4 out of 5 sessions."

f. The Student's goal in written language was, "In 36 instructional weeks, [the Student] will demonstrate improved letter formation and legibility in writing [their] first and last name with appropriate size, shape, and spacing by using the three-lined writing paper or similar paper. [The Student] will demonstrate this skill in 4 out of 5 trials as measured by teacher-generated writing probes and or district allowable measures, while inside the resource room."

g. The Student's goal in math was, "In 36 instructional weeks [the Student] will score 5/16 correct on a curriculum based second[-]grade math numbers and operations probe in 2 out [of] 3 trials as measured by teacher[-]generated math probes and or district allowable measures, while inside the resource room."

h. The following communication goals were listed:

i. Goal 1: "Within 36 instructional weeks, [the Student] will produce age-appropriate sounds (l,s,z) in all positions of words and phrases with at least 80% accuracy as demonstrated on 3 of 4 data opportunities."

ii. Goal 2: "Within 36 instructional weeks, when completing activities or picture description tasks, [the Student] will use grammatically correct sentences targeting subject-verb agreement (verb tense-present/past regular and irregular, future tense) with 80% accuracy, over two consecutive data collection dates, as measured by the SLP, when completing targeted activities in the speech room."

i. The following Accommodations/Modifications/Supplementary Aids were listed with the location of "all classrooms including general education and special education," with a start date of May 15, 2024 and an end date of May 14, 2025:
    i. Record 1: "[The Student] will have all written language read aloud to [the Student] either by person or electronic device (text to speech)."
        1. Frequency: "Whenever written language is present on assignments, tests, and exams in all classrooms including general education and special education."
        2. Duration: or the duration of the assignment, test, and or exam."
    ii. Record 2: "[The Student] will not have tests, exams, or progress monitoring timed."
        1. Frequency: "When given an exam, test, or progress monitoring [the Student] will not be given a timed exam (example: Oral reading fluency 1 minute)."
        2. Duration: "For the duration of the exam, test, and or progress monitoring."
    iii. Record 3: "[The Student] will be given 2 minutes [of] think time to problem solve without redirection."
        1. Frequency: "When given a task, progress monitoring, directions given, and assignment is given."
        2. Duration: "[The Student] will be given the task, progress monitoring, directions read aloud, and or assignment. Once item is read, [the Student] will receive 2 minutes of think time prior to being prompted to answer the question/task. After 3 total wait times, (total of 6 minutes, 3 prompts), [the Student] will be moved to the next item to complete."
    iv. Record 4: "Scribe will be provided."
        1. Frequency: "For all in-class assignments, projects, and assessments that require writing."
        2. Duration: "Until the completion of the assignment and or project."
    v. Record 5: "Reteaching when [the Student] doesn't understand the material presented to [the Student]."
        1. Frequency: "For all in-class directions, assignments, projects, and tests."
        2. Duration: "[The Student] will be given initial directions, class assignments, projects, and tests with all students and then asked for understanding. If [the Student] does not understand, directions will be restated in a simpler manner up to three additional times. If [the Student] is still not understanding the assignment test, project will be modified to a simpler version and or counted as a no count."
    vi. Record 6: "Breaks and/or redirection will be offered when [the Student] shows frustration."

1. Frequency: "When [the Student] shows frustration during a work task."
2. Duration: "[The Student] will be given redirection first when [the Student] becomes frustrated with a work task. (Safe hands, calm body, prompt for breathing exercise). If redirection is not successful within one minute, a break (calming corner, walk, soft task) will be offered."

vii. Record 7: "Breaks will be offered when [the Student] becomes frustrated and requests a break or is prompted by staff to take a break."

1. Frequency: "[The Student] will ask for a break when frustrated and/or prompted to ask for a break when frustrated."
2. Duration: "[The Student] will be allowed to take a break when frustrated, either by request and or prompted. [The Student] will have no less than 2 minutes and no more than 5 minutes for break. [The Student] will only be allowed one break per 10 minutes of task demand."

viii. Record 8: "[The Student] will be given a soft task (something easier than the task asked of [the Student] prior to escalation, these are already learned skills that come easy to [the Student] after being escalated to assist in returning to work task."

1. Frequency: "[The Student] will be given a soft task after exiting the safe room, or high escalation situation.'
2. Duration: "[The Student] will be given a soft task after a high escalation behavior. [The Student] will be given a soft task such as (1 to 1 correspondence, matching, felt board activity, etc.) before returning to previous task asked of [the Student] to complete. Once the soft task is completed, [the Student] will be given the initial task prior to escalation."

j. Supports for School Personnel indicated, "The special education staff is available to help with questions that the general education staff may need assistance with. This may include working to modify assignments or teaching strategies to help [the Student] be successful within the least restrictive environment."

k. Educational Placement indicated the Student received special education outside of the general education classroom. The team first considered placement in the regular environment with supplementary aids and services. The team determined that the "nature or severity of the Student's disability is such that placement in the regular education environment with supplementary aids and services cannot be achieved satisfactorily." The Student was placed outside of the regular environment. No harmful effects were anticipated as a result of the recommended placement.

l. The Parent was informed of the Student's progress at least one time every quarter, at least as often as parents are informed of their nonexceptional children's progress.

m. Specially Designed Instruction beginning August 14, 2024 and ending May 15, 2025, included:

   i. Special education services in a Non-School Location for 250 minutes one day every week and 270 minutes 4 days every week for "core math, core ELA, social[-]emotional learning, and other academics."
   ii. "Consult occupational therapy services [for] 10 minutes, [one time] every month in a [s]pecial [e]ducation setting."
   iii. "Pull-out speech and language services [for] 20 minutes [one] day per week in a [s]pecial [e]ducation setting."
   iv. "Consult physical therapy services for 15 minutes, [one time] every 9 weeks in a [s]pecial [e]ducation setting."

6. A Prior Written Notice For Identification, Special Education, and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated May 15, 2024 indicated a substantial change in placement and documented the IEP amendments.
7. An email exchange between the Executive Director of Special Education and the Program Coordinator stated, "We have a student moving in from [the Previous District]. In talking with [the Previous District], the behavior classroom was not successful and they created their 'own' specialized program off-site for [the Student]. It was staffed with a teacher and a para (so 2 on 1). [The Student] will need a TLC placement and parents are on board. [The Student] is only able to manage ½ day of school: 8-12:30 at the end of the year. I don't know if [the Student] can transport with others or not. That's a convo [sic] I'll need to have with [the Parent] now that we know the TLC is [their] LRE."
8. Regarding the Student's placement, the Executive Director of Special Education described the following in an interview with the Complaint Investigator:
   a. The Student moved into the District with an existing IEP in which the District County Cooperative was able to provide an equivalent LRE, ensuring continuity of services, which explained the rationale for not considering a more restrictive placement like a placement in a TLC.
   b. The PAUSE program was a less restrictive setting for students who experienced autism with lower-level behaviors. The Student was not considered for this program.
9. A TLC Notice of Meeting dated August 6, 2024 indicated a meeting to develop the IEP for the Student.
10. The amended IEP dated August 12, 2024 indicated a Behavior Intervention Plan (BIP) was needed. The Service Summary indicated the Student would receive the following from August 14, 2023, through May 14, 2025:
    a. Special Education/Specialized instruction at a special day school for behavior, 200 minutes weekly, behavior 195 minutes four days a week, and speech/language 20 minutes, one day a week.
    b. Social Work Services at a special day school for behavior 45 minutes, four times a week and 45 minutes four days a week for emotional regulation and appropriate social skills.
    c. Special Education/Transportation, extracurricular, behavior, 80 minutes five days a week.

d. Special Education Services/Instructional Support, indirect services for behavior, 15 minutes 1 day every 4 weeks for behavioral consultation to assist behavioral management and updates.

e. Related Services included:

i. OT for indirect services: fine motor, 10 minutes, one day every week.

ii. PT for indirect services: gross motor, 10 minutes, one day every week.

iii. School Nurse services- indirect services, health, 30 minutes, one day every four weeks.

iv. School Nurse services: special day school, health, 30 minutes, five days every week. "The Student requires nursing services to address/support [their] diabetes."

11. A Request for Consent for Special Education Action indicated the Parent consented to the special education placement dated August 12, 2024. IEP Meeting Notes reported, "The Student attends a day school program outside of [their] neighborhood school building, will only have access to identified peers 100% of [their] school day and will not have access to the general education curriculum and experiences. [The Student] currently has a shortened school day due to inability to maintain for a longer period of time."

12. A Checklist for Proper Documentation of Initial Placement dated August 13, 2024 indicated the Student would be provided special transportation and that the nurse was notified about the Student.

13. The unsigned, amended IEP dated August 13, 2024 [sic] added the following to the social-emotional performance: "When [the Student] becomes dysregulated, [the Student] demonstrates aggressive behavior towards staff that includes biting, pinching, hitting, scratching, hair pulling or lunging towards adults. [The Student] also engages in self-injurious behaviors by biting [themself]. On occasion, [the Student] will try to elope from the classroom, remove [their] clothing, and urinate. These behaviors occur on average about 1 time per week and last 7 to 10 minutes." The Executive Director of Special Education indicated in an interview with the Complaint Investigator that the dates on the goals for this document were incorrect and 2024 was the correct year. The following new goals were described:

a. Social/Emotional Goal 1: "By October of 202[4] [the Student] will display appropriate responses to frustration 80% of the time by displaying self[-]calming strategies (sensory support, movement break, deep breathing, deep pressure, activity etc.) or taking a break when frustrated."

b. Social/Emotional Goal 2: "By October of 202[4], [the Student] will use [their] words 75% of the time to express [their] emotions and needs."

c. Social/Emotional Goal 3: "By October of 202[4], [the Student] will increase [their] school day, from 90 daily minutes to 420 daily minutes (Full School Day)."

d. Reading and writing goals were created.

14. In an interview with the Complaint Investigator, the Parent shared the following:

a. Regarding occupational and physical therapy, "My understanding is that [the Student] is supposed to have hands-on physical, speech, and occupational therapy … . Unfortunately, we've never actually been able to get [the Student] to cooperate with occupational therapy. So, if they're actually doing it, I'm very surprised. But as I understand it, at this school, they have the paras do the physical therapy. I don't know anything about occupational, and as for speech, it is done through a Zoom call, which [the Student] does not participate in."

b. Regarding physical education, the Parent shared, "They do not allow [the Student] to go outside for anything. They don't allow [the Student] out of the room that [the Student] is in. They don't even allow [the Student] to go to the bathroom. So there is no outside time. There is no playtime, there is no physical exertion at all throughout [the Student's] day there. They don't have a gym. They don't do any of that, not with my child." The Parent described that the Student is confined to a room for long periods of time with minimal movement. The Parent shared that the Student was not allowed to go outside because, on one occasion, the Student refused to come back into the school and was found naked outside. The Parent indicated the school refused to take the Student outside after that incident.

c. The Parent described that while the Student was not a big fan of being outdoors, the Student played with siblings outside. The Parent confirmed that when the Student is determined to stay outside, it is difficult to get the Student to come back inside.

15. The Teacher shared the following in an interview with the Complaint Investigator:

a. The Student rarely used the restroom at school, even when prompted during natural breaks in activities. The Teacher indicated the Student would typically decline, saying, "No thank you." While the Parent took the Student to the bathroom upon arrival, and staff offered throughout the day, the Student infrequently went to the bathroom. According to the Teacher, a bathroom schedule was not initially in place but was added to the Student's schedule after the Parent raised concerns. The Teacher described that the Student had not been present to implement the scheduled bathroom breaks.

b. According to the Teacher, the Student's "best" attendance occurred in August and September.

c. The Teacher shared that the Student is allowed to stand in class, but when the Student becomes aggressive, they asked that the Student sit to determine compliance, "So if [the Student] [has] been escalated and [the Student] hasn't been safe … then we'll say, 'If you want us to return to work with you, then you need to sit down so that we can know that you're safe.'"

d. Regarding drink breaks, the Teacher shared, "… I don't really count them. They are offered drinks, but kind of at the same time after physical activities, they've gone to the bathroom and coming back and just the natural breaks. [The Student] was always asked if [they] needed a drink. [The Student] also has the ability to have snacks because of [the Student's] diabetes."

e. The Teacher indicated they were not involved in the implementation of the healthcare plan. Regarding snacks and water, the Teacher shared, "The snacks [the Parent]

provides don't have anything that needs insulin or non-carbs" and that the Student didn't usually want them.

f. Regarding the Student's access to water, the Teacher shared, "[The Parent] always said to try to push water if [the Student's] blood sugar was getting high. So we always encouraged [the Student] to drink more … ." The Teacher said the Student was never denied water and that it "was offered at least every hour."

16. In an interview with the Complaint Investigator, the Nurse shared the following:
    a. Regarding eating lunch and checking blood sugar, "I do know that [the Student] would refuse to have [their] blood sugar checked because of the neurological disorder [the Student] has and behaviors, and also at times [the Student] would refuse to eat. … So we would give [the Student] some time and ask [the Student] if [the Student] was ready to be checked and if [the Student] wasn't, we would set a timer and give [the Student] some time to calm down if [the Student] needed to and ask [the Student] to be checked again. And if [the Student] refused, we would give [the Student] one more chance after 10 or 15 minutes to be rechecked. And then, at that time, if [the Student] refused, the three chances is what [the Parent] and staff agreed on." After three chances, the Nurse indicated that they would let the Student go and would later ask, "Are you ready to be checked?" The Nurse was not aware of a time when the Student did not receive blood checks or meals due to staff errors or staff shortages.
    b. Regarding bathroom usage and water breaks, the Nurse shared, "Staff would offer [the Student] to go to the bathroom or offer [the Student] water and if [the Student] would say no, they would just wait and offer that again at another time." The Nurse was not aware of any specific intervals or set times for offering the Student water or bathroom breaks and did not know if they were ever denied due to staffing issues or errors.
    c. The Nurse shared that they did not provide direct services to the Student; they were provided through nurse delegation. Staff, including a licensed practical nurse, received training from the Nurse on August 16, 2024, covering blood sugar checks, doctor's orders based on blood sugar levels, and insulin administration based on carbohydrate intake. According to the Nurse, no follow-up training was needed, and the nurse delegation training was included in the health plan review.
17. According to a Medical Management for Diabetes Record dated August 2024 the Student's blood glucose monitoring occurred mid-morning and pre-lunch by staff. During the A.M. time, the Parent would send a snack. The Student would drink 6-8 oz. of water every hour when glucose was elevated.
18. An undated Behavior Intervention Plan (BIP) was completed when the Student was in third grade. "Data from the FBA indicated a need for the following BIP:"
    a. Behavioral Descriptions:
        i. "Emotional/Behavioral Outburst. … yelling, crying, physical aggression toward self and others, verbal aggression, elopement."
        ii. "Removal of [the Student's] own clothes and/or peeing in inappropriate places, and destruction of property or attempts for destruction."

b. Behavior Data:
    i. "[The Student] [attended] the TLC on August 19, 2024, … attendance a total of ten days."
    ii. "Physical aggression toward others: on 8 of 10 days."
    iii. "Aggression toward self: on 6 of 10 days."
    iv. "Elopement: on 2 of 10 days."
    v. "Removal of clothes: on 5 of 10 days."
    vi. "Peeing: on 3 of 10 days."
    vii. "Verbal aggression/Threats: on 6 of 10 days."
    viii. "Episodes lasted a minimum of 8 minutes …. to as long as 2 hours and 40 minutes."
    ix. "Fire alarm pulled on two occasions."
c. "Behavior function- Attention: positive or negative from staff."
d. "Behavioral goal: [The Student] will be able to refocus, use safe hands, calm body while choosing a calming technique (deep breathing … safe room, asking for one more minute) when given a verbal prompt by staff in 4 out of 5 situations."
e. "Reinforcement:
    i. "Give frequent positive reinforcement."
    ii. "Opportunity to participate in desired activities."
    iii. "Opportunity to reintegrate back into more activities with [their] peers."
    iv. "Individual/Flexible schedule."

19. A Behavior Consultation Log indicated the following:
    a. August 20, 2024 - the School Psych/Behavior Consultant met with the TLC Principal and TLC Teacher to discuss learning strategies to meet the Student's needs. "The Behavior Consultant will observe the Student."
    b. August 23, 2024 - an observation of behaviors during blood sugar level testing was completed. A discussion of using a preferred task while checking blood sugar such as videos on the Promethean Board [occurred]. TLC concerns continue to be [the Student's] physical aggression during [their] checking of blood sugar levels."
    c. August 30, 2024 - a "Team meeting /discussed creating a Crisis Cycle for staff to follow during [the Student's] escalation. [The Behavior Consultant] met with the CPI trainer regarding strategies for prevention of restraints. [The] Team did discuss the safety of staff and other students."
    d. November 14, 2024 - "Provided TLC Principal an example of a regulation schedule. This schedule provided relationship[-]building with staff and peer times, sensory times, academic work times, and movement times. These activities are built into the day, and times of work expectations are around 15 min. Use of first/then language for non-preferred tasks. Recommended to have a peer come to [the Student] for unconditional relationship building with peers."

20. In an interview with the Complaint Investigator, the Executive Director of Special Education shared that they were involved in all of the Student's meetings. They also shared the following related to the team considering whether the Student may experience autism:
    a. The decision to not further pursue or consider the autism diagnosis for the Student related to the Parent's assertion that the Student's behaviors were due to Joubert syndrome. The School focused on supporting the Student based on Joubert syndrome's characteristics.
    b. The School had "… both our behavior consultants and autism consultants … to look at physical space, present some ideas for increasing visuals, helping structure because we recognized [the Student] had [their] own unique needs and we wanted to make sure we were aligning our strategies and supports to be more similar" to what had been at the Student's previous school.
    c. The School consulted with TASN and Kansas Behavioral Support, and adjustments were made to support the student. A daily preference assessment was implemented to identify the Student's current interests and use them as motivators. According to the Executive Director of Special Education, the Student's irregular attendance prevented consistent implementation of the strategies.
21. According to a Comment Log with a date range of August 12, 2024 through January 17, 2025, the following relevant entries included:
    a. "8/16-Nurse's Training for Health Care Plan."
    b. "8/19-Nurse for support. [The Student] did not get blood checked and did not eat lunch. 11:00-12:00 due to safety."
    c. "8/23-Staff for COPING Model after ESI."
    d. "9/6-Autism team for ideas."
    e. "10/16-At home ABA scheduled to start up again."
    f. "10/30-Behavior Supports to set up training for staff."
22. According to an Attendance Log with a date range of August 14, 2024 through January 20, 2025 the following attendance percentages were noted:
    a. From August 14, 2024 through August 30, 2024, the Student attended class 46% of the time.
    b. From January 6, 2025, through January 29, 2025, the Student attended class 18% of the time.
23. Behavioral referrals indicated the following:
    a. August 19, 2024: kicking and biting; was restrained for 1 minute and secluded for 18 minutes.
    b. August 20, 2024: physical assault/self-harm; was able to return to class; restrained for 2 minutes and secluded for 8 minutes.
    c. August 26, 2024: physical aggression; was restrained for 2 minutes and secluded for 8 minutes.

d. August 27, 2024: physical aggression; was restrained for 1 minute and secluded for 2 minutes.
e. August 28, 2024: physical aggression; was secluded for 8 minutes.
f. September 4, 2024: physical aggression; was secluded for 20 minutes and 12 minutes.
g. September 5, 2024: physical aggression/staff; was secluded for 110 minutes total.
h. September 10, 2024: physical aggression; was secluded for 20 minutes, twice.
i. September 12, 2024: physical aggression; was secluded for three minutes total.
j. September 13, 2024: physical aggression; was secluded for three minutes.
k. September 16, 2024: physical aggression; was restrained for less than one minute and secluded for 3 minutes.
l. September 19, 2024: physical aggression; was secluded for one minute.
m. October 15, 2024: physical aggression; was secluded for one minute.

24. The following information was listed in a Field Trip Documentation spreadsheet:
    a. On September 12, 2024, the Student was present at school but did not attend the field trip to the State Fair because the Student "did not meet expected 75% for weekly behavior data to attend field trip." There were 15 aggression codes from September 3, 2024 through September 11, 2024 resulting in a 55% for weekly behavior data.
    b. On October 18, 2024, the Student was neither present at school nor did the Student attend the field trip to the pumpkin patch. According to the spreadsheet, "[The Parent] indicated [the Student] refused to come to school. [The Parent] reported [the Student] barricaded self in room." Behavior data from October 7, 2024 through October 18, 2024 indicated 66% with six aggression codes.
    c. On October 31, 2024, the Student was present at school and participated in trick-or-treating.
    d. On December 10, 2024, the Student was neither present at school nor did the Student attend the field trip to the movie. The notes indicated: "IEP Team determined [the Student] would stay home until Winter Break to attend multiple Dr. appointments and work with new ABA technician. Both Kansas Behavior Supports and Parents wanted [the Student] to have consistent time to work with new ABA therapist and build relationships."
25. In an interview with the Complaint Investigator, the Parent indicated that the Student did not participate in field trips or extracurricular activities at this School. According to the Parent, the District did not provide a reason for the Student's lack of field trip participation. The Parent was unsure if the School offered field trips.
26. The Teacher shared in an interview with the Complaint Investigator, "I don't believe [the Student] was here when we attended the field trip. I don't think we took one in August. … [The Student] was absent October. I'm trying to remember when we even went on field trips. [The Student] has not attended a field trip. [The Student] went trick or treating with us upstairs, but I don't think [the Student] hasn't [sic] made it to any field trips, but I'd have to look back at the corresponding dates to tell you why that was. It could have been

because … [the Student's] behaviors were too unsafe to take into the public if it was around the time that [the Student] had not been safe." Regarding communicating that information with the family, the Teacher said, "There would've been conversations if [the Student] didn't turn in the field trip. I sent [the Student] a letter about what the requirements are to make it to field trips. I'd have to look back at the dates and [the Student's] corresponding attendance to see if that was the reason why [the Student] didn't make it or if it was because of behavior."

27. According to a Communication Log with entry dates ranging from August 2, 2024 through October 11, 2024, the District requested Technical Assistance System Network (TASN) support. The TASN TA Provider indicated they would observe the Student and work with the TLC staff. On October 11, 2024, the Program Coordinator emailed to indicate the Student was "beginning ABA services in the home the following Wednesday (10/16/24) so [the Student] would not be at school for an observation on that date. Confirmed new observation date/time of 10/25/24." The TASN TA Provider inquired about the TLC Autism/Behavioral Supports.
28. According to a behavioral log dated September 9, 2024, the Student started "throwing things, kicks feet, becomes louder with 'no' and moves out of the assigned area." The adult response was to provide space, shorten directions, and distract the Student with preferred activities. Behavioral plan notes described ideas that could help enforce behaviors, including social stories, teaching emotions, and calming.
29. A Notice of Meeting dated September 3, 2024 indicated a meeting request to discuss possible changes to the IEP.
30. Team Meeting Notes dated September 11, 2024, indicated the Student would receive PT and OT consultation services provided by the classroom teacher. Speech services were provided virtually. Transportation services would be added to the IEP. A PWN dated September 11, 2024 indicated the team met to update the Behavior Intervention Plan/Crisis Plan. Changes were made due to safety concerns. The Parent consented to the changes. Interventions discussed to try were separate location, video of the Parent speaking to the Student, picture of the Parent for the Student to have while at school, visual schedule, reward system, frequent breaks with preferred activities, 'my singing monster,' and using the same verbiage to speak to the Student.
31. A Consultation Log for communication with a date range of August 29, 2024, through January 16, 2025, indicated that out of 21 days, the Student was:
    a. Absent from speech services 11 times.
    b. Attempted to be seen four times.
    c. No school four times.
    d. Seen by a Speech Therapist two times.
32. According to a Training/Observation/Collaboration Log, on September 6, 2024, the staff that worked with the Student reviewed autism best practices to be implemented in class by the TLC Teacher to support the Student. On November 14, 2024, the Staff attended a Crisis Prevention Institute (CPI) Training, which included controlled hold techniques, non-harmful

physical interventions, de-escalation, and safety strategies. On November 18, 2024, ABA Pairing techniques were presented to the staff of the Student. On December 9, 2024, the Autism Specialist gave feedback and support for the Student. The ABA Technician shared ideas "that could be quickly implemented, and also strategies, and staff training ideas." In an interview, the Executive Director [of Special Education] also shared that the staff "completed some webinars and online training that [Kansas Behavioral Support] as well as in-person trainings focused around [the Student] with some different strategies that they typically don't train all staff on."

33. In an interview with the Complaint Investigator, the Executive Director of Special Education shared that a Director from Kansas Behavioral Support trained the staff on two different occasions. The training focused on relationships and task completion as opposed to academics. The Executive Director of Special Education indicated that the Student's attendance impacted the School's ability to determine whether or not these strategies were effective for the Student.
34. A Consultation Log for Occupational Therapy with a date range of September 19, 2024 through December 3, 2024 indicated:
    a. The Student was observed in the classroom environment.
    b. The Student was provided with theraputty with hidden Lego figures inside for fine motor strength.
    c. An email consultation with the teacher occurred to discuss additional fine motor and/or sensory processing concerns.
35. A Notice of Meeting dated September 23, 2024 requested a meeting for October 15, 2024 to discuss possible changes to the IEP. Meeting Notes dated October 15, 2024 indicated concerns for Student and peer safety due to behaviors and noted the lack of ABA therapy, "there has been a 'huge regression' over the period of 5 months and will take a longer period to build back up to where [the Student] was before. … ABA will be attending 1 day per week to evaluate this Student's needs to provide services and supports."
36. A Student Observation Summary dated October 25, 2024 indicated the Student was observed to "gain insight into the current strategies, environment, and behaviors of the Student to support the team in future planning." Strategies observed were:
    a. "Interactions were calm and structured."
    b. "Consistent verbal prompts across staff."
    c. "Neutral tone and processing time before repeating prompts or moving to the next activity."
    d. "Positive engagement was observed during OT and PT activities."
    e. "Incorporated timers and countdown."
    f. "Provided the option of 'one more minute' when [their] time was up."
    g. "Materials for each task were organized … outside the classroom."
    h. "A behavior chart was filled out by staff after each activity."

i. "During escalation, one para remained outside the door at all times while another para documented events, including timestamps, verbalizations, and staff responses."

j. Professional Development recommendations included Registered Behavior Technician (RBT) Modules and ABA Therapist Resources.

37. On November 7, 2024 a Notice of Meeting indicated a meeting request for November 14, 2024 to consider possible changes to the IEP. Meeting Notes dated November 14, 2024 indicated that according to data, the Student exhibited physical aggression towards staff and bit themself. The Student's daily schedule was discussed. The staff gave the Student choices of activities and shortened activities. A reintegration plan described "3 days of 80% safety." A suggested update to the FBA and BIP was recommended to reinforce activities daily.

    The Parents wondered if a behavioral decline occurred in the academic room. The Student was used to going to a safe room when having behavioral issues. When the Student showed they were calm, they were able to leave the safe room. According to the Parent, now, the Student "views the room as punishment at TLC."

38. According to a message from the Parent dated November 14, 2024, the Student would try a soft start with their peers first thing and then transition to a smaller room for social skills after meeting with the Behavioral Support Technician.

39. In an email exchange with the Program Coordinator and the Regional Clinical Director dated November 18, 2024, the following pairing goals for the Student were suggested:

    a. "Approaches school staff to get desired items."

    b. "Initiates interaction with school staff."

    c. "Responds to name when said by school staff."

    d. "Student engages in activity of their choice with the school staff member."

40. IEP Team Meeting notes dated November 18, 2024 indicated the team discussed the current needs and support for the Student. The team wanted to "map out a plan with a memo of understanding (MOU). … [The Parent] said the Student has a neurology appointment." The team discussed services in the home. The Parent declined, stating that they did not want two different techs. The team discussed the least restrictive environment and a time frame before placement, having some concerns with home status, with other children, and a need to look at residential placement.

41. On December 4, 2024, a Notice of Team Meeting requested a meeting for December 9, 2024 to discuss possible changes to the IEP. According to Team Meeting Notes dated December 9, 2024, the purpose of the meeting was to discuss concerns that the Student had not been in attendance at the TLC since November 18, 2024. "Of the 12 days since then, [the Parent] has attempted to get [the Student] to school twice, but [the Student] has not successfully entered the school building. [The Student] had:

    a. Been sick for two days.

    b. Had high blood sugar for four days.

    c. Refused to leave the house one day.

d. Did not attend due to a lack of sleep for three days.

The team met to discuss the Student's "current health and behavioral needs and to discuss if any changes needed to be made to [their] school plan at this time." The team discussed several potential changes, which included:

a. Transportation: discussed a type of safety harness to use for transport.
b. Adjust start time to start at 9:30 a.m. drop-off and stay later in the day.
c. ABA In-Home Services: ABA offered by the same support worker that supported the Student in the school setting.
d. Virtual School Check-In: The TLC could set up a time for virtual checks with the Student.
e. School work sent home: materials sent for preferred tasks.

42. A Report of Academic Progress for the 2024-2025 School Year indicated:
    a. The Student was absent 17 days out of 41 days in the first nine weeks.
    b. The Student was absent 33 days out of 39 days in the second nine weeks.
    c. Progress for Behavioral goals indicated no progress as of 12/20/24.
    d. Progress for the reading goal indicated no progress due to attendance dated 12/20/24.
    e. Progress for the writing goal indicated no progress due to attendance dated 12/20/24.
    f. Progress for the math goal indicated no progress due to attendance dated 12/20/24.
    g. Progress for speech/language goal indicated no progress due to the Student only attending one speech session dated 12/20/24. TLC.
43. A Notice of Team Meeting dated January 8, 2025 requested a meeting for January 10, 2025 to discuss possible changes to the IEP. Meeting Notes dated January 15, 2025 indicated:
    a. The team scheduled to meet on December 19, 2024 as a follow-up to the plan implemented on December 9, 2024.
    b. The team was unable to meet on December 19, 2024.
    c. The meeting was rescheduled to January 10, 2025.
    d. ABA and Home Services Update: The new ABA Tech began services in the home in December and provided services through December 20, 2024.
    e. ABA Tech worked on pairing with the Student.
    f. TLC Attendance: The Parent reported that they did not believe the Student would return to the TLC, and the Parent did not want the Student at the TLC.
    g. Transportation: The ABA Technician would ride the special education transportation with the Student to and from the TLC and home.
44. In an interview with the Complaint Investigator, the Parent shared that the last day the Student attended was in January 2025, "It was a Wednesday, and it was the first day [the Student] rode the bus. So [the Student] got to go, and [the Student] was doing fine, and then they checked [the Student's] blood sugar and [the Student] was high, so they had to send [the Student] home. And I asked … can [the Student] please stay because if you make [the Student] go home, I'm never going to get [the Student] to go back. I was like, 'Give [the

Student] water. [The Student] has [their] insulin. We can try and get [the Student] to come down by giving [them] water.' And they said, 'No.'"

45. In an interview with the Complaint Investigator, the Parent shared information about the implementation of the Student's healthcare plan, "I don't think they failed to implement it. They implement it because if [the Student's] at 280, they send [the Student] home. I think it was the fact that they would not check [the Student]. They do not give [the Student] water … . Because [the Student] is a type one diabetic, [the Student] needs the water to help regulate and keep [the Student] low because [the Student] pees out [their] sugars. And so if [the Student's] not given the water, then [the Student] does not urinate enough. And so, not that it matters, because they don't take [the Student] to the bathroom. But that was the problem with the health plan is that they were not checking [the Student] regularly. They would say [the Student] was unsafe or stuff like that, and so they wouldn't check [the Student's] blood sugar, and they wouldn't give [the Student] the water."
46. The Parent shared, in an interview with the Complaint Investigator, "… I asked them to see about sending [the Student] to [Another Location], which is a TLC school because they're saying that [the Student] can't go less restrictive. And I understand I'm not asking [the Student] to go less restrictive. I'm asking [the Student] to be able to join a class instead of be by [themself]. I'm asking them … the teachers and staff be open to the engagement with [the Student]. The School that [the Student] is currently in, they do not engage with [the Student]. [The Student's] not allowed to be with the other students. The paras are afraid of [the Student]. They stand in the doorway and like I said, whenever [the Student] stands up, they shut the door so there is no engagement."
47. In an interview with the Complaint Investigator, the Parent shared that "[The Student] refuses to go to school. [The Student] refuses to have anything to do with that school. They've tried to do Zoom meetings with [the Student], and [the Student] [will] throw the phone. [The Student] just says [the Student] doesn't want to go. … I just know that I can ask [the Student] three times if [the Student's] ready to get on the school bus. [The Student] [will] get up in the morning, [the Student] [will] take [their] meds, [the Student] [will] eat breakfast, [the Student] [will] get dressed, and then the school bus shows up and I am like, 'Okay, the school bus is here' and [the Student] refuses. And I'm like, 'Okay, let's at least walk to the door.' And [the Student's] like, refuses. I can get three refusals and then [the Student] [will] get violent." The Parent indicated that they did not have a problem getting the Student to school last year. The Parent shared that the School had not offered solutions for reengaging the Student in school except for Zoom meetings with the para.
48. According to a message to the Parent from the TLC staff, dated January 15, 2025, the Student had a bathroom break before heading to the classroom. "It seemed a positive time here."
49. An email exchange between the Executive Director of Special Education and the Program Coordinator dated January 22, 2025 indicted, "On the document of [the Student's] data summary that provides the analysis of data (validity, daily performance summary, safety data, trends, etc.), what program does [the] TLC use to run/analyze that data? Walk me through the process as I need to include that in the Formal Complaint Process." The

Program Coordinator replied, "The validity statement is based on the consistency of the data collected as stated (i.e., the percentage of data entered versus data cells with nothing entered). Based on the message you receive; it lets you know how much is missing and changes the interpretation and presentation in subsequent summaries."

50. An undated Student Data Summary indicated that based "on the overall consistency of data collection (0%), the summary is likely an accurate representation of the Student's performance:"
    a. "Daily performance summary - Reviewing the overall data collected to date, there is a small upward trend in [the Student's] average performance."
        i. "Made gains on the goal: On-time, follows routine, stays in area/seat over the last 30 days (100%) compared to the overall 51.61%."
        ii. "Progress has been made with completes assigned work, stays on task, participates appropriately over the last 30 days (100%, overall 56.9%."
        iii. "Progress has been made with Safe words and actions over the last 30 days (100%, overall 57.19%)."
        iv. "Progress has been made with Cooperates with neutral/positive interactions to students and adults over the last 30 days (100%, overall 46.28%)."
        v. "Progress has been made with Positive peer interactions over the last 30 days (100%, overall 50.51%)."
    b. Safety data included:
        i. "84 instances of aggression - zero occurred within the last 30 days."
        ii. "22 instances of property destruction - zero occurred within the last 30 days."
        iii. "39 instances of verbal/gestural threats - zero occurred within the last 30 days."
        iv. "38 instances of self-harm - zero occurred within the last 30 days."
    c. "Currently, there is no day of the week that [the Student] performs notably better or worse."
    d. "[The Student's] performance across activities (times of day) is similar (average 100%)."
    e. Intervention Impact-Ten intervention changes were noted with the following results, which indicated not enough data had been collected to examine the impact of the intervention change:
        i. "Tier 3 (off classroom) intervention."
        ii. "Rotation of staff each hour."
        iii. "Visual schedule and picture of [the Parent] intervention."
        iv. "Changed … time at am, [the Student] escalated, and [the] service provider was unable to deliver services. Continue[d] with escalated behavior and was unsafe at speech time so service was not delivered."
        v. "Impact of intervention."
        vi. "Began PT/OT services from consult recommendations intervention."

f. "Overall, [the Student] has had the most success with the staff going to [the] vehicle to encourage coming in intervention - and the least success with the Intervention-could call [the Parent] on [the] phone to talk."

51. In an interview with the Complaint Investigator, the Teacher shared the following:
    g. The data collected, including task completion, safe actions, cooperation, and peer interactions, and IEP goals were not accurate due to the Student's limited attendance.
    h. The Student's day consisted of lunch, pe, a social skills activity, and "towards the end of the time," ABA. According to the Teacher, "People were telling us to not do any academics and just try to do pairing and getting to know [the Student] … . "
    i. The Teacher's understanding of the ABA support was to help the Student with compliance at home and school.
52. A PE Time document with no date indicated the following PE delivery methods:
    j. Tier 1 PE Time: In playground area, whole class participation.
    k. Tier 2 PE Time: The Student worked with a staff member in a separate location, away from peers.
    l. Tier 3 PE Time: The Student worked with a staff member in a separate location, inside, away from peers.
        i. The Teacher shared in an interview that Tier 3 PE was "PE away from [the Student's] peers."
53. In an interview with the Complaint Investigator, the Teacher shared, "When [the Student] first started, [the Student] was going to all of those with the rest of the class. After [the Student] became aggressive, then the plans kind of changed. [The Student] was still getting the social skills, but it was just [the Student] and … somebody delivering the social skills activities with [the Student] and PE. [The Student] was was doing activities within another area that was free of the other students that [the Student] was getting to play and work out and [the Student] played with [parents] and those kinds of things and and lunch [the Student] had here because [the Student] had to do [their] insulin and count [their] carbs and [the Parent] said [the Student] wouldn't walk as far as we have to walk to get to lunch." The Teacher indicated that they had to walk to the high school for lunch. Additionally, the Teacher clarified that the Student participated in parallel activities during PE within their special education classroom. The School lacks a gym and general education classrooms, so activities occur in the special education classroom. All classrooms at the School were special education classrooms.
54. In an interview with the Complaint Investigator, the Parent shared that the Student's behavior worsened at their current school. The Parent attributed the Student's behavioral regression to the Student's isolation in the current school. The Parent believed that this led to the Student experiencing anxiety, an inability to sleep alone, and clinginess.
55. At the conclusion of their interview with the Complaint Investigator, the Executive Director of Special Education shared that they attributed the Student's attendance challenges to a lack of consistent in-home and behavioral support since the family's move. Previously, consistent support was effective, and the move, along with inconsistent staffing from

Kansas Behavioral Supports, created a gap in home and school support. The Executive Director of Special Education indicated they believed that this gap impacted the Student's functioning and attendance.

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), provided the least restrictive environment when the Student was "separated and secluded in a room … " and not able to participate in the general education classroom. K.A.R. 91-40-1.(II); K.S.A. 72-3420; 34 CFR § 300.116.

According to K.A.R. 91-40-1.(II), K.S.A. 72-3420, and 34 CFR § 300.116, The least restrictive environment (LRE) means the educational placement in which, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled and meet the requirements of K.S.A. 72-976, and amendments thereto. The placement shall be determined at least annually, based upon the student's individualized education program, and provided as close as possible to the child's home.

The Parent alleged that when the Student was excluded from the main classroom, the Student did not have opportunities to rejoin their classmates.

The District indicated that the Student's current educational placement at the TLC, "the most restrictive environment in the [District] is appropriate." The District indicated that this placement decision was based "on a comprehensive reevaluation that was completed in May 2024 by … the entity that had provided [the Student] special education services since age 3. The TLC modeled and implemented supports similar to those provided by [the Previous District] in collaboration with Kansas Behavioral Supports and TASN. The [S]tudent's attendance has been very limited, and there is no data to support that a move to a lesser [sic] environment is appropriate at this time. Parents have provided consent for this educational placement both in the previous [District] and in the [current] [District]."

The Student entered the District with an existing IEP that placed them in a specialized program outside of the general education setting. The District determined that an equivalent LRE could be provided at the TLC to provide continuity of services, and the Parent consented. As the year progressed, the Parent was concerned about instances of the Student's isolation and lack of access to the "main classroom" and peers. The Student's behaviors escalated, and their attendance declined, limiting their access to education. The IEP team met on several occasions and discussed the Student's LRE. Safety, peer interaction, and access to curriculum were discussed.

The District and the Parents made an individualized placement decision based on the Student's unique needs and the Student's IEP and periodically reviewed factors that impacted that decision through the IEP meeting process. While the Student's access to the "main classroom" was, at times, limited due to the Student's behaviors, the District made efforts to maximize inclusion where appropriate and provided specialized supports to address the Student's behavioral challenges.

Based on the foregoing, according to IDEA and Kansas special education regulations, it *is not substantiated* that the District failed to provide the least restrictive environment for the Student.

Issue Two

Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's healthcare plan or accommodations related to the Student's Type 1 Diabetes and other health needs, including not allowing the Student to drink water or use the restroom, and failing to offer restroom breaks or change the Student's pull-ups. Further alleged was that the Student was receiving occupational and physical therapy from a paraprofessional, the online speech therapy was not effective for the Student, the behavior intervention plan was not being implemented, and the social skills instruction was not being provided. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

According to K.A.R. 91-40-16(b)(3) and 34 C.F.R. § 300.323. An IEP is to be in effect for each exceptional child at the beginning of each school year.

The Parent alleged the Student was not provided water to drink and needed to have access to water because of the Student's diabetes. According to the Parent, the Student was required to stay in the classroom, required to sit for four hours each day, and was not provided opportunities to use the bathroom facilities, and the Student's pull-ups were not changed. The Parent alleged the Student did not receive occupational therapy. According to the Parent, physical therapy was provided by a paraeducator in the same classroom. Speech services were provided on ZOOM, which, according to the Parent, was not productive for the Student.

The District "… acknowledges that it has been challenging to provide all identified services at [the] TLC due to the [S]tudent's dysregulation and limited attendance. Daily logs will show the desire of staff and attempts made to deliver special education services and educational instruction. The TLC staff continue to be willing to receive training and adjust interventions to try to impact the [S]tudent's success."

To manage their diabetes, the Student required regular blood sugar monitoring, insulin administration, and access to water and bathroom breaks, all of which were documented in their healthcare plan. The Student received consultative occupational therapy and physical

therapy services per their IEP. The Student received speech services virtually but frequently missed sessions due to absences and behavioral issues.

The Student exhibited significant behavioral challenges, including physical aggression, self-harm, and verbal aggression. A BIP was implemented, however, the Student's inconsistent attendance impacted its effective implementation. The Student also struggled with social-emotional skills and received that instruction in various settings to address these needs. Despite these services, the Student showed little to no progress on their IEP goals primarily due to persistent absences and behavior challenges.

While concerns were raised by the Parent regarding the consistency of the healthcare plan implementation, the effectiveness of certain related services, and the Student's limited progress, the District demonstrated a good faith effort to implement the Student's IEP despite the Student's behavioral and attendance challenges. The District monitored the Student, consulted with specialists, and trained staff to support the Student's behavioral and educational needs.

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 healthcare plan.*** Regarding speech, OT, PT, and social skills, the Student's lack of progress and engagement was not a result of the District's failure to implement the IEP. Those allegations are not substantiated.

Issue Three

> Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), offered the Student access to non-academic and extra-curricular activities such as recess. K.A.R. 91-40-1(ttt); 34 CFR § 300.117.

According to K.A.R. 91-40-1(ttt) and 34 CFR § 300.117, "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes or other education-related settings, as well as extracurricular and non-academic settings to enable children with disabilities to be educated with non-disabled children to the maximum extent appropriate.

The Parent alleged that the TLC refused to provide alternative accommodations to the Student, despite repeated Parent requests. The Parent alleged that the Student was subjected to prolonged separation and seclusion from their peers. Additionally, according to the Parent, the Student was not provided an opportunity to engage in physical exercise and was asked to remain seated for the duration of the Student's school day.

The District indicated that "… the educational environment in a non-school setting is not the same as a traditional educational environment. The structure and support provided, as well as access to non-identified peers and opportunities, are different from a traditional educational

setting. The Student attends a partial day, which is in alignment with the school day structure provided previously. Parents have provided consent for this placement both in the [Previous District] and in the [District]."

The District indicated that the setting in which the Student received their special education services was very different from a traditional general educational environment. The Parent reported concerns regarding the Student's access to non-academic and extracurricular activities. The Student's participation in physical education was limited. The School did not have a gym, and the Student primarily participated in physical activities in the classroom as a modification for the Student's aggressive behaviors. The Student was excluded from one field trip for documented behavioral challenges and either attended or was absent for the other opportunities. The Student's attendance and behaviors impacted their educational progress.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the District failed to offer access to non-academic extra-curricular activities.

Issue Four

Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), developed an IEP that included accurate data regarding the Student's behavior, positive behavioral supports, or an accurate behavior intervention plan. The Complaint further alleged that the staff working with the Student were not appropriately trained to work with the Student. K.A.R. 91-40-18; 34 CFR §300.320.

According to K.A.R. 91-40-18 and 34 CFR §300.320, in developing or reviewing the IEP of any exceptional child, each agency shall comply with the requirements of K.A.R. 91-40-18 and shall consider the results of the child's performance on any general state or districtwide assessment programs. As a result of its consideration of the special factors, an IEP team determines that a child needs behavior interventions and strategies, accommodations, assistive technology devices or services, or other program modifications for the child to receive a FAPE, the IEP team shall include those items in the child's IEP.

The Parent reported repeatedly informing the TLC that the Student does not learn when isolated. According to the Parent, the Student's Behavioral Therapist witnessed the staff shutting the door to the room the Student was in while the Student escalated. If the Student did not comply with the sit-down directive and moved to get up, the staff at the TLC would shut the door from the outside. If the Student went to open the door, the staff held the door closed, which escalated the Student's behavior further. Additionally, the Parent alleged that the staff presented inaccurate percentage data regarding the Student's behaviors and believed that the percentages reported were largely skewed due to low attendance.

The Parent reported that while staff documented an increase in the Student's aggression, they failed to mention that it was due to severe isolation. The Parent asserted that the staff was hyper-focused on negative behaviors and established unachievable goals for the Student. Additionally, the Parent identified deficiencies in the Student's BIP and cited the poor identification of targeted behaviors and their functions, as well as a failure to include comprehensive teaching strategies for replacement behaviors. Finally, the Parent believed that the staff at the TLC lacked documented training to appropriately address the needs of the Student.

The District indicated that the "… staff at the TLC have been willing to engage in regular collaboration, communication, and reflection to support [the Student's] needs. This is evidenced by communication with [the Previous District], Kansas Behavioral Supports, TASN, and internal consultants. Staff have repeatedly demonstrated a responsiveness to behavioral data and have continued to seek the best approaches to use with the [S]tudent to impact [the Student's] success. A barrier to implementing [the Student's] educational plan has been daily attendance. The limited attendance has impacted the consistent delivery of special education services and for enough opportunities to implement and assess effectiveness of the current plan."

An IEP was in place at the beginning of the year and was revised as needed. A BIP was in place to document the Student's behavioral challenges. Data from August 2024 revealed concerns about the Student's aggression and elopement. IEP meetings were held to discuss the documented concerns, which led to revisions in the BIP and adjustments to the Student's schedule.

Staff received various training to address the Student's needs, including autism best practices, crisis management techniques, and individualized strategies focused on relationship building and task completion. Medical training on blood sugar management was also provided. However, the Student's inconsistent attendance limited the School's ability to assess the training's effectiveness.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the District failed to develop an IEP that included accurate data regarding the Student's behavior, positive behavioral supports, or an accurate behavior intervention plan. It is also not substantiated that the staff working with the Student were not appropriately trained.

Issue Five

Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), provided the Student with the special education placement as described in the Student's IEP. Further, the Complaint alleged that the Parent requested an alternate placement, and the

District had not considered this request. K.A.R. 91-40-21 ; 34 CFR §§ 300.224, 300.116.

According to K.A.R. 91-40-21 and 34 CFR §§ 300.224, 300.116, each agency shall ensure that a continuum of alternative educational placements is available to meet the needs of children with disabilities. These alternative placements shall include instruction in regular classes, special classes, and special schools, instruction in a child's home, instruction in hospitals, and other institutions. Alternative educational placements shall make provisions for supplementary services, including resource room and itinerant services, to be provided in conjunction with regular class placement. Each placement decision shall be made by a group of persons, including the parent and other persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options.

The Parent reported that alternative schooling options were denied and that the TLC would not offer alternative accommodations, despite repeated requests. According to the Parent, both the TLC staff and the special education department cooperative personnel, including the Director, acknowledged the detrimental effects of the room and the TLC on the Student. According to the Parent, the Director replied by citing adherence to educational guidelines. The Parent detailed the Student's regressions academically, behaviorally, and in their potty training and suggested the Student also showed signs of Post-Traumatic Stress Disorder (PTSD). Finally, the Parent indicated they were informed that the special education cooperative had a contract with the TLC and that they would not fund the Student's placement at an alternative location.

The District "… do[es] not believe that the [S]tudent would be safe in a less restrictive setting at this time. In [the District], the TLC is the most restrictive environment for students that demonstrate intensive social/emotional needs. The TLC is designed to have additional support and resources available for students that demonstrate those needs. This is the same setting (non-school location) identified to be the [S]tudent's least restrictive learning environment by [the Previous District] through a comprehensive re-evaluation in May of 2024. There is not sufficient data to indicate that a move to a less restrictive environment would be appropriate at this time. The [District] acknowledge[s] that a Prior Written Notice should have been presented to Parents to formally document the request and the school's decision to deny that change of placement based on current performance data."

The Student's initial placement in the TLC was discussed and documented through the IEP process and prior written notices. However, in November, when the IEP team reconvened to discuss the Student's current needs and supports, other placement options were discussed. For this discussion, there was no PWN to document the Parent's request or the District's response regarding the consideration of an alternative placement for 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 the special education placement as described in the Student's IEP. However, ***it is substantiated*** that the District

violated K.S.A 72-3430(b) and K.S.A 72-3432 (a-c), describing that Parents of exceptional children have the right to written prior notice whenever an agency proposes or refuses to initiate or change the "... educational placement of the child ... ." Documentation of special education decisions must include a clear description of the proposed or refused action, a detailed explanation for the reasons behind the decision, and a summary of alternative options that were considered and/or rejected.

Issue Six

Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), provided the Student with a free appropriate public education (FAPE). The Complaint alleges that "[the Student] has regressed academically, behaviorally, and on [their] potty training, and now shows signs of P.T.S.D., anxiety, and stress." K.A.R. 91-40-1(z); 34 C.F.R. § 300.101.

According to K.A.R. 91-40-1(z) and 34 C.F.R. § 300.101, every child with an exceptionality is entitled to receive a free appropriate public education (FAPE). FAPE is defined as special education and related services that are provided at public expense, meet the standards of the state board, include appropriate preschool, elementary, and secondary education, and are provided in conformity with an individualized education program.

The Parent alleged that the Student was secluded in a separate room and was not afforded opportunities to rejoin the other students. The Parent believed that the Student was prohibited from outdoor play. This restriction stemmed from a previous incident where the Student, when upset, refused to return indoors and proceeded to take off all of their clothes. According to the Parent, the Behavior Therapist attended the School to observe the Student, and after two hours, the Behavior Therapist inquired about scheduled bathroom breaks. The Paraeducator responded that the Student was not allowed to leave the room because their behavior was unpredictable. Additionally, the Parent indicated the Student did not receive occupational therapy and that physical therapy was provided by a paraeducator within the same room.

The Parent reported that the Student had experienced significant regression across multiple areas, including academic performance, behavior, and potty training, and was now exhibiting signs of PTSD, anxiety, and stress. The Parent further indicated that the Student began to engage in self-harm when a door is closed and refuses to sleep alone in their room. Additionally, the Parent noted that if the Student was left alone in their room for an extended period, they would seek out a family member and express fear. Finally, the Parent indicated that the Student became visibly upset and displayed both physical and verbal aggression when school was mentioned.

The placement of the Student in a non-school location was approved by the IEP team, provided a continuity of services, and was determined necessary to meet the Student's needs. The

Student's attendance impacted the School's ability to provide services. The Student's healthcare plan was implemented to the extent possible despite the Student's refusals and safety issues. The School engaged in ongoing communication and collaboration with the Parent regarding the Student's needs.

The School made reasonable efforts to provide a FAPE to the Student. The Student's challenges with attendance, behavior, and medical needs presented obstacles, but the School continued to adjust the Student's program, seek support and training, and communicate with the Parent.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the district failed to provide a FAPE to the Student.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with a special education statute and regulation. A violation occurred in the following area:

A. Federal regulations at 34 C.F.R. 303.503(a-b) and K.S.A 72-3430(b) and K.S.A 72-3432 specify the requirements for PWN.

In this case, the evidence supports the finding that USD #418 did not provide a PWN to describe the proposed or refused action and the reasoning behind it regarding the educational placement of the Student. Documentation and the District Response letter dated February 6, 2025 document this.

Based on the foregoing, USD #418 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD # 418 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 303.503(a-b) and K.S.A 72-3430(b) and K.S.A 72-3432 by providing parents with PWN when refusing to implement requests made by parents.
2. Within 15 calendar days of the date of this report, USD #418 shall submit a PWN to the Parent documenting the proposed and refused actions and an explanation of those actions regarding the educational placement of the Student.
3. Within 20 days of the date of this report, USD #418 shall submit documentation that the PWN was provided to the Parent.
4. Within 45 days of the date of this report, USD #418 shall train District special education staff and administrators on the PWN requirements. The District shall submit copies of the training materials and attendance sheets.

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.gov 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 FEBRUARY 17, 2025

DATE OF REPORT: MARCH 14, 2025

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

The complaint is against USD #229 Blue Valley 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 February 17, 2025, and the 30-day timeline ends on March 19, 2025 or with the publication 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 complainants. The parent was contacted to clarify the issues of the complaint and to provide interview evidence on February 18, 2025. The written complaint alleged broad noncompliance was present in the student's school, and the investigator asked the parent about their knowledge beyond the experience of their child. When the investigation was initiated, the investigator determined that a systemic inquiry was premature based on the existing evidence. Questions pertaining to district policy and practices were included in the interviews to determine if there was reasonable evidence requiring a systemic inquiry to open during the course of the investigation. Emails were exchanged with the parent through March 12, 2025, to gather additional information or clarification.

The district was contacted on February 19, 2025, and the IDEA issues to be investigated were included in a memo to the LEA dated February 19, 2025 (with a one sentence correction dated February 20, 2025), and the parent's concerns regarding educational records request was redirected to FERPA complaint options, and a 2022 evaluation request was set aside as preceding the 12-month time period preceding the formal complaint.

The district offered the following persons for interviews: Steven Beeler (IEP Case Manager and IRR Special Education Teacher), Erica McDonald (School Principal), Kristen Leaming (Special Education Administrator), and Mr. Heston (Fourth Grade Teacher). Emails and phone calls were exchanged with the district from February 19, 2025, to March 7, 2025, during which the district provided additional documents and information requested by the investigator.

In addition, the following documentation and information were used in consideration of the issues.

Evidence Provided by the Parents:

1. 2024-25 Special Education Services Contact Log, with entries dated August 19. 2024 through January 24, 2025
2. Student Work Sample: Spelling Test (undated)
3. Reader's Theater Scoring Rubric for the Student
4. Student Test History (Fastbridge Reading, IReady, Acadience Reading Composite, Acadience Maze) with testing probes dated from September 2022, through December 2024
5. KAP Interim Assessment Family Report for the student, Fall 2025
6. Email from IEP Case Manager to Parents dated January 15, 2025, at 2:57 p.m.
7. Email exchange from the mother to special education teacher, 4th grade teacher, elementary counselor, and the father dated January 16, 2025, at 11:48 a.m. through January 21, 2025, at 9:54 a.m.
8. Email from the parent to the special education teacher, 4th grade teacher, elementary counselor, and the father dated January 22, 2025, at 1:47 p.m.
9. Parent Notes from IEP Meeting dated January 24, 2025.
10. Email from the principal to the parents dated January 24, 2025, at 3:03 p.m.
11. Individualized Education Program (IEP) for the student dated April 24, 2024
12. Prior Written Notice (PWN) for changes to the IEP dated April 24, 2024, for a meeting on April 24, 2024, for changes to the IEP unsigned by parents
13. IEP Amendment for the student dated January 24, 2025
14. Prior Written Notice (PWN) dated February 3, 2025, about a meeting held on January 24, 2025, for change in services including a material change in services, a change of placement, and other changes to the IEP requesting parent consent and unsigned by the parent
15. Email (a) from the parent to the special education teacher, the special education administrator, and the father dated February 11, 2025, at 12:52 a.m. and the special education teacher teacher's reply dated February 11, 2025, at 4:15 p.m.
16. Email (b) from the parent to the special education administrator and the special education teacher dated February 11, 2025, at 12:52 a.m.
17. Email from the parent to the special education administrator, special education teacher, school psychologist, and the father dated March 10, 2025, at 3:03 p.m.

Evidence provided by the District

18. Children's Mercy Hospital Hearing and Speech Clinic Academic Language - Reading Evaluation, dated June 22, 2022
19. St. Luke's Hospital Midwest Ear Institute Report for the Student dated June 13, 2023
20. Student IEP dated May 1, 2023
21. IEP Progress Report for the student, with quarterly entries dated May 26, 2023, through April 24, 2024
22. IEP Meeting Notes dated April 24, 2024
23. Student IEP dated April 24, 2024
24. Prior Written Notice (PWN) for changes to the IEP dated April 24, 2024, for a meeting on April 24, 2024, for changes to the IEP unsigned by parents
25. Contact log of special education services provided in special education settings to the student, 2024-25 school year, through March 4, 2025
26. i-Ready Fall Math Diagnostic for the student
27. Conference slides for the student, undated
28. iReady Winter Math Diagnostic dated December 11, 2024
29. IEP Progress Report for the student dated December 20, 2024, reporting quarterly progress dated May 24, 2024, October 11, 2024, and December 20, 2024
30. iReady MyPath score report for the student with entries dated January 17, January 22, and January 24, 2025.
31. [Student Initials] Parent Meeting 1-24-25 (a) (Meeting Notes)
32. [Student Initials] Parent Meeting 1-24-25 (b) (Meeting Notes)
33. Parent document [Student initials] Parent's Concern with Services, January 24, 2025
34. Prior Written Notice (PWN) dated February 3, 2025, about a meeting held on January 24, 2025, for change in services including a material change in services, a change of placement, and other changes to the IEP requesting parent consent and unsigned by the parent
35. Notes from phone call with the parent, special education administrator, and principal dated February 4, 2025, at 1:00 pm.
36. Speech Language Screening Report, undated, for testing and data collection on February 5 and February 21, 2025.
37. Email (a) from the parent to the special education teacher, the special education administrator, and the father dated February 11, 2025, at 12:52 a.m.
38. Email (b) from the parent to the special education teacher, the special education administrator and the father dated February 11, 2025, at 12:52 a.m.
39. Paraprofessional schedules showing classroom assignments when staff were fully present or one or more were absent for the 2024-25 school year.
40. Paraprofessional absence spreadsheet dated August 13, 2024 through March 7, 2025.
41. Prior Written Notice (PWN) dated March 3, 2025, for changes to the IEP discussed at the January 24, 2025, IEP meeting
42. Prior Written Notice (PWN) dated March 4, 2025, for a change to the student's IEP including a material change in services, a change of placement, and other changes to the IEP requesting parent consent and unsigned by parent.

43. Prior Written Notice for Evaluation (PWN-E) to re-evaluate the student, dated March 6, 2025, requesting parent consent and unsigned by parent.
44. Email from the special education administrator to the parents and copied to others in the district dated March 7, 2025, at 4:14 p.m.
45. Parent Response and Amendment Working Document dated March 7, 2025, including communication from the parent on February 11, 2025, and recording parent responses to proposed changes dated February 28, 2025.
46. Proposed IEP Amendment for the student dated March 7, 2025
47. The district's response to the complaint, received February 24, 2025

Background Information

The student attended the fourth grade at an elementary school in USD#229 Blue Valley Schools. The student was evaluated and found eligible for special education as a student with learning disabilities in May 2022, at the end of the student's first grade year. In the summer of 2022, based on the district's special education evaluation's informal note regarding the student's speech language performance, the parent had the student independently evaluated at Children's Mercy Hospital in the summer of 2022, before the student's second grade year. According to the parent, the Children's Mercy Hospital evaluation recommended speech language services; the CMH report was provided to the school district and in September 2022, the parent was informed that the student did not qualify for speech language services based on the district's evaluation. In 2025, when the parent requested a copy of this evaluation, the district disclosed that the decision was based on informal observations and a full speech language evaluation was not conducted.

The student's IEP dated May 1, 2023, and the current IEP dated April 24, 2024, showed that the student received 30 minutes of special education services in the special education setting and 60 minutes of services in the general education setting, with IEP goals in reading and writing along with classroom accommodations to access the general curriculum.

Issues Investigated

1. ISSUE ONE: Did USD #229 implement the student's IEP by providing special education services, accommodations or other requirements of the student's IEP? (page 6)
2. ISSUE TWO: Did the district meet the IEP team in response to the parent's concern voiced at the October 2024 parent teacher conferences and the student's lack of progress in mathematics with the current IEP? (page 14)
3. ISSUE THREE: Did the district provide proper PWN in response to parental requests for accommodations or services? (page 18)

Issue One

Did USD #229 implement the student's IEP by providing special education services, accommodations, or other requirements of the student's IEP?

Applicable Law

Federal/State 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.

Analysis: Findings of Fact

The parents allege in the written complaint that the student's accommodations were not provided during the current 2024-25 school year, including to be ungraded on spelling, to be excused from reading aloud in class, and to have tests in a quiet location. The parents alleged that there was no evidence that the student's special education services provided 60 minutes of support in the general education classroom five times per week, and that the student's general education performance in mathematics had deteriorated after the removal of prior special education support in that area.

The district responded that the student's spelling accommodation had been provided in writing and spelling itself was monitored for standards based curricular grading, and that this was clarified during the January 24, 2025, IEP meeting. The district responded that the student has not been required to read aloud in class but been permitted to do so after volunteering. The district further responded that the teacher had provided two options to meet the student's testing accommodation and that the student was given a choice of which to choose during classroom testing. The district stated that the testing accommodation was discussed at the January 24, 2025, IEP meeting and it was adjusted to the parent's request for only one option for testing. The district provided evidence and rationales further described in findings, below.

Findings of Fact

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #229.

The student's IEP dated May 5, 2023, included two IEP goals, one in reading and one in writing. IEP goal progress reporting showed that both goals were met as of April 24, 2024. The IEP dated May 5, 2023, included 30 minutes of special education services in special education and 60 minutes of special education in general education for five days each week.

The student's IEP dated April 24, 2024 included two goals, one in reading and the other in writing: (1) "By April 2025, when given words with Vowel-R combinations and two short vowel syllable words with common endings, [the student] will read them with 85% accuracy or greater," and (2) By April 2025, when given Vowel-R words and words with common suffixes (ing, ed, er, est), [the student] write them with 85% accuracy. This IEP included 60 minutes of special education direct services in the general education classroom five times per week, and 30 minutes of special education in a special education setting five times each week.

When asked to clarify the meaning of direct special education in the general education classroom, the special education director stated that it is a service setting on the district's IEP software, which reflects, "Our view has been to consider any support listed on the IEP, that is provided to a student as direct SPED support, regardless of who is providing it (as directed by the IEP and/or SPED teacher). . . in the description of specially designed instruction, the services are defined [further]. In this case, it is "(s)he will receive in class support for 60 minutes daily. This support will be utilized to support her goal areas and facilitate her independence within the classroom."

IEP goal progress reports for the student showed that the student made progress on the reading and writing goals of IEP dated April 24, 2024, showing that the student was rated as making progress on each goal, with percentages at 80% and 90% at the December 10, 2024, marking period.

The student's Winter Acadience test scores showed that the student read 113 words correctly, which fell in the 50th percentile; the student's reading accuracy was 98% in the 46th percentile; and the student's retelling passages score of 48 words was in the 75% percentile. The student's Maze assessment fell in the 77th percentile. The Winter Fastbridge test, taken in the resource setting, showed a score of 520, which was in the 64th percentile nationally, and 47th percentile at the district level.

The IEP dated April 24, 2024, provided for instructional and testing accommodations. For testing, the accommodations were (1) to take the test in a quiet, noncompetitive setting ("Testing in a separate setting, away from distractions, will allow [the student] to adequately show what [the student] knows. This will also allow for test items to be read and rephrased, as allowed, to increase [the student's] understanding of the items being assessed") and (2) text to speech directions/test items ("[The student] has difficulty decoding and reading accurately and efficiently"). Instructional accommodations were: "Access to spell check and voice to text for writing assignments, fraction strip, alphabet strip, 100's chart, multiplication chart, student not to be graded on spelling, teacher will read directions, and test items if computer audio not

available for assessments/assignments. [The student] will not be required to read out loud in class."

The special education teacher notified the parents in an email dated January 15, 2025, that one of the student's testing accommodations would no longer be allowable under new KSDE guidelines, requiring an IEP amendment to remove this accommodation. Specifically, the email stated that the new ELA KAP assessment for grades 3-5 "uses the science of reading and integrates a measurement of the ability to read (decoding and fluency) and the ability to understand what is read (reading comprehension) . . . Because of this significant change of what is measured in the new ELA KAP, for the district to be in compliance with Sec. 300.160 of the Individuals with Disabilities Education Act (IDEA), the IEP team needs to consider an amendment [to] your child's IEP to remove the TTS [Text to speech] accommodation for the Questions and Response sections, which is no longer allowable."

On January 16, 2025, the parent sent an email to the district members of the IEP team in which she stated her concerns "noncompliance with current accommodations, proposed additions to [the] plan, and time sensitive submission of the Text to Speech Passages and Graphics Application to [KSDE] by January 31, 2025, in light of KAP's new testing methodology." In the email, the parent asserted that the noncompliance with the student's IEP was in the area of spelling being graded, read aloud participation in class, testing in a quiet noncompetitive situation and the 60 minutes of special education in the general education classroom. In this email, the parent proposed 16 instructional accommodations organized into five categories (reading, spelling, writing, math, and homework) and three testing accommodations for the IEP team to consider, along with placement in special education (to consider services offered by the reading specialist rather than the special education teacher). The special education teacher replied on January 16, 2025, to schedule the IEP meeting on January 24, 2025, and the parent brought a list of requests in writing to the IEP meeting, which were discussed, according to the IEP minutes dated January 24, 2025.

The IEP team met and discussed a proposed IEP amendment on January 24, 2025, which stated that the student's services would change as follows: "[The student] will now receive 60 minutes of special education services in the special education classroom to focus on reading and math goals. [The student] will continue to receive 60 minutes of support in the general education setting during reading, writing, and math to help facilitate accommodations, modifications, and promote independence. [The student] will continue to utilize manipulatives (i.e. hundreds chart, multiplication chart, fraction strips) during math. [The student will] begin receiving math instruction in the special education setting and will no longer utilize the "MyPath" program within iReady." In addition, the IEP team increased the student's accommodations from those in the IEP dated April 24, 2024, which were largely continued with some rewording and to specify detail, to add reduced homework assignments at teacher discretion, using audio along with reading, a quiet environment for reading, extended time for assignments, frequent checks for understanding on multi step assignments, and to provide a copy of notes. The testing accommodations were expanded to include testing in a

noncompetitive situation, text to speech directions and test items, extended time, text to speech math diagnostic, and text to speech classroom accommodations.

The district provided PWN dated February 3, 2025, regarding the IEP amendment dated January 24, 2025. Along with other changes to the IEP, the district modified the student's access to text-to-speech for assignments in the general education classroom, "unless it would invalidate the construct of the assignment or assessment or measure." In the explanation of actions proposed or refused, the PWN stated: "The District proposes to modify the following assessment accommodation: text-to-speech for directions and test items. This modification is proposed to reflect the allowable accommodations on classroom, district, and state testing."

The parents replied in an email dated February 11, 2025, that the district had not accurately recorded their concerns and that their specific requests made in the January 24, 2025, meeting, which they believed were agreed upon in the meeting, had been changed in the PWN's proposed actions. The district prepared a chart of the parent's requests and their responses, and a special education administrator met with the parent on February 28, 2025, to review each request and response, which resulted in a revised IEP amendment dated March 7, 2025, with two associated PWNs. The district and the parent remained in discussion regarding the proposed IEP amendments during the investigation period and the parent did not sign consent to for the proposed IEP amendments with material changes in services, dated January 24, 2025, or March 7, 2025. This is further discussed as part of ISSUE 3.

Special Education Services and Paraprofessional Support in General Education Class

The district reported and a contact log provided by the district showed that the special education in the special education classroom was provided for 30 minutes each day school was in session, except on February 24, 2025. According to the district, the parent was notified, and the district submitted documentation that the 30 minutes were provided by pulling the student from a general education activity time on February 27, 2025, to make up the services. The parent reported in an email to the investigator that she believed there were two days when services were not provided, February 21 and February 24, 2025, and that the student reported to the parent that the teacher had not made up the time on February 27, 2025. The contact log showed that a paraprofessional provided the make-up session rather than the teacher.

To examine classroom special education services, the investigator asked the district to provide the schedule for paraprofessionals assigned to the student's classroom. The district provided the paraprofessional absence schedule and the paraprofessional classroom assignments when one or more paraprofessionals were absent, dated August 13, 2024, through March 7, 2025. Through December 5, 2024, the school was considered fully staffed with four paraprofessionals, providing the student's classroom with 105 minutes of special education support. With three paras present, the classroom had 60 minutes of special education support.

After December 5, 2024, through March 7, 2025, the schedule showed that when the fifth para was added the student's classroom had 120 minutes of paraprofessional support and when four paras were present, the student's classroom had 130 minutes of paraprofessional support. When three paras were present, the student's classroom had 55 minutes of special education support.

Four para schedule. From August 13, 2024, through December 5, 2024, the records showed that there were 16 full days and one partial day when 3 paraprofessionals were present. On these 17 days, the student's classroom had 60 minutes of paraprofessional support assigned. In addition, there was 1 partial day when three paras were present, and on this day, no special education support was present in the classroom (November 1, 2024). On three days (September 3, 6, and 9, 2024), there were only 2 paraprofessionals present, and on these days, the student's classroom had no special education paraprofessional support. On the remaining school days, all four paras were present and provided 105 minutes of support to the student's classroom.

Five para schedule. After December 5, 2024, through March 7, 2025, the schedule showed that the student's classroom had four (or five) paraprofessionals present for 24 days when one para was absent for a full (or partial) day. On three days, there were three paras present. On two days, there were four paras present, except for 23 minutes on February 21, 2025, and 45 minutes on February 4, 2025, neither of which affected the student's classroom.

In summary, from August 13, 2024, through March 7, 2025, the schedule showed that when paras were absent, the student's classroom had no special education support on 4 days, 60 minutes on 18 days, 55 minutes on 3 days, and 120 or 130 minutes on 30 days. On the remaining days of the school schedule, the student's classroom had 105 minutes of support through December 5, 2024, and 120 minutes after the district added a fifth para to the school's staff.

When asked, the parent reported that she had not been told that staffing shortages caused missed service time for her child, and she replied that she had not been told that by the district. In an interview, the general education teacher stated that when paraprofessional support was absent in the classroom, he adjusted instructional activities (such as not giving a test that would need to be read aloud) and he provided accommodations for the student as they were required by the adjusted instructional schedule. When asked directly if the student missed accommodations due to staff absences, he stated that she received her accommodations in his classroom in this situation.

In an email dated March 6, 2025, to the investigator, the principal explained the school's response to providing special education services in general education classes when special education paraprofessionals were absent: "Our focus is always on making sure the accommodations on the IEP are provided by an adult in the general education classroom. These can be provided by a special education teacher, para, or when necessary, a general education teacher. During the three days where paraprofessional support was not scheduled

[in September], the special education team reviewed student needs with the teacher and made sure those accommodations would be provided during the short time additional coverage wasn't available. This results in the teacher supporting short term the responsibility of accommodations and providing access to the general education curriculum in the classroom in the absence of the para.

Interviews with the general education teacher for the first semester of 2024-25 and the special education teacher found that the district reported that the student's specific accommodations were implemented in the general education classroom. According to these interviews, the student volunteered but was not required to participate in Readers Theater; spelling test corrections of concern to the parent were seen by the district as feedback on spelling development, and spelling errors were not graded as part of writing assignments for the student; and the student had been given a choice to leave the general education classroom or sit with the teacher in a small group as a quiet noncompetitive testing option. The district reported in its response that each of these accommodations were discussed and further clarified at the IEP meeting dated January 24, 2025, to alleviate any misunderstandings and to respond to parental requests.

Conclusion

In summary, the district provided a contact log that showed that the student received special education services in the special education classroom as required by the IEP dated April 24, 2024. Evidence showed that the district implemented the student's accommodations in the general education classroom, including those of special concern to the parent as expressed in the January 16, 2025, email to the district and at the January 24, 2025, IEP meeting. Further, progress monitoring of the student's IEP goals and related academic testing showed that the student made progress in the areas addressed by the IEP.

Also, the district provided special education staff in the general education classroom to provide special education services to the student. While staff absences affected the amount of special education staff in the classroom, the district had a systematic plan in place to provide prioritized paraprofessional support in the form of the two-, three-, and four- paraprofessional classroom schedules. Further, the district had an articulated policy on how to maintain the student's accommodations and access to the general education curriculum when support was lacking, including accommodations being offered by the general education teacher, who wisely also amended the student's instructional program on days when staffing affected the classroom. The district administrators demonstrated attention to the needs of this student and others when short term staff shortages occurred, and the district added an additional staff person to provide special education services by the end of the first semester. Based on the foregoing, it is found that USD#229 implemented the student's IEP by providing special education services, accommodations or other requirements of the student's IEP and *the district is in compliance*.

Issue Two

Did the district meet the IEP team in response to the parent's concern voiced at the October 2024, parent teacher conferences and the student's lack of progress in mathematics with the current IEP?

Applicable Law

Federal/State statutes and regulations at C.F.R. 300.324(b)(1) and KSA 72-3429(f) state that each agency shall ensure that the IEP team reviews the child's IEP periodically but not less than annually to determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate, to address: Any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate; the results of any reevaluation conducted under this section; information about the child provided by the parents; the child's anticipated needs; or (E) other matters. The Kansas Special Education Process Handbook states: "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 (K.S.A. 72-3429(f))."

Analysis: Findings of Fact

The parents alleged that their concerns about the student's mathematics performance were raised at a parent teacher conference in October 2024, with the classroom and special education teachers. At this time, the parent alleged that the district stated that the school did not provide special education support in mathematics. The parent alleged that the teachers stated that they would monitor the student's progress and performance in mathematics and that they dismissed her concerns. The parent alleged that the student's mathematics performance dropped precipitously from the beginning to the end of the fall, 2024 semester and alleged that the district failed to act and provide support during this period of time.

The district responded that: "While parents shared concerns about math achievement during the general education, October 2024 parent/teacher conference, the data available at that time did not indicate any level of special education intervention, nor did the parents request an IEP meeting." The district further reported that the student's August 21, 2024, IReady scores showed that the student scored at the third grade level at the beginning of the 4th grade year, which is expected performance for a fourth grade student and in the 57th percentile nationally. The district reported that such students are "well- positioned for grade-level instruction, though, differentiation is likely needed in certain domains." The district responded that when the student's December 2024 math scores showed one subdomain at two years below grade level, a general education tier 2 intervention was begun in mid-January 2025, and that the student's need for special education services was discussed at the January 24, 2025, IEP meeting.

Findings of Fact

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 #229.

The IEP developed at the end of the student's third grade year, dated April 24, 2024, stated that the student did well in math and listed the following academic achievement tests as evidence: iReady Winter Diagnostic Overall Grade 2; Number & Operations: Early Grade 3; Algebra & Algebraic Thinking: Grade; Measurement & Data: Early Grade 3; Geometry: Grade 2; and Nationally placed at the 52nd percentile. The IEP did not include a goal or services in mathematics. The IEP included math accommodations.

The district reported and the student's Fall iReady Diagnostic Assessment (August 21, 2024) showed that the student scored 450 in the 57th percentile nationally, with math domain scores as follows: Numbers and Operations: 442, grade 3, one grade level below; Algebra and Algebraic Thinking: 435, grade 3, one grade level below; Measurement and Data: 456, grade 3, one grade Geometry: 475, early grade 4, on grade level. In its response, the district reported that the student's test data "did not indicate a need for special education services" at the time of the October 2024, parent teacher conferences, nor did the student qualify for Tier 2 general education interventions based on her test scores.

At the October 2024, parent teacher conference, according to interviews and the district response, the parent raised a concern about the student's mathematics performance. The parent and the district agree that the student's mathematics performance was discussed at the parent teacher conference. The district and the parent agreed that the parent did not ask for an IEP meeting at that time. The parent reported in an interview that the district assured her that the student's mathematics performance would be monitored. According to interviews, the parent believed that the case manager told her that the school did not offer mathematics support, while the district reported that the case manager communicated that the student did not have mathematics support on her IEP at the time. According to the district response, regarding the parent teacher conference in October 2024, the case manager reported: "[The] parents expressed that math was a concern after looking at the Fall iReady Diagnostic score. They did not mention anything specific about math that was a challenge. I believed they wanted to know that she is using manipulatives while completing assignments. We discussed how we will continue to support [the student] through routine checks on work and small group instruction in the classroom. They (parents) did not request an IEP meeting to discuss math concerns. We shared that we will let them know if we see any regression or particularly difficult lessons/concepts."

The district reported and student Winter iReady Diagnostic Assessment (December 11, 2024) scores showed that the student had a decrease in performance to a score of 439 at the 28th percentile, with domain scores of "Numbers and Operations: 442, grade 3, one grade level below (remained the same from fall); Algebra and Algebraic Thinking: 449, grade 3, one grade

level below (increased from fall); Measurement and Data: 456, grade 3, one grade (decreased from fall); Geometry: 421, grade 2, two grade levels below (decreased from fall)." The district reported that based on the geometry score, the student qualified for MyPath, a Tier 2 general education intervention, and began lessons on January 17, 2024, completing 3 lessons at 100% accuracy each.

The district reported and IEP meeting documents dated January 24, 2025, submitted by the parents and the district showed that the parents requested that the student be excluded from MyPath and receive direct special education services in mathematics. At the IEP team meeting dated January 24, 2025, the school team members agreed to this request and the draft IEP dated January 24, 2025, showed a new goal and service in mathematics.

Conclusion

In this case, the parent and the teachers discussed the student's math performance at the October parent teacher conference. At that time, the student's beginning of the year quarterly test scores did not indicate a need for special education or additional general education intervention, nor did the IEP dated April 24, 2024, include a math goal or special education services in math. It is noted that the parent may have anticipated emergent math needs that subsequently became evident on district's quarterly iReady monitoring December 12, 2024. When the student's math scores dropped, the district responded to implement a general education tier 2 intervention by mid-January 2025. An IEP team meeting was held January 24, 2024, and a mathematics goal and special education services were added to the proposed IEP resulting from that meeting.

Based on the foregoing, it is found that the district met its obligation to meet with the IEP team under C.F.R 300.324(b)(1) and *there is no violation*.

Issue Three

Did the district provide proper PWN in response to parental requests for accommodations or services?

Applicable Law

Parents have the right to bring questions, concerns, and recommendations to an IEP meeting for discussion (Federal Register, August 14, 2006, p. 46678; Kansas Special Education Process Handbook, p. 93). In addition, while the IEP team should work toward reaching a consensus, if the team cannot do so, the Local Education Agency (LEA) representative at the meeting has the authority to make a decision and to then provide parents with the appropriate notice and consent for the action, if consent is required.

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.

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

The parents alleged that they provided a list of their concerns prior to and in the January 24, 2025, IEP meeting, and that the discussion in the meeting appeared that the school members of the IEP team were in concord with their positions. The parents alleged that following the team meeting they received an IEP amendment and prior written notice that did not align with the discussion in the IEP meeting. Further, in reviewing a previous PWN from April 24, 2024, the parent alleged a discrepancy in what was discussed in the meeting and the subsequent PWN provided by the district.

The district responded that "the schools members of the IEP team provided the PWN February 4, 2025 in good faith based on: our understanding of the parent requests from January 24, 2025; information provided to the parents at the IEP meeting; modifications that were necessary to comply with IDEA Sec 300.160 Participation in assessments; and new requirements of the Kansas Assessment Program (KAP) for Reading that does not allow text to speech to be used on the test section that measures 'decoding' (reading) because 'text to speech' would invalidate the test."

The district's response to the complaint on February 19, 2025, continued that, "After reviewing the PWN, the parents responded with two emails on February 11th "...requesting clarification and possible revisions" to the IEP amendment and PWN. The school team is currently working on responding to the parents' questions and concerns. Given weekends and the days school was not in session due to weather and conferences (February 12, 14, 17, 18, 19, or 20), there was only one school day between the school receiving parents' requests and the filing of 25FC229-003. The team is currently working on a PWN that will provide a written response to all of the requests for clarification and modification included in the two February 11th emails. We plan to complete this response within 10 days that will address all questions/concerns including any that the parent's perceive were not addressed in the original PWN."

Findings of Fact

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 #229.

The parent reported that the conversation in the April 24, 2024, IEP meeting did not include discussion of new IEP goals. The IEP meeting notes dated April 24, 2024, provided by the district as evidence said only this about the discussion: "Parent wanted [the student" to continue to have access to math manipulatives instead of relying on rote memory," and "[the student] has made good progress in 3rd grade and the team celebrated her growth, especially in reading."

The district provided PWN dated April 24, 2024, to make changes to the student's IEP of the same date with this explanation: "Any additions, changes or modifications to the special education and related services or educational placement that are needed to enable your child to meet the measurable annual goals set in the IEP and to participate, as appropriate, in the general curriculum." Changes proposed were for new reading and writing goals, "as [the student] continues to need direct, individualized instruction in both areas." Parental consent was not requested or provided for these changes.

The parent reported that testing accommodations were changed from the student's IEP dated May 1, 2023, to the IEP dated April 24, 2024, and that these changes were omitted from the April 24, 2024, PWN. In both IEPs, the testing accommodations were to take tests in quiet noncompetitive environments and text to speech for directions and test items.

The parent provided a list of concerns prior to the January 24, 2025, IEP meeting that included a concern regarding the student's speech and its deleterious effect on the student's reading performance. She requested a copy of the student's speech and language evaluation that she believed was conducted at her request in 2022.

The parent reported that she was informed by the special education administrator that the speech language evaluation was not completed in 2022. In notes of a phone call on February 4, 2025, between the parent, the principal and the school administrator, the district offered to provide immediate screening, observation and teacher questionnaire conducted by the speech and language pathologist, with the options to proceed immediately to a speech language evaluation or to include speech language as part of the student's upcoming triennial evaluation, due May 10, 2025.

In an email dated February 11, 2025 to the district, the parent stated disagreement with aspects of the PWN dated February 3, 2025, including: the attendance page, the nature of the math goals, inaccuracy of parent concerns recorded with a restatement of their concerns, and specific aspects of the following nine accommodations on the proposed IEP amendment dated January 24, 2025: (a) Text-to-Speech & Keyboard Usage for Writing Assignments, (b) Extended Time for Reading Assignments & Assessments, (c) Quiet Environment for Reading When Audio Versions Are Unavailable, (d) Spell Checker for Written/Typed Work, (e) Pre-Written Notes for Lessons Requiring Board Copying, (f) Grading Based on Content Rather Than Spelling or Form, (g) Frequent Accuracy Checks for Multi-Step Assignments, (h) Parent Discretion to Modify Homework Without Repercussions, and (i) Extended Time for All Tests & Assessments (Testing Page).

The district elaborated in its response, stating: "During the January 24th IEP meeting, parents provided a list of requested changes to the IEP. We were able to agree to some of these verbally during the meeting, but others needed more time to consider the facts and legal requirements. It appears that in some cases, the parents viewed not verbally objecting as agreement with their proposals. We did not feel the need to object to every area of concern as the parents stated in writing that they wanted the response in the form of a PWN."

The special education administrator met with the parent on February 28, 2025, to provide detailed information on accommodation and other aspects of the IEP amendment to address the parent's concerns. On March 7, 2025, the special education administrator sent an email to the parent that attached (a) an IEP amendment dated March 7, 2025 revised in response to February 11 and 28, 2025 parent concerns and input, (b) two Prior Written Notices for the IEP Amendment formatted as requested by the parent (a PWN for the items that do not require consent dated March 3, 2025 and a second PWN for the items that do require consent that indicate the items or parts of items that were accepted and rejected and why, dated March 4, 2025), (c) a Working Document the district team used to respond to parent requests and revised based on ongoing input, including a chart with changes, (d) The PWN-E for evaluation and consent dated March 6, 2025 for [the student's] three-year reevaluation to share a proposed evaluation plan and seek input, and (e) an additional copy of the parent rights document.

The Working Document included the original language of the IEP amendment dated January 24, 2025, the parent concerns from their email dated February 11, 2025, the districts proposed revisions or the district's acceptance/rejection/rationale statement for each concern, and the proposed revisions following the February 28, 2025, meeting including parent input. In addition to the nine accommodations listed above, the Working Document included similar discussions of the student's (revised) math goal, a summary of the other accommodations that did not require further revisions, updated present levels of performance in reading and math requested by the parent, revised reading goals, and the revised statement of parental concerns and how these were addressed by the district.

The revised IEP amendment dated March 7, 2025, summarized the process and changes in this way: "*After the IEP meeting on 1/24/25 an IEP Amendment was developed and sent on 2/3/25. It included the following changes: -Updated PLAAFP in the area of math -Addition of math services for 30 minutes daily -Addition of math goal -Updated parent concerns and how team is addressing parent concerns -Updated classroom and assessment accommodations. *After further input from parents on 2/11/25 and 2/28/25 additional changes were made to the IEP Amendment on 3/7/25: -Updated staff members in attendance for 1/24/25 IEP meeting - attendance reflects the presence of team members on 1/24/25 -Additional data in the area of math, reading and spelling in PLAAFP and baseline -Updated parent concerns and how team is addressing parent concerns -Updated classroom and assessment accommodations after input provided by IEP team, including parents -Updated Specially Designed Instruction section after input provided by IEP team, including parents."

As requested by the parent, the district provided two associated PWNs, one requiring parental consent for material changes in services dated March 4, 2025, and one with revisions that did not require consent, dated March 3, 2025. Parental consent was not sought for changes to the IEP based on the IEP team meeting on January 24, 2025, for the following district proposals: to add a math goal, modify current reading and spelling goals, update present levels of functioning, update parental concerns, and to excuse the student from participating in MyPath within the IReady curriculum. The district proposed to reject the parent's request to have special education services provided by a reading specialist in this PWN. The PWN included the rationales for accepting or rejecting changes, other options considered, and evidence used for decision making.

The second PWN dated March 4, 2025, for changes to the IEP sought parental consent for changes to the IEP noting a material change in services. This PWN stated, "The District proposes to revise or expand upon existing accommodations from the IEP dated April 24th, 2024. Each accommodation now indicates the accommodation, rationale, location, frequency, and duration, a new IEP system update, which was not included in the previous IEP. An amendment was sent on February 3rd, 2025. Revisions were made based on parent feedback received on February 11th, 2025, and February 28th, 2025." The district proposed to revise 7 previous accommodations. Similarly, the district proposed to add 8 accommodations based on the same IEP meeting and other communication with the parent. Finally, the district stated: "The District proposes to reject the following accommodation based on further team discussion after the IEP meeting on January 24th, 2025. The team considered parent feedback received on February 11th, 2025, and also discussed this further during a meeting on February 28th, 2025. 1. Reject "Allow access to a spell checker for all written and typed assignments and assessments to support [the student's] spelling needs" 2. Remove "Text-to-Speech directions/test items" for the ELA KAP Assessment." The PWN proposed to increase special education services in the special education classroom from 30 minutes to 60 minutes daily to add math services. The PWN included the rationales for accepting or rejecting changes, other options considered, and evidence used for decision making.

Conclusion

Regarding the PWN provided on April 24, 2024, it is found that the district provided PWN to the parent on a change to the IEP that did not require parental consent. It cannot be determined if these changes were discussed in detail at the meeting based on the evidence available. There is no violation found with this PWN.

In this case, the parent expressed concern that the district's PWN did not agree with the parent's perception of the events of the January 24, 2025, IEP meeting. The district in response reported that further consideration was required for some of the requests made by the parents before the February 3, 2025, PWN was provided.

Following the January 24, 2025, IEP meeting, the district provided PWN dated February 3, 2025, to the parent asking for consent for material changes in services, adding a math goal and 30

minutes of direct special education services in special education, removing the KAP-disallowed test accommodation, and adding or amending accommodations. In response to the email dated February 11, 2025, of parental concerns with the PWN, the district met with the parents February 28, 2025, to review detailed information regarding their concerns with the proposed IEP amendment's contents. The district again revised the IEP amendment now dated March 7, 2025, and provided associated PWNs dated to the parents showing changes that required parental consent and those that did not. The district provided supporting documents clearly showing the IEP process and changes to the parent and the investigation. It is noted that the parent and the district continue to work extensively together toward reaching agreement through the IEP process.

Based on the foregoing, it is found that the district provided proper PWN in response to parental requests for accommodations or services and *there is no violation*.

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 C.F.R. 300.324(b)(1) and KSA 72-3429(f) was not found, based on facts listed above. Corrective action is not required.
3. ISSUE THREE: A violation of 34 C.F.R. 300.503(a) and K.A.R. 91-40-27(a)(3) was not found, based on the 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.gov 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: 25FC229-003

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on February 17, 2025, 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 allegations, was issued on March 14, 2025. That Complaint Report concluded that there were no violations of special education statutes and regulations

Thereafter, the parents filed an appeal of the Complaint Report. Upon receipt of the appeal, an Appeal Committee was appointed, and it reviewed the original complaint, the Complaint Report, the parents' notice of appeal, and the district's response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

Preliminary Matters

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.

Discussion of Issues on Appeal

From Complaintant

The report identified three issues:

1. ISSUE ONE: Did USD #229 implement the student's IEP by providing special education services, accommodations or other requirements of the student's IEP? (page 6)
2. ISSUE TWO: Did the district meet the IEP team in response to the parents' concern voiced at the October 2024 parent teacher conferences and the student's lack of progress in mathematics with the current IEP? (page 14)
3. ISSUE THREE: Did the district provide proper PWN in response to parental requests for accommodations or services? (page 18)

The parents appeal the findings and conclusion of the investigator on each of the three issues. The Appeal Committee has addressed the issues separately, below.

Issue One

Did USD #229 implement the student's IEP by providing special education services, accommodations or other requirements of the student's IEP?

The investigator concluded that the district did implement the student's IEP by providing special education services, accommodations or other requirements of the student's IEP (report, p. 14). This conclusion was based on:

- A contact log showing that the student received services as required by her April 24, 2025 IEP;
- Interviews with school staff members;
- Use of a "systematic plan" to provide paraprofessional support in the form of two, three and four paraprofessional classroom schedules;
- Use of accommodations provided by general education classroom teachers; and
- Use of additional staff members when staff shortages occurred. (Report, p. 14)

The parents' appeal of this issue is divided into three "subsections" listed as Subsection A, Subsection B, and Subsection C. the Appeal Committee will address each subsection separately.

Subsection A

The parents assert that the district failed to implement "direct" services as specified in the student's IEP by using paraeducators to provide a portion of those services, and thereby implementing a material change of services without IEP Team consideration, prior written notice, parent consent, or least restrictive environment (LRE) concerns.

The basis for the parents' assertions in Subsection A is that: "Per federal and state guidance, paraprofessionals *may assist under supervisio*n but may *not independently deliver* SDI or substitute for credentialed special educators (Notice of Appeal, p. 5)."

The Appeal Committee disagrees with this assertion.

The applicable law regarding the use of paraprofessionals in providing special education and related services is in federal regulation 34 C.F.R. 300.156(b)(2)(iii), which states:

> (b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--
>
> (iii) Allow **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. (Emphasis added).

Whether described in an IEP as a "direct service," or otherwise, this federal regulation permits paraprofessionals who are appropriately trained and supervised, in accordance with state written law or policy to assist in the provision of special education and related services. There is nothing in this regulation that prohibits such assistance from being independently delivered by a paraprofessional or other assistant, as long as the assistance is in accord with state law or written policy.

Kansas policy describing the use of paraprofessionals is stated in the Kansas Special Education Reimbursement Guide (KSERG), and includes the following:

> 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. (KSERG, P. 27, emphasis added).

There are specified limits:

> Paraeducators must not be: • 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. (KSERG, p. 27).

The supervision requirement is described as follows:

> Unless otherwise indicated, instructional p**araeducators must be directly supervised a minimum of 10% of the time they are working with students** (emphasis added). (KSERG, p. 29).

Accordingly, although there are limits, paraprofessionals in Kansas are authorized to provide a wide range of direct IEP services to children with disabilities, provided that they are directly supervised at least 10% of the time they are working with a student. No evidence has been presented to the Appeal Committee that paraprofessionals providing direct services to this student were not supervised in accordance with the Kansas Special Education Reimbursement Guide.

Subsection B

(Notice of Appeal p. 6-7) asserts that there were "multiple failures to provide mandated services and to accurately report or notify parents about changes in service delivery."

Subsection B asserts that the parents were not notified of missed services on February 21 and February 24 or how those services would be made up, that the cumulative reduction in services over these dates exceeded 25% (constituting a material change in services that required consent, not provided by the parents) and that special education services were provided by a general education teacher.

A material change in services 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). **This increase or decrease means the IEP has been changed to increase or decrease the frequency or duration of a service over the time-period of the IEP, not over the time period of a single service**. The Appeal Committee finds that the parents failed to provide sufficient information in this appeal as to how missed services on February 21 and February 24 (if correct) constituted a material change in services that required consent or a PWN.

The Appeal Committee also finds that the Notice of Appeal does not explain why a change in service delivery (presumably due to a change in service providers) requires a prior written notice. The Appeal Committee has already addressed the issue of using paraprofessionals to deliver direct special education and related services in Subsection A, but re-states here that changes of personnel who are qualified to provide services does not constitute a change of services. A change in the delivery or educational methodology of services (when, as here, the delivery or educational methodology is not specified in the IEP) is not a change in the frequency or duration of any service and so does not require a PWN or consent.

Finally, a failure to provide services in an IEP does not, by itself, change the IEP or require a PWN. A missed service may be a failure to implement the IEP, but failing to implement the IEP is not the same thing as changing the IEP (which would require a PWN). With regard to implementation of an IEP, not every failure to implement an IEP is a failure to provide a Free Appropriate Public Education (FAPE). The Office of Special Education Programs (OSEP) is the office in the United States Department of Education that both writes and enforces the federal special education regulations. OSEP has issued guidance stating that the IDEA statute and regulations do not address whether a school district must make up for missed services. That guidance advised that whether a missed service needs to be made up is a matter of FAPE and must be addressed on a case by case basis with emphasis on the impact of the missed service on the child's ability to continue to progress and meet the annual goals in the IEP (See, Letter to Clarke, 48 IDELR 77 (OSEP 2007)).

The courts that have considered the impact of missed services agree that an IEP implementation failure must be material to be actionable. See, Abigail P. v. Old Forge School District, 124 LRP 21769 (3d. Cir. 2024), joining the 4th, 5th, 8th, 9th, and 11th Circuits, saying: "Several of our sister courts have held that "a party challenging the implementation of an IEP must show more than a de minimis failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP." This court went on to explain that perfection is not the standard for implementation of an IEP, and that "a requirement of perfect adherence would ignore the realities and the challenges that the IDEA was built to accommodate…A materiality standard affords local agencies some flexibility while still holding those agencies accountable for material failures and for providing the disabled a meaningful education benefit."

The Appeal Committee finds that the evidence does not support the parents' contention that there was a material failure to implement the student's IEP or that the district failed to provide a required PWN.

Subsection C

This subsection of issue 1 is stated as: "Misapplication of IEP accommodation and Misrepresentations."

The Appeal Committee first addresses the "misrepresentations" portion of this subsection. The parents state that the investigator "relied solely on district accounts and failed to fully represent parent statements submitted during interviews and in documentation." The Appeal Committee finds no basis for that assertion in either the report or the parents' appeal.

The report shows that the investigator used information from the parent to conduct a comprehensive investigation into this issue. Most of the report dealing with this issue describes the district's responses to the investigator's inquiries. That is typical for these kind of reports where an investigator is tasked with substantiating allegations made against the district. That investigative technique does not indicate that the investigator "relied solely" on district accounts. Moreover, these reports are not intended to be exhaustive to the extent that they "fully represent parent statements submitted during interviews and in documentation." That kind of procedure would require the same application to statements of school officials and result in unnecessarily long and difficult to read reports that include significant amounts of irrelevant information. Instead, investigators are trained to identify in the report only the pertinent facts needed to explain and support their conclusions.

As for the "Misapplication of IEP accommodation"' portion of this subsection, the Appeal Committee agrees that there is evidence that the student's IEP may not have been perfectly implemented. However, as already addressed above, perfect implementation is not required, and there is no showing of a material failure to implement the IEP.

Finally, the complaint report states that: "progress monitoring of the student's IEP goals and related academic testing showed that the student made progress in the areas addressed by the IEP," thus meeting the FAPE standard articulated by both OSEP and the 3rd Circuit, cited in Subsection B. (Report, p. 7), and finding that December 10, 2024 progress reports showed the May 5, 2023 goals in reading and writing were met with percentages at 80% and 90% (Report, p. 8).

For the reasons stated above, the conclusion in Issue 1 of the report is sustained in full.

Issue Two

> Did the district meet the IEP team in response to the parent's concern voiced at the October 2024 parent teacher conferences and the student's lack of progress in mathematics with the current IEP? (page 14)

This issue is awkwardly stated, but alleges that the district failed to convene an IEP meeting in response to concerns of the parents and the student's lack of progress in math. This involves several undisputed facts, including:

- The parents voiced concerns at an October, 2024, Parent/Teacher conference regarding the student's lack of progress in mathematics;
- The parents did not ask for an IEP meeting at that time;
- District personnel indicated they would conduct routine checks and report any noted regression to parents; and
- No IEP team meeting was held to address this concern until three months later, on January 24, 2025, at which a math goal and service were added to the IEP.

The investigator found no violation because the investigator judged the quarterly test scores, at the time of that Parent/Teacher conference, did not indicate a need for special education nor for additional general education intervention (Report, p. 17).

Subsection A

This subsection of the of the parents' appeal cites statutes and regulations requiring school districts to revise an IEP to address a lack of student progress based on information provided by parents, specifically 34 C.F.R. 300.324(b)(1) and K.S.A. 72-3429(f).

Subsection A omits important language in both the cited federal regulation and Kansas statute. Both 34 C.F.R. 300.324(b)(1) and K.S.A. 72-3429(f) require an IEP team to revise the IEP, as appropriate, to address information provided by parents. These provisions involve the use of judgment in determining whether an IEP needs to be revised, and do not require IEP teams to revise IEPs whenever a parent requests a revision or brings up a concern.

The investigator included, in her findings, that the October, 2024 meeting was a parent–teacher conference. At that parent–teacher conference the parents expressed concern about the student's mathematics performance (Report, p. 16). The report also noted that the parents and school officials agreed that the parents did not ask for an IEP meeting at that time (Report, p. 16). In addition, the investigator reviewed the student's Fall iReady Diagnostic Assessment (dated August 21, 2024), saying it, "showed that the student scored 450 in the 57th percentile nationally, with math domain scores as follows: Numbers and Operations: 442, grade 3, one grade level below; Algebra and Algebraic Thinking: 435, grade 3, one grade level below; Measurement and Data: 456, grade 3, one grade Geometry: 475, early grade 4, on grade level." (Report, p. 16), and, based on these scores, in the judgement of school officials, the student did not need special education services nor Tier 2 general education interventions in math.

The investigator concluded that, at the time of the October parent–teacher conference, "the student's beginning of the year quarterly test scores did not indicate a need for special education or additional general education intervention." (Report, p. 17).

Parties sometimes, as here, disagree with how data should be interpreted. As noted in the "Preliminary Matters" portion of this decision, the Appeal Committee does not conduct a separate investigation, but instead, determines whether sufficient evidence exists to support the findings

and conclusions in the Complaint Report. The Appeal Committee agrees that the evidence (see paragraph immediately above) supports the conclusion by the investigator that, under these facts, the district was not compelled by law to convene an IEP meeting or revise the student's IEP.

Subsection B

This subsection alleges a violation of "child find" requirements. While the law uses the term "child find," there is no definition for the term "child find" in the law. These "child find" provisions, requiring the evaluation and identification of children who may have a disability and be in need of specially designed instruction, apply to unidentified children, not those, such as this student, who have already been identified as eligible for special education. This student has had an IEP in place since at least May of 2022 (Report, p. 5). Accordingly, these "child find" requirements have no application to this student.

The pertinent Federal regulation is 34 C.F.R. 300.324(b), which requires public schools to review and revise IEPs at least annually and as appropriate to address: "any lack of expected progress toward annual IEP goals (Emphasis added)." The Appeal Committee's finding in Subsection A of this issue applies equally to this subsection. The evidence supports the conclusion by the investigator that, under the facts presented, where significant progress was made toward the student's IEP goals and math deficits were not yet apparent, the district was not compelled by law to convene an IEP meeting or to revise the student's IEP.

The conclusions of the investigator on this issue are sustained in full.

Issue Three

Did the district provide proper PWN in response to parental requests for accommodations or services?

Subsection A

This subsection addresses alleged violations within the PWN provided after the April 24, 2024 annual IEP meeting (dated 4/24/2024) and the February 4, 2025 PWN following the emergency IEP meeting on January 24, 2025.

With regard to the April 24, 2024 meeting, the parents' appeal states: "Following the April 24, 2024 IEP meeting, the IEP removed language regarding accommodations for district assessments, limiting them to state assessments only. This change was not discussed in the meeting and not disclosed in the April PWN (Appeal, p. 16)."

The parents do not explain in this appeal precisely what language was removed from the previous IEP. The Appeal Committee reviewed the IEPs dated 5/1/23 and 4/24/24. Under the title: "Supplementary Aids and Services (Accommodations and Modifications)," the IEPs are identical. Both IEPs allow accommodations, including Text to Speech, on both state and district level

assessments. On page 9 of 13, both IEPs say: "Does the student require Accommodations/Modifications for Assessments"? The "yes" box is checked on both. On page 10 of both IEPs, under the heading of "Participation in Statewide Assessments," both IEPs state that "Text to Speech" is permitted for Mathematics and Englash Language Arts (ELA). A plain reading of these identical provisions cannot be interpreted to mean that Text to Speech, or any specific testing accommodations in the IEP, are limited to only state assessments.

With regard to the January 24, 2025 meeting, the district provided a PWN dated February 3, 2025, to the parents asking for consent for material changes in services, including the removal of the Text-to-Speech test accommodation for the ELA KAP assessment. The parents did not give the requested consent. The parties met again on February 28, 2025 and the district issued another PWN, dated March 7, 2025, again requesting consent for removal of the Text-to-Speech test accommodation for the ELA KAP assessment. The parents did not give the necessary consent. These exchanges clearly indicate that neither party believed the district had already removed the Text-to-Speech test accommodation for the ELA KAP assessment from the IEP.

The investigator concluded, as follows: "The district provided all supporting documents to the investigator, who found that the documents, "clearly" showed that the IEP revision process was continuing (Report, p. 24). The Appeal Committee agrees with the investigator. The Appeal Committee finds that this exchange was, and is, an on-going process that has not yet reached a conclusion. It is, therefore, still in the proposal stage. As of the date this complaint was filed, the student's IEP was not changed with regard to this Text to Speech testing accommodation.

Subsection A of this issue also includes the following allegations:

- The February 4, 2025 PWN, which followed the January emergency IEP meeting:
    - Omitted two accommodations previously listed in the student's IEP.
    - Altered one accommodation's language without prior discussion.
    - Excluded five new accommodations discussed and agreed upon during the IEP meeting.
    - Revised six additional accommodations in a way that diluted or contradicted their intended support.
    - Failed to accurately reflect the parents' concerns or the rationale for the changes proposed or rejected.
    - Failed to accurately account for participants in the January 24, 2025 meeting.
        - Omitted two participants who were in attendance.
        - Falsely added a participant who was not in attendance.

This portion of Subsection A lacks sufficient information for consideration on appeal. As stated in the Preliminary Matters portion of this decision, when a party submits an appeal of a complaint report and makes statements in the notice of appeal without support, the Committee does not attempt to locate the missing support. The above statements do not provide any supporting

information. For example, The first statement alleges that the 2/4/2025 PWN "Omitted two accommodations previously listed in the student's IEP." It does not identify what those two accommodations were, making it impossible for the Appeal Committee to review. Each of the following allegations in this portion of Subsection A have the same lack of sufficient information needed for review. As a result, the Appeal Committee finds these allegations to be without the necessary support for review.

NOTE: the parents cite M.C. v. Antelope Valley Union High School, 852 F.3d 840 (9th Cir. 2017) as ruling that "IEP changes must be mutually agreed upon and documented." The Appeal Committee agrees with the decision in that case, but finds no application to the facts in this complaint. In the Apple Valley Union High School case, school officials saw an unintentional error in the IEP and changed the IEP to correct that error, without informing the parents. That is not what happened here. Here, the school district has made multiple attempts to meet with the parents to discuss proposals to change this student's IEP. The district has not received the required consent to do so, and has not made the proposed changes to the IEP. As a result, the process continues and the school district has not changed the student's IEP where consent is needed but not obtained.

Subsection B

IEP meetings held without parent participation.

On page 17 of their appeal, the parents cite statements of school personnel, made to the investigator, and disclosed in the report, indicating that IEP issues were further considered and decisions were made by the IEP team after the January 24, 2025 IEP meeting, without participation of the parents. These statements, submitted to the investigator by school officials were recorded in the report as follows:

KSDE Report Citations:

> *"The team is currently working on a PWN that will provide a written response to all of the requests for clarification and modification included in the two February 11th emails." (KSDE Report, p. 19)*
>
> *"We were able to agree to some of these verbally during the meeting, **but others needed more time to consider the facts and legal requirements**. It appears that in some cases, the parents viewed not verbally objecting as agreement with their proposals. We did not feel the need to object to every area of concern as the parents stated in writing that they wanted the response in the form of a PWN." (KSDE Report, p. 21)*
>
> *"The District proposes to reject the following accommodation **based on further team discussion after the IEP meeting on January 24th, 2025**." (KSDE Report, p. 23), (emphasis added).*

> *"The district in response reported that* ***further consideration was required for some of the requests made by the parents before the February 3, 2025, PWN was provided.****" (KSDE Report, p. 24)*

This allegation that the IEP team met without the parents to further discuss and make final decisions on the revision of the student's IEP was first alleged in this appeal. It was not an issue presented in the original complaint and so it is not subject to review on appeal. However, because this information comes from the district, itself, it is highly credible. The department has general supervision duties that obligates it to make an inquiry into highly credible allegations of a failure to comply with law, and will do so on this issue in a separate procedure. The parents will be copied on all correspondence relating to this action, including any resolution or required corrective action.

Conclusion

For the reasons stated herein, the Complaint Report is sustained in full.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 15th day of April, 2025.

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 #320
ON FEBRUARY 10, 2025

DATE OF REPORT: MARCH 17, 2025

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 "parent", or the "mother".

The complaint is against USD #320 (Wamego Public Schools) who contracts with the Special Services Cooperative to provide special education services to students enrolled in the school district. In the remainder of the report, both of these responsible public agencies may also be referred to as "the district", "the local education agency (LEA)", or "the school". Individually, they will be referred to by "USD #320" and "the Cooperative" respectively.

The Kansas State Department of Education (KSDE) allows for a 60-day timeline to investigate a complaint and allow for an appeal process 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 February 10, 2025.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all the documentation provided by both the complainant and USD #320.

Interviews were conducted with both parties. The parent was interviewed by telephone on February 15, 2025 and provided additional information and clarifications via email during the investigation.

A telephone interview was held on March 4, 2025 with Erica Bammes, Special Education Director; Carol Hay, School Psychologist; and Brad Couture, Principal. In addition, a telephone interview was held on March 7, 2025 with Kim Marquardt, Special Education Teacher, and Jana Schmidt, In-School Suspension Supervisor.

The following written documentation was used in consideration of the issues:

1. Individual Education Program (IEP) and Behavior Intervention Plan (BIP) dated October 2, 2023
2. Email dated September 4, 2024 written to all of the student's general education teachers by Brad Couture, Principal of Wemego Middle School

3. IEP and BIP dated September 30, 2024
4. Email dated October 4, 2024 written to the parent by Jacque Colgrove, Middle School Math Teacher
5. Email dated October 7, 2024 written to the parent by Kim Marquardt, Special Education Teacher with an IEP dated May 9, 2024 for student KJA attached
6. Email dated October 15, 2024 written to the parent by the Special Education Teacher
7. Recording of October 22, 2024 phone call between parent; the Principal; and Carol Hay, School Psychologoist; (note: all parties acknowledged being recorded)
8. Email dated October 22, 2024 written to the parent by the Principal
9. Email exchange dated October 29, 2024 between the parent, the Special Education Teacher, and Scott Nading, Mental Health Therapist
10. Email dated October 30, 2024 written to the parent by the Special Education Teacher
11. Email dated November 15, 2024 written to the parent by the Special Education Teacher
12. Email dated November 20, 2024 written to the parent by the Principal
13. Neuropsychological Report dated December 31, 2024 written by Dr. Christine Durrett, Board Certified Clinical Neuropsychologist, at the Flint Hills Neuropsychology
14. Email exchange dated January 15, 2025 between the parent and the Special Education Teacher
15. Email dated January 29, 2025 written to the parent by Brittany Lakin, Math Teacher
16. Discipline Log dated August 13, 2024 through February 5, 2025
17. List of unexcused tardies to classes dates between October 14, 2024 through February 11, 2025
18. LEA Self-Assessment Interview Questions and Answers
19. LEA Response to the Allegations dated February 21, 2025 written by Erica Bammes, Director of Special Education
20. Email dated March 5, 2025 written to the Investigator by the Principal

Background Information

The student is an 11-year-old boy who is currently enrolled in in the 6th grade at Wamego Middle School in USD #320 for the 2024-25 school year. It is noted that the student transferred from an elementary school within the district at the beginning of this school year with an IEP in effect.

The student has a history of medical diagnoses of Attention Deficit Hyperactivity Disorder (ADHD), anxiety, and Post-Traumatic Stress Disorder (PTSD). His most recent neuropsychological evaluation conducted on December 31, 2024 noted diagnoses of ADHD and Disruptive Mood Regulation Disorder (DMRD).

The student was initially evaluated for special education services during the fourth grade in USD #320. At that time, he was found eligible for special education and related services due to meeting the exceptionality category of Other Health impaired. A reevaluation was conducted with additional assessment on September 30, 2025 while the student was attending Wamego

Middle School. At that time, the student was found to continue to be eligible under the exceptionality category of Other Health Impaired.

Issues Investigated

Based on the written complaint and an interview with the complainant, four issues were identified.

Issue One

USD #320, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to protect personally identifiable information (PII) when it shared a copy of another student's IEP with the parent on October 7, 2024.

Applicable Law

Federal regulations at 34 C.F.R. 300.123 which require public agencies in the State to protect the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the IDEA.

Analysis: Findings of Fact

After requesting a copy of the student's IEP, the parent alleged that the Special Education Teacher emailed her a copy of another student's IEP on October 7, 2024. The parent was concerned that she received confidential information about another student as well as was concerned that confidential information about her student had been shared with another parent.

USD #320 acknowledged the district was out of compliance with the IDEA in regards to the IDEA requirements for Issue One. The district proposed a resolution to address the noncompliance to the KSDE and the KSDE accepted the proposed corrective action plan. As such, no findings of fact will be made in this report.

Conclusion

As a result of the district's self-assessment and *acknowledgement of noncompliance*, USD #320 proposed a resolution to the KSDE for correcting the noncompliance. KSDE accepted the proposed corrective action plan and notified both parties on March 10, 2025.

Issue Two

USD #320, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate disciplinary procedures when suspending the student during the 2024-25 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.530 require specific procedures to be followed when a student with a disability or suspected of having a disability are subject to a disciplinary change of placement as a result of a violation of the student code of conduct.

Federal regulations as 34 C.F.R. 300.536(a) define a disciplinary change of placement as occurring when a student's educational placement has been changed for more than 10 consecutive school days or for more than 10 cumulative school days when a pattern exists due to disciplinary action resulting from a violation of the student code of conduct.

Analysis: Findings of Fact

The following findings of fact are based upon interviews and record review.

The parent alleged the student has been suspended for more than 10 school days during this school year through a combination of out-of-school suspensions (OSS) and in-school suspensions (ISS). The parent believes these suspensions have been for behaviors that are directly related to the student's disability. The parent also reported that the School Psychologist and Principal informed her during a phone call on the morning of October 22, 2024 that a manifestation determination meeting needed to be held.

Disciplinary records show and interviews confirmed that the student received a total of five days of OSS on the following dates during the 2024-25 school year: September 9, September 10, October 3, October 4, and October 7.

Disciplinary records show and interviews confirmed that the student received a total of eight days of ISS on the following dates during the 2024-25 school year: August 21, September 4, September 5, September 6, October 31, November 1, November 20, and November 21.

The Disciplinary Log documents the behavior which resulted in the ISS and OSS included harassment, physical aggression, and noncompliance/classroom disruption.

USD #320 staff reported that the district's practice is for ISS to be served in the Adverse Child Experience (ACE) classroom under the supervision of the ISS Teacher. This is considered a general education setting as the classroom serves students both with and without disabilities. The curriculum in the ACE classroom provided by the general education teachers who consult with the ISS Teacher for providing individual instruction on each lesson and providing assignments for each assigned student. The district provided an email dated September 4, 2024 written by the Principal to all of the student's general education teachers which supported this practice.

The ISS Teacher and the Special Education Teacher indicated that whenever a student with an IEP is assigned to ISS, they meet at the beginning of the school day to plan for providing the specialized instruction and supports required by the IEP for that particular student and they meet again at lunch to monitor progress.

While no documentation was provided, the ISS Teacher and the Special Education Teacher reported that the student was provided access to the general education curriculum and received his accommodations and special education support as required by the IEP during the eight days he served in ISS during the first semester.

USD #320 staff noted and documentation showed the student has not received either ISS or OSS due to any disciplinary actions since the Thanksgiving Break in November 2024. However, the student has been sent to the office for verbal warnings and reteaching of expectations by the Principal on December 12, 2024 and January 13, 27, and 29 and February 5, 2025 for behaviors related to disrespect and use of inappropriate language and behavior.

The School Psychologist and Principal acknowledged that they mistakenly told the parent that a manifestation determination meeting needed to be held during the phone call on October 22, 2024. The Principal reported that he corrected this statement in an email to the parent later that same day and requested the parent to call him so he could explain.

Conclusion

An educational change of placement as a result of disciplinary action occurs when a student does not receive the special education and related services required by the IEP as a result of disciplinary action resulting from a violation of a student code of conduct for either more than 10 consecutive school days or 10 cumulative school days when a pattern exists.

It is noted that an educational change of placement can occur during an in-school suspension as well as during an out-of-school suspension for the purposes of 34 C.F.R. 300.530. In the Analysis of Comments and Changes accompanying the Part B regulations at 71 Fed. Reg. 46715 (Aug. 14, 2006), the Department explained:

> *It has been the Department's long term policy that an in-school suspension would not be considered a part of the days of suspension addressed in 34 C.F.R. 300.530 as long as the child is afforded the opportunity to continue to appropriately participate in the general education curriculum, continue to receive the services specified on the child's IEP, and continue to participate with nondisabled children to the extent they would have in their current placement.*

In this case, interviews and documentation found that the student received a total of 14 days of suspension as a result of disciplinary action taken as a result of violations to the student code of conduct during the 2024-25 school year to date. Of these 14 days, eight were served through ISS where it appears the student continued to receive the required special education services and supports and access to the general education curriculum and his peers. The other five days were served through OSS and are considered to be an educational change of placement as a result of disciplinary action because the student did not receive the required special education services and supports during the OSS days.

Based on the foregoing, the district was not required to follow any special procedures at this time as the student had not been subject to an educational change of placement of more than

10 consecutive or 10 cumulative school days with a pattern. As such, USD #320 *is found to be IN compliance* in regards to this issue.

Issue Three

USD #320, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP and behavior intervention plan (BIP), specifically by not providing support staff, during the 2024-25 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 alleged that the student's IEP requires that he be supervised in unstructured settings. She believes this has not occurred during the 2024-25 school year and, as a result, has displayed the impulsive behaviors associated with his disability which caused the student to violate the student code of conduct and be disciplined with multiple ISS and OSS. In addition, the student's IEP was updated in October 2024 to provide supervision during passing times between classes. However, this support has also not been provided on a regular basis as demonstrated by the student being tardy to class on multiple occasions.

The findings of Issue Two are incorporated herein by reference.

Documentation and interview found there were two IEPs in effect during the 2024-25 school year. The first IEP was developed on October 23, 2023 and required 45 minutes per day of specialized instruction provided in the special education setting; 45 minutes per day of paraprofessional support in the physical education class; and 75 minutes per day of paraprofessional support in the core classes taught in the general education setting. A Behavior Intervention Plan (BIP) was also included which required several accommodations including the use of a daily behavior chart and reward system. The second IEP was developed on September 30, 2024 and continued the same special education services and BIP as required by the previous IEP. In addition, this IEP requires 28 minutes per day of supervision during passing times between classes.

While both IEPs and BIPs include statements indicating the student has difficulty handling unstructured settings, there is nothing specifically requiring supervision in all unstructured settings in either the October 2, 2023 IEP and BIP or the September 30, 2024 IEP and BIP.

School staff stated that a schedule was developed to provide the student with the special education services and supports required by the October 23, 2023 IEP beginning on the first day of the 2024-25 school year. When the IEP was reviewed and revised on September 30,

2024, school staff noted that a schedule was developed to provide the extra support for each of the four-minute time periods between each class allowed for passing time.

The Cooperative acknowledged there is currently a staffing shortage of five paraprofessionals at Wamego Middle School. On-going efforts to fill these vacancies include advertising job openings, participating in community job fairs, and conducting budget reviews to explore options for increasing pay to support recruitment and retention efforts.

In the interim, the LEA has implemented efforts to mitigate the impact of the staff shortage on students. The Special Education Director stated:

> *Building-level special education staff prioritize support for students with the highest needs, including this student. While efforts to hire additional paraprofessionals are ongoing, the building is utilizing other staff members to provide attendant care support when paraprofessionals are unavailable. General education teachers, special education teachers, counselors, and office staff are assisting with hallway supervision and escorting the student between classes. There is a specific plan in place to secure hallway coverage for this student.*

The parent provided a list of dates the student has been tardy during the second semester prior to the filing of the child complaint. These dates include January 23, 24, 27, 28, 31, and February 3, 5, and 10, 2025.

USD #320 noted that their practice is to excuse the student's classroom tardy if he arrives late to a class with a staff member. School staff acknowledged the student has been tardy to class and this is because the student does not always wait to be escorted in the hallway between classes. He will dart and run away from staff when they are attempting to provide supervision in the hallway and often does not respond to re-direction in the hallway. Staff also noted that he will be observed to enter the assigned classroom but then leaves and is tardy when he returns back to the assigned classroom. Staff acknowledged that there are times when the assigned staff person is unavailable to provide the escort and an effort is made to find a substitute; however, this is not always feasible and, in those situations, the general education teachers assigned to hall duty monitor the student from their posts in the hallway along the route to the student's next class.

The district provided a copy of an ABC (Antecedent / Behavior / Consequences) Chart dated between October 29, 2024 and February 9, 2025 showing 14 days of observations. The consequences reported did not show any type of reward system for appropriate behavior.

Conclusion

In this case, the student's IEP dated September 30, 2024 requires 28 minutes per day of supervision in the hallway between classes. The Cooperative acknowledged that there is currently a staffing shortage of five paraprofessionals at Wamego Middle School and, despite the LEA's efforts to provide the hallway supervision by utilizing multiple staff members including office staff, teachers, and administration staff, the student is not always supervised in the hallway as evidenced by the student receiving tardies to his classes on at least eight school

days between January 23 and February 5, 2025. In addition, there is no evidence that the daily behavior chart and reward system required by the BIP has been implemented during the 2024-25 school year.

Based on Interviews and documentation, there is evidence to support a finding that **the LEA is OUT of compliance** for this issue.

Issue Four

USD #320, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the student with the opportunity to participate in non-academic and extracurricular activities, specifically the field trip to Central Elementary School to be a reading buddy on October 29, 2024.

Applicable Law

Federal regulations, at 34 C.F.R. 300.107 require public agencies to provide students with disabilities with an equal opportunity to participate in nonacademic and extracurricular services and activities. Nonacademic and extracurricular services and activities may include[1] counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency[2], referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency[2] and assistance in making outside employment available.

[1] https://www.law.cornell.edu/definitions/ Include
Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

[2] https://www.law.cornell.edu/definitions/ Public agency
Public agency includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

Analysis: Findings of Fact

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

The parent reported the student was denied the opportunity to participate in the field trip to Central Elementary School to be a reading buddy on October 29, 2024 because there was not enough staff available to provide supervision. The parent believes the district denied the student the opportunity to participate in this extra-curricular activity due to his disability. An email dated October 29, 2024 written by the parent to the Special Education Teacher stated:

> *. . . The student came home today disappointed that he did not get to go to Central today with all the 6th graders, because there wasn't enough staff to go with him. He also said that it was said to him to let this be a lesson that that he needs to behave to do fun things like field trips. I feel like he was treated completely unfair. He should get the same opportunity that the other kids get and para or teacher support should be there if needed.*

USD #320 acknowledged that selected students from the student's sixth grade English/Language Arts class went to Central Elementary School to read to younger students on October 29, 2024. This is an extension of the curriculum where students pre-read books and prepare activities to implement with one or two assigned elementary students. The Special Education Teacher reported that the student was not the only 6th grade student who remained in class instead of participating in the reading buddy class activity that day.

The Special Education Teacher acknowledged that the building was short-staffed for paraprofessional support on the day of the class activity but that was not the primary reason the student did not participate as a reading buddy. An email dated October 29, 2024 written by the Special Education Teacher to the Principal stated:

> *If a student has behaviors, such as what Aiden demonstrated previously and then this morning where he cannot keep his hands to himself, I don't feel comfortable sending him with other students in a separate building when I don't have a body to be with him 1:1. His behavior this morning proved that provided time alone without adult supervision, even when that time frame is a 3 minute period, he cannot make the appropriate choices. I did not have the bodies to be able to send with him, being that we were down 3 paras, and when students have had behaviors in the past they either cannot go if not covered, or depending on the behaviors they may not go to the event at all, even to the simple extent that it was today at Central.*

An email dated October 30, 2024 written by the Special Education Teacher to the parent stated:

> *The student is correct, he was not able to go. It is true that we are short-staffed, and I had a conversation with the teacher the student was walking with where that was mentioned. However, he was not the only 6th-grade student who stayed back. The reason I did not feel comfortable with him attending was that the event was more unstructured, and we are still working on preparing him for these type of activities. Additionally, there was an incident that morning between the student and another student.*

The Principal reported that the criteria for being able to participate in this class activity was no disciplinary actions for ten days prior to the date of the activity. Based on the student's disciplinary history and an incident that occurred the morning of the activity, the Principal reported that he made the determination that the student did not meet the criteria to participate in the class activity on October 29, 2024 and therefore, the student remained in class at the building with the other students who did not participate in the class activity at Central Elementary School.

School staff reported that the student has subsequently been eligible to participate and has participated in other school activities including attending after-school volleyball and basketball games as well as being a reading buddy at Central Elementary School on March 3, 2025.

Conclusion

The district reported that the criteria to be able to participate in the class activity on October 29, 2024 was no disciplinary incidents for 10 days prior to the activity. Interviews and documentation show that, prior to the date of the activity, the student's last disciplinary action was on October 7, 2024; however, the student had an altercation with another student on the morning of October 29, 2024 and was therefore ineligible to participate in the class activity. It is noted that there were other 6th grade students who were also not eligible to participate and remained in class the day of the activity.

Based on the foregoing, the district is *found to be IN compliance* for providing the student with the opportunity to participate in nonacademic and extracurricular activities.

Summary of Conclusions/Corrective Action

ISSUE ONE: USD #320 acknowledged noncompliance with federal regulations at 34 C.F.R. 300.123 which require public agencies in the State to protect the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the IDEA. USD #320 proposed a corrective action plan to address the noncompliance which was accepted by the KSDE on March 10, 2025. Based on the foregoing, the district is determined to be IN compliance with the requirements of the IDEA and no corrective action is required.

ISSUE TWO: Interviews and documentation support a finding that the district was not required to follow any special procedures based on disciplinary actions assigned to the student during the 2024-25 school year because the student has not been suspended for more than 10 consecutive or 10 cumulative school days with a pattern during the 2024-25 school year. Based on the foregoing, the district is determined to be IN compliance with the requirements of the IDEA and no corrective action is required.

ISSUE THREE: Interviews and documentation support a finding that the district did not consistently implement the student's IEP for providing 28 minutes per day of supervision in the hallway between classes nor and BIP for implementing a daily behavior chart and reward system. Based on the foregoing, the district is determined to be OUT of compliance with the requirements of the IDEA for implementing the IEP as written and corrective action is required.

a. CORRECTIVE ACTION:

    i. The LEA will review its practices to ensure that the student receives the required 28 minutes per day of supervision in the hallway between classes as required by the IEP. This plan must include both the hallway supervisor and the general education classroom teachers. The current supervision plan will be reviewed and revised as necessary and shared with all relevant staff no later than five school days from the date of this report.

    ii. A daily log will be maintained to document that the supervision is being provided in the hallway and that the student remains in the classroom and is

not unsupervised in the hallways between classes no later than six school days from the date of this report.

iii. The Cooperative will train any non-certified staff including, but not limited to, paraprofessionals and office staff assigned to the hallway supervision on strategies for managing the student's behavior prior to supervising the student.

iv. The LEA will create the daily behavior chart and reward system as required by the BIP and train all relevant staff on how to implement and monitor the behavior chart and reward system within five school days of the date of this report.

v. The LEA will implement the daily behavior chart and reward system no later than six school days from the date of this report. The chart will be reviewed weekly and revised as necessary to ensure that it addresses the student's needs effectively.

vi. No later than 10 days after the last day of the 2024-25 school year, the LEA will provide the KSDE with a copy of the Hallway Supervision Log, the Daily Behavior Chart, the student's Daily Attendance Record, and the district's 2024-25 school calendar to document that the requirements of the IEP and BIP were met on each day the student attended school starting six school days from the date of this report.

ISSUE FOUR: Interviews and documentation support a finding that the district did provide the student with the same opportunity to participate in the class activity on October 29, 2024 as was provided to other 6th grade students. In this case, there were eligibility criteria in place and the Principal determined that the student, as well as other students, did not meet the eligibility criteria to participate in this particular event. It is noted that the student has subsequently been eligible for participation and has participated in nonacademic and extracurricular activities for 6th grade students held in the district. Based on the foregoing, the district is determined to be IN compliance with the requirements of the IDEA and no corrective action is required.

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.gov 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 #307
ON FEBRUARY 13, 2025

DATE OF REPORT: MARCH 14, 2025

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 #307, Ell-Saline Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #307.

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 February 13, 2025, and the 30-day timeline ended on March 15, 2025.

Allegations

The following issue will be investigated:

Issue One

Whether USD #307, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP during the 2024-25 school year due to bullying and an unsafe school environment. K.A.R. 91-40-16(b)(3); 34 CFR §300.323(a).

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video conference on March 6, 2025. The following District staff were interviewed on March 11, 2025: the Principal, the Special Education Teacher, and the Special Education Coordinator.

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 District:

1. District Response, 02/26/25
2. Incident Report Log, 01/29/25

3. Incident Report Log, 01/31/25
4. Incident Report, 01/30/25
5. Email, re: [the Student], 01/28-02/25/25
6. Email, re: [the Student], 01/31-02/25/25
7. Email, re: [the Student], 02/06-02/25/25
8. Prior Written Notice (PWN), 02/13/25
9. Conference Summary, 08/16/24
10. Email, re: [the Student], 02/24-02/25/25
11. Incident Report, 12/19, no year
12. Internal Investigation notes, no date
13. Safety Plan, 03/01/24
14. Quick Lookup, 2024-25 school year
15. Progress Report, 07/08/24
16. Neuropsychological Evaluation, 02/15/24
17. IEP Amendments, 02/22/24
18. PWN, 02/22/24
19. Notice of Special Education Meeting, 02/22/24
20. PWN, 03/26/24
21. Conference Summary, 03/04/24
22. IEP Amendment, 03/26/24
23. PWN, 03/26/24
24. Notice of Special Education Meeting, 03/22/24
25. Notice of Special Education Meeting, 05/06/24
26. Notice of Meeting Acknowledgement, 05/15/24
27. Evaluation/Eligibility Team Report, 05/15/24
28. Conference Summary, 05/15/24
29. PWN, 05/21/24
30. Notice of Special Education Meeting, 08/08/24
31. Notice of Meeting Acknowledgement, 08/16/24
32. IEP Amendment, 10/04/24
33. PWN, 10/04/24
34. IEP Draft, 12/05/24
35. Notice of Special Education Meeting, 11/01/24
36. Daily Instruction Calendar, 02/2024-02/2025
37. Counseling Office Documentation, 01/29/25

From the Parent:

1. Email, re: [the Student], 02/25/25, including attendance log 01/30-02/25/25 and grades
2. Email, re: [the Student], 02/24/25, including text message screenshots, various dates
3. Email, re: no subject, 02/25/25, including progress report photos and voicemail transcript, various dates
4. Email, re: [the Student], 02/24/25, including message screenshots and injury photos, various dates
5. Email, re: [the Student], 02/24/25, including photos of IEP, 12/13/24, photos of injuries, photo of doctor's note, and message screenshots, various dates

Background Information

This investigation involved an 8th grade student enrolled at a school in the District. The Student has been diagnosed with Oppositional Defiant Disorder and Generalized Anxiety Disorder. The Student is currently receiving special education or related services as a child with a disability per the Individuals with Disabilities Education Act (IDEA).

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 Neuropsychological Evaluation of the Student, dated February 15, 2024, indicated:
    a. The Student had difficulties regulating their emotions.
    b. "[The Student] has been a victim of bullying for several years at school. Most recently, some of [their] peers will make encouraging statements to harm or kill [themself]. [The Student's] parents do not feel that [their] IEP is being carried out and feel that this resulted in failing grades for the semester."
    c. The Student could be oppositional when upset.
    d. The Student's score was in the clinically significant range on the Externalizing Behaviors composite scale.
        i. "A clinically significant Hyperactivity score suggests a very high number of disruptive, impulsive, and uncontrolled behaviors … . A clinically significant Aggression score indicates a severe level of aggressive behaviors and [the Student] may be reported as being argumentative, defiant, and/or threatening to others… ."
    e. A diagnostic impression of:
        i. "Intellectual Development Disorder (mild)";
        ii. "Generalized Anxiety Disorder";
        iii. "Social Anxiety Disorder";
        iv. "Major Depressive Disorder"; and
        v. "Oppositional Defiant Disorder."
    f. "[The Student's] experiences with bullying and negative social interactions have likely contributed to social anxiety as well." (D113-D126)

2. The Student reported to the District that on February 19, 2024, after school, they were walking with Student H and the other students followed. Then Student H stepped back into the group of students that were walking further back.
    a. When they arrived in the teachers' parking lot, the Student said Student A grabbed them around the neck, put them in a choke hold and threw them to the ground. The Student said they told Student A to stop and asked why they were doing that. The Student said they tried to get up when Student A threw them down again and told them to stop talking about their cousins. Student H returned to help the Student.
    b. The Student reported they did not text Student J that Student A was going to beat them up, and did not tell Student A that Student J was going to beat them up.
    c. The Student requested that seven students, including the student who physically attacked them, be kept away from them.
    d. The District indicated that after several IEP meetings and attorney discussions, the Parent's concerns with the incident were resolved through the creation of a general education safety plan.
    e. During their interview, the Parent indicated one of the students involved in this incident was the same student who later sent the text message to the Student on January 28, 2025. (D2-D3, D42, D43-D44, Video Footage, February 20, 2024, Parent Interview, P4-5, 18:52, Special Education Teacher Interview)

3. The Parent explained that after the incident, the Student was out of school from mid-February through April 2024. They stated the Student would get their assignments on Google classroom or send the assignments home. The Parent would also pick up the Student's assignments once a week, and then send photos to the teachers after they were completed. (Parent Interview, P5-6, 21:53)

4. The Student's IEP was amended on February 22, 2024 to add that the Student would start and end their day with an Emotional/Functional check-in/check-out with an adult to identify their mood and gauge emotional temperature. The Parent signed the amendment.
    a. A PWN dated February 22, 2024 summarized the amendment, which had been requested by the Parent and their attorney. The Parent signed the PWN. (D127, D129-D132)

5. A general education safety plan for the Student was drafted on March 1, 2024 and signed by the Parent on April 9, 2024. It contained ten items, including one which indicated the Student had had conflict with several students, and the Student should not be grouped with them, sit with them, go places with them or be seen with them.
    a. The Parent said, "They did a safety plan, but … the safety plan was making [the Student] feel that [the Student] was the criminal and … was the one being punished. The safety plan was [the Student] would sit at the front of the bus … [they] would have to leave the class early or [they] would have to leave the class later to avoid any hallway contact with any of the [students]."
    b. During an interview with the Complaint Investigator, the Principal explained the safety plan was created in 2024 after a physical altercation between the Student

and another student. No special needs or concerns were identified during the creation of the safety plan.

c. A Conference Summary IEP Team Considerations dated March 4, 2024 reported there was a meeting to review a plan to keep the Student safe based on an incident which happened in February 2024. Staff was instructed to not release the Student until all students were in their classrooms after the bell rang, and then the Student could switch rooms. (D45, D144-D145, Parent Interview, P5-6, 21:53, Principal Interview, P2-3, 02:13)

6. A PWN for Evaluation or Reevaluation, signed by the Parent and dated March 26, 2024 indicated a proposal to conduct a re-evaluation of the Student. (D138-D143)

7. An IEP amendment dated March 26, 2024 described a change to the IEP that when the Student showed signs of dysregulation, to encourage them to communicate the need for a functional break. The Parent signed the amendment. (D146, D147-D150)

8. A Notice of Special Education Meeting, dated May 6, 2024, proposed a meeting date for May 15, 2024 to review the evaluation feedback meeting results. The Parent signed the notice. (D158-D162)

9. A Re-Evaluation Report dated May 15, 2024 indicated:
    a. The Student reported that the bullying made it difficult for them to be successful at school.
    b. The Student's current special education services.
    c. Assessment findings.
    d. The diagnostic impressions from the Neuropsychological Evaluation.
    e. The purpose of the re-evaluation was to determine if the Student met the criteria for an Intellectual Disability.
    f. The Student continued to meet the criteria as a student with a Learning Disability, specifically in mathematics.
    g. The Student had missed a significant amount of school due to incidents with peers on school grounds. (D162-D177)

10. A Conference Summary IEP Team Considerations dated May 15, 2024 included a summary of the re-evaluation meeting. The summary indicated the Parent wanted the attorney to review the documents before they agreed to the exceptionality, and the Parent asked if the safety plan would be in place for the next school year. (D178-D180)

11. The Student's Progress Report for their Measurable Annual Goals for the 2023-24 school year indicated:
    a. As of May 16, 2024, the Student had not made adequate progress toward achieving their annual goal in reading.
    b. As of May 16, 2024, the Student had made adequate progress toward achieving their annual goal in math and in social/emotional behaviors. (D70-D74)

12. A PWN dated May 21, 2024 indicated the Student was eligible for special education and met the criteria for a Specific Learning Disability and Emotional Disturbance. (D181-D187)

13. A Notice of Special Education Meeting dated August 8, 2024 proposed a meeting for August 16, 2024, and was signed by the Parent.
    a. A Conference Summary IEP Team Considerations dated August 16, 2024 indicated the Parent requested the District dismiss the Student's general education safety plan. (D188-D191, D28-D29)
14. When asked about the Student's safety plan, the Special Education Teacher said, "When we had a meeting prior to school, … [the Parent] did not want the safety plan implemented." (Special Education Teacher Interview, P4, 06:26) The Special Education Teacher stated it was a general education safety plan and unrelated to special education. (Special Education Teacher Interview, P5, 07:05) They added that when the Parent stated they did not want to implement the safety plan, the District complied. (Special Education Teacher Interview, P5, 07:05)
15. The Special Education Teacher stated the Parent did not like the safety plan because they thought it isolated the Student. The Special Education Teacher indicated they had observed the Student not following the safety plan, and that the School tried to get the Student to follow the plan. (Special Education Teacher Interview, P6, 09:12, Principal Interview, P3,05:24)
16. An IEP amendment on October 4, 2024 indicated a new service and new accommodation for the Student. These were also summarized in a PWN from October 4, 2024.
    a. The new service was that the Student would receive special education services in the special education classroom for the core contents, for 20 minutes once a week for the duration of the IEP. The accommodation was that the Student would start their day with an emotional/functional check-in with an adult. (D192-D198)
17. An IEP draft dated December 5, 2024 was signed by the Parent and IEP team. It included reports from the Shop, Science, English and Social Studies teachers that the Student interacted little with others, would sometimes "push the buttons" of other students, struggled to work in groups, and that their work ethic had declined from the start of the year.
    a. Special Education Services for the Student included:
        i. Starting on December 5, 2024, the Student would receive special education services in the special education classroom for math direct instruction for 40 minutes five days a week, and for science independent work for 15 minutes one day a week, for the duration of the IEP; and
        ii. Starting on January 7, 2025, the Student would receive special education services in the special education classroom for social studies direct instruction for 40 minutes five days a week, and for English direct instruction for 40 minutes five days a week, for the duration of the IEP.
    b. Accommodations and Modifications stated that beginning December 5, 2024:
        i. When the Student started to show signs of dysregulation, the Student would be encouraged to communicate the need for a functional break;

ii. When working on an assignment, the Student would be required to do the problems, but not so many they would get overwhelmed;
iii. When the Student escalated to a level 3 or higher, they would be prompted to use sensory tools;
iv. When given multi-step directions, the Student would be provided the tasks into smaller steps;
v. When given an assessment, the Student would be provided with a separate, quiet area;
vi. When solving math problems that were not testing math fact knowledge, the Student would be provided with a multiplication chart, a 100's chart, and a calculator;
vii. The Student would have access to a text-to-speech tool and read aloud option on Chromebook; and
viii. When in the general education or special education classroom, the Student would be given preferential seating in each class.

c. A PWN dated December 5, 2024 summarized the IEP draft and was signed by the Parent. (D199-D216, D217-D222)

18. During an interview with the Complaint Investigator, the Special Education Teacher explained the Student had in-class services the first half of the 2024-25 school year, which were changed to pull-out services when the School noticed the Student required more assistance. The Special Education Teacher stated the Student had social studies, science (one day a week), English, and math in the Resource Room. They indicated that they provided math support, and direct instruction for math, reading, and social studies. (Special Education Teacher Interview, P2, 01:58) The Special Education Teacher did not recall any lapse in services during the 2024-25 school year, and stated that materials were provided either through Google Classroom or at home when the Parent requested. (Special Education Teacher Interview, P2, 02:50)

19. On January 28, 2025, the Parent emailed the Principal a screenshot of a text message sent to the Student earlier that night. The sender of the text wrote, "… You got me sent down to the office because you wanted to talk shit on me. Oh don't worry, baby girl this is gonna get turned around don't worry."
    a. The Parent explained that the student who sent the text was not supposed to be in the same class as the Student, per the Student's IEP and safety plan. The Parent stated they sent the message to the Social Emotional Counselor, the School Resource Officer and the Principal. According to the Parent, the sender of the text was told by the School Resource Officer during the previous school year they were not supposed to contact the Student. (D1, D12-D13, Parent Interview, P2-3, 07:06, Principal Interview, P2, 01:55)

20. According to the District Response, the District was only aware the Student had been involved in one physical altercation during the 2024-25 school year, which the District stated stemmed from unkind comments that the Student made to another student the day before the incident. The District indicated the physical altercation was investigated by the administration and the School Resource Officer.

a. A log entry dated January 29, 2025 described an incident on January 28, 2025 in which the Student "… antagonized another student by making fun of [their] appearance and family situation."
b. According to a counseling session dated January 29, 2025, the Student had said via text that another student "thinks [they're] better than everyone," "throws around [their] money," and acts like a "me girl." The Student admitted to making the statements. The counselor concluded the Student instigated conflict by making negative comments about one student and falsely claiming another student had been talking about the first student. (D1, D5, D248-D249)

21. A log entry dated January 31, 2025 reported that on January 30, 2025, the Student "… was involved in a physical altercation with another student stemming from comments made earlier in the week."
    a. At approximately 8:05 a.m. on January 30, 2025, Student D entered the locker room with knowledge that the Student was in there. Student D found the Student sitting on the floor and sat on a bench nearby. Student D questioned the Student about comments the Student had made about another student. The Student did not respond and started to use their phone. Student D asked the Student if their phone was more important than their conversation, grabbed the phone, and tossed in across the room. When the Student went to retrieve it, Student D followed, grabbed the Student and threw them to the ground. Student D punched the Student as they lay on the floor. Students who were present left to get help. These events were corroborated by five students, including Student D and the Student.
    b. The Parent said, "… I received a phone call from the [P]rincipal stating that [the Student] was a victim of a physical altercation." The Parent stated that as a result of the incident, the Student had wet their pants, scraped their knee, and had a busted lip and swollen face.
    c. The Principal explained that after the incident, they changed the other student's schedule so they could keep them out of the same classroom as the Student as much as possible. The Principal also spoke with the PE teacher about making sure that the two students were not in the locker room at the same time. The Principal stated that at that time, they had not spoken to anyone about the Student's IEP. (D8, D11, Parent Interview, P2-3, 04:21, Principal Interview, P3-5, 07:45)

22. On January 31, 2025, the Parent emailed the Principal and explained the Student was seen by their doctor and the Student was on mild concussion protocol. The Parent said, "[The Doctor] wanted to know what the bullying/ physical contact repercussions/guidelines looked like?"
    a. The Principal replied to the Parent the same day and said the doctor could call them directly.
    b. In an undated text message, the Doctor wrote the Student had a mild concussion.
    c. An undated text message from the Doctor contained pictures of the Student's legs and knees, with abrasions on one knee.

d. In the District response, the Principal received a doctor's note on February 5, 2025 indicating the Student would be out for five weeks, but also indicated they would return the following Monday. The School later learned "weeks" was supposed to be "days."
e. During the Student's absence, the Parent indicated they would look into enrolling the Student with another district, doing home school, or virtual school. After learning of this, the District sent a PWN informing the Parent of their willingness to continue to provide special education services for the Student, whether at the school building or through partial enrollment for home school. (D2, D14, D15-D16, P47, P185, P299-P301, Principal Interview, P5, 15:11)

23. According to the Parent, the School put the Student's assignments on Google Classroom after the incident on January 30, 2025. The Parent said, "… I'm dealing with a child who's on concussion protocol and … they tell you to stay off of screen time [sic] limits your screen time, give your brain a rest." The Parent indicated the District was not providing specially designed instruction for the Student during their recovery, and only used Google Classroom. The Parent stated this lasted from January 30, 2025 through February 2, 2025, and then from February 4, 2025 through when the Parent unenrolled the Student from the School. (Parent Interview, P10-11, 36:17)

24. When asked about the Student learning from home in February 2025, the Special Education Teacher reported that the Student was absent due to a medical reason, and the Parent did not request that assignments be sent home. The Special Education Teacher stated they informed the Parent that materials from their classes would be posted on Google Classroom. They noted the Student did not complete any assignments when they were gone, which the Special Education Teacher assumed was due to a concussion. (Special Education Teacher Interview, P3, 03:40) The Special Education Teacher explained that the assignments they were unable to post on Google Classroom were left in the physical classroom to be taken home. (Special Education Teacher Interview, P3, 04:37) The Special Education Teacher stated the Student came to school on February 3, 2025, left, and did not return to the School after this date. (Special Education Teacher Interview, P4, 05:42)

25. The Principal did not recall the Parent asking for services or materials to be provided to them during the Student's absence after the physical altercation on January 30, 2025. (Principal Interview, P6, 15:32)

26. The Parent stated the Student was bullied in the special education classroom on February 3, 2025. The Parent explained another student said, "… [the Student's] family's poor white trash and that [their] family's coming for [the Student's] family. And that's when [the Student] got upset and asked the special education teacher to leave the room. And [the Student's] request was denied. So then [the Student] got up and [they] walked out of the room. But this is being allowed and visible in front of special education team." (Parent Interview, P4, 16:32)

27. The Special Education Teacher stated the Student was never denied a break and said, "[The Student] could take one whenever [they] wanted. [They] never asked for one [on February 3, 2025]." (Special Education Teacher Interview, P7-8, 11:11)

28. The Parent materials contained a list of the Student's absences from school in January and February 2025. In that period, the Student had:
    a. Five absences.
    b. Two excused absences.
    c. Three medical-related absences. (P16-P33)

29. A PWN dated February 13, 2025 indicated:
    a. "[The Student's] last date of attendance at [the School] was 2/3/2025. We understand you would like to enroll [them] at another school; however, if [the Student] does not attend school at another location and you choose to homeschool [them], we are able to provide special education services through [the School]. Potential homeschool services could be provided online in the afternoon 4 days a week and focus on IEP goals." (D17-D22)

30. A Progress Report for the Student, dated February 13, 2025, indicated the Student had made a "slight improvement" between December 5, 2024 and February 4, 2025 in the Student's goals for reading, math and social/emotional. (P90-P93)

31. In an email dated February 24, 2025 from the Parent to the Principal, the Parent stated the Student was not returning to the School. The District responded with a stand ready to service letter on February 27, 2025. (D288)

32. The District materials included calendars with handwritten notes from February 2024 through February 2025 which demonstrated when the Student received daily instruction and in which subjects, in addition to school breaks, snow days, and Student absences. The calendars showed the Student received consistent instruction on the days the Student was in school. (D233-D247)

33. The Student's 2024-25 Attendance Sheet indicated they had two "A's", one "B", and one "C" at the end of semester one. By the end of semester two, the Student had one "B", two "C's", one "D", and one "F". (D50, Parent Interview, P8, 29:38)

Positions of the Parties, Applicable Regulations, and Conclusions

ISSUE ONE: Whether USD #307, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP during the 2024-25 school year due to bullying and an unsafe school environment. K.A.R. 91-40-16(b)(3); 34 CFR §300.323(a).

According to K.A.R. 91-40-16(b)(3) and 34 CFR §300.323(a), an IEP must be in effect for each exceptional child at the beginning of each school year.

The Parent alleged that the Student is not receiving the special education services they should receive. They claimed that the Student does not feel safe at school, that administration is not available when crises arise, and bullying is impeding the Student's education. Additionally, the Parent alleged the Student has been physically attacked twice, and the school administration has minimally responded.

Respondent/District Position: The District stated that documentation showed the Student received services while attending the School. The District indicated that the two incidents in which the Student had been physically hurt were the result of statements initially made by the Student. The District perceived the incidents were the result of the Student's unkind comments or the Student's attempts to sow discord between other students.

A Neuropsychological Evaluation of the Student indicated difficulties with regulating their emotions, being oppositional, and clinically significant areas for externalizing behaviors. "[The Student's] experiences with bullying and negative social interactions have likely contributed to social anxiety as well."

After school on February 19, 2024, the Student had a physical altercation with another student. The Student requested they be kept away from this student and other students. The District indicated the Parent's concerns were resolved through a general education safety plan. The Student's IEP was amended on February 22, 2024 and added that the Student would start and end their day with a check-in/check-out. A PWN dated the same day summarized the amendment. The Parent signed both documents. After the incident, the Student received their assignments on Google Classroom, had them sent home, or the Parent collected them.

On March 1, 2024, a safety plan was drafted and signed by the Parent on April 9, 2024. The safety plan indicated the Student had been in conflict with several students, and instructed that the Student should be kept away from those specific students. The safety plan was unrelated to special education and was not included in the Student's IEP. On March 4, 2024 there was a meeting to review the safety plan. An IEP amendment dated March 26, 2024, and signed by the Parent, added functional breaks to the IEP.

A PWN dated March 26, 2024 proposed a Student re-evaluation. A Notice of Special Education Meeting proposed a meeting for May 15, 2024 to review the Student's evaluation. The Parent signed both documents. A Re-Evaluation Report dated May 15, 2024 indicated the Student reported challenges with bullying, and that the Student met the criteria as a student with a Learning Disability. During the meeting, the Parent inquired about the safety plan for the 2024-25 school year. A PWN dated May 21, 2024 indicated the Student was eligible for special education services.

In a meeting on August 16, 2024, the Parent requested the District dismiss the Student's general education safety plan because it made the Student feel like they were being punished. The District complied with the request. An IEP amendment on October 4, 2024 indicated the Student would receive special education services in the special education classroom for the core contents, for 20 minutes once a week. The added accommodation was that the Student

would start their day with a check-in with an adult. These amendments were summarized in a PWN.

An IEP draft dated December 5, 2024, signed by the Parent, described special education services that would take place in the special education classroom, starting on December 5, 2024 and January 7, 2025. The IEP listed Accommodations and Modifications, including, "When the Student started to show signs of dysregulation, the Student would be encouraged to communicate the need for a functional break." The Parent signed a PWN summarizing the IEP draft. The Student's special education services changed from in-class to pull-out due to greater needs.

On January 28, 2025, the Student had a negative interaction with another student. That night, the Parent emailed the Principal a screenshot of a text message sent to the Student. The Parent explained that the sender was not supposed to contact the Student or be in the same class, per the Student's IEP and safety plan. On January 30, 2025, the Student had a physical altercation with another student and sustained a mild concussion.

When the Parent considered alternative schooling, the District sent a PWN offering continued special education services. The Parent indicated the District did not provide specially designed instruction for the Student during their recovery from the concussion. The Special Education Teacher stated the Parent did not request that assignments be sent home. They informed the Parent that materials would be posted online and available in the physical classroom to be taken home.

The Parent stated the Student was bullied in the special education classroom on February 3, 2025, and did not receive a break, which the Special Education Teacher denied. A PWN dated February 13, 2025 indicated the Student's last day at the School was February 3, 2025. On February 24, 2025, the Parent informed the School the Student was not returning. The Student missed 10 cumulative days of school from January through February 2025.

The Student's Progress Report for the 2023-24 school year indicated the Student made progress on two of their three IEP goals. Another Progress Report indicated the Student made a "slight improvement" on their goals between December 5, 2024 and February 4, 2025. Calendars from February 2024 through February 2025 contained handwritten notes which demonstrated the Student received consistent instruction on the days the Student was in school. During the 2024-25 school year, the Student had two "A's", one "B", and one "C" at the end of semester one, and one "B", two "C's", one "D", and one "F" by the end of semester two.

Documentation showed that the District responded to the Parent's concerns, including through the creation of a safety plan and different IEP amendments. There were regularly documented and consistent PWNs, IEP amendments and drafts, meeting notices, and evaluations. Progress reports demonstrated the Student made progress toward their IEP goals, and staff documented when the Student received certain instruction, per their IEP.

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 during the 2024-25 school year due to bullying and an unsafe school environment.

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.gov 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 7, 2025 AND FEBRUARY 11, 2025

DATE OF REPORT: MARCH 18, 2025

This report is in response to two complaints filed with our office against USD #500 by two individuals who work with Wyandotte County Infant Toddler Services (hereafter referred to as ITS). Complaint 25FC500-004, received by the Kansas State Department of Education (KSDE) on February 7, 2025 was filed by --------, a social worker for ITS, on behalf of -------- In her complaint, in addition to specific concerns regarding --------, she also alleges that systemic violations of special education statutes and regulations have impacted other students going through the transition process. For the remainder of this report, --------, will be referred to as "Complainant 1." -------- will be referred to as "Student 1."

Complaint 25FC500-005, received by the KSDE on February 11, 2025, was filed by --------, a Family Service Coordinator for ITS. For the remainder of this report, -------- will be referred to as "Complainant 2." Complainant 2 alleges systemic violations of special education statutes and regulations related to the transition process, including the development of IEPs, for students who are transitioning to Part B services through the school district. These allegations involve the same cohort of students identified under the February 7, 2025 filing by Complainant 1.

For the remainder of this report, USD #500 will be referred to as "the district."

Evidence Reviewed

The investigation of a formal complaint requires the investigator to contact the complainant in order to gather additional information and verify specific allegations of noncompliance that may be relevant to the investigation. To that end, the investigator spoke with Complainant 1 on February 11 and 13, 2025. On February 28, 2025, the investigator spoke by telephone with Complainant 2.

On February 12 and March 6, 2025, the complaint investigator spoke via telephone with the Director of Special Education for the district. In the process of this investigation, the investigator spoke with additional staff from both ITS and the district in order to develop a list of students whose services could have been impacted by issues raised by these complaints. From the cohort of students who have transitioned from Part C to Part B services during the 12-month period covered by these complaints, a total of 25 students were identified by the parties (complainants and district). Each of these students will be identified by number in the remainder of this report.

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

- Document entitled "Kansas Early Childhood Transition from IDEA Part C to Part B" developed by the Kansas State Department of Education
- Document entitled "KCKPS Special Education Status Review" prepared for the district by the Achievement & Assessment Institute of the University of Kansas in the Spring of 2024
- Document entitled "Kansas Early Childhood Transition from IDEA Part C to Part B - Frequently Asked Questions" developed by the Kansas State Department of Education in July 2023
- 2024-25 Case Manager Handbook for the district
- Part C to Part B Transition Handbook for the Wyandotte Special Education Comprehensive Cooperative
- Part C to Part B MOU
- Email exchange dated January 29, 2025 between the ITS Program Coordinator to the Executive Director of Special Education for the district
- Documents related to Student 1:
    - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 1/17/25
    - Notice of Meeting on 1/24/25 (Eligibility and IEP) dated 1/17/25
    - Evaluation/Eligibility Report dated 1/24/25
    - Notice of Meeting on 2/12/25 (IEP) dated 2/7/25
    - IEP for this student dated 2/12/25
    - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/12/25
- Documents related to Student 2:
    - Email exchange dated August 5, 2024 between ITS and district staff
    - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 8/20/24
    - Evaluation/Eligibility Report dated 8/20/24
    - Notice of Meeting on 8/22/24 (Eligibility and IEP) dated 8/20/24
    - IEP for this student dated 8/29/24
    - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 8/22/24
- Documents related to Student 3 (DOB 9/25/21):
    - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 6/21/24
    - Notice of Meeting on 9/12/24 (Eligibility and IEP) dated 8/27/24
    - Notice of Meeting on 9/23/24 (Eligibility and IEP) dated 9/3/24
    - IEP for this student dated 9/23/24
    - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 9/23/24
- Documents related to Student 4:
    - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 10/6/23
    - Evaluation/Eligibility Report dated 11/9/23

  - Notice of Meeting on 11/9/23 (Eligibility and IEP) dated 10/19/23
  - IEP for this student dated 11/9/23
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 11/9/23
- Documents related to Student 5:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 1/16/25
  - Evaluation/Eligibility Report dated 2/4/25
  - Notice of Meeting on 1/30/25 (Eligibility and IEP) dated 1/16/25
  - Notice of Meeting (IEP) on 2/13/25 dated 2/7/25
  - IEP for this student dated 2/13/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/13/25
- Documents related to Student 6:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 12/14/23
  - Notice of Meeting on 2/12/24 (Eligibility and IEP) dated 1/23/24
  - Notice of Meeting on 2/13/24 (Eligibility and IEP) dated 2/7/24
  - IEP for this student dated 2/13/24
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/13/24
- Documents related to Student 7:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 10/17/23
  - Evaluation/Eligibility Report dated 1/16/25
  - Notice of Meeting on 12/10/24 (Eligibility and IEP) dated 11/12/24
  - Notice of Meeting on 1/16/24 (Eligibility and IEP) dated 1/16/24
  - IEP for this student dated 1/16/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 1/16/25
- Documents related to Student 8:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 11/29/23
  - Notice of Meeting on 1/8/24 (Eligibility and IEP) dated 1/4/24
  - IEP for this student dated 1/8/24
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 1/8/24
- Documents related to Student 9:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 2/5/24
  - Evaluation/Eligibility Report dated 4/5/24
  - Notice of Meeting on 4/18/24 (Eligibility and IEP) dated 4/5/24
  - IEP for this student dated 4/18/24
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 4/18/24

- Documents related to Student 10:
    - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 11/17/23
    - Evaluation/Eligibility Report dated 3/1/24
    - Notice of Meeting on 3/8/24 (Eligibility and IEP) dated 3/1/24
    - IEP for this student dated 3/8/24
    - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 3/8/24
- Documents related to Student 11:
    - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 1/11/24
    - Evaluation/Eligibility Report dated 3/1/24
    - Notice of Meeting on 3/4/24 (Eligibility and IEP) dated 2/29/24
    - IEP for this student dated 3/4/24
    - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 3/4/24
- Documents related to Student 12:
    - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 11/22/24
    - Evaluation/Eligibility Report dated 1/7/25
    - Notice of Meeting on 2/11/25 (IEP) dated 2/6/25
    - IEP for this student dated 2/11/25
    - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/11/25
- Documents related to Student 13:
    - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 1/31/25
    - Notice of Meeting on 2/20/25 (Eligibility) dated 2/7/25
    - Notice of Meeting on 3/3/25 (Eligibility) dated 2/10/25
    - IEP for this student dated 3/3/25
    - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 3/3/25
- Documents related to Student 14:
    - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 1/14/25
    - Evaluation/Eligibility Report dated 1/30/25
    - Notice of Meeting on 1/30/25 (Eligibility and IEP) dated 1/14/25
    - Notice of Meeting (IEP) on 2/13/25 dated 2/6/25
    - IEP for this student dated 2/13/25
    - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/13/25
- Documents related to Student 15:
    - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 3/25/24
    - Evaluation/Eligibility Report dated 4/2/24

  - Notice of Meeting on 4/11/24 (Eligibility and IEP) dated 4/2/24
  - IEP for this student dated 4/11/24
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 4/11/24
- Documents related to Student 16:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 3/4/24
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 3/25/24
  - Notice of Meeting on 5/6/24 (Eligibility and IEP) dated 5/6/24
  - IEP for this student dated 3/7/34
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 5/6/24
- Documents related to Student 17:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 12/4/24
  - Evaluation/Eligibility Report dated 1/27/25
  - Notice of Meeting on 1/7/25 (Eligibility and IEP) dated 12/12/24
  - Notice of Meeting on 2/14/25 (IEP) dated 2/5/25
  - IEP for this student dated 2/14/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/14/25
- Documents related to Student 18:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 12/4/24
  - Evaluation/Eligibility Report dated 12/12/24
  - Notice of Meeting on 1/9/25 (Eligibility and IEP) dated 12/12/24
  - Notice of Meeting on 1/31/25 (Eligibility) dated 1/31/25
  - Notice of Meeting on 2/10/25 (IEP) dated 2/5/25
  - IEP for this student dated 2/10/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/10/25
- Documents related to Student 19:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 12/4/24
  - Evaluation/Eligibility Report dated 2/25/25
  - Notice of Meeting on 2/18/25 (Eligibility and IEP) dated 1/28/25
  - IEP for this student dated 2/25/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/25/25
  - Attempts to contact the parent covering the period of September 30, 2024 through January 22, 2025
- Documents related to Student 20:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 12/4/24

  - Evaluation/Eligibility Report dated 1/30/25
  - Notice of Meeting on 1/22/25 (Eligibility and IEP) dated 1/13/25
  - Notice of Meeting on 1/30/25 (Eligibility) dated 1/30/25
  - Notice of Meeting on 2/11/25 (IEP) dated 2/6/25
  - IEP for this student dated 2/11/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/11/25
- Documents related to Student 21:
  - Attempts to contact the parents covering the period of November 19 - 21, 2024
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 1/16/25
  - Evaluation/Eligibility Report dated 1/29/25
  - Notice of Meeting on 1/24/25 (Eligibility and IEP) dated 1/16/25
  - Notice of Meeting on 2/6/25 (IEP) dated 2/4/25
  - IEP for this student dated 2/6/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/4/25 (for a meeting on 2/6/25)
- Documents related to Student 22:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 12/13/24
  - Evaluation/Eligibility Report dated 1/29/25
  - Notice of Meeting on 1/28/25 (Eligibility and IEP) dated 1/14/25
  - IEP for this student dated 1/29/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 1/28/25
- Documents related to Student 23:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 12/6/24
  - Evaluation/Eligibility Report dated 12/5/25
  - Notice of Meeting on 1/10/25 (Eligibility and IEP) dated 12/6/24
  - Notice of Meeting on 2/6/25 (IEP) dated 2/5/25
  - IEP for this student dated 2/6/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/5/25
- Documents related to Student 24:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 12/12/23
  - Evaluation/Eligibility Report dated 1/26/24
  - Notice of Meeting on 2/14/24 (Eligibility and IEP) dated 1/26/24
  - IEP for this student dated 2/22/24
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/22/24
- Documents related to Student 25:

- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 2/6/24
- Evaluation/Eligibility Report dated 3/22/24
- Notice of Meeting on 3/29/24 (Eligibility and IEP) dated 3/19/24
- Notice of Meeting on 4/1/24 (Eligibility and IEP) dated 3/29/24
- IEP for this student dated 4/1/24
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 4/1/24

Background Information

This investigation involves students who are transferring from Part C services through ITS to Part B services through the district. All district evaluations to determine eligibility for special education services through Part B are conducted by a single designated team of professionals. At the beginning of the 2024-25 school year, that team was comprised of a school psychologist, an "Academic Evaluator" (a special education teacher) and a Speech/Language Pathologist, (SLP) with an Occupational Therapist (OT), Physical Therapist (PT), and Audiologist available on an on-call basis. The school psychologist - who works from a remote location - is assisted in-district by a paraeducator.

For most transitions during the time period investigated, the task of scheduling evaluations and IEP team meetings fell to the school psychologist and the school psychologist's paraeducator. It was the job of the Academic Evaluator to assist with evaluations and to develop IEPs for transitioning students.

The Academic Evaluator who began the 2024-25 school year with the district was a contracted employee - not a direct district hire. That individual resigned her position for personal reasons as of November 12, 2024 and was replaced by a second contract employee. That second individual gave notice on January 24, 2025 that she would be leaving her position on January 31, 2025 to accept a position with another agency.

The Executive Director of Special Education for the district was copied on the evaluator's email notice of resignation on January 24, 2025 but was out of the office at the time and did not become aware of the vacancy until the Program Coordinator for ITS sent her an email on January 29, 2025 notifying her that IEPs had not being completed on two transitioning students.

Issues Investigated

Issues One through Three below were presented by Complainant 1. Issue Four below outlines the systemic concerns specified by Complainant 2. Because Issue Three and Issue Four both allege systemic violations regarding the provision of FAPE, the applicable statutes and regulations, investigative findings, and summary/conclusions for both issues are combined below.

Issue One

Although Student 1 has been found by the district to be eligible for special education services and has reached the age of three, an IEP has not yet been developed for the student, and he is not yet receiving special education services from the district.

Position of Complainant 1

Complainant 1 asserts that while Student 1 was, on February 4, 2025, determined to be eligible to receive special education services from the district, no IEP was developed. As of the filing of this complaint on February 7, 2025, Complainant 1 contends that no IEP had been developed for the student, no date for an IEP meeting had been proposed to the parent and no special education services were being provided to the student by the district even though the student was now age 3.

Applicable Statutes and Regulations

As required by K.A.R. 91-40-2(b)(1) and (2),

"Each agency shall make FAPE [a free appropriate public education] available to each child with a disability residing in its jurisdiction beginning not later than the child's third birthday [and] an IEP or IFSP shall be in effect by the child's third birthday [unless that birthday occurs during the summer when school is not in session]."

Position of the District

The district stipulates that an IEP had not been developed for Student 1 by his third birthday, and no district-provided special education services were being provided by that date.

Investigative Findings

The resignation of the contracted academic evaluator (special education teacher) for the district's Part C to B team on January 24, 2025 (discussed in the "Background" section of this report and below under Issue Two) left the team without anyone tasked with the specific responsibility of developing a draft IEP for Student 1 (as well as other students). The decision was made by the executive director of special education on January 29, 2025 to have the team conduct evaluation/eligibility meetings for transitioning students but to delay the development of IEPs for those students until a new academic evaluator had been hired and appropriately trained.

Student 1 turned age 3 on February 6, 2024. On January 17, 2025, the parent was given 7-day written notice of a meeting on January 24, 2025 for the purpose of determining the student's eligibility for special education services and developing an IEP. An evaluation/eligibility meeting for Student 1 was held on January 24, 2025, before a new academic evaluator was in place, so the IEP meeting for the student was delayed.

On February 7, 2025 the parent was given 5-day prior notice of an IEP team meeting on February 12, 2025. That meeting was conducted as scheduled on February 12, 2025 - 6 days after the student's 3rd birthday.

According to his February 12, 2025 IEP, Student 1 was to receive 15 minutes a week of speech/language services in an Early Childhood location, 15 minutes a week of speech/language services in a special education setting, and 30 minutes of Early Childhood special education services 4 days a week in an Early Childhood setting.

While the student's IEP shows that the district was prepared to implement services to the student beginning on February 12, 2025, and the student's father provided written consent for those services on the same date, preschool students did not attend class on February 12, 2025, so services for the student actually began on February 13, 2025 at the earliest - 7 days (4 school days) after his 3rd birthday. As a result, Student 1 did not receive the special education support shown in his IEP and is entitled to the following compensatory services:

- 15 minutes of speech/language services in an Early Childhood location;
- 15 minutes of speech/language services in a special education setting; and
- 120 minutes of Early Childhood special education services in an Early Childhood setting.

Summary and Conclusions

Student 1 was not being provided a FAPE through the implementation of an IEP by his 3rd birthday and for four school days after that time. A violation of special education statutes and regulations *is substantiated* on this issue.

Issue Two

The district provided the parents of Student 1 with a statement that compensatory services would be provided to the student, but that statement lacked any tangible information regarding what services would be provided to the student.

Position of Complainant 1

According to Complainant 1, the LEA representative read aloud at the evaluation/eligibility meeting for Student 1 a written statement which told the parent that compensatory services would be offered to the student. Complainant 1 questions the legality of such a statement and contends that the parent was given no clear explanation regarding the nature of the compensatory services to be provided.

Applicable Statutes and Regulations

Districts are encouraged to be open and transparent when talking with parents regarding the provision of special education and related services for their children. Special education statutes and regulations do not prohibit districts from providing parents with information regarding the provision of services.

Position of the District

It is the position of the district that the reading of the written statement was designed to provided consistency for teams who were transitioning students under the circumstances described above.

Investigative Findings

In an email sent on Wednesday, January 29, 2025 at 10:44 AM, the program coordinator for ITS notified the executive director of special education for the district that, at meetings for two Part B eligible students, their parents were informed that no one from the district was available to write IEPs for their children. As a result, no IEP would be proposed for these two students - one of whom was turning 3 on the following Monday. The names of both students (Student 21 and Student 22) were provided to the executive director.

The executive director called a meeting with the Part B evaluation team at 3:30 PM on January 29, 2025 to discuss the situation reported by the ITS program coordinator. In attendance (virtually or in person) were 3 school psychologists, the Part C to Part B SLP team evaluator, the school psychology paraeducator (also called the "Psych Facilitator"), and the special education coordinator for Part C to B who oversees the Part C to B team. According to the executive director, she was told by the school psychologist at the meeting that the exiting teacher had provided the psychologist a list of students who were still in the transition process at the time of her resignation. The psychologist forwarded that list of students to the executive director during the meeting.

The executive director, after hearing about what the evaluation team had been trying to handle on their own, told the evaluation team to pause any further action until they had received follow up from the executive director who would also follow up with the principals of the early childhood centers to ensure that everyone was "on the same page" regarding next steps.

At 6:49 PM on January 29, 2025, the executive director sent an email to the Director of Early Childhood and to the KSDE Assistant Director of Special Education to inform them of the situation and the actions she had taken, writing:

> *"I am reaching out to communicate about a situation I am currently facing in [the district].*
>
> *I have had 2 sped teachers assigned to part c to b evals resign recently and I have not been able to fill their positions and have been without a teacher for almost 2 weeks. I now have a contracted teacher who will begin next week, but as a result of no staff, I have about 20 students who will not have an IEP in place by their 3rd birthday, but we have been able to or will be holding eligibility meetings before their 3rd birthday, with the exception of some that were scheduled during the winter blizzard that happened earlier this month that we weren't able to hold, but those have been rescheduled and our psych will be doing those.*
>
> *My plan is to communicate honestly with the parents and staff that we will not be able to hold those IEP meetings before the child's 3rd birthday, and I will offer compensatory services*

for anytime missed. I am providing the building LEAs with uniform communication to share with parents at their eligibility meetings about the situation but I can only anticipate that parents may be encouraged to file state complaints due to this, which is absolutely their right to do so, but I just wanted to check with you to see if there was anything else I should consider?

Once the teacher starts next week, her priority will be to contact these families and schedule their IEP meetings and we should be good moving forward with our late February and March students.

I am trying to be as proactive as possible, but I am also a realist and I know we are out of compliance for these students.

Any advice will be appreciated.

Thank you."

The KSDE Assistant Director of Special Education responded:

"I agree with being proactive with the parents, and this is consistent with our guidance, if a district cannot provide a service, notify the parents as to why, what the district is doing to remedy the issue, and will evaluate potential compensatory services when remedied. Also, you are correct, parents may still file a complaint, and it may occur…Again, thank you for working with the families and continuing to be transparent with them, and for letting us know."

At 7:00 PM on January 29, 2025, the executive director sent an email to the building principals as well as the Director of Early Childhood and the Executive Director of Leadership and Learning for the district writing:

"SPED has had some changes in staffing for the part C to B evaluation team. We no longer have an in-person academic evaluator to conduct academic testing for students C to B or to write the initial IEPs for those students. To ensure we are able to meet the evaluation needs for our Part C to B students, please see our plan below:

- *We will have a virtual sped teacher, with experience in Early Childhood to join the C to B eval team the first week of February*
- *The virtual sped teacher will be responsible for drafting the C to B IEPs and facilitating the C to B IEP meetings*
- *Our C to B school Psych will conduct the evaluations with her facilitator and continue to use the data from the evaluation results and IFSP to determine eligibility for C to B students*
- *Our SLP for C to B will continue to conduct her evaluation and hold IEP meetings for Speech only students.*

Since last week, we have only been able to hold eligibility meetings with the C to B eval team. All of those students who qualified for DD (not Speech Only) will have to have their IEP

meeting held once we have onboarded the new sped teacher. There are about 20 students from last week through the first week, maybe 2nd week, of February who most likely will be delayed with having an IEP in place by their 3rd birthday, and I do understand what this means for our SPED compliance, and I will navigate that piece with the state.

Please note, any C to B meetings scheduled for tomorrow through the end of the first full week in February (could be longer, but hoping not) will only be eligibility meetings (No IEP meetings).

As the LEA for these C to B meetings, please state the information below to parents before starting the meeting (please print and have available for the meeting to ensure the message for all parents is the same):

Today's meeting will only be an eligibility meeting to determine if your child is eligible for Part B services. After this meeting, you will be contacted by a SPED teacher within 10 days to schedule an IEP meeting for your student to initiate SPED services. The district is unable to offer your child services until an IEP meeting is held and initiated by you, the parent, and unfortunately due to staffing constraints, we will not be able to implement an IEP by your child's 3rd birthday, as required, however the district is making all efforts to remedy this situation to get your IEP meeting scheduled as soon as possible.

Any services missed as a result of this delay, will be considered for compensatory services by the district's SPED Department, which are special education services offered to you for your child, to make up for the services not provided by your child's 3rd birthday.

To answer any further questions, please contact Dr. Lawrie, our Director of Special Education office at 913-627-5674.

Thank you.

I have attached a copy for you to print to have readily. Once you state this message, it will be captured in the meeting notes. You will receive an email from [the Part C to B coordinator] introducing you to the new sped teacher once everything is confirmed with her.

Please direct any questions the parent, parent advocate or Infant Toddler worker may have to me in the SPED department. I will keep you updated on any changes.

If you have any questions for me, please contact me...

Thank you."

At 7:14 PM on January 29, 2025, the executive director sent an email to the ITS program coordinator writing:

"I had a chance to meet with the C to B eval team and I have provided guidance to the LEAs on how to address the situation for those students who only have had eligibility meetings or will have only eligibility meetings and no IEP meetings.

We have secured a teacher this evening, but we will be out of compliance for part B for not having an IEP in place by the child's 3rd birthday due to this transition with staffing.

Each parent will be contacted by the end of this week to have a discussion about the situation and how we plan to remedy the situation for part B by offering compensatory services for these families impacted by this delay.

It is our priority to quickly onboard the new teacher and she will get those IEP meetings scheduled accordingly. I anticipate there to be an impact on part C to B students through mid February and then we should be caught up.

I understand this is not an ideal situation, but thank you for bringing this to my attention and know we are addressing it on Part B side.

I have asked the LEAs and Part B team to direct all parent concerns to me, but I understand parents have a right to file complaints, but it's my hope that I can explain and offer remedy to the parent regarding the situation.

What will be helpful for you and your staff to understand and communicate with parents?"

The ITS program coordinator responded:

"This will help explain to parents. I'm sorry this is happening.

We will let the parents know they will all be contacted for explanation and a plan to develop and implement the IEP. We will also explain to parents that in this situation, concerns should be directed to you if they need more clarification on the plan.

We will inform parents that no matter what we will remain in support of family until the IEP is implemented. If there is anyway you can keep providers updated as parents are contacted I believe it will help us guide parents back to you.

We will also ask parents to let us know when IEP will be scheduled so we can document and attend.

We will inform KDHE that they will see billing logged after the child's 3rd birthday but I will direct staff to log it as non-billable. Any idea how many IEPs could be late?

Is there anything I can do for you to help with this? I know onboarding a new teacher is not easy."

The executive director replied:

"Thank you, I appreciate it. I also reached out to the state too, but not KDHE.

I can make sure the new teacher keeps the ITS worker in the loop of the date so they can attend.

I'm over projecting but I think it will impact about 20 students, but hopefully not that many.

> *Let me think about if there is anything that you can do to help, I don't think so, but once the state responds back they may give me some ideas."*

On February 12, 2025, the executive director sent a follow-up email to building leaders, the Part C to B team, the ITS coordinator and supervisors directing staff to stop the reading of the January 29, 2025 statement. The executive director told staff that the newly hired academic evaluator was working with parents to schedule IEP meetings and that the team would be returning to the previous practice of holding evaluation/eligibility and IEP team meetings if feasible.

Summary and Conclusions

Special education statues or regulations do not prohibit a district from developing and/or presenting a statement such as the one written by the executive director. As will be discussed below in subsequent issues, such a statement does not in any way obviate the district's obligation to provide the compensatory services due students as a result of the circumstances alluded to in the executive director's statement.

While the statement prepared by the executive director did incorrectly state that the subsequent delayed IEP meeting would need to be "initiated by...the parent," there is no evidence to show that the district abdicated its responsibility to schedule and hold these meetings.

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

Issue Three

The district is failing on a systemic level to provide special education services in a timely manner to students who are transitioning from Part C services through Infant Toddler to Part B services from the district.

Position of Complainant 1

Complainant 1 asserts that, in addition to Student 1 and his family, other parents and students have also been read the statement referenced above under Issue Two. Complainant 1 contends that services to other students have been delayed beyond those students' third birthday with no specific discussion of what compensatory services would be provided.

It is also the position of Complainant 1 that IEP meetings are not routinely timely held in order to smoothly transition ITS students to Part B services by the time that those students turn 3.

Issue Four

The district has failed on a systemic level to properly develop and implement IEPs for students prior to their third birthday.

Position of Complainant 2

Complainant 2 states that she attended an eligibility meeting on February 3, 2025 for a student who was transitioning from ITS to the district. She reports that at this meeting the Local Education Agency (LEA) representative - the building principal - began the meeting by reading the following statement:

> *"Today's meeting will only be an eligibility meeting to determine if your child is eligible for Part B services. After this meeting, you will be contacted by a SPED teacher within 10 days to schedule an IEP meeting for your student to initiate SPED services. The district is unable to offer your child services until an IEP meeting is held and initiated by you, the parent, and unfortunately, due to staffing constraints, we will not be able to implement an IEP by your child's third birthday, as required, however, the district is making all efforts to remedy this situation to get your IEP meeting scheduled as soon as possible.*
>
> *Any services missed as a result of this delay, will be considered for compensatory services by the district's SPED Department, which are special education services offered to you for your child, to make up for the services not provided by your child's 3rd birthday. To answer any further questions, please contact...our [Executive] Director of Special Education office...Thank you."*

Complainant 2 asserts that this action denied the student a free appropriate public education (FAPE) by his third birthday by failing to timely develop and implement an IEP for the student.

Complainant 2 further asserts that the parents were informed that the evaluation report which was developed through the eligibility meeting would be forwarded to a "virtual case manager" who would "write the IEP" for the student. It is the position of Complainant 2 that the parents had not met the virtual case manager but were told that she had not participated in the evaluation of their child and would not be providing services for their child. Complainant 2 contends that having a virtual case manager write the IEP does not comply with the State's expectations regarding the appropriate development of a student's IEP.

According to Complainant 2, she was informed that this virtual case manager would be "writing all of the IEPs" and that numerous families being served by ITS have been informed that an IEP for their child would not be developed and implemented by the child's third birthday - a systemic violation of special education statutes and regulations. Complainant 2 states that the ITS Coordinator had - during the week of February 3, 2025 - been informed by the Executive Director of Special Education that more than 28 children had not/would not have an IEP developed and implemented by their third birthday with that number expected to grow over the weeks ahead.

Applicable Statutes and Regulations

As stated in the Kansas State Department of Education document entitled "Kansas Early Childhood Transition from IDEA [Individuals With Disabilities Education Act] Part C to Part B - Frequently Asked Questions" published in July 2023,

"A vital part of providing quality services to children with disabilities is assuring a smooth transition from Infant Toddler Services to Preschool Services. Part C of IDEA is a federal program that assists states in operating a comprehensive, statewide program of early intervention services for infants and toddlers with disabilities, from birth through 2 years of age. Part C Indicator 8 identifies the responsibility of Part C service programs in transition planning and engaging in timely planning in support of the child's transition to Part B preschool services or other community services by their 3rd birthday.

Part B of IDEA defines the preschool program, which guarantees a free appropriate public education (FAPE) to children with disabilities ages 3 through 5. Part B Indicator 12 covers the transition from IDEA Part C to IDEA Part B, documenting the children referred by IDEA Part C prior to age 3, who are found eligible for IDEA Part B, and who have had an IEP developed and implemented by his or her third birthday.

...A referral to a local education agency (LEA)/state education agency (SEA) is required for every child potentially eligible for IDEA Part B that has been referred to or is receiving IDEA Part C services (at least 90 days and no more than 9 months prior to the third birthday). Potentially eligible is defined in the Kansas Infant-Toddler Services Procedures Manual, XIV-2 as children receiving services [Part C] 90 days prior to their 3rd birthday or determined eligible for Part C services at least 45 days prior to their 3rd birthday.

Part C is required to refer to the LEA [typically a school district]/SEA as soon as possible after eligibility is determined for any child referred to Part C between 45 and 90 days prior to the 3rd birthday.

...When a child who has been served Part C is referred to Part B, the LEA is responsible to giving the parents of the child a copy of the procedural safeguards notice [34CFR 300.504(a)(1)]. A child who is receiving services in Part C, 90 days prior to their 3rd birthday, or determined eligible 45 days prior to their 3rd birthday, is potentially eligible for Part B. Therefore, the LEA must initiate the evaluation process to determine whether the child is a child with a disability [34 CFR 300.301(b)]. Before conducting an initial evaluation under Part B, the LEA must, after providing the parents prior written notice consistent with 34 CFR 300.503, obtain informed written consent...from the parent of the child [34 CFR 300.300(a)]."

At K.A.R. 91-40-8, Kansas special education regulations require the following:

f) Unless an agency has obtained written parental consent to an extension of time and except as otherwise provided in subsection (g), the agency shall complete the following activities within 60 school days of the date the agency receives written parental consent for evaluation of a child:

(1) Conduct the evaluation of the child;

(2) conduct a meeting to determine whether the child is an exceptional child and, if so, to develop an IEP for the child. The agency shall give notice of this meeting to the child's parent or parents as required by K.A.R. 91-40-17(a); and

(3) implement the child's IEP in accordance with K.A.R. 91-40-16.

g) An agency shall not be subject to the time frame prescribed in subsection (f) if either of the following conditions is met:

(1) The parent or parents of the child who is to be evaluated repeatedly fail or refuse to produce the child for the evaluation.

(2) The child enrolls in a different school before the evaluation is completed, and the parent and new school agree to a specific date by which the evaluation will be completed.

h) In complying with subsection (f), each agency shall ensure that an IEP is developed for each exceptional child within 30 days from the date on which the child is determined to need special education and related services.

As stated under question 18 of the document entitled "Kansas Early Childhood Transition from IDEA Part C to Part B - Frequently Asked Questions" developed by the Kansas State Department of Education (see page 12), if a mutually agreed upon time for the scheduling of an IEP team meeting cannot be scheduled before a child's 3rd birthday, a district would be considered noncompliant with the State's Indicator 12. It is the responsibility of the district to proactively schedule IEP meetings at a time that allows such meetings to be rescheduled should unexpected events occur. Question 19 of that same document notes that a district cannot extend the timeline for evaluation beyond a child's third birthday unless the parents have repeatedly refused to make the child available for an evaluation.

Evaluations and IEP meetings should be scheduled with enough lead time to allow the parent viable options. The inability of a parent to present their child for evaluation on a given day should not be considered as "refusal" if other options have not been offered.

Investigative Findings

In conducting this investigation, the investigator reviewed documents related to a total of 25 students who were identified by one or more of the parties (Complainant 1, Complainant 2, and the district). Two of the students identified by complainants went through the transition from Part C to Part B outside of the 12-month window covered by these complaints; their cases were, therefore, not investigated.

The 23 remaining students represent only a tiny portion (less than 4%) of the approximately 620 referrals that have been received and processed for Part C to Part B during the period of July 23, 2023 through March 7, 2025. While both complainants allege that there have been widespread violations of the requirement to provide FAPE to students by their third birthday, no other specific students were identified.

The case of one of the identified students was addressed in a formal complaint filed in August 2024 (24FC500-009). Issue 7 of that complaint specifically targeted the question of whether the student was receiving services on his 3rd birthday. That investigator determined that a violation of special education statutes and regulations had not been substantiated. No further investigation of that issue was conducted as a part of this complaint.

One of the students identified by a complainant was referred to Part B less than 45 days before the student's third birthday.

In the course of this investigation, the investigator reviewed documents related to each student in order to determine,

- when consent was obtained from the parent(s) for evaluation to determine eligibility for special education services;
- when the evaluation was completed;
- when an evaluation meeting was held;
- when notice of meetings were provided to the parent(s);
- when IEP meetings were held;
- what services were recommended; and
- when the parent(s) provided written consent for those services to be provided.

Student 1:

A violation regarding Student *1 was established* under Issue 1.

Student 2:

This student was born on August 23, 2021. An email from ITS staff dated July 30, 2024 shows that contact had been lost with the parent who had gotten a new phone number. The district had been unable to reach the parent in June to schedule an earlier evaluation. The ITS staff member reported that the parent was still interested in having the student evaluated in order to determine eligibility for special education services. Contact information for the parent was provided, and the district reached out to the parent who provided written consent for evaluation of the student on August 20, 2024. The student was evaluated on that same date. An evaluation/eligibility meeting was scheduled for August 22, 2024, but that meeting was subsequently rescheduled for August 29, 2024, 6 days after the student's third birthday. An IEP for this student was developed on August 29, 2024, 6 days after the student's third birthday.

Because of the mitigating circumstances outlined above, a violation of special education statutes and regulations *is not substantiated* with regard to this student.

Student 3:

This student was born on September 25, 2021. The district obtained consent for evaluation of this student on June 21, 2024. An eligibility/IEP team meeting was conducted for the student on August 27, 2024. The parent provided written consent for proposed services on September 23, 2024, and services were initiated on September 25, 2024.

A violation of special education statutes and regulations *is not substantiated* with regard to this student.

Student 4:

This student's date of birth is November 9, 2020. The student's transition from Part C to Part B fell outside of the 12-month window covered by this complaint and therefore *was not investigated* further.

Student 5:

This student was born on February 5, 2022. The student's parents provided consent for his evaluation on January 6, 2025. An eligibility/IEP meeting was originally scheduled for January 30, 2025, but that meeting was delayed because the student was not evaluated until February 4, 2025. The student's IEP meeting was conducted on February 13, 2025, the same day the parents gave written consent for proposed services.

As a result of the delay, Student 5 is entitled to compensatory services of:

- 15 minutes of Occupational Therapy;
- 30 minutes of Speech/Language services;
- 795 minutes of special education services in an Early Childhood Special Education classroom setting; and
- transportation to and from these services if needed in order to access these additional services.

A violation of special education statutes and regulations *is substantiated* with regard to this student.

Student 6:

This student was born on March 10, 2021. The students provided consent for an evaluation on December 4, 2023. A meeting to discuss eligibility and develop an IEP was originally scheduled February 12, 2024 but was moved to February 13, 2024. The parents provided consent for the provision of special education services on the day of the IEP meeting, and services for the student were initiated on the student's third birthday.

A violation of special education statutes and regulations *is not substantiated* with regard to this student.

Student 7:

This student was born on December 2, 2021. Consent for evaluation was sent to the parents on October 9, 2024 and an appointment for the evaluation was scheduled for November 13, 2024. The parent and student did not come at the scheduled time, and a new evaluation date was set for November 18, 2024 but the student's father cancelled that appointment because of transportation problems. A new appointment was scheduled with the district offering to provide transportation if needed. While the district had proposed that an eligibility/IEP meeting be held for the student on December 10, 2024, the student was not evaluated until January

2025. The student was determined to be eligible for services, and an IEP was developed on January 16, 2025. The parents gave written consent for the provision of those services on that same date.

While the IEP for this student was not implemented until more than 30 days beyond her 3rd birthday, the parent cancelled two evaluation appointments and did not make the student available for evaluation until more than two months after the originally scheduled evaluation date. The district worked promptly to determine the student's eligibility and develop an IEP after the evaluation was conducted.

Because of these mitigating circumstances, a violation of special education statutes and regulations *is not substantiated i*n the case of this student.

Student 8:

This student was born on January 8, 2021. The transition for this student was completed prior to the 12-month period covered by this complaint. Circumstances regarding this student were, therefore, not investigated.

Student 9:

This student was born on April 25, 2021. Consent for evaluation of the student was provided by the parents on February 5, 2024, the same date the evaluation was conducted. A meeting was held to determine the student's eligibility and to develop an IEP on April 18, 2024. The parents provided consent for services to begin on the student's birthday.

A violation of special education statutes and regulations *is not substantiated* in the case of this student.

Student 10:

This student was born on March 17, 2021. While the parent provided consent on November 17, 2023 for the student to be evaluated, the evaluation was not completed until March 1, 2024. An eligibility/IEP meeting was held on March 8, 2024 and the student began receiving services on her birthday.

A violation of special education statutes and regulations *is not substantiated* in the case of this student.

Student 11:

This student was born on March 14, 2021. While consent was obtained on January 11, 2024 for the evaluation of this student, the evaluation was not completed until March 1, 2024. An Eligibility/ IEP meeting was held on March 4, 2024. While the district proposed that the IEP for the student be implemented as of her 3rd birthday, the parents did not give consent for services to be implemented until March 20, 2024.

Because the parents did not provide written consent for the implementation of the student's IEP until after her 3rd birthday, a violation of special education statutes and regulations *is not substantiated* in the case of this student.

Student 12:

This student was born on January 29, 2022. Consent for evaluation was provided by the parents on December 13, 2024, and the results of the initial evaluation of the student were presented to the parents on January 7, 2025. An IEP was developed for the student on February 11, 2025, 14 calendar days (7 school days) after the student's 3rd birthday. The parents provided written consent on February 11, 2025 for the services outlined in the student's IEP.

Because of the delay in provision of services, Student 12 is entitled to the following compensatory services:

- 30 minutes of Speech/Language services in a special education setting;
- 30 minutes of Speech/Language services in a Reverse Mainstream setting; and
- 140 minutes of special education services in a Reverse Mainstream ECSE setting.

Because the district failed to provide a FAPE to this student beginning on his 3rd birthday, a violation of special education statutes and regulations *is substantiated*.

Student 13:

This student was born on January 28, 2022. Records provided by the district show that the district first contacted the parent on January 14, 2025. Questions surfaced as to whether the student was a resident of the state since the student's siblings attended school in Missouri. Ultimately, the district determined that the student should be evaluated, and consent for evaluation of the student was provided by the parent on January 31, 2025. An eligibility meeting was scheduled for the student on February 20, 2025, but the physical therapy evaluation of the student was not conducted until February 14, 2025, and an IEP was not developed for the student until March 3, 2025, at which time services were initiated with the written consent of the parent.

As a result of the delay, the student did not receive a FAPE until more than 30 calendar days and 17 school days beyond his 3rd birthday. Therefore, Student 13 is entitled to the following compensatory services:

- 75 minutes of Occupational Therapy;
- 75 minutes of Physical Therapy;
- 150 minutes of Speech/Language Therapy;
- 600 minutes of B time; and
- transportation to receive these services if needed.

Because the district failed to provide this student with a FAPE by his 3rd birthday, a violation of special education statutes and regulations *is substantiated*.

Student 14:

This student was born on February 2, 2022. Consent for an initial evaluation of the student was obtained from the parents on January 14, 2025, and the results of the evaluation of the student was reported to the parents on January 30, 2025 at an eligibility meeting. An IEP was developed for the student on February 13, 2025, the same day the parents gave written consent for services to be provided - 11 calendar days and 6 school days after the student's 3rd birthday.

As a result of this delay, Student 14 is entitled to the following compensatory services:

- 30 minutes of Speech/Language Therapy in a special education setting;
- 30 minutes of Speech/Language Therapy in a Reverse Mainstream ECSE setting; 180 minutes of Special Education services in a Reverse Mainstream ECSE setting; and
- transportation to receive these services if needed.

Because the district failed to provide a FAPE to this student by his 3rd birthday, a violation of special education statutes and regulations *is substantiated*.

Student 15:

Because this student was referred for Part B services less than 45 days prior to her 3rd birthday, this case *was not investigated* further.

Student 16:

This student was the subject of a formal complaint (24FC500-009) filed against the district in April 2024. Issue 7 of that complaint addressed the allegations of the parents that the district had failed to provide services to the student by his 3rd birthday. The investigator determined that a violation of special education statutes and regulations *was not substantiated*. This case was not reviewed further as a part of this investigation.

Student 17:

This student was born on January 24, 2022. Consent for an initial evaluation of the student was provided by the parents on December 4, 2024. On February 14, 2025, the district conducted an eligibility/IEP meeting regarding the student, and the parents provided written consent for services proposed by the district - 21 calendar days after the student's 3rd birthday. Because students were not in school on February 14, 2025, services for the student were initiated on February 18, 2025, 13 school days after the student's birthday.

Because of the delay in the provision of FAPE to this student, Student 17 is entitled to the following compensatory services:

- 45 minutes of Occupational Therapy in a special education setting;
- 45 minutes of Speech/Language Therapy in a special education setting;
- 45 minutes of Speech/Language Therapy in a Reverse Mainstream ECSE setting; and
- 3 hours of special education services in a Reverse Mainstream ECSE setting.

Because the district failed to provide this student with a FAPE by her 3rd birthday, a violation of special education statutes and regulations *is substantiated.*

Student 18

This student was born on January 31, 2022. The written consent of the parents for the initial evaluation of this student was obtained on December 4, 2024. The student was evaluated in December 2024, but an eligibility meeting for the student was not held until January 31, 2025. The parents then participated in an IEP meeting for the student on February 10, 2025 and gave their written consent for the services proposed by the district.

As a result of delays, Student 18 did not receive special education services until 5 school days after his 3rd birthday and is entitled to the following compensatory services:

- 15 minutes of Speech/Language Services in a special education setting;
- 15 minutes of Speech/Language Services in a Reverse Mainstream ECSE setting;
- 150 minutes of Special Education services in a Reverse Mainstream ECSE setting; and
- transportation for these services if needed.

Because the district failed to provide a FAPE to this student by his 3rd birthday, a violation of special education statutes and regulations *is substantiated.*

Student 19:

This student was born on January 6, 2022. Consent for evaluation was emailed to the parents on September 30, 2024, and attempts to schedule the initial evaluation of the student were made in October 2024. A scheduled evaluation in early December was rescheduled when the parent experienced car trouble. The parents signed a new consent for evaluation on January 28, 2025. Ultimately, the IEP meeting for this student was not held until February 25, 2025, and the parents did not provide written consent for the district to implement proposed services until March 4, 2025.

While the district's staffing problems certainly contributed to a delay of special education service implementation of more than 2 months beyond the student's 3rd birthday, the student was not made available for evaluation until nearly a month after he turned 3, and the parents took a few days to consider the district's recommendations for service before providing their written consent.

In a report provided to the investigator, the district has calculated compensatory special education services for this student covering 25 school days, which, in the opinion of the investigator more than makes up for any of the missed services that were solely the responsibility of the district. Therefore, Student 19 is entitled to the following compensatory services:

- 90 minutes (6 weeks at 15 minutes per week) of Speech/Language Services in a Reverse Mainstream ECSE setting;
- 90 minutes (6 weeks at 15 minutes per week) of Speech/Language Services in a special education setting; and

- 750 minutes of Special Education Services in a Reverse Mainstream ECSE setting.

Because the district failed to provide a FAPE to this student by his third birthday, a violation of special education statutes and regulations *is substantiated*.

Student 20:

This student was born on January 30, 2022. Consent for an initial evaluation of this student was obtained from the parents on December 4, 2024. The results of the evaluation were reviewed with the parents on January 30, 2025, and an IEP meeting for the student was held on February 11, 2025, the same day the parents provided written consent for the district's proposed services. This resulted in the student missing 7 school days of special education services.

Student 20 is therefore entitled to the following compensatory services:

- 30 minutes of Speech/Language Services in a special education setting;
- 30 minutes of Speech/Language Services in a Reverse Mainstream ECSE setting;
- 210 minutes of Special Education Services in a Reverse Mainstream ECSE setting; and
- transportation to receive these services if needed.

Because the district did not provide special education and related services to this student until 7 school days past her 3rd birthday, a violation of special education statutes and regulations *is substantiated.*

Student 21:

This student was born on February 3, 2022. The district first contacted the parent in mid-November 2024 but did not obtain parental consent for an initial evaluation until January 16, 2025. An eligibility meeting for the student was held at the end of January 2025, and an IEP team meeting was held on February 6, 2025 at which time the parent provided written consent for the delivery of special education services to the student. This delay resulted in the student missing a total of 30 minutes of special education services in an Early Childhood classroom. The student is, therefore, entitled to compensatory services for this time.

Because the district failed to provide special education services to this student by his 3rd birthday, a violation of special education statutes and regulations *is substantiated*.

Student 22:

This student was born on February 13, 2022. On December 13, 2024, the district obtained consent from the parents for an initial evaluation of the student. That evaluation was completed and an eligibility/IEP meeting regarding the student was held on January 28, 2025. It was determined that the student's primary delays were in the area of speech and language. The IEP team recommended that he receive 30 minutes of speech/language services per week, and the parent provided written consent for those services to begin on the student's 3rd birthday.

A violation of special education statutes and regulations *is not substantiated* in the case of this student.

Student 23:

This student was born on February 5, 2022. The district obtained parental consent from the parents on December 6, 2024 to conduct an initial evaluation of the student. Inclement weather caused the district to cancel an eligibility/IEP team meeting originally scheduled for January 31, 2025. That meeting - which included representatives from outside agencies - was held on February 6, 2025 - the first school day following the student's third birthday. The parents provided written consent on February 24, 2025 for the services proposed by the district.

The district was ready, willing, and able to begin providing services to this student on the first school day following his 3rd birthday, however, they lacked the parents' consent until 18 calendar days later. Therefore, a violation of special education statutes and regulation*s is not substantiated* in the case of this student.

Student 24:

This student was born on February 17, 2021. The parents provided written consent on December 12, 2023 for the district to conduct an initial evaluation of the student. An eligibility/IEP meeting regarding the student was conducted on February 22, 2024 - 2 school days after the student's 3rd birthday. The parents provided written consent that same date for the special education services proposed by the district.

Because this student was not receiving special education services from the district as of her 3rd birthday, a violation of special education statutes and regulations *is substantiated.*

No evidence was presented to show that the district failed to provide the speech and language services (15 minutes a week of speech/language services in a special education setting and 15 minutes a week of speech/language services in an Early Childhood setting) called for in the student's IEP during the two days the student attended school in the week of February 19, 2024. Therefore, no compensatory services are warranted.

Student 25:

This student was born on April 3, 2021. Consent for an initial evaluation was given on February 6, 2024. An eligibility/IEP meeting regarding the student was conducted on April 1, 2024. The parents provided written consent on that same day for the implementation of the special education services specified in the student's IEP, and he was able to begin to receive those services on April 4, 2024, the first school day after his 3rd birthday. A violation of special education statutes and regulations *is not substantiated* in the case of this student.

Summary and Conclusions

Twenty-five (25) students were identified by the parties to this complaint for review, and as noted above the records for 23 of those students were investigated. Violations of special education statutes and regulations regarding the provision of services to those students by their 3rd birthday were substantiated for 11 of the 23 students (48%). Of those 11 students, 9

were self-identified by the district as having been negatively impacted due to the resignation of the contracted academic evaluator (special education teacher) for the Early Childhood evaluation team, far fewer than the twenty or more students that the executive director of special education had - as she told the director of ITS in an email - feared might be impacted.

The district anticipated that compensatory services could be warranted for students impacted by this situation, and compensatory services are due to 8 of these students as enumerated above.

The complainants identified 2 other students who were determined through this investigation to have not been receiving services by their 3rd birthday, but compensatory services are only warranted for 1 of those students.

While the resignation of the special education teacher did result in numerous violations of special education statutes and regulations, there is - based upon this investigation - no indication of a systemic violation outside of this situation caused by that resignation.

It is important to note, however, that while there are no indications that the district is routinely delaying services to students transitioning from Part C to Part B services beyond their 3rd birthday, this investigation did determine that there are reasons for the district to take a close look at how the transition process is being managed.

The district generally appears to be providing services to students by the deadline established by statutes and regulations - the child's 3rd birthday. However, the district's transition process has not consistently provided these children and their families with what the Assistant Director of Special Education for the Special Education and Title Services (SETS) division of the Kansas State Department of Education (KSDE) describes as "a soft landing" into public school programs.

Much attention is given by KSDE to the transition process from Part C to Part B. Part C providers, in this case ITS, are directed to refer students to the district well before their 3rd birthday so that the district can obtain consent for and conduct evaluations to determine whether or not a student is eligible to receive special education services from the district under an IEP. There is an expectation that there will not be an eleventh-hour rush to complete the process so that the district can meet the letter-of-the-law deadline for the provision of services.

Rather, the intent of established policies and procedures is to ensure that - even if there are bumps in the road due to scheduling problems - families will glide into that soft landing in plenty of time for all arrangements regarding the provision of special education services to have been put in place well before their child turns 3.

District procedural guides direct staff to move promptly to complete evaluations of students once they are referred by ITS. A review of the records associated with the students identified in this complaint shows that consent for evaluations were for the most part obtained early on in the transition process. On average, the district obtained consent for evaluations 44 days ahead of students' 3rd birthdays (median of 35 days with a range of 120 days ahead to 3 days ahead).

However, the results of these evaluations were not reviewed with the parents until on average 6 days before the child's birthday (median of 4 days with a range of 50 days before to 45 days after). While this pattern may not be typical of all transitioning students, the data suggests that the evaluation team has not consistently acted timely to complete evaluations once consent had been obtained.

The district is strongly encouraged to establish and follow timelines for completing evaluations so that IEPs for students can be developed at least 2 weeks prior to a student's 3rd birthday. Doing so will allow time to set up transportation if needed and will provide some "wiggle room" in those cases where last-minute meeting changes need to be made.

Additional Issues

The investigator reviewed the IEPs and associated meeting notices of each of the 25 students identified through this investigation. In the course of those reviews, two additional issues were identified. Both of these issues appear to be systemic in nature.

Issue Five

Parents have not consistently been provided with 10-day notice of their child's IEP team meeting.

Applicable Statutes and Regulations

After an evaluation is completed and the information is compiled, the team must schedule a time to convene in order to make the determination of eligibility. Parents are to be provided an opportunity to participate in the eligibility meeting, which can be conducted at the same time as the IEP team meeting. The school must provide a notice of the meeting at least 10 calendar days prior to the meeting date that includes the requirements in K.A.R. 91-40-17(b)(1). The notice must indicate the purpose, time, and location of the meeting and who will be in attendance, and inform the parents that they may invite others who have knowledge of or special expertise about the child.

If the parents want to waive their right to 10-day notice of an IEP team meeting in order to expedite the development of their child's IEP, the district may honor their request and have the parents formally waive the required notice. It should not, however, be a common practice of a district to request that parents waive their right to 10-day notice because tight time lines make it difficult to complete a student's IEP and have him/her ready for service by the student's third birthday.

Investigative Findings and Conclusions

In 13 of the 23 (57%) cases investigated, parents were given less than a 10-day notice of eligibility and/or IEP team meetings. In some cases, parents were given less than a 10-day notice of more than one meeting. On average, this group of parents were given a 5-day notice of meetings (range of 0 to 9 days and a median of 5).

While the resignation of the special education teacher may have prompted teams to try to move quickly in scheduling meetings once staff was in place, it is noteworthy that in at least five of the cases reviewed, parents were given less than a 10-day notice and did not waive their right for that notice.

Because in multiple cases associated with this investigation parents were provided with less than a 10-day notice of meetings and did not waive their right to such notice, a violation of special education statutes and regulations has been identified.

Issue Six

A general education teacher was not consistently included as a member of the IEP team for students transitioning from Part C to Part B.

Applicable Statutes and Regulations

K.S.A. 72-3404(u)(2) requires that the IEP team include at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment.

If a school district provides "regular education" preschool services to nondisabled children, or if a preschool child with disabilities is enrolled in a preschool program for children without disabilities operated by the school district, the preschool teacher has the same requirements to attend the IEP meeting as for school age children. If the child is enrolled in a preschool program for children without disabilities that is not operated by the school district, the school is required to invite the preschool teacher, but has no authority to require the preschool teacher's attendance. If the preschool teacher of the child does not attend, the school shall designate a teacher who, under state standards, is qualified to serve children without disabilities of the same age.

For a child 3–5 years of age, the representative may be a preschool teacher (e.g., regular preschool, Title I preschool, Even Start, Head Start, Migrant, Bilingual, Early Learning Kansans, Kansas Parent Education Program, etc.). For a child 3–5 years of age that is in a setting that does not provide a preschool educational component (e.g. home setting or child care), it is considered the child does not have a regular education teacher and is not participating in a general education environment, therefore, a general education teacher is not required to be part of the IEP team. However, a parent may invite a child care provider to attend the IEP team meeting as a person with knowledge or expertise about the child.

Investigative Findings and Conclusions

In the course of reviewing student records related to these complaints, the investigator observed that a general education teacher was rarely in attendance at the IEP meetings for these students including the case of students whose IEPs reflected that they were participating in "K" setting programs. "K" programs are defined by the KSDE Data Dictionary as

> *"...a regular early childhood program. These qualified programs may include Head Start; community based or private preschools, group child development / childcare center,*

Preschool age at risk programs, district run universal preschool programs, preschool classes offered to eligible pre-KG children by the public-school system."

In total, 10 of the 23 (43%) students whose files were reviewed as a part of this investigation had IEPs that referenced participation in a K setting, but a general education teacher did not participate in the development of the IEPs of any of those students. In fact, in none of the 23 cases reviewed was a general education teacher identified as a part of the IEP team.

Because the district has on multiple occasions failed to include a general education teacher as a member of the team when developing IEPs for students who either were or might be participating in a regular education environment as defined for children ages 3 to 5 years of age, a violation of special education statutes and regulations has been identified.

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, multiple violations were substantiated with regard to K.A.R. 91-40-2(b)(1) and (2) which require districts to provide FAPE (a free appropriate public education) to each child with a disability residing in its jurisdiction beginning not later than the child's third birthday and to ensure that an IEP or IFSP is in effect by the child's third birthday unless that birthday occurs during the summer when school is not in session.

Additionally, during the course of this investigation, violations were also established with regard to:

- K.A.R. 91-40-17(b)(1) which requires that parents be provided 10-day notice of an IEP team meeting for their child; and
- K.S.A. 72-3404(u)(2) which requires that a general education teacher participate as a member of an IEP team when determining services for a child who is is, or may be, participating in the regular education environment.

Therefore, USD #500 is directed to take the following actions:

1) Submit to Special Education and Title Services (SETS) by no later than April 14, 2025 a written statement of assurance stating that it will comply with

    a. K.A.R. 91-40-2(b)(1) and (2) by making a FAPE available to all applicable resident students by their 3rd birthday;

    b. K.A.R. 91-40-17(b)(1) by routinely providing 10-day notice to parents of children transitioning from Part C to Part B of eligibility/IEP team meetings; and

    c. K.S.A. 72-3404(u)(2) by including a general education teacher as a member of the IEP team for every child transitioning from Part C to Part B services who is, or may be, participating in the regular education environment.

2) By no later than April 14, 2025, USD #500 shall develop and present to the parents of each of the following students a plan for the delivery of compensatory services in the amounts outlined below. (The names of the numbered students below will be provided to the district.)

Parents shall be given the option of accepting some, all, or none of the compensatory services offered. If any of these plans require the student to come to a district location at times outside of the regular school day for the 2024-25 school year, the district shall either provide transportation for the student or shall compensate the parents at the standard district rate for transporting their child for services.

All compensatory services shall be delivered by no later than August 1, 2025.

a) Student 1:
   i. 15 minutes of speech/language services in an Early Childhood location;
   ii. 15 minutes of speech/language services in a special education setting; and
   iii. 120 minutes of Early Childhood special education services in an Early Childhood setting.
b) Student 5:
   i. 15 minutes of Occupational Therapy;
   ii. 30 minutes of Speech/Language services; and
   iii. 795 minutes of special education services in an Early Childhood Special Education classroom setting.
c) Student 12:
   i. 30 minutes of Speech/Language services in a special education setting;
   ii. 30 minutes of Speech/Language services in a Reverse Mainstream setting; and
   iii. 140 minutes of special education services in a Reverse Mainstream ECSE setting.
d) Student 13:
   i. 75 minutes of Occupational Therapy;
   ii. 75 minutes of Physical Therapy;
   iii. 150 minutes of Speech/Language Therapy; and
   iv. 600 minutes of B time.
e) Student 14:
   i. 30 minutes of Speech/Language Therapy in a special education setting; and
   ii. 30 minutes of Speech/Language Therapy in a Reverse Mainstream ECSE setting; 180 minutes of Special Education services in a Reverse Mainstream ECSE setting.

f) Student 17:
   i. 45 minutes of Occupational Therapy in a special education setting;
   ii. 45 minutes of Speech/Language Therapy in a special education setting;
   iii. 45 minutes of Speech/Language Therapy in a Reverse Mainstream ECSE setting; and
   iv. 3 hours of special education services in a Reverse Mainstream ECSE setting.

g) Student 18:
   i. 15 minutes of Speech/Language Services in a special education setting;
   ii. 15 minutes of Speech/Language Services in a Reverse Mainstream ECSE setting; and
   iii. 150 minutes of Special Education services in a Reverse Mainstream ECSE setting.

h) Student 19:
   i. 90 minutes (6 weeks at 15 minutes per week) of Speech/Language Services in a Reverse Mainstream ECSE setting;
   ii. 90 minutes (6 weeks at 15 minutes per week) of Speech/Language Services in a special education setting; and
   iii. 750 minutes of Special Education Services in a Reverse Mainstream ECSE setting

i) Student 20:
   i. 30 minutes of Speech/Language Services in a special education setting;
   ii. 30 minutes of Speech/Language Services in a Reverse Mainstream ECSE setting; and
   iii. 210 minutes of Special Education Services in a Reverse Mainstream ECSE setting.

3) By no later than August 2, 2025, USD #500 shall provide to SETS a summative document showing, for each of the 9 identified students,
   a) whether the offered compensatory services were accepted in whole or in part by the parents or were rejected by the parents, and
   b) when any accepted compensatory services for each student were completed.

4) By no later than April 14, 2025, USD #500 shall provide to SETS a plan to train all staff involved in the Part C to Part B transition process on the requirement for providing parents with 10-day notice of eligibility and IEP team meetings. This plan should address the training of current staff and any new staff members joining the transition team at the beginning of the 2025-56 school year.

5) By no later than August 1, 2025, USD #500 shall provide to SETS a summative report documenting the delivery of 10-day notice to parents of any eligibility or IEP team meeting held with regard to Part C to Part B students during the period of April 14, 2025 through July 31, 2025. That report should include documentation as to why any parent is provided with less than 10-day notice of such a meeting. For

any instance where less than 10-day notice was provided, the report should include a copy of the notice of meeting form documenting the parents' consent to waive the prior notice requirement.

6) By no later than April 14, 2025, USD #500 shall provide to SETS a plan for the training of all Part C to Part B transition staff regarding the requirement that a general education teacher be included as a member of the IEP team of any transitioning student who either is or may be participating in a regular education environment during the course of the period covered by the student's IEP. This includes any student who is being considered for services through any K setting.

   A document entitled "Regular Education Preschool Teacher at the IEP/IFSP Meeting" developed by the Kansas State Department of Education provides guidance to districts on when a preschool general education teacher must attend the IEP meeting and who meets the requirements of a general education teacher for early childhood may prove useful to the district in establishing who teams should be inviting to participate in these meetings.

7) By no later than August 1, 2025, USD #500 shall submit to SETS a summative document reflecting the presence of a general education teacher as a part of the IEP team for each student transitioning from Part C to Part B services during the period of April 14 through July 31, 2025. For any case wherein a general education teacher did not participate, the district shall provide documentation (e.g. IEP service delivery pages) to show that the student will not be participating in the regular education environment during the period covered by the student's IEP.

   Further, USD #500 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).



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.gov 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 #329
ON FEBRUARY 17, 2025

DATE OF REPORT: MARCH 20, 2025

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

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 parent via phone call on February 25, gathering additional information and verifying the specific allegations to be investigated. Laura Jurgensen provided a draft of the specific allegations to be investigated to the parent via email on February 24 that could then be discussed during the February 25 phone call. The parent did not dispute how the complaint investigator framed the issues to be investigated. The parent also provided documentation for the complaint investigator to consider as part of the investigation and the parent and complaint investigator exchanged multiple emails. The district provided the complaint investigator with a response to the issues the complaint investigator identified, as well as documentation and data the complaint investigator requested, and the complaint investigator exchanged multiple emails with the district superintendent and special education director. The complaint investigator and student's first grade teacher and private school principal also exchanged multiple emails.

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

- District's Response to the Complaint, Feb. 27, 2025.
- Statement from USD 329 Board Clerk Regarding Parent's Feb. 14, 2025, Request, Feb. 27, 2025.
- Log of Student's Special Education Services, Jan. 30–Feb. 21, 2025.
- Parent's Complaint, Feb. 16, 2025. (Kansas State Department of Education (KSDE) receipt occurred upon opening the complaint on Feb. 17, 2025.)
- Text Message Exchange Between District Superintendent and Parent Regarding Copy of Student's Individualized Education Program (IEP), Feb. 14, 2025.

- Email Exchange Between Parent and Special Education Director Regarding Location of Student's Special Education Services, Feb. 13–14, 2025.
- Feb. 11, 2025, IEP Team Meeting Notes.
- Email Exchange Between Parent and Special Education Director Setting Up IEP Team Meeting to Discuss Services Location Change, Feb. 3–10, 2025.
- Email from Parent to Special Education Director Requesting IEP Team Meeting to Discuss Services Location Change, Feb. 3, 2025.
- Student's Dec. 19, 2024, IEP with a Jan. 30, 2025, Printed Date.
- Email Exchange Between Special Education Teacher and Parent Regarding Parent Request for Dec. 19, 2024, IEP, Jan. 29–30, 2025.
- Email from Special Education Director to Parent Following Up on Phone Call to Discuss Location of Services, Jan. 28, 2025.
- Call Log with Notes from Phone Call Between Special Education Director and Parent to Discuss Location of Services, Jan. 28, 2025.
- Email Exchange Between Special Education Director and Private School Principal Setting Up Phone Call, Jan. 24–25, 2024.
- Email Exchange Between Special Education Director and Private School General Education Teacher Regarding Transportation for Special Education Services, Jan. 17–21, 2025.
- Email Exchange Between Student's General Education Teacher and Special Education Teacher, Jan. 9, 14, 16, 17, 21, 2025.
- Student's Dec. 19, 2024, IEP.
- IEP Team Meeting Notes, Dec. 19, 2024.
- Statement Signed by the Parent That The District Provided Him With a Copy of the IEP, Dec. 19, 2024.

Background Information

This complaint focuses on a student in the first grade during the 2024–25 school year. (Student's Dec. 19, 2024, IEP.) The student attends a private school located within the district boundaries and lives within the district boundaries. (Email Exchange Between Special Education Director and Private School General Education Teacher Regarding Transportation for Special Education Services, Jan. 17–21, 2025.) The student was determined eligible for special education services on December 19, 2024, and this concern focuses on the initial provision of services the IEP Team developed at the December 19, 2024, IEP Team meeting. (Student's Dec. 19, 2024, IEP.)

Issues

In the written complaint and the complaint investigator's discussion with the complainant, the parent alleges seven issues upon which this investigation will focus:

Issue One: Whether the district consulted with the parent or guardian of the student and with officials of the private, nonprofit elementary or school in determining the site for the provision of special education services for the student. K.S.A. § 72-3462.

Issue Two: Whether the district provided the special education services articulated in the December 19, 2024, individualized education program to the student? K.S.A. § 72- 3462.

Issue Three: Whether the student experienced a substantial change in placement, which would require the district to obtain parental consent before taking that action. K.A.R. § 91-40-1(sss); K.A.R. § 91-40-27(a)(3).

Issue Four: Whether the district ensured that the student's IEP included a statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability, to enable the student to be involved in and make progress in the general education curriculum; and meet each of the student's other educational needs that results from the student's disability. K.S.A. § 72-3429(c)(2).

Issue Five: Whether the district ensured that the student's IEP included a statement of the special education services, based on peer-reviewed research to the extent practicable, that will be provided for the student to advance appropriately toward attaining the annual goals and to be involved in and make progress in the general education curriculum in accordance with the student's present levels of academic achievement and functional performance. K.S.A. § 72-3429(c)(4).

Issue Six: Whether the district gave the parent a copy of the student's current IEP. K.A.R. § 91-40-18(d).

Issue Seven: Whether the district allowed the parent an opportunity to inspect and review all the student's education records. K.A.R. § 91-40-25(a).

Issue One

Consultation on the Site for Services

Applicable Law

Kansas statute adds to federal requirements regarding special education services for students attending a private school. In Kansas:

[e]very 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. 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.

K.S.A. § 72-3462. A private, nonprofit elementary or secondary school "means an organization which regularly offers education at the elementary or secondary level, which is exempt from federal income taxation under section 501 of the federal internal revenue code of 1954, as amended, which conforms to the civil rights act of 1964, and attendance at which satisfies any compulsory school attendance laws of this state." K.S.A. § 72-3461.

Analysis: Findings of Fact

The student attends a private school, which meets the definition in K.S.A. § 72-3461, that is located within the district boundaries. Additionally, the student lives within the district boundaries. (Email Exchange Between Special Education Director and Private School General Education Teacher Regarding Transportation for Special Education Services, Jan. 17–21, 2025.) The district's response indicates the site for the student's special education services was not discussed at the December 19, 2024, IEP Team meeting and IEP Team meeting notes do not record a discussion of the site for services. (District's Response to the Complaint, Feb. 27, 2025; IEP Team Meeting Notes, Dec. 19, 2024.) The student's IEP indicates the "setting" for special education services will be "G – Special Ed Classroom In Regular Ed Class Building." (Student's Dec. 19, 2024, IEP.) This setting reference indicates how the district will report the setting for the student's services to KSDE. (2024-2025 School Year, KSDE Special Education Individual Student Data, Report Preparation Instructions and Data Dictionary, Guidelines for IDEA, Part B and Gifted Reporting of Special Education Data.) This data reporting to KSDE is required, but this setting is not required to be included in a student's IEP. What must be included in the student's IEP is the location of the student's special education services. K.S.A. § 72-3429(c)(7). In this student's IEP, the district appears to be using the "setting" to indicate the location of the services.

In the district's response, the district confuses the requirement in K.S.A. § 72-3462 to consult "with the parent or guardian of the child and with officials of the private, nonprofit elementary or secondary school" with the private school consultation requirement in K.A.R. § 91-40-42a to "engage in timely and meaningful consultation with representatives of private schools located in the school district and representatives of parents of children with disabilities enrolled in those private schools before making determinations regarding" the consultation process, child find, and spending the proportionate share of federal funds providing special education services to children with IEPs in private school, providing evidence that it has met both requirements. K.A.R. § 91-40-42a is a Kansas regulation implementing a federal requirement for children whose parents voluntarily enrolled in private school and is not at issue in this complaint. At issue in this complaint is whether the district consulted with the parent and

official of the private school regarding the site for services for the student at the focus of this complaint, under K.S.A. § 72-3462.

The district initially provided the student's services by transporting the student from the private school to the public elementary school and providing the services in a special education classroom. (Email Exchange Between Special Education Director and Private School General Education Teacher Regarding Transportation for Special Education Services, Jan. 17–21, 2025.) The student's IEP does not include transportation. (Student's Dec. 19, 2024, IEP.) On January 24 and 25, the special education director exchanged emails with the private school principal, setting up a phone call to discuss the student's services (Email Exchange Between Special Education Director and Private School Principal Setting Up Phone Call, Jan. 24–25, 2024.) On January 28, the special education director called the private school principal and indicates the result of this call was the private school principal "agree[ing] to services being provided at St. John's Lutheran and to assign a staff member to support the student by keeping [the student] engaged, on task, and ensuring they had the appropriate materials during direct services." (District's Response to the Complaint, Feb. 27, 2025.) The private school principal characterized this phone call as a "discussion." (Email from Private School Principal to Complaint Investigator, Mar. 11, 2025.)

On January 28, the special education director called the parent to discuss the location of the student's services. (Complaint Investigator Interview with Parent, Feb. 25, 2025; Call Log with Notes from Phone Call Between Special Education Director and Parent to Discuss Location of Services, Jan. 28, 2025.) The parent perceived this phone call as "informing" him that the site for services was changing from a special education classroom in the public elementary school to the student's general education classroom via a virtual meeting with the special education teacher. (Complaint Investigator Interview with Parent, Feb. 25, 2025.) The district characterizes this call, in its call log with notes on the phone conversation, as a call "to consult" and in the district's response to this complaint as a "consultative conversation." (District's Response to the Complaint, Feb. 27, 2025; Call Log with Notes from Phone Call Between Special Education Director and Parent to Discuss Location of Services, Jan. 28, 2025.)

The requirement here is for the district to "consult" and then to "determine" the site for services. The district provided evidence that it consulted with the private school principal regarding the site for the student's services. The district's position is that it consulted with the parent regarding the site for the student's services and the parent's position is that the district informed him of the site for the student's services. When parties to a complaint disagree, the investigator must consider the evidence provided and determine whether a legal requirement has been violated. In addition to each party's position, the district provides notes from the special education director's phone call with the parent and a follow-up email from the special education director to the parent, private school principal, district superintendent, and special education teacher. (Call Log with Notes from Phone Call Between Special Education Director and Parent to Discuss Location of Services, Jan. 28, 2025; Email from Special Education Director to Parent Following Up on Phone Call to Discuss Location of Services, Jan. 28, 2025.) It

would have been most helpful for the special education director's January 28 email to the parent to describe the nature of the January 28 phone call on the site for services, but the email simply indicates the director is "following up on [the] phone conversation." (Email from Special Education Director to Parent Following Up on Phone Call to Discuss Location of Services, Jan. 28, 2025.) The special education director and parent continue to exchange emails on this topic, but neither describes the nature of the January 28 phone call. (Email Exchange Between Parent and Special Education Director Regarding Location of Student's Special Education Services, Feb. 13–14, 2025.) The parent does not provide any information on the nature of the January 28 phone call outside of the complaint and the interview with the complaint investigator.

Conclusion

This complaint investigator finds the district's call log of the January 28 phone call between the special education director and parent to be credible and absent additional information, it appears that the district met its requirement to consult with the parent and private school officials regarding the site for services and then made a decision. Therefore, this investigation concludes that the district *did not violate* its obligation to consult with the parent of the student and with officials of the private, nonprofit elementary school before determining the site for the provision of special education services for the student under K.S.A. § 72-3462.

Issue Two

Provision of Special Education Services

Applicable Law

In Kansas, "[e]very 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." K.S.A. § 72-3462. The statement of special education services in a child's IEP must include, "the projected date for the beginning of the services … and the anticipated frequency, location, and duration of those services " K.S.A. § 72-3429(c)(7).

Analysis: Findings of Fact

The facts for Issue Two are closely intertwined with the facts from Issue One and those facts are incorporated here by reference. The parent asserts in his complaint that the district has not provided the student's special education services in accordance with the student's IEP as the student's IEP requires the special education services to be provided in a special education classroom. (Parent's Complaint, Feb. 17, 2025.) The district asserts that it has not made any changes to the provision of special education services in the student's IEP as the student continues to receive special education services outside a regular education classroom as the student is removed from the general education environment to receive special education services even though the student does not actually leave the general education classroom.

(District's Response to the Complaint, Feb. 27, 2025.) The district's response indicates the "statement of special education services is in the service line within the IEP." (District's Response to the Complaint, Feb. 27, 2025.) This table duplicates the header row of this chart and the row of this chart at issue in this complaint investigation:

Service	Setting	Minutes	Days	Frequency	Start Date	End Date
SE - Special Education Services	G – Special Ed Classroom in Regular Ed Class Building	20	4	Every week	12/19/2024	12/18/2025

(Student's Dec. 19, 2024, IEP.) The student's IEP indicates that the "setting" of the special education services is "Special Ed Classroom In Regular Ed Class Building." (Student's Dec. 19, 2024, IEP.) Again, what must be included in the student's IEP is the location of the student's special education services and in this student's IEP, the district appears to be using the "setting" to indicate the location of the services. (K.S.A. § 72- 3429(c)(7).)

The parent asserts that the parent did not know that the district interpreted "Special Ed Classroom" to mean both the special education classroom at the public elementary school where the district initially provided the student with services and the student's regular first grade classroom at the private school. (Complaint Investigator Interview with Parent, Feb. 25, 2025.) The district argues in its response that a "special education classroom can include a designated area within the general education classroom where a licensed special education teacher delivers individualized or small group instruction either in person or virtually." (District's Response to the Complaint, Feb. 27, 2025.) The problem with how the district's response interprets the location of the student's special education services on the student's IEP is that the district confuses the concept of placement with the concept of location. The United States Department of Education's Office of Special Education Programs (OSEP) refers to " 'location' as the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services" and " 'placement' as points along the continuum of placement options available for a child with a disability." (Letter to Trigg, U.S. Dep't of Educ. Office of Special Educ. Programs (Nov. 30, 2007), available at https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2007-4/trigg113007lre4q2007.pdf.)

The district's response that a special education classroom can be a designated area within the general education classroom is a placement concept, as the district describes how the student's removal from general education peers during the student's special education services moves the student along the continuum of placement options, transforming the part of the student's first grade classroom where they are receiving special education services into a special education classroom. The requirement to include within each IEP the location of special education services is instead focused on the location of the student's services or "the physical surrounding" where the student receives special education services. For this student, the district initially provided special education services in "the physical surrounding" of a special education classroom at the public elementary school. The district then changed the location, or "the physical surrounding" where the student received special education services, to the

student's regular first grade classroom in the private school. Because the two locations (physical surroundings) where the district provided special education services were not the same, the district was required to amend the student's IEP to change the location of the student's special education services either through an IEP Team meeting or by asking the parent if they would agree to amend the IEP outside of an IEP Team meeting and following relevant requirements to amend.

Regarding the provision of services, the district's response includes information on whether the district has provided special education services from the start date of services indicated in the student's IEP (12/19/2024) through February 21, 2025. The student's IEP indicates that he would receive special education services four days per week. (Student's Dec. 19, 2024, IEP.) The December 19, 2024, IEP Team meeting notes do not provide information on the days of the week that services would occur. (IEP Team Meeting Notes, Dec. 19, 2024.) The district's response indicates that the private school principal requested services occur Monday, Tuesday, Thursday, and Friday. (District's Response to the Complaint, Feb. 27, 2025.) Despite the IEP Team listing a service start date of December 19, the district did not provide services that day or on December 20 as the St. John's Lutheran principal indicated the student was unavailable due to Christmas celebrations. (Email from St. John's Lutheran Principal to Complaint Investigator, Mar. 11, 2025.) From December 23 through January 8 the district had winter break and inclement weather. (District's Response to the Complaint, Feb. 27, 2025.) The first email the district provided that shows an attempt to schedule services is from January 9 and the student's first grade teacher indicates this is the first time the district contacted her to arrange services. (Email from Student's First Grade Teacher to Complaint Investigator, Mar. 11, 2025; Email from Special Education Teacher to St. John Lutheran's Staff, Jan. 9, 2025.) The district did not provide services on January 10 due to inclement weather and January 17 and 20 as the district did not have school). (District's Response to the Complaint, Feb. 27, 2025.) From January 22 through February 21, 2025, the district's information indicates services were provided. (District's Response to the Complaint, Feb. 27, 2025.) The district does not provide information that it provided special education services to the student on three school days the student appears to have been available: December 19 and January 13 and 14.

It is important to note that this issue arose because the district's IEP web-based tool placed a chart used for data reporting to KSDE within the student's IEP. Data reporting to KSDE is not intended to be included within student IEPs. Data reporting to KSDE is not intended to and does not meet the district's obligation to ensure each student's IEP includes the projected date for the beginning of special education services, and the anticipated frequency, location, and duration for special education services. As illustrated here, the data reporting to KSDE that the district included in the student's IEP provides the "setting" and not location, as IEPs require. KSDE uses setting codes to report data to the United States Department of Education about the placement (points along the continuum of placement options available for a child with a disability) where a student receives special education services. The district's location change of the student's special education services would not change the setting code the district used to report the student's services to KSDE as setting codes report placement information, not

location information. Additionally, the "Start Date" of special education services included within the table used for KSDE reporting is used to represent the start date of that particular IEP going into effect, which could be a different date than the IEP Team intended to begin certain special education services, related services, accommodations, modifications, and supports for school personnel. This further illustrates why data reporting information does not belong in student IEPs.

Conclusion

The student's IEP states the "setting" of the student's services is "Special Ed Classroom" and does not provide a "location" for the student's services, in violation of K.S.A. § 72- 3429(c)(7). Despite the student's IEP not providing a location for special education services, the district was able to show it provided most days of special education services to this student with three days unaccounted for in the evidence the district submitted. Based on a lack of evidence that it provided services to the student on December 19 and January 13 and 14 the district *is in violation* of K.S.A. § 72-3462.

Issue Three

Substantial Change in Placement

Applicable Law

K.A.R. § 91-40-1(sss) indicates that 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. § 91-40-27(a)(3) requires that "each agency shall obtain parental consent before . . . making a substantial change in the placement of, an exceptional child"

Analysis: Findings of Fact

The parent asserts in the complaint that the district was required to obtain his consent before changing the location of the student's services. (Parent's Complaint, Feb. 17, 2025.) The district responds that the student's placement did not change at all and, therefore, the district was not required to obtain the parent's consent as a substantial change in placement did not occur. (District's Response to the Complaint, Feb. 27, 2025.) As established in Issue Two, a change of placement did not occur with this student, including a substantial change of placement.

Although parent consent was not required, this investigation must also consider whether written prior notice was required under K.S.A. § 72-3430(b)(2). This statute requires "written prior notice in accordance with K.S.A. 72-3432, and amendments thereto, 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." This change did not concern identification or evaluation and, as established in Issue Two and in the previous paragraph, this change did not constitute a

change in the educational placement of the student. The question is whether this change involved the provision of a free appropriate public education to the student. KSDE's guidance on prior written notice indicates that the provision of a free appropriate public education, within the context of this statute, means the same thing as the "provision of special education and related services." (Kan. State Dep't of Educ., Kansas Special Education Process Handbook 6 (2025).) The change with this student involved the location of the provision of special education services. As indicated in Issue Two, the district's response provides that its position is that when the provision of the student's special education services moved from a special education classroom at the public elementary school to the student's first grade classroom at the private school, the "setting" stated in the student's IEP did not change. (District's Response to the Complaint, Feb. 27, 2025.) As the district did not believe any change had occurred, the district did not provide the parent with a Prior Written Notice.

Conclusion

Because a substantial change of placement did not occur with this student, the district did not violate K.A.R. § 91-40-27(a)(3). However, as established in Issue Two, because the two locations where the district provided special education services were not the same, the district was required to amend the student's IEP to change the location of the student's special education services. This change impacted the provision of special education services (free appropriate public education) to the student and required the district to provide the parent with a Prior Written Notice. As the district did not do this, it *is in violation* of K.S.A. § 72-3430(b)(2).

Issue Four

Measurable Annual Goals

Applicable Law

K.S.A. § 72-3429(c)(2) require that the "IEP for each exceptional child shall include . . . a statement of measurable annual goals, including academic and functional goals designed to . . . [m]eet 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"

Analysis: Findings of Fact

The parent asserts in the complaint that the district has not designed appropriate goals to meet all the student's needs that result from the student's disability. (Parent's Complaint, Feb. 17, 2025.) Specifically, the parent indicates that the student's goal is "hard to understand" and the student's evaluation results merit goals in "several areas .. . including writing." (Parent's Complaint, Feb. 17, 2025.) The district's response indicates that the student's evaluation indicated the student's needs are related to reading, which led to the team designing a goal to build the student's reading skills. (District's Response to the Complaint, Feb. 27, 2025.)

The student's IEP includes one goal, in the area of reading, that states "By the end of this IEP in December 2025, when shown a list of 20 blend-vowel, digraph-vowel, vowel- blend, and vowel-digraph combinations, [the student] will give the correct sound of the blend/digraph and vowel with 70% accuracy (14 of 20 correct) when given over 4 consecutive weeks." (Student's Dec. 19, 2024, IEP.) To meet the requirements of the statute, the goal must be measurable, academic or functional, meet the need's resulting from the student's disability, and enable the student to be involved in and make progress in the general education curriculum. (K.S.A. § 72-3429(c)(2).) To be measurable, the goal must indicate how the IEP Team will know if the student has accomplished the goal, which is indicated by "with 70% accuracy (14 of 20 correct) when given over 4 consecutive weeks" and aligns with the data provided as the student's baseline "[the student] gave the correct sound of the blend/digraph and vowel with 40% accuracy." (Student's Dec. 19, 2024, IEP.) This goal is a reading goal, which is academic. (Student's Dec. 19, 2024, IEP.) The student's evaluation and IEP provides assessment results and staff information that indicate the student needs assistance with correctly identifying letter sounds. (Student's Dec. 19, 2024, IEP; Student's Dec. 19, 2024, Evaluation.) The student's IEP provides the first grade reading standards with which the student's goal is aligned, showing the IEP Team's intent to enable the student to be involved in and make progress in the general education curriculum. (Student's Dec. 19, 2024, IEP.)

KSDE guidance provides:

> *'[f]our critical components of a well-written goal' as (1) 'timeframe . . . usually specified in the number of weeks or a certain date for completion;'*
>
> *(2) 'conditions [that] specify the manner in which progress toward the goal is measured;' (3) "behavior [that] clearly identifies the performance . . . being monitored;' and (4) 'criterion [that] identifies how much, how often, or to what standards the behavior must occur . . . to demonstrate that the goal has been reached.'*

(Kan. State Dep't of Educ., Kansas Special Education Process Handbook 77 (2025).) Applying these components to the student's goal, the timeframe is indicated through "by the end of this IEP in December 2025," the conditions are "when shown a list of 20 blend-vowel, digraph-vowel, vowel-blend, and vowel-digraph combinations," the behavior is "give the correct sound of the blend/digraph and vowel," and the criterion are "70% accuracy (14 of 20 correct)." (Student's Dec. 19, 2024, IEP.)

In reviewing the student's evaluation, the student participated in FastBridge testing and scored in the 16th percentile in reading, 5th percentile in English, and 42nd percentile in Math. (Student's Dec. 19, 2024, Evaluation.) The student also participated in the Woodcock-Johnson IV Tests of Cognitive Abilities and scored below average in comprehension-knowledge, fluid reasoning, oral vocabulary, numbers reversed, letter- pattern matching, long-term retrieval, and visual-auditory learning. (Student's Dec. 19, 2024, Evaluation.) The student scored significantly below average in cognitive processing speed and pair cancellation. (Student's Dec. 19, 2024, Evaluation.) The student also participated in the Woodcock-Johnson IV Tests of

Achievement and scored below average in word attack and significantly below average in reading, letter- word identification, passage comprehension, and basic reading skills. (Student's Dec. 19, 2024, Evaluation.) The student's IEP includes that the student participated in the Phonological Awareness Screening Test and scored between 0 and 50% on Syllable Levels and Phoneme Levels. (Student's Dec. 19, 2024, IEP.) The student's IEP additionally indicates that the student participated in the Quick Phonics Screener and scored 50% or less on vowel consonant and consonant vowel consonant nonsense words and common beginning- and ending-consonant digraphs nonsense words. (Student's Dec. 19, 2024, IEP.)

The district's response indicates that the student's goal "is specific to building reading skills as per [the student's] performance on the Quick Phonics Screener." (District's Response to the Complaint, Feb. 27, 2025.) There is no information within the student's evaluation, IEP, IEP Team meeting notes, or district response about why the student's IEP Team determined that out of all the student's evaluation data, the student only needed one goal based on the student's "performance on the Quick Phonics Screener." The student's evaluation indicates the student is not achieving adequately for their age to meet state-approved, grade-level standards when provided with appropriate instruction and learning experiences for the student's age and grade level in basic reading skills, reading fluency skills, and reading comprehension. (Student's Dec. 19, 2024, Evaluation.) The student's evaluation indicates the student is achieving adequately for their age to meet state-approved, grade-level standards when provided with appropriate instruction and learning experiences for the student's age and grade level in written expression and the student's IEP indicates that the student does not have needs in writing that require special education or related services. (Student's Dec. 19, 2024, IEP; Student's Dec. 19, 2024, Evaluation.)

Conclusion

The student's current reading goal meets legal requirements and KSDE guidance for measurable annual goals. However, the district has not ensured the student's IEP includes measurable annual goals designed to meet the student's needs that result from the student's disability and to enable the student to be involved in and make progress in the general education curriculum in the areas of reading fluency skills and reading comprehension *in violation* of K.S.A. § 72-3429(c)(2).

Issue Five

Statement of Special Education Services

Applicable Law

K.S.A. § 72-3429(c)(4) requires "[t]he IEP for each exceptional child shall include . . . a statement of the special education . . . services . . ., based on peer-reviewed research to the extent practicable, and services to be provided to the child, . . . [t]o advance appropriately toward attaining the annual goals [and] to be involved in and make progress in the general education curriculum in accordance with" the student's present levels of academic achievement and

functional performance." 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].

(K.A.R. § 91-40-1(lll).)

Analysis: Findings of Fact

The parent's complaint indicates that the student's goal is of an "insufficient" frequency and duration to meet the needs resulting from the student's disability. (Parent's Complaint, Feb. 17, 2025.) The district's response maintains that the student's special education services "are providing the student with FAPE [free appropriate public education] and the student is making progress in the curriculum." (District's Response to the Complaint, Feb. 27, 2025.)

The district's response indicates the "statement of special education services is in the service line within the IEP." (District's Response to the Complaint, Feb. 27, 2025.) This table duplicates the header row of this chart and the row of this chart at issue in this complaint investigation:

Service	Setting	Minutes	Days	Frequency	Start Date	End Date
SE - Special Education Services	G – Special Ed Classroom in Regular Ed Class Building	20	4	Every week	12/19/2024	12/18/2025

(Student's Dec. 19, 2024, IEP.)

The student's IEP only references the special education services the student will receive in the chart reproduced above. There is no other statement that describes these special education services. The district uses the web-based tool WebKIDSS to create student's IEPs. (Email from Special Education Director to Complaint Investigator, Mar. 18, 2025.) The district's response indicates that how these services were determined was to consider the student's "PLAAFPs for reading and the cognitive/intelligence, and Impact of Exceptionality statements." (District's Response to the Complaint, Feb. 27, 2025.) The IEP Team meeting notes indicate that the district proposed the number of days per week "due to many weeks throughout the year being only four days long" allowing for "flexibility and less missed opportunities." (IEP Team Meeting Notes, Dec. 19, 2024.) The district's response indicates that the "school, district, and cooperative make the determination of how services are provided[, t]he licensed special

education provider has the authority and autonomy to make these decisions[, and t]he fully licensed special education teacher is using a research, evidence-based intervention curriculum to provide services specific to the student's skill deficits." (District's Response to the Complaint, Feb. 27, 2025.)

The chart in the student's IEP does not contain the results of the IEP Team's discussion and decision and simply states "Special Education Services." The district's response provides information to show alignment between the special education services provided and the statute, but the statute requires this information to be in the IEP, within the 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, or the Kansas regulatory definition of specially designed instruction. A previous KSDE state complaint decision included language from a Colorado Department of Education state complaint decision that 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." (Report of Complaint Filed Against Unified Sch. Dist. #458 (SEA KS 2024), https://www.ksde.gov/Portals/0/SES/legal/decisions/24FC.pdf #page=649, Adams 12 Five Star Schs., 75 IDELR 86 (SEA CO 2019)). In the comments to the regulations implementing IDEA, OSEP provides guidance on the requirements applicable to the statement of special education services in a child's IEP that is applicable to the vagueness we see in the location of 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 a statement of special education services.

The district's response indicates the duration and frequency of the student's special education services is appropriate as "the student is making progress in the curriculum." (District's

Response to the Complaint, Feb. 27, 2025.) Because the student just began special education services in January, there is insufficient information to show whether the current frequency and duration of the services is appropriate. The special education director indicated in an email to the complaint investigator that the first progress report since the student began services will be available soon. (Email from Special Education Director to Complaint Investigator, Mar. 10, 2025.) As soon as the district has information on the student's progress, the district would then have an obligation to act should the student not be making appropriate progress toward meeting the student's goal.

Conclusion

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. As indicated in previous issues, this chart is likely appropriate to report special education data to 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 that does not require including this chart within a student's IEP. Based on the foregoing, this investigation concludes that the district *violated its obligation* to ensure that the student's IEP include a statement of special education services as K.S.A. § 72-3429(c)(4) requires.

Issue Six

Copy of IEP

Applicable Law

K.A.R. § 91-40-18(d) requires that [e]ach agency shall give the parent a copy of the child's IEP at no cost to the parent."

Analysis: Findings of Fact

The parent's complaint indicates the district never provided him with a copy of the student's IEP. (Parent's Complaint, Feb. 17, 2025.) In the complaint investigator's interview with the parent, the parent stated that the district brought a draft IEP to the student's December IEP Team meeting and that he was provided a copy of the draft. (Complaint Investigator Interview with Parent, Feb. 25, 2025.) The parent also stated that the special education teacher took notes on the draft IEP at the meeting and that the special education teacher indicated she

would incorporate the notes into the IEP, creating a final version, and provide it to the parent, which the parent maintains he has never received. (Complaint Investigator Interview with Parent, Feb. 25, 2025.)

The district's response also indicates that it provided the parent with a copy of the draft IEP at the December IEP Team meeting and the parent signed a document indicating he had received a copy of the IEP. (District's Response to the Complaint, Feb. 27, 2025; Student's Dec. 19, 2024, IEP.) The district also provided an email request from the parent to the special education teacher requesting a copy of the IEP and the special education teacher's response, providing a copy of the IEP. (Email Exchange Between Special Education Teacher and Parent Regarding Parent Request for Dec. 19, 2024, IEP, Jan. 29–30, 2025.) When the complaint investigator requested that the parent provide the draft copy of the IEP he received at the December IEP Team meeting, the parent provided the investigator with the copy the special education teacher sent on January 30. (Email from Parent to Complaint Investigator, Feb. 25, 2025.)

Conclusion

The parent indicated that the district never provided him with a final copy of the IEP, but when the complaint investigator requested that the parent provide the draft copy of the IEP, the parent provided the investigator with an IEP with a print date of January 30, 2025, the date the special education teacher sent the IEP to the parent. (Student's Dec. 19, 2024, IEP with a Jan. 30, 2025, Printed Date.) This, along with the evidence the district provided, shows that the district met its obligation to provide the parent with a copy of the IEP and ***did not violate*** K.A.R. § 91-40-18(d).

The district should be cautious about its practice of documenting that it met this obligation by providing a parent with a draft copy of the IEP, which it did at the December IEP Team meeting by having the parent sign that he received a copy of the IEP, but the district, at that point, had only provided a draft copy of the IEP. The district should establish and follow a procedure to document only when a parent is provided a final copy of an IEP, not a draft copy of the IEP. In this situation, the district is found not to violate the relevant Kansas regulation because it had evidence it provided a final copy of the IEP to the parent in January, when the parent requested it. If the parent had not made this request, the district would not have been able to show it met this requirement based on providing the parent with a draft copy of the IEP at the December IEP Team meeting.

Issue Seven

Inspect and Review Education Records

Applicable Law

K.A.R. § 91-40-25(a) requires "[e]ach agency shall allow the parents of an exceptional child an opportunity to inspect and review all education records . . . concerning their child with respect

to the following: The identification, evaluation, or education placement of the child; and the provision of FAPE to the child."

Analysis: Findings of Fact

In the complaint the parent indicates that he "went to the . . . District Office on 2/14/2025" to "view everything in my child's file" and was told the district "did not have a copy of the [student's] file." (Parent's Complaint, Feb. 17, 2025.) The district's response indicates that the February 14, 2025, visit from the parent did not include a request to inspect and review the student's education records, but was a request for a copy of the student's IEP. (District's Response to the Complaint, Feb. 27, 2025.) The district provided a statement from the board clerk that interacted with the parent on February 14, 2025, and she indicated that the parent "visited the district office . . . requesting a hard copy of [the student's] IEP." (Statement from USD 329 Board Clerk Regarding Parent's Feb. 14, 2025, Request, Feb. 27, 2025.) The district maintains it has not received a request from the parent to inspect and review the student's education records. (District's Response to the Complaint, Feb. 27, 2025.) When asked, the parent was unable to provide the complaint investigator with any documentation of his request to inspect and review the student's education record, outside of the statements within the complaint. (Email Exchange Between Complaint Investigator and Parent, Mar. 10, 14, and 17, 2025.)

Conclusion

There is not sufficient evidence to show that the parent made a request to inspect and review the student's education record, therefore the district *did not violate* K.A.R. § 91- 40-25(a).

Summary of Conclusions and Corrective Action

Issue One

This investigation found no violations and there is no corrective action.

Issue Two

The district violated K.S.A. § 72-3429(c)(7) and K.S.A. § 72-3462, 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, the district 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)(7) which requires the IEP for each exceptional child to include the anticipated location of special education services; and
    b. State legal requirements at K.S.A. § 72-3462 which requires the district to 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 the request of a parent or guardian of any such child for the provision of such services.

a. Within ten calendar days of the date of this report, the district must contact its WebKIDSS representative and inform them that the district's web-based IEP tool must include a prompt to require IEP Teams to provide a location of special education services. The district may provide a redacted version of this report to WebKIDSS as part of its request to add this prompt. The district should also consider removing the table used for KSDE data reporting from student IEPs.

b. Within one school day of completing this portion of the corrective action, the district must confirm to SETS that it completed this portion of the corrective action.

c. The district must obtain a date from its WebKIDSS 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 WebKIDSS 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. Within two calendar weeks of the date of this report, provide SETS with a progress report on the student's goal since beginning special education services and the student's general progress report for the second and third quarters of the 2024–25 school year.

f. SETS will then review and determine whether compensatory services are required and, if so, the amount of compensatory services required. If SETS requires compensatory services, within two calendar weeks of receiving notice from SETS of the amount of compensatory services required, the district must submit to SETS a proposed plan for compensatory services that includes any compensatory services required due to Issue Four, 3. Corrective Action that the district presented to the parent and evidence of whether the parent accepted all, some, or none of the proposed compensatory services.

g. If SETS requires compensatory services and the parent accepts all or some of the proposed compensatory services, SETS will establish a due date based on the plan by which the district must submit a log of the services provided and documentation explaining any services not provided.

2. Within two calendar weeks of this report the student's IEP Team must add a location of special education services to the student's IEP 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.

3. Due Dates:

   h. March 31, 2025: 1. and 2.a.;

   i. April 2, 2025: 3.a. and 4.;

   j. Within one school day of contacting its WebKIDSS representative: 2.b.;

   k. Within one business day of receiving the date of when the prompt will be added: 2.c.;

   l. Within one business day of receiving the prompt: 2.d.;

   m. Within two calendar weeks of receiving notice from SETS of the amount of compensatory services required: 3.b.; and

   n. If SETS requires compensatory services and the parent accepts all or some of the proposed compensatory services, SETS will establish a due date: 3.c.

Issue Three

The district violated K.S.A. § 72-3430(b)(2), 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, the district must submit a written statement to SETS that it will comply with:

   a. State legal requirements at K.S.A. § 72-3430(b)(2) which requires prior written notice in accordance with K.S.A. § 72-3432 whenever a district proposes to initiate or change or refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education (special education and related services) to the child

   a. Within two calendar weeks of this report the district must draft a proposed amendment to its prior written notice policy and/or procedure to provide descriptive instructions to district staff to understand all circumstances in which a prior written notice must be provided and send the draft to SETS. The district must inform SETS whether the draft is a procedure and/or policy and whether it will require board approval to be finalized. SETS will then review and determine whether to approve the draft policy or procedure.

   b. Within two calendar weeks of receiving notice from SETS that the draft policy or procedure is approved, provide the final policy or procedure, evidence of board adoption if the district adopted a policy, evidence of communication to relevant district staff of the final policy or procedure, and district staff roles provided the communication of the final policy or procedure. If the policy or procedure requires board approval, SETS will consider changing the due date to accommodate the board meeting schedule.

1. Due Dates:
    a. March 31, 2025: 1.;
    b. April 2, 2025: 2.a.; and
    c. Within two calendar weeks of receiving notice from SETS that the draft policy or procedure is approved: 2.b.

Issue Four

The district violated K.S.A. § 72-3429(c)(2), based on the findings of fact listed above. Corrective action is required, as follows:

2. Within 10 calendar days of the date of this report, the district must submit a written statement to SETS that it will comply with:
    a. State legal requirements at K.S.A. § 72-3429(c)(2) which requires the IEP for each exceptional child to 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.
3. Within two calendar weeks of this report the student's IEP Team must add to the student's IEP a statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability, to enable the student to be involved in and make progress in the general education curriculum and meet each of the student's other educational needs that result from the student's disability. At a minimum, this must include goals for each area which the student's evaluation indicates the student is not achieving adequately for their age to meet state-approved, grade- level standards when provided with appropriate instruction and learning experiences for the student's age and grade level: (1) basic reading skills, (2) reading fluency skills, and (3) reading comprehension. The IEP Team may add goals either using the IEP amendment process described in K.S.A. 72-3429(b)(4) or in an IEP Team meeting.
    a. 4.
    a. SETS will review the student's general progress report for the second and third quarters of the 2024–25 school year and determine whether compensatory services are required due to the student's missing goals and, if so, the amount of compensatory services required. If SETS requires compensatory services, within two calendar weeks of receiving notice from SETS of the amount of compensatory services required, the district must submit to SETS a proposed plan for compensatory services that includes any compensatory services required due to Corrective Action for Issue Two, 3.b., that the district presented to the parent and evidence of whether the parent accepted all, some, or none of the proposed compensatory services.

b. If SETS requires compensatory services and the parent accepts all or some of the proposed compensatory services, SETS will establish a due date based on the plan by which the district must submit a log of the services provided and documentation explaining any services not provided.

4. Due Dates:
   a. March 31, 2025: 1.;
   b. April 2, 2025: 2.;
   c. Within two calendar weeks of receiving notice from SETS of the amount of compensatory services required: 3.a.; and
   d. If SETS requires compensatory services and the parent accepts all or some of the proposed compensatory services, SETS will establish a due date: 3.b.

Issue Five

The district violated K.S.A. § 72-3429(c)(4), 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, the district must submit a written statement to SETS that it will comply with:
   a. State legal requirements at K.S.A. § 72-3429(c)(4) which require the IEP for each exceptional child to include a statement of the special education services, based on peer-reviewed research to the extent practicable, that will be provided for the child to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum in accordance with the student's present levels of academic achievement and functional performance 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.
2. Within two calendar weeks of this report the student's IEP Team must add to the student's IEP a statement of the special education services, based on peer-reviewed research to the extent practicable, that will be provided for the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum in accordance with the student's present levels of academic achievement and functional performance 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. The IEP Team may add this either using the IEP amendment process described in K.S.A. 72-3429(b)(4) or in an IEP Team meeting.

1. 3.

a. Within ten calendar days of the date of this report, the district must contact its WebKIDSS 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 district may provide a redacted version of this report to WebKIDSS as part of its request to add this prompt. The district should also consider removing the table used for KSDE data reporting from student IEPs.

b. Within one school day of completing this portion of the corrective action, the district must confirm to SETS that it completed this portion of the corrective action.

c. The district must obtain a date from its WebKIDSS 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 WebKIDSS 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.

3. Due Dates:

a. March 31, 2025: 1. and 3.a.;

b. April 2, 2025: 2.;

c. Within one school day of contacting its WebKIDSS representative: 3.b.;

d. Within one business day of receiving the date of when the prompt will be added: 3.c.; and

e. Within one business day of receiving the prompt: 3.d.

Issue Six

This investigation found no violations and there is no corrective action.

Issue Seven

This investigation found no violations and there is no corrective action.

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.gov 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 #446
ON FEBRUARY 17, 2025

DATE OF REPORT: MARCH 19, 2025

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 #446, Independence Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #446.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint. 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 February 17, 2025, and the 30-day timeline ended on March 19, 2025.

Allegations

The following issues will be investigated:

ISSUE ONE: Whether USD #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP when the bus frequently arrived at the Student's house 5-7 minutes late. K.A.R. 91-40-16(b)(3); 34 CFR §300.323(a).

ISSUE TWO: Whether USD #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide information to the Parent in their native language to assist the Parent in understanding the special education proceedings. K.A.R. 91-40-1(I)(1), K.A.R. 91-40-17(d), K.A.R. 91-40-21(d)(5), K.A.R. 91-40-26(b); 3 4 C.F.R. §§ 300.322(e), 300.503(c), 300.504(d).

ISSUE THREE Whether USD #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to offer the Student a free appropriate public education (FAPE) in the least restrictive environment when the Student was in school for only two hours per day. K.A.R. 91-40-1(II), K.A.R. 91-40-2, K.A.R. 91-40-3, K.S.A. 72-3420; 34 C.F.R. § § 300.101(a), 300.114, 300.116-117.

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video conference on March 4, 2025. The following District staff were interviewed on March 7, 2025 and March 14, 2025: the School Psychologist, the Special Education Teacher, and the 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:

District Materials:

1. District Response, no date
2. Individualized Education Plan (IEP), 04/23/24
3. IEP Spanish, 04/23/24
4. Student Information Page Spanish, various dates
5. Prior Written Notice (PWN), 04/23/24
6. PWN Spanish, 04/23/24
7. Notice of Meeting, 04/19/24
8. Notice of Meeting Spanish, 04/19/24
9. Progress Report, 04/29/24
10. Progress Report, 05/21/24
11. Progress Report, 09/17-10/31/24
12. Progress Report, 11/04-12/16/24
13. Progress Report, 04/22-12/19/24
14. Notice of Meeting, 01/31-02/05/25
15. Notice of Meeting Spanish, 01/31/25
16. PWN, 02/06/25
17. PWN Spanish, 02/06/25
18. Notice of Meeting, 02/07/25
19. Notice of Meeting Spanish, 02/07/25
20. Schedule, no date
21. Complaint Notes, no date
22. Assessment Results, various dates
23. Daily Data Pages, 08/22/24-02/11/25
24. Grade Reports, Q2 2024-2025
25. IEP Amendment, 02/28/25

Parent Materials:

1. Email from Parent, re: New information from [Parent], 02/26/25

Background Information

This investigation involved a second-grade student enrolled at an elementary school in the District. The Student is eligible for special education services with a disability of Autism Spectrum Disorder (ASD), per the Individuals with Disabilities Education Act (IDEA).

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Parent and staff in the District.

Bus Arriving Late

1. According to the District Response, the Student's IEP indicated Transportation service was to be provided for 30 minutes a day, 5 days a week, to and from the School. The Parent had not sent the Student on the bus since December 23, 2024, at the Parent's request.

   Per the Transportation Director of the District, when the Student utilized the school bus, they were picked up at home between 11:50-11:55 a.m. and dropped off at the School at 12:00 p.m. The Student was picked up from the school at 2:00 p.m. and returned home at 2:10 p.m. The District stated special transportation was still available to the Student and wrote that there was, "… no documentation to show that the bus picked [the Student] up late or brought [them] back late."

2. The Student was assigned to bus #11, which picked up students at their residences. The driver of bus #11, who the Parent had an issue with, was no longer the bus driver. Additionally, all the information shared with the Parent about transportation was provided by a district-provided interpreter.

3. During an interview with the Complaint Investigator, the Parent explained the Student stopped taking the bus around February 2025. The Parent stated this was their decision. The Parent shared that when the bus was late, it would arrive at the house at the time the Student was supposed to be at school. They said they observed the bus be up to 15 minutes late during the 2023-24 school year. The Parent believed this impacted the Student's education because they were spending less time in school. The Parent said there was no reason given for why the bus was late.

4. During an interview with the Complaint Investigator, the Special Education Teacher explained the Student arrived on time when taking the bus and when the Parent dropped them off. They stated that neither the bus nor the Parent was late in picking the Student up from school.

5. During an interview with the Complaint Investigator, the Assistant Principal stated that during the 2023-24 school year there were issues where the bus went to the Student's house and nobody came out, and then the bus had to be called back to the house.) The Assistant Principal recalled it happened more than once, but stated it was not a

consistent, pervasive issue. They did not recall any issues with the bus in the 2024-25 school year after a new bus director was hired.

Translation Services

6. According to the District Response, most meetings with the Parent had an interpreter present, and if an interpreter was not available through the District, the District had a contract with a translating service. The District stated they had not utilized that service yet because translators were available.
7. The Parent explained that at the beginning of the 2023-24 school year, they had a relative come and translate for them two or three times. They did not recall specific dates. The Parent recalled having an interpreter at meetings where the Student's IEP was discussed. The Parent stated that documents were not consistently provided to them in Spanish. The Parent explained they only started receiving documents in Spanish at a meeting in 2025.
8. The District Response indicated that the Parent received a NOM through text and hand delivery on January 31, 2025. Parent Rights were provided in English and Spanish on February 6, 2025, and a PWN was given to the Parent in English and Spanish the following day. The District indicated a translator attended the meeting on February 6, 2025.
9. The District Response indicated that for the IEP meeting on April 23, 2024, the Parent was provided a Notice of Meeting (NOM), IEP, and PWN in English and Spanish. The Parent also initialed that Parental Rights were provided to them in their native language. The Spanish IEP was signed by the Parent. The District indicated there was no documentation to show there was a translator present at the IEP meeting on April 23, 2024.
10. The Special Education Director did not recall if a translator was present at the meeting on April 23, 2024, but stated that translators did attend most of the IEP meetings. They explained that if a translator attended a meeting, they would sign the signature page. The Assistant Principal did not recall if a translator was present at the meeting, but did not recall attending a meeting without a translator.

FAPE & Least Restrictive Environment

11. The Parent stated in their interview that the Student attending school less than full-time impacted their emotional and psychological development, and that the Student had regressed.
12. During an interview with the Complaint Investigator, the School Psychologist explained the Student was on a shortened day because the Student required significant adult intervention. They said the Student had a limited tolerance for this type of interaction, and when that limit was reached, the Student exhibited aggressive behaviors. The Assistant Principal stated their understanding of why a shortened day was the least restrictive environment was because the Student was an "eloper" and "aggressive".

13. The Special Education Teacher stated the Student did not go to the general education classroom, had lunch in the classroom, and attended recess. The Assistant Principal stated the Student participated in lunch and recess as a group with the special education class, which sometimes coincided with the general education students.
14. According to the District Response, the Student had started their elementary school career on a shortened school day of 60 minutes/day.
15. A NOM dated April 19, 2024 proposed a meeting for April 23, 2024 to conduct an annual review of the Student's IEP. It was signed by the Parent on April 22, 2024, and provided in English and Spanish.
16. The Student's IEP, dated April 23, 2024, and provided in English and Spanish, indicated:
    a. The Student demonstrated motor skills at a lower level than same-aged peers. The IEP Team had concerns about the Student in the area of "Motor" that impacted the ability to learn or access the general curriculum.
    b. The IEP Team had concerns about the Student in the area of "Communication" that impacted the[ir] ability to learn or access the general curriculum.
        i. The Student had been receiving speech therapy services to increase communication skills; and
        ii. A Speech-Language goal was created to address a language delay.
        iii. "[The Student's] participation and behavior is not consistent. There are sessions that have been productive; however, there are also sessions [the Student] runs, hits, and spits."
    c. The Student's social/emotional skills were delayed when compared to same-aged peers. The IEP Team believed the delay would negatively impact the Student's ability to interact with peers in the general education classroom.
        i. "[The Student] needs constant staff supervision to ensure [their] safety in the classroom."
    d. The IEP Team had concerns about the Student in the area of "General Intelligence" that impacted their ability to learn or access the general curriculum.
        i. The IEP indicated the Student was diagnosed with Autism Spectrum Disorder, Level Three, and struggled with "…expressive communication, social skills, and engage[d] in repetitive/stereotyped behaviors."
    e. The IEP Team had concerns about the Student in the area of "Academic/Functional Performance" that impacted their ability to learn or access the general curriculum.
    f. The Student required Assistive Technology aids/services in order to be educated in a less restrictive environment.

i. The Student had been introduced to the LAMP program on the iPad for communication, and had been working on using voice buttons to communicate.

g. The IEP determined that for the Student to have opportunities to participate with non-disabled peers in extracurricular and nonacademic activities, regularly scheduled special education and related services would not occur when it would prevent the Student from participating in field trips, assemblies, and special events for the general education classroom.

h. In response to the question "Do the positive effects of the placement outweigh the potential harmful effects?", the IEP team wrote, "… the positives outweigh the harmful effects because [the Student] shows a need for individualized instruction in special education and it is the least restrictive placement that is appropriate for [them] at this time."

i. When discussing the least restrictive environment for the Student's services to take place, the IEP team considered the Student's current skill level, the quality of services that could be provided in which environments, and the potential harmful effects of each option. After considering those factors, it was determined the Student's needs would best be met in the special education setting. The IEP team reviewed the educational placement and/or services and considered it reasonably designed to deliver a FAPE in the Student's least restrictive environment.

j. Services included:

ii. "Special Ed Direct Service Outside Regular Ed classroom for academics, life skills, and social[-]emotional, for 120 minutes two days per week";

iii. "Special Ed Direct Service Outside Regular Ed classroom for academics, life skills, and social[-]emotional, for 105 minutes three days per week"; and

iv. "Special Ed Direct Service Outside Regular Ed classroom for speech and language, for 15 minutes per three days per week."

17. A PWN dated April 23, 2024, written in English and Spanish, indicated:

a. The IEP Team met to discuss special education and related services the Student needed, and the appropriate educational placement for the Student.

b. The IEP team determined to continue a schedule of 120 minutes/day until the end of the 2023-24 school year, and then increase the Student's day to 150 minutes/day at the start of the 2024-25 school year. The Parent provided their consent.

i. Through their investigation, the District found that the increased service time did not begin in the 2024-25 school year as indicated in the IEP, and remained at 120 minutes/day. The District wrote, "… the current school team failed to implement the IEP beginning 8/14/24 through current. Based on

the [D]istrict calendar, [the District] owes [the Student] 57 hours of compensatory services from 8/14/24-2/28/25."

c. "The team supports increasing time in the special education classroom and it is most appropriate for the least restrictive environment. [The Student] is making progress towards [their] goals while in the special education classroom."

18. The Student's Progress Report dated April 29, 2024 described the Student's progress toward their goals and indicated:
    a. As of April 23, 2024, it was anticipated the Student would not meet their communication goal.
    b. As of March 18, 2024, it was anticipated the Student would meet their Academic Performance goals in designated area and engagement.
    c. As of March 18, 2024, it was anticipated the Student would meet their Social-Emotional goal.
19. The Student's Progress Report dated May 21, 2024 described the Student's progress toward their goals and indicated:
    a. As of May 15, 2024, it was anticipated that the Student would meet their communication goal.
20. A summary of the Student's 1st Quarter and 2nd Quarter Progress Reports detailed the Student's use of the iPad and LAMP program, in addition to notes on the Student's participation in activities and the level at which they could express vocabulary words and make requests. The information was also written in Spanish.
21. The Student's Progress Report for the 2024-25 school year described their Measurable Annual Goal. Updates for the Speech-Language goal were the only ones written in English and Spanish. The report indicated:
    a. As of December 16, 2024, it was anticipated the Student would meet their Speech-Language goal.
    b. As of December 19, 2024, it was anticipated the Student would meet their Academic Performance goals in letters and numbers, and for daily living skills.
22. On January 30, 2025, the Parent arrived at the School and spoke to the Assistant Principal, and stated they wanted the Student's educational day to be extended. The Assistant Principal stated to the Parent that an action to extend a student's school day for an IEP would require an IEP team meeting. The Assistant Principal informed the Parent that they would request the Special Education Teacher to set up an IEP meeting, which was set for February 6, 2025.
23. The Assistant Principal recalled the Parent had asked for the Student's day to be extended once each year the Student had been at the School. The Special Education Teacher stated their understanding of why the Parent requested to extend the Student's school day was because the Parent had no way to earn income when the Student was with them all day.

24. A NOM was sent to the Parent via phone/text on January 31, 2025, with a proposed meeting date of February 6, 2025. A copy was also provided to the Parent in Spanish.
    a. A second notification was hand-delivered to the Parent's home on February 5, 2025. Additional notes were written in English and Spanish.
    b. Boxes checked included that the Parent would attend the meeting as scheduled and that they consented to waive their rights to a 10-day PWN of the meeting.
25. A PWN notice sent to the Parent on February 6, 2025 indicated:
    a. A consideration to increase the Student's school day. At the time, the Student was attending two hours daily with 120 minutes of pullout services.
    b. The Parent reported they had been advised not to sign any documents until reviewed by their attorney.
    c. A proposal to increase the Student's school attendance by one hour.
        i. "Pullout Special Education Setting 180 minutes 4 x a week"; and
        ii. "Pullout Special Education Setting 150 minutes 1 x a week (district early release day)."
    d. The proposal was agreed to verbally by the Parent. The draft IEP and PWN Identification would be completed and sent to the Parent for review, with a meeting to follow.
    e. "It was relayed to [the Parent] by the interpreter no changes will be made to the schedule until the meeting takes place and official signed consent of [sic] obtained."
    f. The PWN was hand-delivered to the Parent on February 7, 2025 in both English and Spanish, but the Parent did not provide consent. The same day, a new NOM, in English and Spanish, was hand-delivered to the Parent for a meeting scheduled on February 18, 2025.
    g. The follow-up meeting was rescheduled to February 28, 2025 due to inclement weather and illness.
    h. According to the Special Education Teacher, the Student's school day did not increase.
26. The Student's school schedule detailed that for Monday through Friday:
    a. The Student was in the Special Education Teacher's classroom for 1:1 direct instruction from 12:00 p.m. - 1:40 p.m. and 1:55 p.m. - 2 p.m.
    b. The Student was in the gym from 12:05 p.m. - 1:00 p.m. on Tuesdays and Thursdays.
    c. The Student had speech therapy from 1:40 p.m. - 1:55 p.m., Monday through Wednesday.
    d. Dismissal was at 2 p.m.

e. Paraprofessionals rotated every 30 minutes to work with the Student at 12:00 p.m., 12:30 p.m., 1:00 p.m., and 1:30 p.m.

27. The Special Education Teacher said the Student's school day had recently been extended to four hours a day for the 2024-25 school year. They said that during the 2023-24 school year, the Student attended school from 12 p.m. to 1 p.m., and then from 12 p.m. to 1:30 p.m.
28. The Parent said, "...they told me that the teacher that [the Student] has now is going to be leaving ... and they're gonna put in a substitute ... . The [person] that ... takes [the Student] when I bring [them] to school, told me that there have been four teachers that have been switching off every 30 minutes." The Special Education Teacher stated they only had a substitute when they were gone, but that the same staff remained in their room.
29. Speech Language Pathology Services Data and Notes from August 22, 2024 through February 11, 2025 indicated the Student achieved either minimal improvement, or no level of progress was circled.
30. The Student's Report Card for Q2 of the 2024-25 school year indicated they were absent 1.5 days, had a passing grade for music and PE, and an "A" in grammar and science lab.
31. The District and Parent met on February 28, 2025 to review and revise the IEP and added the following revisions (which were provided in English and Spanish):
    a. Increase special education services for academics and social-emotional skills to 180 minutes, two days a week. Increase special education services for academics and social-emotional skills to 165 minutes, three days a week. Both would begin March 3, 2025.
    b. Addressed Parent concerns of wanting the Student at school for a full day and the plan on getting them to a full day.
    c. Signed by the Parent and District on February 28, 2025.
32. A PWN dated February 28, 2025 summarized the meeting and indicated the Student would be attending school for 240 minutes, five times a week. The amendment indicated the Student would start attending school for 180 minutes, five times a week. It also included an additional 60 minutes, five times a week, for compensatory services. The latter would go through the end of the 2024-25 school year, which would be a payback of 49 hours of compensatory services.
    a. The PWN indicated the District would provide 30 minutes four times a week of compensatory services during the Extended School Year (ESY) dates of June 2, 2025 through July 24, 2025, for a total of 65 hours of compensatory services from March 3, 2025 through July 24, 2025. The Parent declined ESY services at this time because the Student would be out of state over the summer.

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP when the bus frequently arrived at the Student's house 5-7 minutes late. K.A.R. 91-40-16(b)(3); 34 CFR §300.323(a).

According to 34 CFR §300.323(a) and K.A.R. 91-40-16(b)(3), an IEP must be in effect for each exceptional child at the beginning of each school year.

The Parent alleged that during 2024, the Student's bus "always arrived 5 to 7 minutes late."

The District stated that special transportation continued to be available for the Student, but the service had not been utilized for two months at the Parent's request. There was no documentation to show that the bus picked the Student up late or brought them back late.

The Student's IEP, dated April 23, 2024, indicated Transportation services were to be provided for 30 minutes a day, 5 days a week, to and from the School. The Student had not ridden the bus since December 23, 2024, at the Parent's request. No documentation showed that the bus was late picking up the Student or returning them home. The Student was placed on a bus which picked up identified students at their residences. This information was shared with the Parent through a District-provided interpreter.

The Parent explained the Student stopped taking the bus around February 2025, and that it was the Parent's decision. The Parent said they observed the bus arriving up to 15 minutes late during the 2023-24 school year, and believed this negatively impacted the Student's education. The Special Education Teacher stated that the Student arrived at and left school on time, and that neither the bus nor the Parent was ever late. The Assistant Principal reported that during the 2023-24 school year, the bus sometimes had to be called back to the Student's house because nobody came out to the bus. This was not a consistent issue, and there were no further problems after a new bus director was hired for the 2024-25 school year.

Some inconsistencies were noted with the timelines of when the Student stopped riding the bus, but it was consistently stated that it was the Parent's decision to stop utilizing the bus service. While the Parent indicated they had observed the bus arriving late, there was no documentation or additional evidence to indicate this occurred; however, statements from the Assistant Principal confirmed there were times when the bus was called back to the Student's house. Anecdotal evidence from the Special Education Teacher supported the Student did not arrive at or depart late from school. There were some conflicting statements regarding the bus's arrival, but there was no direct evidence or documentation to corroborate the allegation.

Based on the foregoing, according to IDEA and Kansas special education regulations*, it is not substantiated* that the District failed to implement 34 CFR §300.323(a) and K.A.R. 91-40-16(b)(3).

Issue Two

Whether USD #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide information to the Parent in their native language to assist the Parent in understanding the special education proceedings. K.A.R. 91-40-1(l)(1), K.A.R. 91-40-17(d), K.A.R. 91-40-21(d)(5), K.A.R. 91-40-26(b); 3 4 C.F.R. §§ 300.322(e), 300.503(c), 300.504(d).

According to K.A.R. 91-40-17, K.A.R. 91-40-1(l)(1), K.A.R. 91-40-21(d)(5), and 34 C.F.R. § 300.322(e), an agency shall take action to ensure that parents understand the discussions that occur at IEP team meetings, any discussions concerning educational placement, and information related to all activities for which consent is sought. This includes arranging for an interpreter for parents whose native language is other than English. Additionally, K.A.R. 91-40-26(b), 34 C.F.R. §§ 300.503(c), and 300.504(d) require that any procedural safeguards and notices of proposed actions or refusals shall 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.

The Parent alleged that the District did not provide an interpreter for the school meetings with the Parent. The Parent reported that they brought a relative to help interpret so they could understand what was happening with the Student's education.

The District responded that they had historically, and continued to, provide Notice of Meetings, IEPs, and PWNs in the Parent's native language. Translators were typically at the Student's meetings for the Parent, but there was no documentation to show there was one present at the April 23, 2024 IEP meeting. There was a translator at the February 6, 2025 meeting.

The District stated that most meetings with the Parent had an interpreter present and that they had a contract with a translating service if needed. The Parent noted that during the 2023-24 school year, they had a relative come and translate for them two or three times but did not recall specific dates. However, the Parent recalled having an interpreter at meetings where the Student's IEP was discussed. The Parent stated that documents were not consistently provided to them in Spanish.

The District indicated that for the IEP meeting on April 23, 2024, the Parent was provided a NOM, IEP, and PWN in English and Spanish. The Parent signed the IEP which was written in Spanish. No documentation showed there was a translator present at this meeting, and District staff did not recall whether a translator attended the meeting. However, the Assistant Principal did not recall attending a meeting without a translator present. Parent Rights were provided to the Parent in English and Spanish on February 6, 2025, and a PWN was given to the Parent in English and Spanish the following day. The District indicated a translator attended the meeting on February 6, 2025.

Documentation indicated the Parent received information about the Student's education in English and Spanish, in accordance with K.A.R. 91-40-26(b), 34 C.F.R. §§ 300.503(c), and

300.504(d). There was no documentation or evidence from either party to determine if an interpreter attended the meeting on April 23, 2024. While the Parent stated the District did not provide an interpreter, the statements could not be linked to a specific meeting. While it is plausible that an interpreter was not present at the meeting on April 23, 2024, it could not be conclusively determined.

Based on the foregoing, according to IDEA and Kansas special education regulations, i***t is not substantiated*** that the District failed to provide information to the Parent in their native language to assist the Parent in understanding the special education proceedings.

Issue Three

Whether USD #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to offer the Student a free appropriate public education (FAPE) in the least restrictive environment when the Student was in school for only two hours per day. K.A.R. 91-40-1(II), K.A.R. 91-40-2(a)(e), K.A.R. 91-40-3(a)(b), K.S.A. 72-3420; 34 C.F.R. §§ 300.101(a), 300.114, 300.116-117.

According to K.A.R. 91-40-1(II), K.S.A. 72-3420, and 34 C.F.R. § 300.114, "Least restrictive environment" and "LRE" 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. Agencies are to provide special classes, separate schooling, or remove 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.

Additionally, K.A.R. 91-40-2(a)(e), K.A.R. 91-40-3(a)(b), and 34 C.F.R. § 300.101(a), requires that agencies provide FAPE based upon a child's unique needs, including offering the same variety of educational programs, services, nonacademic and extracurricular services and activities that are available to nondisabled children served by the agency. These activities and services include counseling, athletics, transportation, health services, and recreational opportunities.

Finally, according to 34 C.F.R. §§ 300.116-117, for any child with a disability, when determining their educational placement, public agencies must ensure specific conditions are met. The placement decision must be made by a group including parents and knowledgeable individuals about the child, evaluation data, and placement options, and must align with the LRE provisions. The child's placement must be determined at least yearly, must be based on the child's IEP, and must be as close as possible to the child's home. Unless the child's IEP requires otherwise, the child must be educated in their neighborhood school, and when choosing the LRE, potential harmful effects on the child or the quality of needed services must be considered. Agencies must also ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

The Parent alleged that the Student was not receiving the support and intervention they needed to address their behavior and receive an appropriate education. The Parent reported that during 2024, the Student was only in school for 2 hours per day and "this has affected [the Student's] learning progress tremendously."

The District responded that after investigating the Student's history and current IEP, the current School team failed to implement the Student's IEP beginning on August 14, 2024. Based on the District calendar, the District owed the Student 57 hours of compensatory services from August 14, 2024 through February 28, 2025, and a proposal would be offered to the Parent.

The Student began their elementary school career on a shortened school day of 60 minutes/day. The Parent stated the Student had regressed due to not attending school full-time. The School Psychologist explained that the Student was on a shortened day due to requiring significant adult intervention and engaging in occasional aggressive behaviors, which the Assistant Principal confirmed and was indicated in their IEP. The Special Education Teacher stated the Student did not go to the general education classroom.

A NOM, signed by the Parent on April 22, 2024, proposed a meeting for April 23, 2024 to review the Student's IEP. It was provided in English and Spanish. The Student's IEP, dated April 23, 2024 and written in English and Spanish, identified significant delays in motor skills, communication, social-emotional development, general intelligence, and academic/functional performance, with a diagnosis of Autism Spectrum Disorder Level Three. The IEP team determined that the Student required individualized instruction in the special education setting and that their current placement was the least restrictive environment appropriate to provide a FAPE. A PWN from the same day summarized the meeting and indicated the Parent consented to increase the Student's day to 150 minutes per day at the start of the 2024-25 school year.

A Progress Report dated April 29, 2024 indicated it was anticipated the Student would not meet their communication goal, but would meet their Academic Performance and Social-Emotional goals. A Progress Report dated May 21, 2024 stated that it was anticipated the Student would meet their communication goal. The Student's iPad and LAMP usage, activities, vocabulary, and requests were detailed in their Progress Reports, which were also written in Spanish. The Student's Progress Report for the 2024-25 school year indicated it was anticipated the Student would meet their Speech-Language and Academic Performance goals. Speech-Language Pathology Services Data and Notes from August 22, 2024 through February 11, 2025 indicated the Student achieved minimal improvement. The Student's Report Card for Q2 of the 2024-25 school year indicated they had a passing grade for music and PE, and an "A" in grammar and science lab.

On January 30, 2025, the Parent told the Assistant Principal they wanted to extend the Student's school day. The Assistant Principal stated that would require an IEP meeting, which was scheduled for February 6, 2025. The Assistant Principal recalled the Parent had also asked

for the Student's day to be extended in prior years. A NOM was sent to the Parent on January 31, 2025, with a proposed meeting date of February 6, 2025. A second notification was delivered to the Parent's home on February 5, 2025.

A PWN sent on February 6, 2025 proposed increasing the Student's school day by one hour, which the Parent verbally agreed to. The PWN and NOM were delivered to the Parent in English and Spanish, but the Parent did not provide consent. A follow-up meeting was scheduled for February 28, 2025.

The Student's weekly schedule indicated that paraprofessionals rotated every 30 minutes to work with the Student. The Special Education Teacher said that during the 2023-24 school year, the Student attended school from 12 p.m. to 1 p.m., and then from 12 p.m. to 1:30 p.m. The Parent indicated they were told the Student had four teachers who switched off every 30 minutes. The Parent believed these adults were substitutes.

On February 28, 2025, the Student's IEP was revised, increasing special education services for academics and social-emotional skills, effective March 3, 2025. The meeting outlined a plan to achieve the Parent's desire for a full school day. The Parent signed the IEP amendment, which was provided in English and Spanish. A PWN from the same day documented the meeting, outlining a 240-minute school day, which included 180 minutes of regular attendance and 60 minutes of compensatory services to address past deficits.

When addressing the issue of least restrictive environment, the Student's access to general education, their grades, and attendance were reviewed. Overall, the Student demonstrated progress toward their IEP goals, achieved passing grades, and only missed 1.5 days of school in Q2 of the 2024-25 school year. The District documented in the IEP that the Student occasionally engaged in aggressive behaviors and required "… constant staff supervision to ensure [their] safety in the classroom." The District also provided their reasoning for determining why the Student's needs would best be met in the special education setting. The District detailed in the IEP that they weighed the positive effects of the placement against potential harmful effects and concluded that it was the least restrictive placement.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the District failed to offer the Student a free appropriate public education (FAPE) in the least restrictive environment when the Student was in school for only two hours per day.

While gathering information for the Complaint Investigation, the District discovered it failed to implement the Student's IEP from August 14, 2024 through February 28, 2025, which denied the Student a FAPE. The District did not contest this and created a proposal for compensatory services. ***This additional finding is substantiated.***

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. A violation occurred in the following area:

A. State and federal regulations at K.A.R. 91-40-1(II), K.A.R. 91-40-2, K.A.R. 91-40-3, K.S.A. 72-3420; 34 C.F.R. § § 300.101(a), 300.114, 300.116-117 require that agencies provide a FAPE based upon a child's unique needs.

In this case, the evidence supports the finding that USD # 446 did not provide a FAPE to the Student when the District scheduled the Student to attend only a portion of their shortened school day from August 14, 2024 through February 28, 2025. The Student missed 57 hours of school and instruction.

Based on the foregoing, USD # 446 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD # 446 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 K.A.R. 91-40-1(II), K.A.R. 91-40-2, K.A.R. 91-40-3, K.S.A. 72-3420; 34 C.F.R. § § 300.101(a), 300.114, 300.116-117 that require agencies to provide a FAPE based upon a child's unique needs.
2. Further, by April 15, 2025, USD #446 will complete and submit a written statement of assurance to Special Education and Title Services (SETS) that the district's practices and procedures for a FAPE have been reviewed and revised as appropriate to be responsive and compliant with FAPE requirements of the Individuals with Disabilities Education Act (IDEA) and the Kansas Special Education for Exceptional Children Act.
3. Within 15 calendar days of the date of this report, USD # 446 shall submit a service schedule that shows the dates the 57 hours of compensatory services will be provided.
4. Within one year of the date of this report, USD #446 shall submit verification that the compensatory services have been completed.

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.gov 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 PUBLIC SCHOOLS
ON FEBRUARY 27, 2025

DATE OF REPORT: MARCH 27, 2025

This report is in response to a complaint filed with the Kansas State Department of Education against USD #229 Blue Valley Schools on behalf of --------, by his father, --------. In the remainder of the report, -------- will be referred to as "the student." -------- is the student's father and in the remainder of the report he will be referred to as "the complainant," or "the father."

The complaint is against USD #229 Blue Valley Schools. In the remainder of the report, USD #229 will be referred to as "the district." The student attends Indian Valley Elementary 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 February 27, 2025 and the 30-day timeline ended on March 27, 2025.

Evidence Reviewed

During the investigation, the Complaint Investigator Dr. Donna Wickham reviewed all documentation provided by the district and the parent. The following was used in consideration of the issues:

- Evaluation Report dated April 4, 2023
- Individualized Education Program dated April 17, 2024
- IEP Team meeting minutes dated April 17, 2024
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated April 17, 2024
- Email from speech and language therapist to principal, special education administrator, assistant superintendent of special education, long term special education substitute, father, special education consultant, and special education teacher/case manager, dated September 11, 2024 at 3:35 p.m.
- IEP meeting notes dated September 5, 2024
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated September 11, 2024
- Notice of Meeting dated November 15, 2024
- District response dated March 6, 2025
- Social Worker Parent Consent form

The Investigator first spoke with the father by phone on March 3, 2025 and again on March 21, 2025. The Investigator spoke with the district special education director by phone on March 4 and 5, 2025 to clarify the issues and discuss requested evidence. The investigator interviewed the principal, school psychologist, special education administrator, student's case manager, speech and language therapist, and general education teacher on March 13, 2025 by video conference.

Background Information

The student is a ten-year-old fourth grader and is eligible for special education and related services under the category of Speech / Language Disabilities according to the most current re-evaluation dated April 20, 2023. The Current Classroom Based Assessment and Performance in the General Curriculum describes the student's Social Skills/Peer interaction: "At the beginning of the year, [student] struggled with peer relationships and telling the truth about what happened between [student] and [student's] peers. However, [student] has made great improvements and [student's] peer relationships have greatly improved. [Student] enjoys being with [student's] friends and [student's] friends enjoy being with [student]." Attention issues/Behavioral concerns were not reported. The Social Work Evaluation Summary indicated the student had strengths with prosocial skills, emotionality, hyperactivity, and peer relationships. Further, the student would benefit from continued general education lessons and practice with peers focusing on conflict resolution, but the student does not show a need for specialized instruction in social work.

The IEP dated April 17, 2024 lists 4 annual goals and includes 20 minutes of direct speech and language services in the special education classroom 2 days every week, 30 minutes of direct special education services in the special education classroom 5 days every week and 60 minutes of direct special education services in the general education classroom 5 days every week. The IEP lists that in addition to instruction targeting reading and writing goals, instruction will include guided and repeated practice, reteaching, and immediate feedback on decoding single and multi-syllabic words, encoding/spelling skills, high-frequency words, and syllable types. The student's IEP includes one accommodation, take test in a quiet, non-competitive setting.

Issues Investigated

ISSUE ONE: Did the district discuss and respond to the father's request for a school-based special education evaluation to investigate behaviors resulting from not expressing feelings and emotions due to a speech and language disability during the 2024-2025 annual IEP meeting?

ISSUE TWO: Did the district discuss and respond to the father's request for mental health aid services for anxiety and oppositional defiant behavior due to the student's speech and language disability during the annual 2024-2025 IEP meeting?

Issue One

Did the district discuss and respond to the father's request for a school-based special education evaluation to investigate behaviors resulting from not expressing feelings and emotions due to a speech and language disability during the 2024-2025 annual IEP meeting?

Applicable Law

Federal regulations at 34 C.F.R. 300.503(a)(2) states that prior written notice needs to be provided to the parents of a child with a disability a reasonable time before the public agency proposes 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 Father alleged that the student's behavior was changing at school, showing anxious and oppositional-defiant behaviors because the student could not express fears, embarrassment with other peers and could not speak up consistently. This has resulted in decreasing the student's development. The father stated that he asked for evaluation at the September 5, 2024 IEP meeting and the school psychologist denied this request.

The district responded that two IEP meetings occurred during the fall, September 5, 2024 and November 15, 2024. "The September 5th IEP meeting was requested to review his [student's] progress. However, during the meeting, [Father] requested a Motivational Interview with an outside evaluator. The district responded with a PWN declining the request, as it was not necessary to determine needs and additional support needed for [student] to make progress. At no time did [parent] state that his [student's] perceived behavior difficulties were because of [student's] speech and language disability, nor did the IEP team believe that [student] required additional special education services for behavior to make progress on [student's] IEP goals and general education curriculum."

The director of special education stated in a phone interview with the investigator on March 5, 2025 that the parent did not ask for special education evaluation for the student's behavior or inability to express feelings but instead requested an outside evaluator to complete a motivational interview not related to special education services.

The student's IEP's present levels of performance, meeting notes, and PWN from the April 17, 2024 annual IEP meeting do not indicate behavioral concerns or concerns with expressing feelings. Instead, it is recorded in the April 17, 2024 IEP that the student's father would like his child to be able to speak in normal conversations and normal settings, to be able to join two phrases in a sentence and be capable of having a conversation with kids the age of his child.

The September 5, 2024 IEP meeting notes record Father's statement that, "[Student] is having trouble with the process they are going through as a family. We need to consider interview of

[Student] in navigating this process." to which the principal responded that the school is not seeing issues at school.

The PWN issued on September 11, 2024 following the September 5, 2024 IEP meeting stated, "While the school team considered the need for an outside provider to complete a motivational interview for [student], it was determined that this was not necessary to determine needs and additional supports for [student]." The rationale for rejecting the parent request was, "they have all the resources to support [student's] progress towards [student's] special education goals and needs with the staff and tools available at [student's] home school, [name of school]." The PWN describes that progress monitoring, parent Input and collaboration with the student's IEP team members including the general education teacher was used to make the decision.

The principal stated during the interview on March 13, 2025 that the student's school team does not see reason to conduct additional special education evaluation related to the parent's concerns about behavior or social emotional needs as these behaviors are not seen at school or during school activities. Participants on the district call additionally stated that the parent has not requested special education evaluation regarding these concerns.

The student's speech/language therapist stated during the March 13, 2024 interview that the student's goals and SPL services are not directed to expressing feelings and emotions although the student may practice relating feelings and emotions while practicing the goals during SPL services.

Conclusion

The issue investigated was in response to a parent request for an evaluation that was denied by the district with a prior written notice. IDEA regulations are clear that the district must consider a parent's request for an evaluation (or any other action) and then issue a prior written notice documenting and explaining the decision.

The district issued a PWN on September 11, 2024 in response to the September 5, 2024 IEP meeting in which the request was made. The prior written notice and district interviews document that the request for the evaluation was not related to special education services or concerns, but instead to a transition happening with the student's home life. It is found that the district considered whether the parent's request and followed all of the procedures for denying a parent request for a specific evaluation. The PWN dated September 11, 2024 documents the decision and follows procedural steps for denying the request as specified in 34 C.F.R. 300.503(a)(2).

Therefore, it is found that the district is I*N compliance* and followed proper procedure in responding to a parent request with a prior written notice.

Issue Two

Did the district discuss and respond to the father's request for mental health aid services for anxiety and oppositional defiant behavior due to the student's speech and language disability during the annual 2024-2025 IEP meeting?

Applicable Law

Federal regulations at 34 C.F.R. 300.503(a)(2) states that prior written notice needs to be provided to the parents of a child with a disability a reasonable time before the public agency proposes 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 findings of Issue One are incorporated herein by reference. The parent alleged in the complaint that his child was denied access to mental health aid services in an IEP meeting after his child was showing a change in behavior. The child's father stated that the student "couldn't express [student's] fears, embarrassment needs with other peers and had an anxious, oppositional defiant behavior and couldn't speak up consistently."

The district responded that throughout the fall of 2024 they had shared with the parent that the student was not exhibiting any behaviors out of the norm of a typical fourth grader experiencing a temporary home life transition and that this was not due to the student's disability. They further stated that the district could provide mental health services for the student with parent consent. Later, the parent reiterated in an email to the director of special education that the student needed mental health services, but they were not an IEP issue. At the November 14, 2024 IEP meeting the parent again requested mental health services for his student and again the director of special education described the social work support provided to any student in the district during periods of transition. The district reported that a family member signed consent to this general education support in January 2025.

The April 17, 2024 IEP, meeting notes, nor PWN indicate behavioral concerns or mental health services.

The IEP meeting minutes dated September 5, 2024 recorded that the father stated, "[Student] is having trouble with the process they are going through as a family. We need to consider interview of [student] in navigating this process. It is hard for [student] to not be seeing dad for almost 4 months. Don't want counselor or LMSW working with [student]. [Father] wants someone outside of [school] to work with [student]." The director of special education offered to help with district resources for a therapist, but the father declined.

An email from the parent to the district on October 16, 2024 at 3:04 p.m. reported that while the parent had concerns about his child's classroom behavior, the parent was "not talking about [student's] IEP". This led the special education director to direct the parent to general education resources, such as the student's general education teacher.

During the March 13, 2025 investigator's interview with the IEP team members they recalled that the father stated during the November 15, 2024 IEP meeting that a court appointed evaluation had been conducted in relation to an issue outside of school and based on the results of that the father was wanting the school psychologist to work with the student about the home life transition. During that meeting the IEP team reiterated that the father was wanting services offered by general education, not special education services. They further shared that a social worker would provide the services rather than the school psychologist and referred to a memo describing district services for students in transition outside of school.

In a memo shared with all parents regarding services, "The [District] employs masters-level social workers, as well as partners with [local hospital] to provide additional masters-level social workers within [District] Schools. These social workers work in collaboration with the school counselors and school psychologists to provide large and small group instruction, as well as individual services." This memo outlines the general responsibilities for each, school counselors, school social workers and school psychologists in the 1) prevention and responding to a crisis and 2) collaboration as part of school team. The memo further states, "The school team may offer ongoing support to any child or family to meet needs beyond academic learning following a referral by parents, teachers, school counselor, psychologist, principal, or self-referral. We would like to provide an opportunity for your child to benefit from the supports of the social workers if needed. With the exception of health and safety emergencies that require immediate interventions, signed parent consent is required to receive ongoing services." Both the principal on March 13, 2025 and the director of special education on March 5, 2025 reported that this service was offered to the parent at the IEP meeting in November and consent was signed by the mother in January, 2025.

Conclusion

In this case the parent and district acknowledge that the parent requested mental health services for his child during the November 15, 2024 IEP. However, an email from the father to the director of special education in October demonstrates that the district and parent recognized that the father's request for mental health services during the meeting was not an IEP issue, but instead a concerned father requesting support for his child during a meeting with school staff. In the meeting minutes and interview with the parent, district staff and director of special education it became clear that all parties were discussing a general education service rather than a parent request for a special education service. The special education regulation is directed to a district providing a PWN in response to parent request for a special education service, rather than a general education service discussed during an IEP meeting.

Based on the documentation and interviews with the parent and the district is found that is ***IN compliance*** with IDEA regulations.

Summary of Conclusions/Corrective Action

ISSUE ONE: A violation of 34 C.F.R. 300.503(a) was not found, based on the facts above. Corrective action is not required.

ISSUE TWO: A violation of 34 C.F.R. 300.503(a) was not found, based on the 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.gov 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 #348
ON FEBRUARY 14, 2025

DATE OF REPORT: MARCH 28, 2025

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" and -------- will be referred to as the "complainant", the "parent", or the "mother".

The complaint is against USD #348 (Baldwin City Public Schools) who contracts with the East Central Kansas Cooperative in Education (Interlocal #614) to provide special education services to students enrolled in the school district. In the remainder of the report, both of these responsible public agencies may also be referred to as "the district", "the local education agency (LEA)", or "the school". Individually, they will be referred to by "USD #348" and "the Interlocal #614" respectively.

The Kansas State Department of Education (KSDE) allows for a 60-day timeline to investigate a complaint and allow for an appeal process 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 February 14, 2025 and assigned the case for investigation on February 17, 2025.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all the documentation provided by both the complainant and the LEA.

Interviews were conducted with both parties. The parent was interviewed by telephone on February 25 and March 10, 2025.

A telephone interview was held on March 10, 2025 with the following school district staff:

- Derek Bland, Principal
- Bench Curry, Assistant Principal
- Randi Dalton, Gifted Teacher
- Ryan Cox, 6th Grade Math Teacher
- Kelly Evans, 6th Grade Reading Teacher
- Sarah Johnson, 6th Grade Language Arts Teacher
- Chad Scoby, 7th Grade Math Teacher

- Patty Flory Evans, 7th Grade Language Arts Teacher
- Lee Hanson, Director of Special Education for Interlocal #619
- Sara Hoepner, Assistant Director of Special Education for Interlocal #619
- Mark Dodge, Superintendent for USD #348

Both the parent and the LEA provided multiple documents for review and consideration during the investigation. All of this documentation was reviewed and considered by the investigator. The following written documentation was viewed as most relevant and primarily used in consideration of the issues:

1. Email dated August 21, 2023 written to parents of students in the Extended Services program by Patricia Lenning, 2023-24 Gifted Teacher
2. Individual Education Program (IEP) dated January 31, 2024
3. Email dated May 9, 2024 written by the 2023-24 Gifted Teacher to the parent
4. Email exchange dated May 14, 2024 between the parent and the 2023-24 Gifted Teacher
5. IEP Goal Progress Report dated May 16, 2024
6. Email exchange dated August 20, 2024 between the parent and the 2024-25 Gifted Teacher
7. Meeting Invitation for Pre-IEP Team Meeting dated August 21, 2024
8. Email exchange dated August 27, 2024 between the parent and the 2024-25 Gifted Teacher
9. Email dated August 27, 2024 written to the 7th grade Math Teacher by the 2024-25 Gifted Teacher
10. IEP Goal Progress Report dated October 8, 2024
11. IEP dated October 22, 2024
12. Staffing Report dated October 22, 2024 written by school staff
13. IEP Team Meeting Notes dated October 22, 2024 written by the parent
14. Email exchange dated November 12 and 13, 2024 between the parent, the Gifted Teacher, and the Assistant Director of Special Education
15. Prior Written Notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated November 13, 2024
16. IEP Goal Progress Report dated January 17, 2025
17. Email dated January 21, 2025 written to the parent by the Gifted Teacher
18. Email dated February 25, 2025 written by the 2024-25 Gifted Teacher to the parent
19. Email dated February 26, 2025 written by the parent to the 2024-25 Gifted Teacher
20. Email dated February 28, 2025 written by the parent to the Investigator
21. District Response to the Allegations dated March 7, 2025
22. Statement of Math Materials and Summer Study dated March 12, 2025
23. Schedule of Gifted Services Minutes during the 2024-25 School Year written by the 2024-25 Gifted Teacher
24. Grades and Fast Bridge scores for 6th and 7th grades

25. 6th grade English Language Arts (ELA) Rubric sample (unscored)
26. 7th grade ELA Rubric sample (unscored)
27. USD #348 School Board Policy KN: Complaints
28. USD #348 School Calendar for 2023-24
29. USD #348 School Calendar for 2024-25
30. Written Statement from Chad Scoby, 7th grade Math Teacher
31. Written Statement from Patti Flory-Evans, 7th grade ELA Teacher
32. Written Statement from Ryan Cox, 6th grade Math Teacher
33. Written Statement from Sarah Johnson, 6th grade ELA Teacher
34. Written Statement from Kelly Evans, 6th grade Reading Teacher

Background Information

The student is a 13-year-old girl who is currently enrolled in in the 7th grade at Baldwin Junior High School (BJHS) in USD #348 for the 2024-25 school year. It is noted that she also attended BJHS for 6th grade.

The student was initially evaluated for special education services during the fifth grade in USD #348. On February 3, 2023, the multidisciplinary team determined she was eligible for special education and related services due to meeting the eligibility criteria for the exceptionality category of Gifted. The IEP team then developed an initial IEP and the student has continuously received special education services to the present time.

Issues Investigated

Based on the written complaint and an interview with the complainant, three issues were identified and investigated.

According to Chapter 1, Section H of the Kansas Special Education Process Handbook, special education services are not compulsory for children who are gifted. Therefore, parents of gifted children may choose to accept whatever special education services are proposed by the IEP team. Schools are required to provide the services specified in an IEP once the parent gives consent as required by Kansas state statutes and regulations. As such, the parents and children who are gifted have the same rights as parents and children with disabilities with certain exceptions. It is noted that none of the exceptions apply to the issues being investigated in this particular case.

Issue One

USD #348, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond appropriately to the parent's request for an IEP team meeting in August 2024.

Applicable Law

Kansas statutes at K.S.A. 72-3429(f) require public agencies to ensure that each child's IEP is reviewed periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate, to address information about the child provided to, or by, the parents.

Kansas statutes at K.S.A. 72-3429(b)(4) allows the public agency and the parent of a child with a disability to agree to make changes to a child's IEP after the annual IEP Team meeting for a school year, if the parent of a child with a disability and the public agency agree not to convene an IEP Team meeting for the purposes of making those changes, and instead develop a written document to amend or modify the child's current IEP.

Kansas statutes at K.S.A. 72-3430 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.

Positions of the Parties

The parent alleged that the LEA failed to respond to her request for an IEP team meeting at the beginning of the 2024-25 school year. The mother reported requesting an IEP team meeting shortly after school started in August; however, an IEP team meeting was not held until after the end of the first quarter in October 2024.

The district acknowledged that the parent requested an IEP team meeting in August 2024 but reported that the parent agreed to a "pre-IEP" meeting with the Gifted Teacher to discuss her concerns. The district stated:

Following this [the pre-IEP meeting] there was email correspondence between the Gifted Teacher, Principal, and parent planning the procedure for the student to participate in pre-testing as discussed in the pre-meeting. Next additional emails document the parent's agreement to amendments to the service time without an IEP team meeting. Additionally, the parent agreed that she preferred to wait until after her daughter had completed the math pre-tests before having an IEP team meeting. Upon completion, the IEP team meeting was scheduled for October 22nd due to the length of time it took for the student to complete all pre-tests.

Analysis: Findings of Fact

The following findings of fact are based upon interviews and record review.

Documentation shows the parent requested an IEP team meeting to discuss the student's educational program for 7th grade in an email written to the Gifted Teacher on August 20, 2024.

Emails between the Gifted Teacher and the parent dated August 21, 2024 document that a "pre-IEP meeting" was offered and the parent accepted this meeting. The meeting was scheduled and held according to both the parent and the Gifted Teacher. Both parties reported that a plan to conduct pre-tests for math was developed at the meeting and a regular schedule would be developed for the special education instruction to be provided in the 7th grade.

An email dated August 27, 2024 from the Gifted Teacher to the parent stated:

I met with the student today for pull-out and we talked about her interests and possibilities for EL [Enhanced Learning] time . . . She would like to be in Period 3 EL pull-out. This is during robotics. I emailed her teacher and created a recurring ehall pass for every Tuesday during period 3. Class periods are 49 minutes long. Her IEP currently states 30 minutes, 2 times a week. Would you be fine if I created an amendment for 49 minutes once a week and then added the rest of the minutes together as a one time a quarter or something similar? That way she would only miss one class period a week but would also have an opportunity to do something a bit longer such as a Friday field trip or group project day to make up the remaining minutes. Alternatively, we could just reduce her minutes to 49 minutes once a week . . . If we agree to either of these changes in anticipated service minutes, we could do an amendment without a meeting now and then we can hold an IEP meeting to put a math plan in place. Would you prefer to wait for an IEP meeting?

The parent responded via email to the Gifted Teacher the same day indicating that she was "fine with an amendment for 49 min once a week and then add the rest of the minutes together for once a quarter. And fine with just waiting to have an IEP meeting for the math plan".

A copy of the 2024-25 School Calendar shows each quarter consists of nine weeks.

The district provided a copy of an IEP dated January 31, 2024 requiring 30 minutes of special education extended learning services twice a week starting January 31, 2024 and ending January 30, 2025. However, there was no written documentation to amend this IEP showing the change in the services described in the August 27, 2024 email and agreed to by the parent.

Conclusion

The IDEA allows for two responses when a parent requests an IEP team meeting: 1) Reconvene the IEP team to discuss the information shared by or with the parent, or 2) the LEA and the parent agree to amend the IEP without conducting an IEP team meeting and a written document describing the changes agreed upon is created to amend or modify the IEP.

In this case, interviews and documentation found that the parent did request an IEP team meeting on August 20, 2024 via an email to the Gifted Teacher. The Gifted Teacher responded by offering a "pre-IEP meeting" to discuss the parent concerns and the parent participated in this meeting on August 23, 2024. On August 27, 2024, the parent agreed to wait to conduct an IEP Team Meeting to discuss the math plan.

It also appears that the parent and the Gifted Teacher agreed to amend the student's IEP services without conducting an IEP Team Meeting in response to the parent's request for a meeting to discuss concerns on August 20, 2024

Based on the email dated August 27, 2024 between the parent and the Gifted Teacher, there was a mutual agreement to change the delivery of the special education services from 30 minutes twice a week as described in the January 31, 2024 IEP to 49 minutes one time per week with the remaining 11 minutes per week for the nine weeks in a quarter being combined and provided once each quarter for a total of 99 minutes per quarter.

Based upon the way the services were described as being provided, the student was continuing to receive a total of 540 minutes per quarter of special education services [30 minutes x 2 times per week x 9 weeks in a quarter = 540 minutes equals 49 minutes x 9 week in a quarter + 11 minutes per week x 9 weeks for a combined 99 minutes once per quarter = 540 minutes]. It is noted that while the total amount of services being provided was not changed, this change did affect the frequency the services were to be provided for the student, and, therefore, a prior written notice (PWN) for a change in services should have been provided to the parent. For this reason, the LEA is found to be out of compliance for not providing the parent with appropriate PWN following the August 27, 2024 mutual agreement to amend the IEP.

In addition, the LEA was required to develop a written document to amend the student's IEP and none was created. Based on the foregoing, the LEA is also found to be *OUT compliance* with the requirement to appropriately respond to the parent's request for an IEP team meeting in August 2024 when it agreed to amend the student's IEP without conducing an IEP Team Meeting on August 27, 2024 by failing to develop a written document to amend the student's IEP showing the agreed upon changes.

Issue Two

USD #348, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP dated January 31, 2024, specifically the accommodations and special education services, between February 14, 2024 through October 21, 2024.

Applicable Law

State regulations at K.A.R. 91-40-16(b)(3) require school districts to have an IEP in place at the beginning of each school year for every child with a disability within its jurisdiction. In addition, state regulations at K.A.R. 91-40-16(b)(2) require school districts to ensure that as soon as possible following the development of an IEP, special education and related services are made available to the child in accordance with that child's IEP.

Positions of the Parties

The parent alleged that the general education teachers failed to challenge the student in math and reading/language arts classes by not providing the accommodations required by the IEP during both 6th and 7th grade. The parent reported she complained multiple times that the accommodations in the general education math and reading/language arts classes were not being provided and questioned whether the student was receiving the required special education extended learning instruction as required by the IEP during 7th grade but none of these issues was ever resolved. The parent believes the disparity between the 98-100% scores on the student's grade cards and her Fastbridge and Kansas Assessment Program (KAP) state assessment scores indicated that the IEP was not being implemented as written.

The district reported the accommodations on the IEP as well as the special education services were provided as required by the January 31, 2024 IEP during the second semester of 6th grade and the first semester of 7th grade.

Analysis: Findings of Fact

The following findings of fact are based upon interviews and record review.

The findings of Issue One are incorporated herein by reference.

The January 31, 2024 IEP was in effect between February 14, 2024 and October 21, 2024. This IEP required 30 minutes twice per week of special education instruction for extended learning. This IEP was amended on August 27, 2024 to provide 49 minutes once per week with 99 minutes provided one time each quarter through an agreement made between the parent and the 2024-25 Gifted Teacher.

An email dated August 21, 2023 written by Patricia Lenning, the 2023-24 Gifted Teacher, documents that special education extended learning services were scheduled to be provided for 30 minutes on Tuesdays and Thursdays each week during the 2023-24 school year. It is noted that Ms. Lenning is no longer employed by the LEA. The parent and district agree that these services were provided during the 6th grade.

The Schedule of Gifted Services Minutes during the 2024-25 School Year written by the 2024-25 Gifted Teacher documents that the special education extended learning services were scheduled to be provided during one 48-minute class period on Tuesdays with an additional 108 minutes provided each quarter. The 2024-25 Gifted Teacher noted:

This schedule was created to align with the Junior High Bell Schedule and meant she only missed one elective class a week regularly. Her mother was informed in person that the remaining time would be made up so that all of her service minutes would be met.

It is noted this schedule does not match the times agreed upon by both parties on August 27, 2024; however, again, the total amount of services is 540 minutes per quarter.

Based upon the school calendar and the schedule of special education extended learning services during the first quarter, the student received the weekly services during the 7th period of the school day on Tuesdays when she was in attendance and received an additional 330 minutes of extended learning through a field trip experience to the Heartland Literature Festival in Topeka, Kansas on October 2, 2024.

The January 31, 2023 IEP included four accommodations to be provided in the general education setting. However, the parent only expressed concerns regarding the provision of the three accommodations required in the math and reading/language arts classes so these are the only ones addressed in this investigation.

The first accommodation required pre-testing for math tests to allow the student to demonstrate mastery and the to provide extension as appropriate on a weekly or bi-weekly basis. The 6th grade Math Teacher stated:

In January 2024, Mrs. Lenning, the Gifted Teacher at the time, approached me to discuss the possibility of accelerating Rue in math, allowing her to advance to high school Algebra I. Based on my observations of her performance up to that point, I did not believe this would be in her best interest. After discussion, we reached an agreement to pre-assess the student before each unit throughout the second semester. If she scored 90% or higher on the pre-assessment, she would engage in a project or a more challenging activity instead of completing the unit's standard coursework . . . At the end of the school year, we planned to evaluate the student's overall progress to determine if she could potentially skip a grade level or more in mathematics. Before each new unit, I provided the post-assessment to Mrs. Lenning, who administered it to the student as a pre-assessment. This approach allowed us to gauge the student's understanding of the material. Either Mrs. Lenning or I would grade the assessment and discuss the next steps. This process was followed for Units 8, 9, and 10 during the second semester. Each time, the student's pre-assessment scores fell within the 60-70% range, which we determined was not high enough to warrant acceleration. As a result, she continued following the class curriculum, participating in regular coursework. Occasionally, she attempted "challenge problems" when they were included in assignments. Upon completing the final exam, the student improved her score to the 90-100% range, which was consistent with other mathematically proficient students in my class . . . Throughout the semester in question, Mrs.

Lenning and I maintained ongoing communication, primarily in face-to-face discussions, as our classrooms were located next to each other.

The parent indicated she spoke to the 2023-24 Gifted Teacher regarding her concerns that the pre-testing was not being conducted. The Gifted Teacher then checked with the 6th grade Math Teacher who said the student hadn't passed any of the pre-tests. The parent reported that she and the Gifted Teacher were never provided with any data to support this assertion. The parent also stated, "The student was not aware that she had ever taken even one chapter pre-test, let alone one for each chapter that semester".

The 7th grade Math Teacher stated:

The student is currently enrolled in Foundations of Algebra, which is the advanced math placement class for 7th grade students. The student has a very strong foundation in general math concepts and her ability to use rational thinking when problem solving is above average. The student scored in the top one percent on both the Fall (243) and Winter (245) Fastbridge testing opportunities and her classroom performance is consistently in the 90-100% range. She is a copious note taker and always demonstrates using the necessary steps/formulas when needed. The curriculum within the Foundations class has provided an adequate challenge for the Student and her success is definitely a product of hard work.

An email dated August 27, 2024 written to the 7th grade Math Teacher by the 2024-25 Gifted Teacher indicates the student is to be pre-tested by taking the end-of-year test for Foundations of Algebra and the end-of-year test for Pre-Algebra in order to "get an idea of which skills she has already mastered and which skills she still needs to learn". The email indicates these tests can be administered in either the special education or general education setting and "Ideally she would take both no later than mid-week next week". The Math Teacher responded in an email dated the same day indicating "I don't have a preference for when you test the student. Let me know and I'll send her as needed". Interviews with both the parent and school staff found this pre-testing of the 7th grade math curriculum was not completed until mid-October and triggered the October 22, 2024 IEP Team Meeting to review and revise the IEP.

The second and third accommodations related to the student's reading and language arts classes. The second accommodation requires that when the student is given a writing assignment, the student "will be allowed to write more in depth or go beyond the rubric and/or chose a more advanced presentation method" in the general education setting "as needed" and noted the student "may require additional time to complete writing assignments". The third accommodation states that "When asked to read a novel of her choice, the student will be allowed to read a higher level book of her choice" on an "as needed" basis.

The 6th grade Language Arts Teacher stated:

The student's writing goal states that accommodations are to be provided "as needed." However, in practice, most conversations about accommodations revolved around offering extensions, which were generally left up to student choice or by her EL [Gifted] teacher. The

student was always encouraged to write more than the expectation or in general. To add, the majority of assignments were ones she had never done before, this being her first class directed towards writing, speaking, listening, and critical thinking skills.

The 6th grade Reading Teacher reported that the student was permitted to select any book she desired for all reading assignments and completed a reading log for grading purposes. In addition, the student participated in two novel studies conducted in class and, while she was given the opportunity to read a different book as were the other gifted students, the student chose to read the classroom novel.

The 7th grade Language Arts Teacher reported the student chose the books that the whole class read for assignments. In addition, she provided copies of three grading rubrics and stated:

I use rubrics for formal paper assignments. My first paper is at a higher level for all students and part of the assignment is to be concise. The student is on the advanced level in Amplify [an online curriculum with a personalized learning path]. Assignments with worksheets will not have rubrics. I teach how to use higher level verbs through paper analysis.

Conclusion

In this case, interviews and documentation support a finding that the special education services for extended learning were provided during the time period between February 14, 2024 and October 21, 2024 as required by the student's IEP. Both parties acknowledged the required services were provided during the second semester of the 2023-24 school year and there is evidence the student received the required total of 540 minutes of special education extended learning service during the first semester of the 2024-25 school year.

However, interviews and documentation also show that the accommodations were not provided as required by the IEP. It appears that the math accommodation was provided during the second semester of 6th grade based on the detailed description from the 6th grade Math Teacher even though the student did not remember completing any assignment titled a "pre-test". However, during the first semester of the 7th grade, it appears that the pre-tests for math were designed as end-of-course tests or comprehensive course exams . The plain language of the accommodation calls for a frequency of "weekly or bi-weekly" which would not be the frequency these types of tests/exams would be given to students following the curriculum in the general education math class.

In regard to the writing and reading accommodations, the frequency was described "as needed". During the second semester of the 6th grade, it appears that these accommodations were provided to the student "as needed" as determined by the 6th grade Reading and Language Arts Teachers based on their detailed descriptions. Evidence shows the 7th grade Language Arts Teacher also determined and provided accommodations "as needed".

Based on the foregoing, the district is found to be *OUT compliance* in regards to implementing the student's IEP, specifically by not providing the math accommodation as required by the January 31, 2024 IEP during the first semester of the 2024-25 school year.

Issue Three

USD #348, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP dated October 22, 2024, specifically the accommodations, goals, and services, between October 22, 2024 and the current date.

Applicable Law

State regulations at K.A.R. 91-40-16(b)(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.

Kansas statutes at K.S.A. 72-3430 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.

Positions of the Parties

The parent believes the LEA is failing to implement the student's most recent IEP developed on October 22, 2024. She indicated the student is not receiving the required special education extended learning instruction to address the IEP goals. In addition, the accommodations for reading and writing are still not being provided appropriately in the 7th grade language arts class.

The LEA again reported that the special education services are being provided to address the IEP goals as evidenced by the fact the student is making progress towards meeting all of them at this time. In addition, the accommodations are being provided in the language arts class as required by the IEP.

Analysis: Findings of Fact

The following findings of fact are based upon interviews and record review.

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

An IEP Team Meeting was held on October 22, 2024 with the parent in attendance. IEP team meeting notes kept by the parent and the LEA staff show the IEP team reviewed state and

district assessments, progress towards the previous IEP's goals, and current information shared by both the parent and the student's teachers. Both sets of notes reflect updates to the IEP goals and accommodations. It is noted that the accommodation for math was removed and replaced with an accommodation to allow the student to take placement tests for language arts, science, and math to determine class assignment in 8th grade for the 2025-26 school year.

A prior written notice (PWN) dated November 13, 2024 was provided to the parent describing the proposed action as "Changed gifted pull-out minutes to 30 minutes one time a week; Changed her goals; and Updated her accommodations". The PWN explained these proposed changes were needed to reflect her current needs and schedule and were based on the Fastbridge and KAP scores, a review of grades, as well as input from the parent, student, and teachers. The PWN requested consent for a material change in services and a substantial change of placement and the parent signed the PWN electronically granting consent for the proposed changes on November 13, 2024.

During the parent interview and in an email dated February 28, 2025 written to the Investigator, the parent reported that she requested a copy of the October 22, 2024 IEP on November 11, 2024 because she had not yet received a copy. On November 13, 2024, she was provided with a copy of the IEP and PWN and was asked to sign and return the PWN, which she did on that same date.

When asked about her written consent for the material change of services and the substantial change of placement described in the PWN, the parent stated:

I am now very confused about this time change situation...I just re-read the PWN that they sent on Nov 13 for the IEP held on Oct 22. It states that her minutes were changed to 30 minutes to "fit her needs and her MS schedule." This was not discussed at the IEP meeting and the middle school class periods are 49 minutes long which is why we did the amendment in August to change her minutes to 49 minutes. So I apparently missed that on the PWN that they sent post-meeting? But it was not discussed at the meeting nor was I ever asked about it - as you could probably tell since I thought she was still getting the same # of minutes. I don't have any idea why that change was made.

IEP goal progress reports for the second quarter of the 2024-25 school year indicate the student is making progress towards both IEP goals.

The reading accommodation in the October 22, 2024 IEP requires that the student be allowed to read a higher level book of her choice when asked to read a novel of her choice for a novel study assignment.

The parent reported the 7th grade Language Arts Teacher failed to provide the reading accommodation in January 2025 when she assigned the student to study "junior level Shakespeare independently" and that her grades would be based on "writing papers" over the

reading. The parent indicated the student was not given any choice in this novel study and she met with the school social worker and the Principal to resolve the situation.

The 7th grade Language Arts Teacher stated, "I tried to give her a higher level book to read because I thought it was desired by her mom. This was not welcomed".

Conclusion

In this case, the 7th grade Language Arts Teacher clearly misunderstood the IEP accommodation by assigning a novel study instead of allowing the student to make a choice to read a higher level book of her choice for the assignment.

In regard to the provision of the special education extended learning services, it is clear that the parent and the LEA have very different understandings of the amount of services that were to be provided to the student in the October 22, 2024 IEP. This is complicated by the fact that the IEP notes kept by both parties are mute to any discussion about changes in services and placement.

It is further complicated by the fact that a copy of the IEP and the PWN proposing the material change of services and the substantial change of placement was provided 22 days following the IEP Team Meeting, and then only provided as a result of a parent request for a copy of the IEP. The parent acknowledged that she signed the PWN but indicated that she did not fully review the copy of the IEP or the PWN because she thought the services remained the same as the August 27, 204 amendment and the changes to the goals and the accommodations discussed at the October 22, 2024 IEP Team Meeting had started immediately following the meeting.

Based on Interviews and documentation, there is evidence to support a finding that the LEA is *OUT of compliance* for both implementing the October 22, 2024 IEP, specifically the reading accommodation, as well as for not providing appropriate PWN to the parent following the October 22, 2024 IEP Team Meeting.

It is noted that because of the noncompliance with the requirements of PWN, the Investigator is unable to make a determination in regard to implementation of the IEP because it is unclear what services were supposed to be provided based on the discrepancy between the parent's strong belief the services were to remain the same as the August 27, 2024 IEP amendment and the PWN provided to the parent 22 days following the IEP Team Meeting.

Summary of Conclusions/Corrective Action

ISSUE ONE: Interviews and documentation support a finding that the district did not appropriately respond to the parent's request for an IEP team meeting in August 2024 when it agreed to amend the student's IEP without conducing an IEP Team Meeting on August 27, 2024 by failing to develop a written document amending the IEP showing the agreed upon changes. In addition, the agreed upon amendment changed the frequency the IEP services were to be provided to the student and the LEA failed to provide the parent with the

appropriate PWN. Based on the foregoing, the district is determined to be OUT of compliance for both of these requirements.

CORRECTIVE ACTION:

1. The LEA will provide training to the Gifted Teacher regarding the IEP amendment process and required documentation required to be created and provided to the parent no later than June 30, 2024. The LEA will provide KSDE with the date of the training, the name of the trainer, and a copy of any handouts or presentation materials no later than one week following the date of the actual training.
2. No individual corrective action is required as documentation and interviews found the parent was in agreement with the changes agreed upon and the student's IEP was subsequently reviewed and revised again on October 22, 2024. Note that allegations of special education services being provided at the beginning of the school year are addressed in Issue Two.

ISSUE TWO: Interviews and documentation support a finding that the district did not provide the accommodation for pre-testing the student on a weekly or bi-weekly basis to determine mastery of math concepts and to provide extension as appropriate. Based on the foregoing, the district is found to be OUT compliance in regards to implementing the student's IEP as written during the between August 15 and October 21, 2024 and corrective action is required.

CORRECTIVE ACTION:

3. The LEA will provide training to the 7th and 8th grade general education teachers assigned to the student regarding the requirements to implement the IEP as written as well as training for how to implement accommodations in the general education setting. This training will occur no later than the first day of the 2025-s6 school year. The LEA will provide KSDE with the date of the training, the name of the trainer, a sign-in sheet signed by the participants showing the names and positions of each attendee, as well as copies of any handouts or presentation materials no later than one week following the date of the actual training.
4. Because of the noncompliance, the student was not provided with potential opportunities for extended learning opportunities in the area of math. The LEA will confer with the parent to identify at least two opportunities to participate in an extended learning opportunity in the area of math during the summer of 2025 at district expense no later than April 30, 2025. The parent may choose to accept one or none of these opportunities. The LEA will notify KSDE of the parent's decision no later than 10 days from the date of the decision. If an extended learning opportunity is accepted by the parent, the LEA will provide documentation of payment for the program to the KSDE no later than August 1, 2025.

ISSUE THREE: Interviews and documentation support a finding that the district did not implement the student's IEP in January 2025, specifically by not providing the reading

accommodation required by the October 22, 2024 IEP. In addition, interviews and documentation support a finding that the LEA did not provide the parent with appropriate PWN following the October 22, 2024 IEP team which has resulted in multiple misunderstandings between the two parties as to what services are actually required to be provided to the student between October 22, 2024 through October 21, 2025. Based on the foregoing, the district is determined to be OUT of compliance with the requirements of the IDEA for these issues and corrective action is required.

CORRECTIVE ACTION:

5. Corrective action #3 will address the training that must be provided to the 7th grade Language Arts Teacher in regard to providing the accommodations required by the IEP.
6. The LEA will provide training to the Gifted Teacher regarding the appropriate provision of PWN and the required documentation no later than June 30, 2024. The LEA will provide KSDE with the date of the training, the name of the trainer, and a copy of any handouts or presentation materials no later than one week following the date of the actual training.
7. Because the noncompliance with the PWN caused the misunderstanding in regard to the required minutes of special education extended learning to be provided to the student, it is unclear whether the student was denied potential extended learning opportunities in reading and writing following the October 22, 2024 IEP Team Meeting. The LEA will confer with the parent to identify at least two opportunities to participate in an extended learning opportunity in the area of language arts during the summer of 2025 at district expense no later than April 30, 2025. The parent may choose to accept one or none of these opportunities. The LEA will notify KSDE of the parent's decision no later than 10 days from the date of the decision. If an extended learning opportunity is accepted by the parent, the LEA will provide documentation of payment for the program to the KSDE no later than August 1, 2025.
8. The LEA will reconvene the student's IEP Team no later than 20 days from the date of this report to discuss and determine the amount of special education extended learning services required to be provided in order to provide the student with a free appropriate public education (FAPE). At the end of the meeting, the LEA will describe the actions proposed or refused and explain the parent's rights in regard to consent contained in the Procedural Safeguards document. The LEA will provide the parent with appropriate PWN no later than two days following the date of the IEP Team Meeting. The LEA will provide KSDE with copies of the IEP Team Meeting notes and a copy of the PWN as documentation for correction of the noncompliance.

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.gov 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 AUGUSTA PUBLIC SCHOOLS
ON MARCH 3, 2025

DATE OF REPORT: APRIL 2, 2025

This report is in response to a complaint filed with the Kansas State Department of Education against USD #402 (Augusta Public Schools) on behalf of -------- by her parents --------. In the remainder of the report, -------- will be referred to as "the student", -------- as "the mother" or "parent", -------- as the "father" or "parent" and collectively as the "parents" or "complainants".

The complaint is against USD #402 (Augusta Public Schools). In the remainder of the report, USD #402 will be referred to as "the district". The district is supported by the USD #638 Butler County Special Education Interlocal which will be referred to as the "interlocal". The student currently attends the Augusta High School which will be referred to as the "high school" in the remainder of the report. School and district staff will be referred to In the remainder of this report as follows:

- April Hilyard, director
- Denise Walton, assistant director
- Matt Ward, superintendent
- Rick Rivera, principal
- TJ Meyer, assistant principal
- Deana Walls, student's IEP teacher
- Chelsey Tormey, special education teacher
- Mrs. Richardson, chemistry teacher
- Mrs. Gonzales, 1st semester math teacher
- Mr. Schwinn, 2nd semester math teacher
- Mr. Spellman, history/social studies teacher

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 3, 2025.

Evidence Reviewed

USD #402 made the following staff available for interviews on March 25, 2025 as part of this investigation.

- Director
- Principal
- Assistant principal
- IEP teacher
- Special education teacher
- Counselor
- Chemistry teacher
- Career and life planning teacher
- College preparation teacher
- Math teacher for first semester
- Math teacher for second semester

During the investigation, the Complaint Investigator, Nikki Crawford, reviewed all evidence and documentation provided by the district and the parents. Additionally, the complaint investigator contacted the parents, director and student on March 6, 7, 9, 10, 11, 15, 17, 21, 23, 24, 25 and 26, 27, 28, 29 and 31, 2025 by phone and email to clarify evidence and documentation.

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:

1. Notice of meeting for March 7, 2024 IEP, dated February 21, 2024
2. Notice of meeting acknowledgement signed February 25, 2024
3. IEP dated March 7, 2024
4. IEP meeting notes dated March 7, 2024
5. Student attendance record for the 2024-2025 school year
6. Student class schedule for the 2024-2025 school year
7. Email exchanges between the mother and IEP teacher scheduling a meeting to discuss accommodations on September 4, 2024.
8. Email exchange between the chemistry teacher and father on September 5, 2024
9. Handout used in training with general education teachers focused on IDEA, including the use of accommodations on October 21, 2024
10. Teacher attendance log for October 21, 2024 staff training related to IDEA
11. Time in service document provided by district reflecting the missed special education services from November 12, 2024 through March 7, 2025
12. Email from father to the math teacher on November 17, 2024
13. Email exchange between math teacher and parents on November 18, 2024
14. Progress report including progress on math and reading goals dated December 18, 2024

15. PWN for Substantial Change in Placement filed February 25, 2025
16. Student's drafted IEP dated March 5, 2025
17. Phone call between the parents and investigator March 6, 2025
18. Phone call between the director and investigator March 6, 2025
19. Phone call between the student and investigator March 7, 2025
20. Email exchange between the mother and director related to the drafted March 5, 2025 IEP on March 11, 2025
21. Email exchange between the mother and investigator clarifying concern over the use of Academic, Clubs and Educational Opportunities (ACE) as a substitution for special education support on March 13, 2025
22. Email exchange between the mother and investigator sharing the student's perspective on ACE on March 14, 2025
23. District response shared on March 14, 2025
24. Email exchange between the mother and investigator clarifying testing accommodations and provision of notes on March 23, 2025
25. Email exchange between director and investigator clarifying February 25, 2025 PWN on March 26, 2025
26. Email exchange between mother and investigator clarifying consent for change in student's schedule impacting paraprofessional support on March 26, 2025
27. Email exchange between mother and investigator clarifying the student's change in schedule on March 26, 2025
28. Phone call with the IEP teacher on March 27, 2025
29. Phone call with the history teacher on March 28, 2025
30. Paraprofessional log for the history class from January 6, 2025 through March 27, 2025 emailed on March 29, 2025
31. Email exchange between the history teacher and investigator on March 31, 2025
32. Email exchange between the math teacher and investigator on March 31, 2025

Background Information

The subject of this complaint is a young woman of 16 enrolled in the 11th grade at the high school during the 2024-2025 school year. She lives at home with her parents and two siblings. The student attended two years of full-time preschool prior to starting kindergarten at a district elementary school. The student's initial evaluation was May 11, 2017 identifying a Learning Disability as the primary exceptionality; her most recent evaluation was conducted on January 16, 2023.

The current IEP is dated March 7, 2024 and states that the student has a math and reading goal and qualifies for special education services in the general education setting for math, social studies and language arts, five days per week, for 45 minutes per day, every other week. The high school utilizes a block schedule which includes a particular class twice a week and then in the next week offers that same class three times, thus offering each class a total of five times in two weeks. There are five accommodations noted including; 1) a quiet, alternate

setting for tests upon the student's request when given grade level test, 2) TTS (text-to-speech)/read aloud during grade level assignments/test when reading aloud to herself is not available or appropriate, 3) additional time to complete assignments/tests when expected to read lengthy text at grade level, 4) provide access to notes when required to take notes, and 5) allowed to read aloud to herself when given grade level assignments/tests. It is noted that the student had an annual IEP meeting during the investigation period on March 5, 2025.

Issues Investigated

Based on the written complaint and an interview with the complainant, two concerns which fall under the same IDEA regulations were identified and investigated.

Issue One

Did USD #402 implement the student's IEP specifically related to (1) the accommodations for testing, Text-to-Speech (TTS)/Read Aloud and (2) paraprofessional support as stated in the IEP?

(1) Accommodations for testing, the Text-to-Speech (TTS)/Read Aloud:

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. 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.

Parent Position

The parents stated in their complaint that, "On March 2nd [student] informed us that she had not received a copy of her Chemistry or Math notes since the beginning of the current semester." Additionally, the complaint states that the "[high school] has not provided paraprofessional support in math class since late October and Social Studies since January."

District Position

In the district response dated March 14, 2025 states that, "[student's] teachers all state that notes were provided by being posted to google classroom or at the end of class when [student] asked for them". Related to the lack of paraprofessional support the district response asserts that, "The IEP indicates "special education services" not "para support"...Starting in January, and per parent request, [student] was moved to a different math teacher. The parents were told that there was no available paraeducator in this class, however, the teacher is a highly qualified math teacher and a certified special education teacher. The parents still

requested the change even knowing this information. Despite this, [student] still received equal to or more time in service for specialized instruction than was noted in her IEP as she had access to [second semester math teacher] instruction both in class and during ACE period (45 minutes daily)."

Accommodations

1. The student's IEP dated March 7, 2024 states that she will receive the following five accommodations; 1) a quiet, alternate setting for tests upon request when given grade level test, 2) TTS/read aloud during grade level assignments/test when read aloud to herself is not available or appropriate, 3) additional time to complete assignments/tests when expected to read lengthy text at grade level, 4) provide access to notes when required to take notes, and 5) allowed to read aloud to herself when given grade level assignments/tests.
2. The parent's complaint states that on August 26, 2024 the student was told that she was responsible to find her own alternate setting for the chemistry test and the read-aloud option was not accessible because the test was online and the auto-reader was disabled.
3. According to the parent's complaint, the mother met with the principal over the phone on August 29, 2024 to talk about her concerns related to the chemistry test and lack of a read-aloud option. As a result of this call a meeting with the student's teachers was scheduled to ensure all of the teachers were aware of the student's accommodations.
4. The meeting took place on Friday, September 6, with the principal, general education teachers and the student's IEP teacher in attendance. The parent's complaint states, "During the meeting, we reviewed [student's] accommodations, and the agreed-upon plan was for [student] to notify her advisor when tests were approaching. If her teachers were unavailable that day, she would seek assistance from the principal. When we expressed concerns about similar issues arising in the future, we were assured that this was an isolated incident and would not happen again. [Student] has been able to arrange for her scheduled tests, but for pop up quizzes is often running around in the morning in order to schedule a room. We also used this meeting to clarify any accommodations in [student's] IEP that the teachers might have questions about. None were raised at the time. However, in the weeks following the meeting, [student] did not receive copies of class notes from her Chemistry, Math, and Social Studies teachers. The Chemistry teacher did allow [student] to take pictures of her notes, but [student] found them unhelpful, as they lacked context after classroom discussions. The Math teacher was not providing anything. The Social Studies teacher uploaded his presentation slides, but they were not structured as comprehensive class notes". There are no notes available for the meeting.
5. The parent complaint states, "On September 24, [mother] met with the superintendent to discuss our ongoing concerns. I suggested providing more training for teachers on the importance of implementing IEP accommodations. He agreed to reach out to [assistant director] to discuss next steps. I followed up with [assistant director] via email on October 8 to seek clarification on [student's] accommodations and discuss possible solutions. When we spoke on October 9, she informed me about an upcoming training she had

arranged after speaking with [superintendent]". The mother followed up again on October 23, and [assistant director] reported that she had conducted teacher training on October 21, 2024.

6. The district shared the teacher attendance log for October 21, 2024 staff training which confirms the attendance of 42 staff including all but one of the student's teachers. In the March 25, 2025 staff interviews, the director clarified that actually all staff had attended the training, but one of the student's teachers had failed to sign the attendance sheet.
7. The October 21, 2024 training handout reflects general information on IDEA, and the IEP process including a paragraph on supplementary aids and services. There was no specific student information included in this training.
8. The parent complaint states, "On November 13, [father] met with [principal] regarding the continued lack of notes in [student's] classes. During the meeting, [principal] stated that the [first semester math teacher] was doing her best and that he would speak with the teachers again about ensuring accommodations were met. He also requested that [student] begin emailing her teachers, CC'ing both principals, whenever an accommodation listed in her IEP was not provided. Additionally, he planned to speak with [first semester math teacher] about our concerns".
9. The parent complaint states, "On November 15, [parents] received an email from [first semester math teacher] stated that she was learning a new textbook and was trying to determine how to provide [student] with the corresponding Google Slides. [First semester math teacher] began posting incomplete Google Slides in Google Classroom. These slides were intended for in-class discussions, where students filled in missing information provided by the teacher—information [student] could not access afterward. We discussed where they were in the textbook, and I explained the purpose of [student] receiving class notes. I did not receive a response to my email".
10. The parent complaint states, "On November 18, [student] emailed [chemistry teacher] requesting a copy of the class notes. On November 20, [chemistry teacher] pulled [student] aside and asked why she had included the principals in her email. [Student] explained that she had been directed to do so. [Chemistry teacher] was the only teacher to begin consistently providing class notes at that time."
11. The parent complaint states, "On December 11, [student] informed us that her social studies teacher had announced to the class that he would no longer be posting his Google Slides in Google Classroom unless a student had an IEP, in which case the materials would be assigned separately".
12. The parent complaint states, "On March 2, [student] informed us that she had not received a copy of her Chemistry or Math notes since the beginning of the current semester."
13. In the staff interview on March 26, 2025 both the chemistry and math teachers were adamant that they had provided notes since the beginning of the second semester; they offered examples of these notes and how the student could have accessed them. These teachers also shared that they are now also sharing the notes with the mother.

14. The district response stated, "When talking to parents, one of the issues is the definition of "notes". The parents do not feel google slides or PowerPoint notes are comprehensive enough to meet the definition of notes. They want the notes to show examples of how to work the problems or examples of how to break down and chunk the new learning material. While those are conversations that took place at the IEP meeting in March 2025, there is no specificity in the accommodation of what has to be included in the notes and teachers still have autonomy to determine what to include in their notes".

Conclusion: Accommodations

The parents have been strong advocates for the student's accommodations in particular the availability of class notes. There are documented conversations with the principal on August 29, 2024 to which the school responded with a staff meeting on September 6, 2024 to clarify with staff the student's testing and other accommodations.

The parents report that some teachers were still inconsistent in their provision of notes in the weeks after the September 6, 2024 meeting. The mother met with the superintendent on September 24, 2024 to discuss the student's accommodations which the district responded to by conducting staff training focused on the IEP process provided by the interlocal on October 21, 2024.

The father met with the principal on November 13, 2024 to discuss the continued lack of notes in one of the student's classes. The district responded by speaking with the teacher who then posted notes, although considered incomplete by the parents. The parents attempted to clarify with the teacher what type of notes would be most helpful but did not receive a response to their email.

On March 2, 2025 the student reported to her parents that she had not received a copy of her chemistry or math notes since the beginning of the semester, an assertion strongly denied by both teachers.

The district response states that the teacher's interpretation of what they are required to provide the student and what the parents and student finds helpful, are not aligned. The response also shares that, "[student's teachers all state that notes were provided by being posted to google classroom or at the end of class when [student] asked for them". The IEP states that the student will have access to notes when the class is required to take notes, but does not specify what is meant by "notes".

Based on the foregoing, it is found that the district provided the student's accommodations through the provision of some type of class notes and were responsive to the parent's concerns. The ***district is IN compliance*** and no corrective actions are required.

This lack of alignment about what the word "notes" means in this student's IEP should be discussed and clarified at an IEP meeting to prevent further similar disputes. The IEP clarification should address not only what the word "notes" means, but also what "access to" means. In the alternative, the IEP team may choose to revise this provision completely, with parent consent.

(2) Paraprofessional support as stated in the IEP?

Analysis: Findings of Fact

Paraprofessional support:

1. The student's IEP dated March 7, 2024 states that she will receive 45 minutes of special education support in the general education setting for math, social studies and language arts. This special education support is to be provided five days per week, for 45 minutes per day, every other week.
2. The parent's complaint reports that the student "has not had a paraprofessional in her classes since late October".
3. The Time in Service document shared by the district on March 11, 2025 states: "[student's] IEP indicates 45 minutes each for reading, math and social studies. She received her full minutes in each of these classes until November 12, 2024. After this date, the para assigned to her math class was no longer employed by the Interlocal. [High school] utilizes a block schedule so she would have missed:
    a. November 12, 2024-December 20, 2024 (math class only):
        i. 5 days x 45 min. of no support in the general education classroom = 225 minutes missed.
        ii. 2 days x 45 min. of support with [advisor] to take a test = 0 minutes missed.
4. The district response states, "While the district acknowledges a brief time from November to December of no paraeducator support in the math class, the district feels that other strategies and options were utilized to help support [student] during that time to help her find success in her advanced level classes". However, in the interview with the IEP teacher on March 27, 2025 she reported that there were no efforts made in the first semester to make up the minutes missed in the IEP because they were hoping to quickly hire a paraprofessional for that classroom.
5. The parent's complaint reports that, "In January, her math class was switched to a new teacher because the previous teacher was not meeting her accommodations. This resulted in a schedule change, which also removed her from the class where she had paraprofessional support in Social Studies. We were not notified of these changes in services until we received the annual meeting notice, at which time the IEP teacher also sent home a prior written notice form indicating a proposed change in services".
6. The PWN sent February 25, 2025 indicates a "substantial change in placement" and the description of the action proposed states, "[Student will have 90 minutes of special education services 5 days a week every other week per the [high school] block schedule. This is down from 135 minutes 5 days every other week". The explanation given for this proposed reduction states, "[Student] is losing 45 minutes of service time due to losing a para educator". The parents signed as not giving consent for this change on March 5, 2025. It is noted that the change in special education services occurred at the beginning of the semester on January 6, 2025, thus made prior to issuance of the PWN.

7. In the March 27, 2025 interview with the IEP teacher she shared that the PWN dated February 25, 2025 was sent due to the lack of paraprofessional support in the second semester math class. She went on to explain that the PWN indicated a change in placement rather than a change in service because the student was placed in a math classroom without paraprofessional support in the second semester.
8. In an email with the parents on March 11, 2025 the director shared her perspective on the special education support offered in lieu of paraprofessional support, "The discussion about para support should be clarified. Time in service on an IEP is not defined as "para support". Time in service on an IEP should be for specialized instruction, which, technically, can be provided by anyone certified and/or working under the supervision of a special educator. Sometimes, time in service helps support the accommodations but in [student]'s case, the accommodations are provided by the general education teachers or special education teachers (which is very appropriate). [student] is clearly very bright and is in advanced coursework. I'm curious to know what the paraeducator does in the classroom "live" that helps support her academic progress. The most qualified person to help [student] learn the content is going to be the highly qualified general education teacher and/or the special education teacher. [student] is going to her math teacher during ACE time to get "specialized instruction" from the highly qualified math teacher who is the expert on the content and much more equipped to help [student] breakdown the problem into manageable steps. She would also have the option of going to one of the special education teachers to get specialized instruction during ACE or she could receive that during a resource hour. This would truly allow her to learn the skills needed to break down the material. I mention this only because the time in service was/is a point of concern for you as parents and I want to make sure that we are talking the same language".
9. The parent's complaint states that once they received the PWN filed February 25, 2025 noting a reduction in services, "we asked [student] about the services she had received this year. She reported that she has not had paraprofessional support in her Math or Social Studies classes".
10. During the student's interview on March 7, 2025 she confirmed that she no longer has paraprofessional support in math and social studies, but does in her reading class. Further, she reported that her current social studies course is a history class which "is a lot harder without a para; there is so much reading".
11. The mother shared in an email on March 26, 2025 that the parents were unaware that the changes to the student's schedule at the beginning of the spring semester impacted the paraprofessional support available to the student. She also shared they did not sign any type of consent for this change in how support was offered. She stated, "In all of our discussions about what options [student] would have, no one mentioned that her support would change".
12. The Time in Service document shared by the district on March 11, 2025 states: "[student's] IEP indicates 45 minutes each for reading, math and social studies.
    a. January 6, 2025 – March 7, 2024 (math class only):

i. [Student]/her parents requested a teacher change at semester. This new teacher [2nd semester Math teacher] does not have a paraeducator assigned to the class, however, he is highly qualified as a math teacher and is a licensed special education teacher. This was a parent/student request, and one made knowing there was no accessibility of a para with this schedule, however, [student] utilizes Academic, Clubs and Educational Opportunities (ACE) time to go to [2nd semester Math teacher] and receive a breakdown of the instruction (specialized instruction).

b. There have been 18 A days in the second semester and 2 of those days [student] went to [advisor's] room to take a test.

c. Additionally, [student] has visited [2nd semester Math teacher's] room during ACE time 18 times and she was there for the entire 45 minute duration of the ACE period (2nd period).

d. [Student] did not miss any other minutes for any other classes.

13. The high school student handbook for 20204-2025 states that "The purpose of ACE is to serve as a remediation, extension and enrichment for the educational programs of [High School]. It will primarily be used for makeup work, tutoring, and homework. Teachers assume the role of a mentor for students in their class. Teachers and students should view ACE as an opportunity to further enhance classroom instructions as well as build a relationship with an adult in the high school. The focus of ACE is to reduce the amount of incomplete work for students to be successful in completing all coursework."

14. In a March 13, 2025 email from the mother, [Student] has gone to her teachers during ACE, but she's using this study hall class in the same way her other non-identified peers are using it. She is going in for extra help on the concept and she also doesn't go into that class [ACE] every day".

15. In a March 14, 2025 email exchange between the mother and investigator the mother shared, "This is the first time they have brought up using ACE as a substitution for the para support". Additionally, the mother stated, "ACE has been helpful for the questions that I can't help her answer, but it hasn't been enough. [Student] said she isn't the only one getting the help and often doesn't get through all of her questions because there are other kids working with the math teacher. There are days when the math teacher isn't available due to club or staff meetings. She also has to use that time for other classes. When she had a para in class she could talk through the problems or would work in small groups to talk about the practice problems. Without that, she does take longer to get through the work. When she gets lost in the lecture, she was able to ask a para to help her get back on track while the teacher is still instructing. [Student] said she felt like she would leave class with a better understanding of the concepts because of the para support".

16. In the district interview on March 25, 2025 the district emphasized that during ACE the student has access to all of her core general education teachers and all three of the special education teachers.

17. The current IEP does not note the use of ACE as a special education support.
18. In the IEP teacher's phone interview on March 27, 2025 she clarified that the student has received the same minutes of ACE regardless of whether she had paraprofessional support, meaning that her minutes of access to ACE do not offset the lost minutes of special education services via paraprofessional support. She also shared that the student is currently getting a D in her math class.
19. In a phone interview March 28, 2025 with the history teacher he shared that there was not a paraprofessional assigned to his room until after the March 7, 2025 he believed as a result of the March 5th 2025 IEP meeting. Prior to March 7, he was in frequent communication with a paraprofessional who helped the student if she requested help and who frequently checked in with the student. He also reported that the student is currently receiving an A and rarely visits him during the ACE period for extra support.
20. The director shared the paraprofessional's log for the student's history class which showed that the student has been in attendance for 16 class periods from January 6, 2025 through March 7, 2025. The paraprofessional was available to the student for 11 of these class periods. Two of the missed days the paraprofessional was unaware that she was to support the student, two days the paraprofessional was ill and one day she was giving a test in a different class.
21. When clarifying with the history teacher in a March 31, 2025 email in regards to the paraprofessional's log of support, he confirmed the dates of available support shared in the paraprofessional's log from January 6 through March 7, 2025.
22. In clarifying with the math teacher in a March 31, 2025 email he shared that he was not asked or provided individualized instruction beyond what he would offer any student.

Conclusion: Paraprofessional support:

There were no minutes of special education services provided from November 12, 2024 to December 20, 2024 due to the loss of a paraprofessional in the student's math class. The district did not offer a replacement strategy for these lost minutes of support.

There were no minutes of special education services provided from January 6 through March 7, 2025 in the student's math classroom due to a change in the student's second semester schedule which placed her in a class with no paraprofessional availability. This change in schedule placed the student in a math class with a teacher whom the student had previously and is a certified special education teacher. Neither the parents or district were able to produce documentation that the parents had been notified or agreed to the lack of paraprofessional support as a result of the schedule change prior to the change on January 6, 2025. A PWN was not issued until February 25, 2025 notifying the parents of this change.

Additionally, the schedule change also placed the student in a history class that did not have ongoing paraprofessional available, however the school ensured there was a paraprofessional available to check in with the student and offer support as requested by the student. The paraprofessional was not available to support the student for four of the 15 class periods from

the beginning of the semester to March 7, 2025 when the district scheduled a consistent paraprofessional in the classroom. It is also noted that the student is earning an A in this class.

It is true, as the district response states, that the IEP does not specifically define special education support as paraprofessional time. However, the PWN issued on February 25, 2025 states "[Student] is losing 45 minutes of service time due to losing a para educator". This PWN reflects the district's own definition of special education services as paraprofessional support for this student.

The district's assertion that ACE is a replacement for special education service is not appropriate in light of IDEA's definition of special education including, 300.39(a)(1) "Special education means specially designed instruction to meet the unique needs of a child with a disability", and "Specially designed instruction means "adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--(i) To address the unique needs of the child that result from the child's disability; and (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children [34 C.F.R. 300.39(b)(3)]."

The availability of the math teacher to be consulted with during study hall does not meet the definition of specially designed instruction. The math teacher stated that he has not been asked to, nor does he provide individualized services through adaptation or specialization of instruction beyond what he would do for any of his students. Additionally, the student's access to ACE has been consistent, meaning the loss of special education services was not offset by an increase in ACE time. At no point in the first or second semesters when there was a loss of paraeducator time in math, were these lost minutes of special education services offset by increases in other methods of special education service.

Based on the foregoing, it is found that although there were four days of missed special education services delivered by the paraprofessional in the student's history class, the student is not experiencing material harm as evidenced by her grade. No corrective action is ordered for the missing services in history. However, the student did not receive 225 minutes of special education services for math as required by the IEP from November 12, 2024 through December 20, 2024. Additionally, the student did not receive 720 minutes of special education services for math from January 6 through March 7, 2025. Therefore the ***district is found to be OUT of compliance*** with IDEA regulations for the missing special education services in her math class.

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 the lack of accommodations and paraprofessional support as required by the IEP during the 2024-20205 school year. Corrective action is required.
    a. USD #402 shall reconvene the student's IEP team and will offer a minimum of 945 minutes of special education services for math in the general education setting as

described in the March 6, 2024 IEP as compensatory services for failing to implement the student's IEP during the 2024-25 school year.

b. USD #402 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.

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.gov 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 #501
ON FEBRUARY 27, 2025

DATE OF REPORT: MARCH 31, 2025

This report is in response to a complaint filed with our office on behalf of a student, -----, by their parents, -----. In the remainder of the report, the student will be referred to as "the Student" and the parents as "the Parents."

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

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint. 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 February 27, 2025, and the 30-day timeline ended on March 31, 2025.

Allegations

The following one issue will be investigated:

Issue One

Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP. K.A.R. 91-40-16 (b)(3).; 34 C. F. R. § 300.323.

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video conference on March 24, 2025. The following District staff were interviewed on March 25, 2025: the Principal and the GEI Coordinator.

In completing this investigation, the Complaint Investigator reviewed documentation provided by 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:

District Materials:

1. Formal Response, 03/10/25
2. GEI Referral Plan, 11/06/24
3. Behavior Plan, 10/09-12/04/24

4. Daily Point Sheets, 10/21-12/10/24
5. Email, re: [Student] notes, 12/04/24
6. GEI Referral Plan, 08/09/23
7. GEI Referral Plan, 08/04/23
8. 2024-2025 Implementation Manual
9. General Education Intervention Guide
10. Notice of Meeting, 03/03/25
11. Prior Written Notice (PWN), 12/12/24
12. Email, re: … complaint, 03/05-03/06/25
13. Evaluation Report, 03/04/25
14. Email, re: [Student], 08/26/24
15. Email, re: behavior note…, 09/05-09/11/24
16. Email, re: [Student], 10/18/24
17. Email, re: [School], 10/29-12/02/24
18. Email, re: [Student], 01/27-01/28/25
19. Email, re: 5th grade Student behavior, 01/30/25
20. Notice of Short Term Suspension, 02/04/25
21. Email, re: manifestation determination review, 02/06/25
22. Email, re: [Student], 02/14-02/16/25
23. Email, re: [Student], 03/03/25
24. Email, re: … complaint, 03/06/25
25. Notice of Short Term Suspension, 09/30/24, 11/08/24, 11/19/24, 11/21/24, 12/20/24, 02/04/25
26. Student Discipline Profile, 2024-2025
27. Manifestation Determination Review, 02/11/25
28. Daily Attendance Profile, 2024-2025
29. Special Programs Policy 6200-1, 06/18/80-06/05/09
30. Initial Contact for Special Services Intervention Policy 6200-2, 06/18/80-07/19/02
31. Comprehensive Evaluation Policy 6200-3, 02/10/83-09/07/03
32. Implementation of Individual Education Programs (IEPS) Policy 6200-4, 11/11/19
33. Class-size/caseload for Special Education Classes Policy 6205-1, 05/25/01
34. Student Transfers and Enrollment, 04/23/91-11/16/23
35. Email, re: transfer application submitted, 03/06/25

Background Information

This investigation involved a ten-year-old student who attends fifth grade at an Elementary School that is not the Student's neighborhood school. The Student has been diagnosed with Attention Deficit Hyperactivity Disorder and Oppositional Defiant Disorder.

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 GEI Coordinator stated the Student was having behavior difficulties and was referred to the GEI team to help with interventions that would help them be more successful in school.
2. A General Education Intervention Referral Plan (GEI Referral Plan) dated August 13, 2024 indicated a goal of, "By November 19th, [the Student] will use a calming strategy when [the Student] is escalated 50% of the time as evidenced by [their] behavioral chart." According to Behavior Plan Meeting notes dated October 9, 2024, the team decided to implement for the Student breaks, Check In & Check Out, a behavior chart and reward system, a science class modification, and a Crisis Plan.
3. The Parent stated there were "many plans put in place", and perceived the plans were always changing and inconsistent. The Parent indicated the Student's behavior plan charts also changed, and stated there were two or three versions. The Parent stated the Student reviewed their behavior chart with an adult every day, during check-in/check-out. The Parent stated that the GEI plan was inconsistent, and that sometimes the Student reported the staff had forgotten to give them a break or had denied them a break.
4. The GEI Coordinator said, "… when a student is referred for GEI, we … put them on the calendar and then we meet officially as a GEI team and we like to have at least four to six weeks of intervention to see if whatever the team has come up with is working or not. And then when you meet again, if it is successful, then we just continue on with the plan. If it is not being as successful as we would like, then we come up with a different intervention to try to help the student be more successful at that time." They stated that in general, the GEI team preferred to do at least two or three cycles of interventions before referring for special education evaluation.
5. According to discipline referrals ranging from September 6, 2024, through February 10, 2025, the Student was suspended for fighting, harassment/ bullying, insubordination, obscene behavior, disruptive behavior, and vandalism. The Student received six short-term suspensions and 23 major and minor referrals.
6. An email exchange between the Principal and the Case Manager dated September 27, 2024 indicated the Other Parent suggested the Student not go to specials because the Student continued to have issues in music and science.
7. An email exchange between the Principal and the Case Manager dated October 18, 2024 indicated the Other Parent would like to have the Student, "start fresh each day," meaning the Student would not review their think sheet from the previous day.

8. During an email exchange between the Principal and the Case Manager dated December 2, 2024 the Principal requested the Case Manager attend a meeting with the Parent to "start working on the 504."
9. Daily Point Sheets with date ranges from November 1, 2024 through December 10, 2024 indicated behaviors noted were cussing, rudeness, leaving class without permission, throwing chairs, earning 140 points out of 290 points, 48% on December 9, 2024. On December 10, 2024 the Student earned 89 out of 290 points.
10. A GEI Referral Plan was developed for the Student on November 6, 2024, indicating the Student was on a Tier 2 Plan ending on May 23, 2025. The plan stated the Student was absent 37.5 days from August through February. No year was indicated. There were no math, reading, writing, or speech concerns at the time.

    Student strengths were the following:

    a. Able to focus.
    b. Excels at Mathematics.
    c. Enjoys taking part in class discussions.
    d. Helps others with their math.
    e. Likes to work problems on the board.
    f. Likes to volunteer to walk through the questions as a class.
    g. Likes to read aloud when able.

    The area of concern was for behavior. Behaviors noted were:

    a. Following directions/expectations.
    b. Emotion regulation.
    c. Social Skills.
    d. Self-regulation.
    e. Externalizing behavior (elopement, aggression, inappropriate language, non-compliance).

    Documented concerns noted the Student was easily triggered. "[The Student] enters the classroom in a heightened emotional state (not always negative) and has a difficult time regulating [their] emotions. … emotions are amplified when we transition to S.T.E.M. or Music class. [The Student] has particular feelings towards those subjects and the teachers involved, and refused to show respect to them, their classrooms, or focus on what [the Student] simply needs to do for [themself]." The Student gets physical with things in the classroom. The Student "gets extremely verbal and colorful with [their] word choice, often times leaning towards the F word and disrespecting other teachers and administration with not kind names."

    The team used a behavioral chart with the Student and recorded Student incidents. Incidents were also reported in Synergy. Interventions were implemented for a

minimum of 3 weeks. Interventions used were calming strategies and instruction. The Goal stated, "By January 16th, [the Student] will use a calming strategy when escalated 50% of the time. Sessions were for 30 minutes one time a week, starting November 6, 2024. The baseline score was 25%. An accommodation/modification listed was, "[The Student] will go to the SPED teacher for whole group social skills lesson."

The Parents requested a comprehensive evaluation for the Student. The General Education Intervention (GEI) Team recommended moving forward with the request. The team recommended referring the Student for a comprehensive evaluation and continuing the intervention progress monitoring.

11. In an email exchange between the Principal and a Behavioral Consultant dated November 15, 2024, the Behavior Consultant after observing the Student suggested:
    a. "Have [the Student] obtain unconditional connection time with staff."
    b. "Do not get into power struggles."
    c. "Give [the Student] scheduled breaks that are gross motor in nature."
    d. "Have [the Student] use a self-monitoring tool."
12. According to the District General Education Intervention Guide, "the GEI Team can consider a special education referral if they have tried at least two rounds of GEI providing evidence-based interventions with fidelity and the student did not show adequate progress. … A parent can request a special education evaluation. The GEI Team should consider the parent's concern and review the GEI documentation. If there is a concern the student has a disability, the GEI process does not need to be completed prior to an evaluation."
13. Parent concerns dated December 4, 2024 noted, "[The Student] is behind academically due to behavior." The Parent felt the Student was triggered when the Student struggled academically. The Other Parent was concerned that the Student sleeps too often, stating that 90% of the Student's problems are the Student sleeping in class and waking up agitated. The Other Parent wanted the plan to continue in middle school.
14. According to an email exchange between the Assistant Principal and the Instructional Coach dated December 4, 2024, the Student has "great days vs. suspensions-there is no middle." The Parent requested a bag of candy be used with the Student to reward good behavior.
15. A Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent dated December 12, 2024 indicated the District proposed to conduct an initial evaluation. The Parent signed the consent for evaluation on December 12, 2024.
16. On January 23, 2025, a GEI Plan indicated the Student was not able to self-regulate 50% of the time. The performance goal was changed to "By March 27th, [the Student] will self-regulate 50% of the time." The Student does try to calm themself, but it doesn't last. The classroom teacher provided breaks for the Student; however, the Student had been refusing to go.

17. In an email exchange dated February 6, 2025, the School Psychologist emailed the Parent regarding a meeting for a Manifestation Determination Review for the Student.
18. According to a Manifestation Determination Review dated February 11, 2025, which the Parents were notified about on February 6, 2025, the Student had been removed from school for more than 10 consecutive days in a row. The conduct in question was caused by, or had a direct and substantial relationship to, the Student's disability. The IEP/504 Team determined the misconduct was a manifestation of the Student's disability.
19. During an email exchange between the Case Manager and the School Psychologist, dated February 14, 2025, the Parent shared they wanted the assessment completed so the Student can be supported in Middle School. The School Psychologist replied, "I believe we have enough data already gathered to determine eligibility."
20. On February 19, 2025, the Parent withdrew the Student from the Elementary School to be home-schooled.
21. An email exchange between the Case Manager and the District indicated the Parent requested to have the Student dropped on February 27, 2025. The Parent wanted to continue with determining eligibility for special education for the Student. The Parent agreed to waive the ten-day notice of meeting, and an eligibility determination meeting was set up for March 5, 2025.
22. The Attorney for the District said that the Student's evaluation was finished on February 21, 2025, and the evaluation staff determined the Student's eligibility on March 5, 2025.
    a. In an email dated February 20, 2025, one of the Student's teachers wrote, "Parents agreed that they wished the evaluation to continue and testing has been arranged for tomorrow … to complete testing. Then an eligibility meeting will be held soon after."
23. A Notice of Meeting dated March 3, 2025, indicated a meeting to determine if the Student was eligible for special education and related services and if needed, an individualized educational program (IEP) be developed for the Student and appropriate placement determined.The Case Manager requested two meetings to discuss what services for the Student would look like for the remainder of the year.
24. An Evaluation Report dated March 4, 2025 indicated that this was a second initial comprehensive special education evaluation. The Parent reported that the Student was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD). The Student recently transitioned to home-schooling. The team determined the Student qualified as a student with a disability under the exceptionality of Other Health Impairment.

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP. K.A.R. 91-40-16 (b)(3); 34 C. F. R. § 300.323.

According to K.A.R. 91-40-16 (b)(3) and 34 C. F. R. § 300.323, an IEP must be in effect for each exceptional child at the beginning of each school year.

The Parent alleged that the District was "not following [the Student's] plan that was in place."

The District stated they made a good faith effort to address the Student's educational needs through the Student Intervention Plan Process. When that was not successful, the District proceeded to request a special education evaluation. The District stated there was no evidence to show that they failed to implement the Student's General Education Plan.

The Student was referred to the GEI team for behavioral interventions, and had a General Education Intervention Referral Plan dated August 13, 2024. Behavior Plan Meeting notes dated October 9, 2024 detailed strategies to help the Student. The Parent reported that the Student's GEI plan, behavior plans and charts were inconsistently followed and frequently changed. The GEI Coordinator said they preferred to have at least four to six weeks of intervention to determine the success of a plan, and to try two or three intervention cycles before considering a special education evaluation.

From September 6, 2024 through February 10, 2025, the Student received six short-term suspensions and 23 major and minor referrals. One of the Parents suggested the Student avoid specials due to issues in music and science, and that the Student no longer review their think sheet from the previous day. On December 2, 2024, the Principal emailed the Case Manager requesting their attendance at a meeting with the Parent to begin working on the 504. Daily Point Sheets from November 1, 2024 through December 10, 2024 indicated negative behaviors the Student had displayed.

A GEI Referral Plan was developed for the Student on November 6, 2024, and listed Student strengths and behavior concerns. On November 15, 2024, the Behavior Consultant made recommendations to the Principal after observing the Student. According to the District General Education Intervention Guide, typically, two rounds of effective GEI are needed before a special education referral for lack of progress; however, a parent's request or a team concern about a disability allows for an evaluation without completing the GEI process.

On December 4, 2024, the Parents requested a comprehensive evaluation for the Student. The GEI Team recommended proceeding with the evaluation. A PWN for Evaluation or Reevaluation and Request for Consent dated December 12, 2024 indicated the District proposed to conduct an initial evaluation. The Parent signed the consent for evaluation on December 12, 2024. On February 14, 2025, the School Psychologist shared via email that the Parent still wanted the

assessment completed. The Student's assessments were finished on February 21, 2025 and an eligibility meeting was held on March 5, 2025. The evaluation and meeting were completed within 47 school days, meeting the 60-day deadline.

On January 23, 2025, a GEI Plan indicated the Student was not able to self-regulate 50% of the time and a performance goal was changed. A Manifestation Determination Review was held on February 11, 2025. On February 19, 2025, the Parent withdrew the Student from the School. An Evaluation Report dated March 4, 2025 stated that the Student qualified as a student with a disability under the exceptionality of Other Health Impairment.

After reviewing documentation and from interviews with the Parent and District staff, it was determined that the Student did not have an IEP during the complaint range. 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 in accordance with K.A.R. 91-40-16 (b)(3).; 34 C. F. R. § 300.323.

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.gov 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 MARCH 11, 2025

DATE OF REPORT: APRIL 10, 2025

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 #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. 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 11, 2025, and the 30-day timeline ended on April 10, 2025.

Allegations

The following issues will be investigated:

ISSUE ONE: Whether USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to conduct child find activities to determine whether the Student was a student with a disability who required special education services. K.A.R. 91-40-7; 34 CFR § 300.111.

ISSUE TWO: Whether USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the Student with a free appropriate public education when the District did not provide the Student with an IEP. K.A.R. 91-40-1(z); 34 C.F.R. § 300.101.

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video conference on March 26, 2025. The following District staff were interviewed on March 26, 2025: the School Psychologist and the Assistant Superintendent of Special Education.

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:

District Materials:

1. Student Support Plan, 09/21/23
2. Email, re: [the Student], 08/26-08/28/24
3. Notice of Meeting, 11/06/24
4. Email, re: IEP meeting, 11/11-11/20/24
5. Email, re: fall, 08/02-08/06/24
6. Email, re: lunch help, 08/16/24
7. Email, re: thank you, 09/07-09/09/24
8. Email, re: [the Student] update?, 09/27-11/04/24
9. Email, re: draft evaluation report, 09/26/24
10. Student Profile, no date
11. Email, re: follow up, 09/23/24-03/14/25
12. Authorization to Disclose Health/Education Information, 11/08/24
13. Email, re: school, 09/17-09/19/24
14. 504 Accommodation Plan, 09/21/23
15. Email, re: release of information, 08/22/24
16. Email, re: board policy information, 10/29/24-03/14/25
17. Parent Input Form, 11/19/24
18. Email, re: follow up, 09/23-11/04/24
19. Student Record Release Form, 11/20/24
20. Student Enrollment Log, 2024-2025
21. Email, re: checking in, 10/23-11/08/24
22. Authorization to Disclose Health/Education Information, 09/18/24
23. Hospital Discharge Summary, 09/06/24
24. Hospital Discharge Summary, 08/24/24
25. Notice to Conduct a 504 Meeting, 04/11/24
26. Evaluation Report Draft, no date
27. Request for Consent, 04/11/24
28. Email, re: touching base, 04/09-04/26/24
29. Email, re: due process, 09/20/24-03/14/25
30. Special Ed Student Contact Log, 03/12/25
31. Notice of Meeting, 11/18/24

Parent Materials:

1. Email, re: no subject, 04/09/24
2. Email, re: touching base, 04/09-05/03/24
3. Email, re: academics, 09/12-09/20/24
4. Email, re: due process, 09/20-09/24/24
5. Email, re: no subject, 10/15-11/20/24
6. Draft Evaluation Report Comments and Inaccuracies, no date
7. Complaint Background, various dates
8. Email, re: [case] email from parent, 03/19/25

Background Information

This investigation involved a 15-year-old, ninth-grade student enrolled at a high school in the District. The Student is not currently receiving special education or related services as a child with a disability per the Individuals with Disabilities Education Act (IDEA). According to the Parent, the Student was evaluated for preschool special education at age three, diagnosed with Attention Deficit/Hyperactivity Disorder (ADHD) and "suspected" Autism Spectrum Disorder (ASD) Level 1 at age four, and participated in a program focused on developing social-emotional skills for preschoolers for three years. The Student continued receiving special education services through kindergarten and then transitioned to a 504 Plan at private religious schools through eighth grade. The Student was formally medically diagnosed with ASD Level 1 at age eight.

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 Private School Student Support Plan dated September 21, 2023 outlined the following for the Student:
    a. Medical diagnoses of ADHD and Autism and current medications.
    b. Documentation of eligibility: "The student has a physical or mental disability which substantially limits one or more major life activities and requires minor adjustments in the classroom."
    c. Area of need: "Adaptations to Assignments and Instruction"
        i. "Minor Adjustments:"
            1. Participation in the enrichment program twice monthly;
            2. Breaking up long-term assignments into interim due dates communicated to the Parents; and
            3. An extra set of books provided at home.
    d. Area of need: "Assessments"
        i. "Minor Adjustments:"
            1. "The opportunity to test in a separate, quiet location, if needed (summative and standard)." (D37-D39)
2. During an interview with the Complaint Investigator, the School Psychologist stated the Parent called them in January 2024 and told them the Student was planning to attend public school in the fall, and had a 504 plan. They stated the Parent wanted to know how public school accommodations compared to the Private School. The School Psychologist said they talked to the Parent again in April 2024, when they requested a special education evaluation. They stated they met the Student in May 2024, when they started testing for the evaluation. (School Psychologist Interview,

P1, 00:57) The School Psychologist indicated the Parent did not ask for an evaluation in January 2024. (School Psychologist Interview, P1, 02:12) The School Psychologist stated that in January 2024, they told the Parent the School would continue with the services on the Student's 504 plan. (School Psychologist Interview, P2, 03:46)

3. The Parent stated when they spoke to the School Psychologist in January 2024, the School Psychologist told them they could wait closer to the end of the semester to start an evaluation. The Parent said, "… they started the evaluation at the end of May, I believe May 20th and May 30th [2024] were the two days that they evaluated [the Student]. Any other evaluations that were done were just observations … . There was nothing else that was done after that. We received the evaluation report on September 24th [2024]. Our 60 [school] day window … was supposed to have been September 25th [2024].(Parent Interview, P6, 13:00)
4. According to a District enrollment report, the Student enrolled for a "special education evaluation" on April 10, 2024, and then as a student at a high school from August 13, 2024 through November 25, 2024. (D110)
5. On April 9, 2024, an Administrative Assistant to Student Services emailed the Parent on behalf of the counseling department, welcoming them to the School and identifying the Student's assigned counselor. They stated that the counselor was currently on leave, but would return in a few weeks, and an appointment would be scheduled for the Parent and Student to meet the counselor, choose classes, and tour the School. The Parent asked if the counselor would help coordinate 504 or IEP services, and the Administrative Assistant responded that those questions would be addressed in a meeting with the counselor, who was scheduled to return the last week of April [2024]. (P8)
6. On April 9 and April 10, 2024, the Parent and the School Psychologist exchanged emails about the Student.
    a. The Parent said they had contacted the School Psychologist a few weeks before to discuss the Student, who would attend as a ninth-grader the next school year. They said they were unable to meet with the Student's assigned counselor until they returned from leave, that the Student had an IEP that was dismissed in 2016, and had a private school 504 Plan since kindergarten. The Parent expressed that the Student was having a "really hard semester that included inpatient hospitalizations and five weeks of intensive outpatient therapy," so they wanted to ensure that support and a plan were in place for the next year.
    b. The School Psychologist replied that they would schedule a meeting once the Student's assigned counselor returned in two weeks since the Counselor was the only one who could access course scheduling for the Student.
    c. The Parent asked what needed to be done for testing for an IEP evaluation because they did not want the school year to end and the Student to be without accommodations the next school year.

d. The School Psychologist notified the Parent of the District's process for enrolling the Student for evaluation purposes. They also said the Private School teachers would be asked for input for the evaluation, and once school was out, they could schedule dates for the Student to be assessed by the School Psychologist. Also, once the Student's assigned high school counselor returned, the Student would be invited in to discuss their schedule and support. Finally, it was noted that they would plan an eligibility meeting within the first couple weeks of school as long as they had all the necessary data. (D246-D247)

7. A Request for Consent dated April 11, 2024 indicated that the District proposed to conduct an initial evaluation to determine the Student's eligibility and need for special education and related services. It listed a review of existing information in all areas and the collection of new data for social/emotional/behavioral status, general intelligence, academic performance, and transition skills. It was based on the Parent's request and medical diagnoses. The Parent signed it, giving consent, on April 11, 2024. (D239-D243, Parent Interview, P5, 12:06)

8. A Notice to Conduct a 504 Meeting dated April 11, 2024 listed a meeting at the School to discuss the need for a 504 evaluation scheduled for November 11, 2024 from 1:00 to 2:00 p.m. It was noted that the date was a placeholder to occur at the same date and time as the IEP to be determined. (D144)

9. On April 26, 2024, emails were exchanged between the School Psychologist and the Parent, scheduling evaluation testing with the Student on May 20, 2024. (D244)

10. On May 3, 2024, the Parent received an email from another District school psychologist assisting the School Psychologist with the Student's evaluation. They sent links for a behavior rating scale and questionnaire for the Parent to complete and asked for the email addresses of the Student's Private School teachers so that they could also submit completed rating scales. The Parent responded by sending three Private School teacher emails. (P10)

11. Between August 2, 2024 and August 6, 2024, emails were exchanged between the Parent and the School Psychologist. The Parent introduced the School Psychologist to the Student's Mental Health Case Manager and asked about the next steps for the Student regarding an IEP or 504 Plan. The School Psychologist replied with the following:

    a. The School would honor the Private School 504 Plan and immediately communicate the accommodations with the Student's teachers.

    b. The Student was enrolled in a "Career and Life Planning" course taught by an interventionist to support the Student with executive functioning, study strategies, and homework while in the IEP evaluation process.

    c. The Student's evaluation was due to be completed by September 25, 2024, meaning the team needed to meet on or before that date to review the completed testing and data collected from the Private School teachers. The School Psychologist added, "There is so much that has already been collected; the last piece is allowing [the Student] to adjust to [the School] with the

support of the intervention class plus [their] accommodations to determine if even more support is needed."

d. They concluded by listing the Student's School Counselor and stating that the School Counselor would transfer the incoming 504 Plan information into the School information system and meet weekly with the Intervention Teacher and the School Psychologist to review and adjust support for the Student as needed. (D51-D53)

12. An August 8, 2024 District version of a 504 Accommodation Plan included the information from the September 21, 2023 Private School Support Plan regarding the Student's accommodations and indicated that the Student was in the District's special education evaluation process. (D86)
13. A School class schedule indicated the Student entered their classes on August 13, 2024 and left on September 25, 2024. (D69)
14. On August 16, 2024, the School Psychologist emailed the Parent, confirming that the 504 Plan had been distributed to the Student's teachers and that the Parent could access it via their online parent portal. They also stated that the Private School Psychologist was collecting information from the Student's previous teachers and would send it over once completed. (D54)
15. On August 22, 2024, the School Psychologist emailed the Parent, saying they had sent a release of information to allow communication with the Student's Mental Health Case Manager via the online parent portal. The Parent replied that they signed it. (D93)
16. An email exchange occurred from August 26, 2024 through August 28, 2024 between the Parent and the District School Psychologist:
    a. Monday, August 26, 2024: The Parent notified the School Psychologist that the Student was hospitalized with no discharge date and no anticipation of attending school that week. The Parent asked what they needed to do regarding academics.
    b. Monday, August 26, 2024: The School Psychologist informed the Parent they would connect with other staff and work with teachers to make a plan to catch the Student up upon their return to school. They said, "Focusing on getting well comes first," and asked for a good time to call the Parent.
    c. Wednesday, August 28, 2024: The Parent responded with times for a possible phone call and stated they hoped the Student would be discharged from the hospital on Friday. (D40-D41)
17. A Discharge Summary dated September 1, 2024 from the In-State Hospital indicated the Student had been admitted on August 24, 2024 and discharged on September 1, 2024. (D130)
18. In the Parent's written timeline for September 2024, it noted, "[The School Counselor] requested an extension for the IEP evaluation to allow more time for adjustment but never provided a consent via [the online parent portal]. [The

Student] did not have a written safety plan, but [their] verbal safety plan included daily check-ins with a psychologist or counselor. On September 6, [2024], [the School Principal] contacted us, informing us that [the Student] made concerning statements, which were deemed a high-level safety threat. The School advised seeking a medical evaluation." According to the Parent, the Student was offered to have their Parents or the School Resource Officer (SRO) transport them to the hospital and the Student chose the SRO, who then handcuffed the Student and escorted them to a police car while the School was on lockdown. The Parent claimed they never received an incident report regarding these events. (P41-P43)

a. The Parent said,"They did request to extend [the Student's] evaluation. When I met with them [on] September 4th in the office, I did request that they send that in writing to us and we didn't ever receive that. (P42, Parent Interview, P3, 05:24) The Parent said a District administrator told them, "... that the [District], if they had extenuating circumstances, could extend the timeline without us signing consent." (Parent Interview, P13, 30:14)

b. The School Psychologist explained that they met with the Parent in September 2024 about possibly gathering more data and extending the evaluation period. They stated that due to an incident with the Student shortly after, a decision about the extension was not reached and the School Psychologist did not send the Parent any paperwork. (School Psychologist Interview, P4, 11:32) The School Psychologist explained that the offer of an extension was not due to concerns about a specific learning disability. (School Psychologist Interview, P4, 12:58)

19. On September 9, 2024, the School Psychologist emailed the Parent and asked if they could let the School know where the Student was staying and the next steps for them. They stated, "That will help us know how to coordinate from a school standpoint." (D57)

20. A Discharge Summary dated September 11, 2024 from the In-State Hospital indicated the Student had been admitted on September 6, 2024 and discharged on September 11, 2024. It was noted, "Discharge was somewhat complicated by placement, but after coordination with case worker, [the] patient was set to be transferred to a [Psychiatric Residential Treatment Facility] PRTF, [Out-of-State Behavioral Health Agency] in [Another State]. [The] patient no longer requires inpatient treatment at the current level of care." (D124-D125)

21. On September 12, 2024, the Academic Coordinator for the Out-of-State Behavioral Health Agency emailed the Parent asking for contact information for the School. The Parent replied with the School's phone number and contact information for the School Psychologist and the School Counselor. The Parent sent a follow-up email on September 13, 2024 asking if there were any issues setting the Student up on the District platform and asking when they'd start coursework. (P13)

22. Between September 17, 2024 and September 19, 2024, emails were exchanged between the Parent and the Out-of-State Behavioral Health Agency's Academic

Coordinator regarding the Student's educational services. The School Psychologist and the Counselor were also included as recipients of the emails.

a. September 17, 2024: The Parent asked if the Student logged on and resumed classes via the District platform, and if not, when would they start and what was needed to help facilitate the process. They also asked for copies of the testing done in May 2024 and what needed to be done in terms of paperwork. They wanted to know if the Student would continue with 504 accommodations or if they would need an "IEP placement" for the virtual platform.

b. September 17, 2024: The Academic Coordinator replied that they had not been able to connect with the School staff and asked the School Psychologist and the School Counselor for a good time to talk via phone.

c. September 17, 2024: The Parent asked if the Academic Coordinator had been in contact with anyone from the District and, if not, what was the anticipated timeline for the Student to start school and what was the Student currently doing during the "time allocated for school."

d. September 17, 2024: The Academic Coordinator responded that they had requested to speak with the School staff via phone the next day, and in the meantime, they had given educational packets to the Student to complete. However, the Student chose to work on "tennis shoe coloring sheets." They said, "We do have a computer assigned to [the Student] and [they] will attempt to log in tomorrow."

e. September 18, 2024: The School Psychologist replied to the emails stating that the District had been unaware that the Student was at the Out-of-State Behavioral Health Agency and that the first thing they needed to do was get a signed release of information. They also informed the Parent that the District would coordinate with care providers when students were inpatient, even if they did not have 504 Plans or IEPs.

f. September 18, 2024: The Parent responded that they had signed District "consents" that morning and signed "consents" for the Out-of-State Behavioral Health Agency on September 9 and September 11, 2024 (admission date). They also said they had given the Out-of-State Behavioral Health Agency's Academic Coordinator the contact information for the District School Psychologist on September 12, 2024 and followed up via email on September 13 and September 17, 2024.

g. September 19, 2024: The Parent asked how things were going and if getting the Student's District laptop to them at the Out-of-State Behavioral Health Agency made sense.

h. September 19, 2024: The School Psychologist answered that they had contacted the Academic Coordinator the day before regarding the Out-of-State Behavioral Health Agency's educational setup. They said they were scheduled to meet with the School Principal that day to discuss the best way for the Student to access the curriculum and continue earning high school credit during their stay at the

Agency. They said they would need to prioritize which courses were most important and consider how much classroom time the Student was scheduled each day.

i. September 19, 2024: The Parent said their priorities were algebra, English, and biology.

j. September 19, 2024: The School Psychologist responded that District leadership would be working on the best learning platform for the Student and the best way to complete the special education evaluation. They said the District had only learned of the Student's placement the day before and needed a few days to figure things out. They said they had talked with the Academic Coordinator and knew there were "many academic activities for students" at the Out-of-State Behavioral Health Agency to engage in while they awaited a more tailored plan with their home school. They encouraged the Parent to contact the School Principal with any questions or concerns regarding the process and that someone would contact them as soon as they knew the next steps.

k. September 19, 2024: The Parent stated, "I am very upset that [the Student] has had 6.5 days of admission and there is no plan. I hope that [the Out-of-State Behavioral Health Agency] is able to implement an interim plan because I do not think color sheets are appropriate. When can we expect to hear from the district with a time?" (D79-D84; P13-P15)

23. An Authorization to Disclose Health/Education Information dated September 18, 2024 proposed the disclosure and receipt of information between the District and the In-State Hospital. It identified the information to be shared as "any information regarding the diagnosis of and/or the services provided" to the Student from January 1, 2024 through January 1, 2025. The purpose was for special education evaluation and continuity of care. It was electronically signed and marked as "accepted" by the Parent on September 18, 2024. (D122-D123)

24. On September 20, 2024, the Parent emailed the School Principal asking what the "due process" was and the reasoning for it. The School Principal responded that upon the Student's return, the team would meet with them regarding the September 6, 2024 events. The Student would be allowed to share their perspective and comments and answer questions. This would serve as an informal due process hearing. They noted these meetings typically occurred immediately after an incident, but it was postponed due to concerns for the Student's mental health. ((D249-D250) The Parent said they were told that the Student could not attend School until they had met with the School Principal for an informal due process hearing. (Parent Interview, P8, 18:49)

In the Parent's written timeline for the same date, they noted, "[The School Principal] informed the family that [the Student] would be unenrolled from the school due to residency concerns effective September 23, [2024], as the school administration felt [the Student] was not meeting the 51% residency requirement to

remain enrolled. … We requested district policy stating this requirement and said that we could bring [the Student] to school on [September 23, 2024] (during the allocated time for schoolwork at [the Out-of-State Behavioral Health Agency]) until it was resolved. [The School Principal] stated that [they] would need to complete an informal due process hearing. The school decided to transfer [the Student] to [the Virtual Academy], and consent for enrollment was signed September 25, [2024]." (P42, Parent Interview, P4-5, 10:10)

25. On September 23, 2024, the Parent emailed the School Principal, asking for an update on the status of the Student's enrollment. They stated they had "not received notice of unenrollment, per District policy." They also asked for an update on the Student's IEP evaluation status and the "implementation of educational services" with an estimated timeline during the Student's stay at the Out-of-State Behavioral Health Agency. The School Principal responded the same day, "Based on information we received from [the Out-of-State Behavioral Health Agency] today, our district has approved enrolling [the Student] in [the Virtual Academy] in partnership with [the District]." They added that they, or another District administrator, would contact them within 48 hours with further enrollment information. (D72-D73, School Psychologist Interview, P7, 20:38)

26. The Assistant Superintendent of Special Education said that when it seemed like the Student was not returning to the School, their thoughts were to close out the file so the deadline was met, and for the School Psychologist to send the evaluation report. (School Psychologist Interview, P5, 15:57)

27. The Other Parent indicated the evaluation process was ongoing throughout the discussions about enrollment. (Parent Interview, P5, 11:25)

28. According to the Parent's written timeline, the Student experienced the following hospitalizations:

    a. September 23, 2024 through October 2, 2024: Admitted to the emergency room and transferred to the Out-of-State Hospital on September 24, 2024.
    b. October 5, 2024 through October 10, 2024: Admitted to the emergency room and transferred to the In-State Hospital.
    c. October 21, 2024 through November 14, 2024: Admitted to the Out-of-State Hospital for further treatment.

    The Parent also noted, "These hospitalizations were partly due to rumors circulating at [the School] about [the Student], stemming from a report by another [School] student who was admitted to the [Out-of-State Behavioral Health Agency]." (P42)

29. A September 24, 2024 entry on the Special Education Contact Log indicated that the School Psychologist had responded to the Parent's September 23, 2024 email inquiring about the status of the IEP evaluation by saying, "I am going to send you a separate email with the draft of the special education evaluation report containing all the data collected thus far. … Please let me know what your upcoming availability is to talk through the evaluation – I'd be glad to review any of the assessment scores

with you. We can also discuss a meeting date to officially determine eligibility as a team." It was also noted, "No response was ever received on this chain." (D256)

30. On September 26, 2024, the School Psychologist emailed an attachment of the Draft Evaluation Report to the Parent, and the Parent replied, "Thank you for sending this." In the Parent's written timeline, they acknowledged receiving the draft evaluation report on September 24, 2024. (D65, P43)
    a. The School Psychologist stated they could not determine a completion date for the evaluation because the eligibility meeting had not been held. (School Psychologist Interview, P4, 14:10)
    b. The Assistant Superintendent of Special Education said about the evaluation process, "But there's an exception that if the student's not made available to you, that then those days don't count towards the 60 [school] days. And so even though we had the document finished and the evaluation was ready to present to the parents, the Student wasn't available to us. … Even though we were ready to go, the timeline was frozen because we had no access to the kid." (School Psychologist Interview, P9, 26:52)
    c. The School Psychologist indicated that the Student's absences did not impact direct assessments for the evaluation. They also said they would have been able to complete eligibility statements with the information they had available, even though the Student was elsewhere. (School Psychologist Interview, P10, 31:14)
31. On September 26, 2024, emails were exchanged between the District administration and the Virtual Academy Academic Advisor. The District wanted to know if the Virtual Academy had contacted the Parent yet. The Academic Advisor stated that the Student's application for the Virtual Academy had been approved that morning, and as soon as they completed orientation, they would be enrolled in courses. They also acknowledged that the Student had a 504 Plan and was undergoing a special education evaluation. The Academic Advisor asked if any modifications were needed at the time. The Academic Advisor immediately followed up, stating they had contacted the Parent to ensure they understood the orientation requirement and were told the Student had been hospitalized the night before. The Parent asked the Academic Advisor for an extension as they anticipated discharge the following week. The District approved the extension on September 30, 2024. (D103-D105)
32. From September 27, 2024 through November 4, 2024, emails were exchanged between the School staff and the Out-of-State Behavioral Health Agency staff regarding coordinating academic services for the Student.
    a. September 27, 2024: The School Psychologist stated the District was working to set the Student up in a Virtual Academy. However, when the Virtual Academy contacted the Parent, the Parent notified them that the Student had been admitted to the hospital and asked for an extension because they anticipated the Student's discharge sometime the next week. The School Psychologist said the Parent had not notified the District of any updates to a change of location or

responded to offers to set up a meeting to review evaluation data. The School Psychologist asked if the Student was still at the Out-of-State Behavioral Health Agency.

b. September 27, 2024: The Executive Director of the Out-of-State Behavioral Health Agency replied, "We will need an extension for [the Student] to begin [their] virtual academy." They stated the Student had been transferred to an "acute setting" that Monday and would not be back at the Out-of-State Behavioral Health Agency until the following week.

c. October 2, 2024: The School Psychologist responded, "We would like to schedule a phone call to coordinate whenever [the Student] is back at [the Out-of-State Behavioral Health Agency] to make sure you have what you need from our team and that we have any updated information relevant to planning for [the Student's] educational needs when [they return] to [the District]."

d. November 1, 2024: The School Psychologist wrote, "Within the next few weeks, we anticipate meeting with [the Student's] family to discuss [their] special education evaluation that was in progress prior to [the Student's] stay at [the Out-of-State Behavioral Health Agency]. In order to make recommendations regarding what [the Student] needs educationally, we will need the most updated information on [the Student's] progress and needs at this time in terms of both academics and social-emotional well[-]being."

e. November 4, 2024: The Out-of-State Behavioral Health Agency's Academic Coordinator responded that the Student "refused to participate in anything educational."

f. November 4, 2024: The School Psychologist replied that the Virtual Academy had just contacted the School Principal, confirmed that the Student never started the online curriculum, and indicated that the Parent said the Student was hospitalized. The School Psychologist asked if the Student was presently at the Out-of-State Behavioral Health Agency and if the District could have the Student's attendance dates at the Agency.

g. November 4, 2024: The Out-of-State Behavioral Health Agency's Enrollment Director stated the Student was not currently a resident at their Agency and that they were discharged from their program on October 21, 2024.

h. November 4, 2024: The School Psychologist said the District was unaware the Student had been discharged and asked if the Out-of-State Behavioral Health Agency could share any discharge paperwork, reports, or progress notes covered by the release of information so that the District could best support the Student's safety and well-being. (D58-D63)

33. On October 15, 2024, the Virtual Academy's Academic Advisor emailed the Student and the Parent a reminder about finishing their online courses. The Parent replied that due to mental health, the Student had not yet started their class work since enrolling and asked if their classes would get paused or what would happen. The Academic Advisor explained that the Student's classes would not expire or lock, but

that it was up to the District whether the Student continued enrollment with the Virtual Academy. They explained how many credits the School required for graduation and the typical timeline for achieving those credits, acknowledging that sometimes circumstances delayed graduation. (P18)

34. Between October 23, 2024 and November 8, 2024, emails were exchanged between the School Psychologist and the Parent regarding the Student.
    a. October 23, 2024: The School Psychologist said they were checking in to see how the Student was doing. They said the Virtual Academy staff confirmed that the Student had started their coursework. The School Psychologist also said they should set up a meeting to review the results of the special education evaluation and determine whether the Student needed an IEP or updates to the 504 Plan. They asked what the Parent's schedule was like during the week of November 11, 2024.
    b. October 29, 2024: The Parent responded that they anticipated the Student finishing the semester at the Virtual Academy but wanted to know what the next semester's process would look like for the Student to return to the School. They also requested more information about the informal due process hearing, including District policies. Finally, they requested the District's provision of an Independent Educational Evaluation (IEE), including "a neuro[-]psych evaluation to better address [the Student's] social-emotional needs."
    c. October 29, 2024: The School Psychologist said they would ask the School Principal to send the Parent the due process policies and information. They also stated that parents can request an IEE when they "disagree with the results of our evaluation, so we need to have that evaluation meeting first" and asked again about the Parent's availability to have an evaluation meeting.
    d. October 30, 2024: The Parent replied with availability on November 12 or November 19, 2024, and asked for a list of attendees and their roles.
    e. October 31, 2024: The School Psychologist responded that they would check the rest of the team's availability for those dates and listed the District staff they planned to invite.
    f. November 1, 2024: The School Psychologist confirmed a team meeting could occur on November 19, 2024 at 1:45 p.m. and the Parent said that worked for them.
    g. November 6, 2024: The School Psychologist emailed the Notice of Team Meeting, Parent Rights in Special Education, and virtual meeting link to the Parent. They also notified them of one change in attendees for the meeting. Additionally, they asked for the Parent's feedback via a Google form before the meeting regarding their concerns and recommendations for the Student. They indicated that one of the questions on the form was about the Student's care during their time out of the District. The School Psychologist explained that the Virtual Academy had contacted them on November 4, 2024 to say that the Student had not actually begun their coursework. Then, the School Psychologist

said they contacted the Out-of-State Behavioral Health Agency and were told the student had been discharged to acute care on October 21, 2024, but had not been given any other information.

h. November 7, 2024: The Parent replied that they had received the notice.

i. November 8, 2024: The School Psychologist said that the day marked the 13th consecutive school day that the Student had not accessed the Virtual Academy, and the District did not have confirmation of their whereabouts. They explained that the District was required to file truancy if they had a student unaccounted for after 10 days, but their understanding from the Out-of-State Behavioral Health Agency and the Virtual Academy was that the Student was receiving care somewhere. The School Psychologist asked the Parent, "Is there a medical note that you could provide confirming where [the Student] is being treated and the dates of stay so that we can excuse [their] absences? If [the Virtual Academy] is inaccessible at the facility, I would like to problem-solve other ways that [the Student] could access education."

j. November 8, 2024: The Parent replied that the Student had been discharged from the Out-of-State Behavioral Health Agency to the Out-of-State Hospital and had not attended school except for the Virtual Academy orientation since leaving the School on September 6, 2024.

k. November 8, 2024: The School Psychologist asked the Parent if they knew of an academic liaison at the Out-of-State Hospital that they could connect with regarding academics. They also said they would need a release of information to contact them.

l. November 8, 2024: The Parent said they did not know about an academic liaison, but they knew the Student did not have access to a laptop or computer while they were there, which was why they had not accessed the Virtual Academy.

m. November 8, 2024: The School Psychologist stated they sent the Parent a release of information to sign via the online parent portal, and once signed, they would contact the Out-of-State Hospital.

n. November 8, 2024: The Parent replied, "[The Out-of-State Hospital] will provide verification of [the Student's] admission date and we will send that when we have it." (D111-D119, Parent Interview, P3, 03:26, School Psychologist Interview, P6, 19:01)

35. On October 29, 2024, the School Principal emailed the Parent information regarding school board documents related to suspension, expulsions, and informal due process, which typically meant meeting with a student and administrator to discuss situations that might require disciplinary action. The Parent asked for a written outline of charges and evidence against the Student as indicated in the school board documents. The Principal replied that the charges to be discussed were "making threats" to the Counselor on September 6, 2024. The Parent asked for

clarification, and the Principal stated that since they had not met with the Student, they had made no disciplinary decisions yet. (D95-D98)

36. An October 29, 2024 entry in the Special Education Contact Log indicated that the School Psychologist had called and left a voicemail for the Parent referencing their October 23, 2024 email, asking for an update on the Student, and inquiring about scheduling a meeting to determine special education eligibility. (D255)
37. A Notice of Team Meeting dated and noted as emailed to the Parent on November 6, 2024, proposed a virtual meeting on November 19, 2024 at 1:45 p.m. to review the evaluation and determine eligibility. It also noted, "If [the Student] is determined eligible for special education services, the team will discuss what services would be needed in light of [the Student's] circumstances. If [the Student] is determined ineligible for special education, the team may discuss what/if any adjustments may be needed to [their] current Section 504 Plan." It listed all the people invited to attend the meeting and was signed and shown as "accepted" by the Parent on November 6, 2024. (D42-D43)
38. A November 8, 2024 Special Education Contact Log entry indicated that the School Psychologist received an email with an attached letter from the Out-of-State Hospital indicating that the Student was admitted October 21, 2024 with no discharge date. (D252)
39. An Authorization to Disclose Health/Education Information dated November 8, 2024, indicated a request to disclose and receive information between the District and the Out-of-State Hospital. The information to be disclosed included the "diagnosis of and/or the services provided" to the Student between October 21, 2024 and October 21, 2025. It also stated that special education evaluation data and the Section 504 Plan could be disclosed. The purpose was "coordination of care" and "educational planning." It was electronically signed and marked "declined" by the Parent on November 8, 2024. (D77-D78)

    In the Parent's written timeline, they stated they declined to sign the release of information for the Out-of-State Hospital because "it requested access to all medical and treatment records. We were advised by [the Out-of-State Hospital] staff that the school did not need full access to [the Student's] medical records." (P43) The Parent stated they communicated this reason to the District. (Parent Interview, P1, 00:51)
40. Between November 11, 2024 and November 20, 2024, an email exchange occurred between the Parent and the School Psychologist regarding the upcoming meeting.
    a. November 11, 2024: The Parent emailed the School Psychologist and stated there was a death in the family and the funeral would be on November 19, 2024. They asked if the team could meet the following Monday instead.
    b. November 11, 2024: The School Psychologist responded that they would need to check the team's availability. They also mentioned receiving a letter from the Out-of-State Hospital confirming the Student's admission to the "acute inpatient

hospital." They asked if the Student would be residing at the facility after their acute care discharge because that would mean a different School District would take over the special education evaluation. If not, they acknowledged needing to "problem-solve educational access," but stated they could not proceed without information about what was available at the hospital or the Student's current progress, status, or ability to participate in education.

c. November 11, 2024: The Parent replied that the Student was "acutely admitted" as of October 21, 2024, and was not enrolled in the residential program nor would be discharged to the residential program.

d. November 11, 2024: The School Psychologist thanked the Parent for the clarification and stated that if the Student did not have access to their laptop, the team needed to explore alternative options. However, without speaking to staff at the facility, they were unsure what alternatives were available and asked the Parent how they recommended proceeding. They also noted that other staff could not reschedule their meeting to November 18, 2024, but they would check for times after the Thanksgiving break and get back to the Parent.

e. November 11, 2024: The Parent replied with two additional days that they were available to meet during the current week, and mentioned they could meet any other time the following week except the day of the funeral.

f. November 15, 2024: The School Psychologist stated they had tentatively blocked time on November 22, 2024 and December 4, 2024, and asked the Parent if either date worked for them to meet.

g. November 15, 2024: The Parent confirmed they would be able to attend a meeting on November 22, 2024.

h. November 18, 2024: The School Psychologist confirmed they would send an updated meeting notice.

i. November 18, 2024: The Parent stated they found out the Student would be transferring to a different School District online, and they had contacted the school psychologist who coordinated their virtual program.

j. November 20, 2024: The School Psychologist stated they had received a records request from the new School District that morning, and since the Student would be withdrawn and enrolled elsewhere, they would have to cancel their meeting scheduled for November 22, 2024. They stated they would work with the new School District to transition the Student and the IEP evaluation. The Parent replied immediately and confirmed the completed enrollment in the new School District. (D44-D49, School Psychologist Interview, P8-9, 25:11, Parent Interview, P3, 05:10)

41. In the Parent's written timeline on November 14, 2024, it was noted that the Student was transferred to the Psychiatric Residential Treatment Facility (PRTF) following their discharge from the Out-of-State Hospital. A different school district provided "on-site educational services" for students at PRTFs, so the Student was officially withdrawn from the District on November 25, 2024 and the IEP evaluation

meeting scheduled for November 22, 2024 was canceled by the School Psychologist. According to the Parent, consent for an evaluation with the new school district was signed and the School Psychologist provided records and engaged in phone conversations with the new school district's school psychologist.

a. The Parent stated the Student's anticipated discharge date from the PRTF is May 15, 2025, and then the Student will be sent back to the District. (P43, Parent Interview, P9, 22:09)

42. The Parent stated they were unable to request an IEE because the meeting on November 22, 2024 had been canceled, due to the Student's enrollment in a new district. (Parent Interview, P4, 07:40)

43. The Parent confirmed that the Student's last enrolled day at the District was November 25, 2024, but the last day the Student attended school on the District campus was September 6, 2024. (Parent Interview, P9, 23:17)

44. A Notice of Team Meeting listed as emailed and dated November 18, 2024, proposed a virtual meeting for November 22, 2024 at 11:00 a.m. to review the evaluation results and determine eligibility. It was also noted, "If [the Student] is determined eligible for special education services, the team will discuss what services would be needed in light of [the Student's] circumstances. If [the Student] is determined ineligible for special education, the team may discuss what/if any adjustments may be needed to [their] current Section 504 Plan." It also said, "I waive my right to a 10-day prior written notice of the IEP meeting" and was electronically signed and marked "accepted" by the Parent on November 18, 2024. (D257-D258)

45. A Google form titled "Parent input form for 11/19/24 meeting" listed five questions specifically about the Student and the Parent's concerns and recommendations for support. One of the questions also asked for a description of the care and approximate dates of stay when the Student was away from the District. The questions did not indicate answers from the Parent. (D100-D101)

46. The School Psychologist explained as part of the evaluation process they included cognitive and academic testing, behavior rating scales, and teacher feedback. (School Psychologist Interview, P3, 06:47) They stated that the Parent completed a Behavior Assessment System for Children (BASC) for the Student. (School Psychologist Interview, P4, 10:12)

The Other Parent stated the Parent told the District the Student had a "serious mental health issue", but that there were no evaluations regarding that concern. The Other Parent said that the District mentioned in the evaluation that the Student's variation between scores on the gifted tests were "extremely rare" and was enough to indicate something. (Parent Interview, P7, 14:59)

47. An Evaluation Report Draft from District was undated, but outlined the following:

a. Type of evaluation: initial

b. The Student "was referred for an evaluation to determine aspects of [their] intellectual, academic, and social/emotional functioning in order to identify an appropriate educational environment for [them]."

c. Referral: The Parent had contacted the School during the spring semester of 2024 to share concerns about the Student, who was finishing up their eighth-grade year at the Private School and planning to enroll at the School to begin ninth grade. The Parent had originally contacted the School Psychologist on January 31, 2024 to discuss available support at the School and shared that the Student had an IEP as a preschooler and kindergartener, diagnoses of ADHD and ASD, and a current 504 Plan at the Private School. On April 10, 2024, the Parent shared with the School Psychologist that the Student was having a difficult semester and had missed a significant amount of school to participate in mental health treatment after being hospitalized for eight days. Upon discharge from an intensive outpatient program, the therapist suggested that the Student's difficulties might be more related to Autism than to mental health issues. The Parent shared significant concerns about the School's ability to support the Student as a ninth grader or to be as accommodating as the Private School regarding their mental health-related absences and requested a plan, such as an IEP, to be established before the beginning of the school year. Consent was obtained for a special education evaluation on April 11, 2024 by the District.

d. Review of existing information:
    i. The Student attended 12 out of 17 school days at the School between August 13, 2024 and September 6, 2024.
    ii. The Student was hospitalized from September 6, 2024 through September 11, 2024.
    iii. Medical information obtained from discharge paperwork from the Out-of-State Hospital was listed.
    iv. The Student had been admitted to the Out-of-State Behavioral Health Agency on September 11, 2024.
    v. The Student was approved for the Virtual Academy on September 26, 2024.
    vi. The Student had been transferred from the Out-of-State Behavioral Health Agency to an acute care setting on September 23, 2024, returned to the Out-of-State Behavioral Health Agency at some point (date unconfirmed), and was transferred to acute care again on October 21, 2024. According to the District, the Parent did not notify the District either time the Student was transferred from the Out-of-State Behavioral Health Agency.
    vii. The School Psychologist requested updated information on the Student's progress from the Out-of-State Behavioral Health Agency on October 2, November 1, November 4, and November 7, 2024. Reportedly, the only information shared was that the Student did not engage in academics while

at the Out-of-State Behavioral Health Agency and had conflict with another student.

viii. On November 8, 2024 the Virtual Academy confirmed the Student had not begun their online coursework and the Parent had informed them on November 7, 2024 that the Student was hospitalized without access to a laptop. The same day, the Out-of-State Hospital confirmed the Student's admission to their inpatient care on October 21, 2024 with no discharge date.

ix. The Student was not present for state or district assessments.

e. Background information provided by the Parent, including developmental and school history. The Parent shared concerns about the Student's impulsivity, emotional maturity, and apathy toward schoolwork.

f. Teacher feedback:

i. Private School teachers indicated that the Student was "extremely intelligent" and functioned at a "very high level." They stated that the Student may need help adjusting to high school expectations, struggled with asking for help when needed, and was not bothered by poor grades.

ii. District teachers indicated the Student had several absences, seemed disorganized, had not turned in assignments, was distracted, and socially seemed to take things literally or not speak to other students.

g. Impact: The Student's progress in the ninth-grade curriculum so far was due to attendance and not by a lack of appropriate instruction in math or reading.

h. Additional Data:

i. A classroom observation was not completed.

ii. The Student participated in testing sessions with the School Psychologist on May 20 and May 30, 2024.

iii. The Student's cognitive abilities were assessed on May 20, 2024, and found to be overall in the average range. Working memory and processing speed were the only areas determined to fall in the low average range.

iv. The Student's academic abilities were also assessed and determined to fall within the average range.

v. The Student's social/emotional/behavioral skills were rated by the Parent, the Student, and the Student's eighth-grade Private School teachers. Concerns that emerged were related to organization, specifically planning and submitting assignments. It was also noted that the Student often expressed negative thoughts, argued with others, and had difficulty expressing themself or asking for help when needed. No "clinically significant problems emerged across settings," but ten areas were rated as "at-risk" by at least two raters (hyperactivity, conduct problems, attention problems, behavioral symptoms, withdrawal, adaptive skills, adaptability, social skills, leadership, and functional communication).

vi. The evaluation report contained detailed information from communication exchanges between the Parent and the District staff since the beginning of the 2024-25 school year and details of incidents leading to the Student's hospitalizations. Relevant details of those exchanges are listed elsewhere in this investigative report.

i. The determination of the eligibility section and the list of evaluation team participants was blank. (D173-D183)

48. The Parent documented the following comments and "inaccuracies" regarding the Evaluation Report Draft:

a. "[The Student] was never evaluated for additional social[-]emotional and/or behavioral concerns."

b. "Teacher feedback repeated a pattern of needing help with social-emotional skills at both [the Private School] and [the School]."

c. "Performance by Index demonstrated significant and unusual discrepancy with no additional follow-up testing."

d. "No mention of [the School Principal's] role during the incident, the use of handcuffs, nor follow[-]up phone conversations or email stating that [the Student] would need to complete an 'informal due process' meeting. We were never provided an incident report of the event."

e. "No mention of phone discussion with school administrators on 9/20 in which we were told [the Student] was going to be unenrolled effective September 23, [2024]." (P23-P24)

49. The Parent stated they did not provide the District with their comments regarding the Evaluation Draft Report because they believed they would be meeting with the District to discuss the report. (Parent Interview, P2, 02:55)

50. A New Student Record Release Form dated November 20, 2024, indicated the Student had been enrolled in a different District and asked for the Student's records to be transferred. (D109)

51. On March 11, 2025, the Parent filed the Complaint.

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to conduct child find activities to determine whether the Student was a student with a disability who required special education services. K.A.R. 91-40-7; 34 CFR § 300.111.

According to K.A.R. 91-40-7; 34 CFR § 300.111, each governing board is mandated to establish and execute policies and procedures designed to comprehensively identify, locate, and

evaluate all children with exceptionalities within its jurisdictional boundaries, encompassing those attending private schools, highly mobile children (including migrant and homeless children), and children suspected of having disabilities who demonstrate academic progression. The governing board's mandated policies and procedures must incorporate age-appropriate screening protocols that, for children under five, utilize observations and instruments to detect potential disabilities or developmental delays, including hearing and vision screenings; for children aged five to 21, utilize observations and instruments to identify potential exceptionalities, including state-mandated hearing and vision screenings; and ensure the implementation of procedures for the early identification and assessment of disabilities in all children.

A school board is authorized to refer a public school student for evaluation when:

1. School personnel possess data-driven evidence that general education interventions are insufficient to address the child's identified concerns;
2. School personnel provide data-driven documentation that the child received appropriate regular education instruction from qualified personnel, underwent repeated academic achievement assessments with results provided to parents, and these results indicate the necessity of an evaluation; or
3. The child's parent requests and consents to an evaluation, and the board concurs that an evaluation is warranted.

The Parent alleged that the Student was not identified or evaluated in a timely manner despite telephone contact with the District in January 2024 and a formal written request in April 2024 prior to the beginning of the 2024-25 academic year.

According to the District, the Student enrolled at a middle school in the District on April 11, 2024 as an “evaluation” student while they were enrolled and attending a private religious school. The enrollment for evaluation purposes allowed the District evaluation team to begin the parent-requested special education evaluation process. The Student began attending a District high school on August 13, 2024, as a general education student with 504 accommodations while the special education evaluation process continued. The District denied there was any delay or inaction that resulted in a failure to conduct child find activities.

A Private School Student Support Plan dated September 21, 2023 indicated the Student had medical diagnoses of ADHD and Autism. The Parent contacted the School Psychologist in January 2024 to inquire about accommodations, and explained the Student had a 504 plan. The Parent requested a special education evaluation in April 2024, and the School Psychologist met with the Student in May 2024 to begin testing. The Parent indicated they received the draft evaluation report on September 24, 2024, and that the 60-school day deadline was September 25, 2024. The Student’s enrollment noted “special education evaluation” on April 10, 2024, and then “high school student” from August 13, 2024 through November 25, 2024.

On April 9, 2024, an Administrative Assistant to Student Services informed the Parent that the counselor would return the last week of April 2024 to schedule a meeting to discuss class selection, and 504 or IEP services. On April 9 and 10, 2024, the Parent inquired about IEP evaluation testing to ensure accommodations for the upcoming school year, and the School Psychologist outlined the process for evaluation. A Request for Consent dated April 11, 2024, signed by the Parent the same day, indicated the District proposed to conduct an initial evaluation to determine the Student's eligibility and need for special education and related services. A Notice to Conduct a 504 Meeting, dated April 11, 2024, listed a meeting to discuss the need for a 504 evaluation, and was scheduled for November 11, 2024. It was noted that the date was a placeholder.

Evaluation testing with the Student was scheduled for May 20, 2024. On May 3, 2024, the Parent received an email requesting completion of a behavior rating scale and questionnaire, and the email addresses of the Student's Private School teachers. The evaluation process included cognitive and academic testing, behavior rating scales, and teacher feedback. The Parent also completed a Behavior Assessment System for Children for the Student. The Other Parent stated the Parent told the District the Student had a "serious mental health issue", but that there were no evaluations done regarding that concern.

Between August 2 and 6, 2024, the Parent emailed the School Psychologist to discuss next steps for an IEP/504 plan. The School Psychologist responded that the Private School 504 Plan would be honored, and that the Student's evaluation was due by September 25, 2024, so the team needed to meet on or before that date to review it. An August 8, 2024 District version of a 504 Accommodation Plan included information from the September 21, 2023 Private School Support Plan. A School class schedule indicated the Student entered classes on August 13, 2024 and left on September 25, 2024.

The Parent signed a release of information to allow communication with the Student's Mental Health Case Manager. Between August 26 to August 28, 2024, the Parent and School Psychologist communicated about the Student's hospitalization. The School Psychologist stated they would coordinate with staff for a plan to help the Student catch up on schoolwork. A Discharge Summary dated September 1, 2024 from the In-State Hospital indicated the Student had been admitted on August 24, 2024 and discharged on September 1, 2024.

In a meeting on September 4, 2024, an extension for the evaluation was discussed, but the paperwork for consent was never sent. The School Psychologist corroborated this. The Parent was contacted on September 6, 2024 about an incident where the Student made concerning statements, which were deemed a high-level safety threat. On September 9, 2024, the School Psychologist asked the Parent if they could let the School know where the Student was staying and next steps. A Discharge Summary dated September 11, 2024 from the In-State Hospital indicated the Student had been admitted on September 6, 2024 and discharged on September 11, 2024. On September 12, 2024, the Academic Coordinator for the Out-of-State

Behavioral Health Agency asked the Parent for contact information for the School, which the Parent provided.

Between September 17, 2024 and September 19, 2024, the Parent, the Out-of-State Behavioral Health Agency's Academic Coordinator, the School Psychologist, and the Counselor discussed the Student's educational services while at the Agency. The Parent inquired about the Student resuming classes and requested testing information and clarification on accommodations. The School Psychologist outlined the District's initial steps to coordinate a learning plan. An Authorization to Disclose Health/Education Information dated September 18, 2024 was electronically signed and marked as "accepted" by the Parent that day. The School Principal informed the Parent that the Student would be unenrolled from the school due to residency concerns effective September 23, 2024. The School later decided to transfer the Student to the Virtual Academy, and consent for enrollment was signed September 25, 2024.

The Student had the following hospitalizations: September 23, 2024 through October 2, 2024; October 5, 2024 through October 10, 2024; and October 21, 2024 through November 14, 2024. The Student was hospitalized a total of 29 school days in that date range. The Parent noted the hospitalizations were due in part to rumors circulating about the Student.

The School Psychologist sent the draft evaluation report to the Parent on September 26, 2024, and could not determine a completion date because the eligibility meeting had not been held. The School Psychologist indicated that the Student's absences did not impact direct assessments for the evaluation, and that they would have been able to complete eligibility statements with the information they had. The School Psychologist wanted to schedule a meeting to review the evaluation. A meeting was scheduled for November 19, 2024, which was documented in a Notice of Team Meeting from November 6, 2024. The Parent canceled the meeting.

On November 15, 2024, the evaluation review meeting was rescheduled for November 22, 2024, and a Notice of Team meeting was sent on November 18, 2024. That day, the Parent learned the Student would be transferring to a different School District online. The School Psychologist received a records request from the new School District and canceled the meeting. The Student was officially withdrawn from the District on November 25, 2024.

The draft evaluation report detailed the referral process initiated by the Parent, and included a history of IEP services, ADHD/ASD diagnoses, and mental health challenges. The report summarized the Student's attendance, hospitalizations, lack of academic engagement, parent/teacher feedback, and cognitive and academic test results. The eligibility determination section was blank. The Parent documented "inaccuracies" with the evaluation, but did not share those with the District.

After reviewing the evidence, it was determined that the District was aware of the Student's Autism diagnosis. The District received paperwork from the Private School that was

acknowledged by the Case Manager on August 8, 2024, which contained information about the diagnosis. On September 4, 2024, the Parent provided the District with medical information from a recent hospital stay, which also listed an Autism diagnosis. During the evaluation, the District did not include any Autism rating scales as part of the process, even though they were aware of the diagnosis. Additionally, the District did not complete the evaluation and hold the eligibility meeting within the 60-school day deadline as specified by K.A.R. 91-40-8(f). The District also did not receive parental consent for an extension. Based on the foregoing, according to IDEA and Kansas special education regulations, *it is substantiated* that the District failed to conduct child find activities to determine whether the Student was a student with a disability who required special education services, in accordance with K.A.R. 91-40-7; 34 CFR § 300.111.

Issue Two

Whether USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the Student with a free appropriate public education when the District did not provide the Student with an IEP. K.A.R. 91-40-1(z); 34 C.F.R. § 300.101.

According to 34 C.F.R. § 300.101, a free appropriate public education (FAPE) must be available to all children residing in the state between the ages of 3 and 21.

K.A.R. 91-40-1(z) defines FAPE 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.

The Parent alleged that the Student did not receive a FAPE as required under IDEA. The Parent indicated the Student's mental health significantly deteriorated less than two weeks into the semester requiring multiple hospitalizations and during this time, the Student was not provided with an IEP that addressed their individual needs.

The District denied there was any delay or inaction that resulted in a failure to provide FAPE by not providing an IEP.

The Student's Virtual Academy application was approved in September 2024. The Parent notified the Virtual Academy that the Student had been admitted to the hospital and asked for an extension. On October 15, 2024, the Virtual Academy's Academic Advisor emailed the Student and the Parent about finishing their online courses. The Parent replied that the Student had not yet started their work. On October 23, 2024, the School Psychologist said the Virtual Academy staff confirmed that the Student had started their coursework.

On November 4, 2024, the Out-of-State Behavioral Health Agency's Academic Coordinator stated that the Student "refused to participate in anything educational." The Virtual Academy

contacted the School Principal and indicated that the Student had never actually started the online curriculum. November 8, 2024 marked the 13th consecutive school day that the Student had not accessed the Virtual Academy. The Student had been discharged from the Out-of-State Behavioral Health Agency to the Out-of-State Hospital, and had not attended school except for the Virtual Academy orientation, since leaving School on September 6, 2024. The School Psychologist asked the Parent if they knew of an academic liaison at the Out-of-State Hospital that they could connect with regarding academics.

From reviewing the evidence and interviews, it appears that the Student's entries into hospitals and treatment centers were medically-based. There was not enough evidence to indicate these matters stemmed from educational reasons. 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 when the District did not provide the Student with an IEP, in accordance with K.A.R. 91-40-1(z); 34 C.F.R. § 300.101.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. A violation occurred in the following area:

B. Federal regulations at K.A.R. 91-40-7; 34 CFR § 300.111 specifies the District's obligations to conduct child find activities to determine whether the Student was a student with a disability who required special education services.

In this case, the evidence supports the finding that USD # 229 did not complete child find activities in accordance with K.A.R. 91-40-7; 34 CFR § 300.111. Documentation and Interviews document this.

Based on the foregoing, USD # 229 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #229 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 CFR § 300.111 and K.A.R. 91-40-7 by completing timely child find activities.
2. Within 30 calendar days of the date of this report, USD #229 shall develop and conduct KSDE approved training on the District obligations for timely child find activities. The District shall submit training materials for KSDE approval before conducting the training. The District shall submit training materials and attendance sheets no later than 15 days after the training is conducted.

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.gov 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: 25FC229-005

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on March 11, 2025, by --------, on behalf of her child, --------. 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 allegations, was issued on April 10, 2025. That Complaint Report concluded that there was a violation of special education statutes and regulations

Thereafter, the parent filed an appeal of the Complaint Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the original complaint, the Complaint Report, the parent's notice of appeal, and the district's response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

Preliminary Matters

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.

Discussion of Issues on Appeal

The report identified two issues:

ISSUE ONE: Whether USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to conduct child find activities to determine whether the Student was a student with a disability who required special education services. K.A.R. 91-40-7; 34 CFR § 300.111.

ISSUE TWO: Whether USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the Student with a free appropriate public education when the District did not provide the Student with an IEP. K.A.R. 91-40-1(z); 34 C.F.R. § 300.101.

The investigator concluded that there was a violation with regard to Issue 1, but found no violation with regard to Issue 2. The investigator said that there was no violation with regard to Issue 2 because:

> *"From reviewing the evidence and interviews, it appears that the Student's entries into hospitals and treatment centers were medically-based. There was not enough evidence to indicate these matters stemmed from educational reasons. 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 when the District did not provide the Student with an IEP..." (Report, p. 34).*

The essential facts, as follows, appear to be undisputed:

1. The student was attending a private school, with a 504 plan (Report, p. 4);
2. The district requested consent for an initial special education evaluation on April 11, 2024 and the parents signed, giving the necessary consent on the same date (Report p. 7);
3. The student's evaluation was due to be completed by September 25, 2024 (Report p. 8)
4. The student entered the public school on August 13, 2024 (Report p. 8)
5. On September 4, 2025, the parties discussed an extension of the evaluation timeline but the paperwork for consent was never sent (Report p. 31)
6. On September 6, 2024, the student made statements that were deemed a high-level safety threat (Report, p. 31)
7. The student was admitted to the district's Virtual Academy sometime in September, 2024, but did not start coursework until October 23, 2024. (Report p. 34)
8. The Student had the following hospitalizations: September 23, 2024 through October 2, 2024; October 5, 2024 through October 10, 2024; and October 21, 2024 through

November 14, 2024. The Student was hospitalized a total of 29 school days in that date range. (Report p. 32)

9. The School Psychologist sent the draft evaluation report to the Parent on September 26, 2024 (Report p. 32)
10. An eligibility meeting was scheduled for November 19, 2025, but the parent canceled the meeting. (Report, p. 32)
11. The eligibility meeting was rescheduled for November 22, 2024, but canceled because the student was transferring to a different school online. (Report, p. 32)

The investigator determined that the district did not comply with its child find duty (in Issue 1) because it was aware of the student's Autism diagnosis and recent hospitalizations but still did not complete the evaluation and hold the eligibility meeting within the 60-school day timeline as specified by K.A.R. 91-40-8(f), nor did it receive parental consent for an extension of time to complete the evaluation process. (Report p. 33).

However, in this issue (Issue 2), the investigator concluded there was no violation for not providing the student with an IEP within the 60-school day timeline because, "the Student's entries into hospitals and treatment centers were medically-based. There was not enough evidence to indicate these matters stemmed from educational reasons."

The Appeal Committee finds that Issues 1 and 2 are bound by the same criteria and same timeline. Kansas regulation K.A.R. 91-40-8(f) says:

> *(f) **Unless an agency has obtained written parental consent to an extension of time and except as otherwise provided in subsection (g)**, the agency shall complete the following activities within 60 school days of the date the agency receives written parental consent for evaluation of a child:*
>
> *(1) **Conduct the evaluation of the child;***
>
> *(2) **conduct a meeting to determine whether the child is an exceptional child** and, if so, to develop an IEP for the child. The agency shall give notice of this meeting to the child's parent or parents as required by K.A.R. 91-40- 17(a); and*
>
> *(3) implement the child's IEP in accordance with K.A.R. 91-40-16.(Emphasis added).*

The Appeal Committee is at a loss to understand how the district could be in violation of K.A.R. 91-40-8(f)(1) but not 91-40-8(f)(2), unless the student is ineligible for special education. Accordingly, that issue must be addressed.

Clearly this student has a disability that adversely affects educational performance, if for no other reason, because the disability is resulting in significant absences from school. However, that is not the end of the eligibility analysis. To be eligible for special education services, the student must

also need specially designed instruction as a result of the disability. That need for specially designed instruction as a result of a disability for this student has never been determined by an eligibility team and no convincing evidence was presented to the Appeal Committee to establish such need. Without such convincing evidence of both requirements for eligibility, there can be no violation of the requirement to timely develop and implement an IEP to meet the FAPE requirement.

For the reasons stated above, the Appeal Committee sustains the conclusion of the investigator (although for a different reason) on Issue two, and finds that the district is not in violation of the requirement to conduct an IEP meeting to determine whether the child is an exceptional child within the 60 school-day timeline.

This result is consistent with the circumstances of this case, where the student is no longer attending school in this district, and so the district has no continuing obligation, or even authority, to develop an IEP for this student.

Conclusion

For the reasons stated herein, the Complaint Report is amended as stated herein. The corrective action specified in the report for issue one remains, as so specified.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 9th day of May, 2025.

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 #497
ON MARCH 3, 2025

DATE OF REPORT: APRIL 11, 2025

This report is in response to a systemic complaint filed with our office on behalf of employee ----------. In the remainder of the report, the employee will be referred to as "Complainant".

The Complaint is against USD # 497 Lawrence Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #497

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 3, 2025 and the 30-day timeline ended on April 2, 2025. Due to the systemic nature of the complaint and the volume of materials received, an extension was granted by the KSDE and the timeline was extended to April 11, 2025.

Allegations

The following three issues will be investigated:

ISSUE ONE: Whether USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide an environment appropriate to the instructional program being provided. K.A.R. 91-40-52(d).

ISSUE TWO: Whether USD #497, in violation of state and federal regulations implementing the IDEA, failed to provide qualified staff to implement Individual Education Programs (IEPs) for the Students enrolled in the Autism Classroom. K.A.R. 91-31-34; 34 C.F.R. 300.156.

ISSUE THREE: Whether USD #497, in violation of state and federal regulations implementing the IDEA, failed to implement the IEPs of the Students enrolled in the Autism Classroom when the Special Education Teacher was absent. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Complainant by video conference on March 27, 2025. The following District staff were interviewed on March 26 and March 28, 2025: the School Principal, the Autism Behavior Consultant, the Assistant Director for Special Education, the Special Education Teacher, and a Paraeducator.

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

Relevant Materials from the District:

1. Email, re: fwd: SCM, 09/26/24
2. Email, re: fwd: [Student 6] OT, 09/09/24
3. Email, re: [Student 3], 09/27/24
4. Email, re: [Student 3] ESI, 10/24/24
5. Email, re: SCM, 09/26/24
6. Email, re: [Student 5] and [Student 6], 11/06/24
7. Email, re: students, 08/26/24
8. Email, re: students, 08/25/24
9. Substitute Log, 08/13/24
10. [Staff] Leave Information, 08/10/24
11. Autism student attendance, no date on first page, second page 09/18/24
12. [Student 4] meeting attendance summary, 02/21/25
13. [Student 5] meeting attendance summary, 03/05/25
14. [Student 6] meeting attendance summary, 02/14/25
15. [Student 1] Individualized Education Program, 10/17/24
16. [Student 1] Progress Report, 12/18/24
17. [Student 1] Progress Report, 12/17/24
18. [Student 1] Individualized Education Program, 10/19/23
19. [Student 2] Individualized Education Program, 05/10/24
20. [Student 2] Progress Report, 12/20/24
21. [Student 2] Progress Report, 03/09/25
22. [Student 3] Individualized Education Program, 10/18/23
23. [Student 3] Progress Report, 10/11/24
24. [Student 3] Progress Report, 10/15/24
25. [Student 3] Individualized Education Program, 10/30/24
26. [Student 4] Individualized Education Program, 02/29/24
27. [Student 4] Progress Report, 12/18/24
28. [Student 5] Individualized Education Program, 12/03/24
29. [Student 5] Progress Report, 12/18/24
30. [Student 5] Progress Report, 12/17/24
31. [Student 5] Progress Report, 12/18/24

32. [Student 6] Progress Report, 12/19/24
33. [Student 6] Progress Report, 12/17/24
34. [Student 6] Progress Report, 12/19/24
35. [Student 6] Individualized Education Program, 11/17/23
36. BMMS Autism Consultant Meeting Notes, 08/09/24
37. Email, re: check in, 08/19/24
38. Email, re: update, 08/26/24
39. Photo, physician note, 08/23/24
40. Supplemental Health Care Payroll Records, 10/19/24

Relevant Materials from the Complainant:

1. Formal Complaint, 02/28/25
2. Photos of Teacher/Classroom, no date
3. Text Message, re: absences, 09/16/[24]
4. Text Message, re: absences, 09/16/[24]

Background Information

This investigation involved an Autism classroom at a Middle School "School" in Lawrence Public Schools USD #497. The Complainant is a former employee who worked in this classroom for three years. This classroom experienced challenges with personnel from the start of the school year including a teacher being out for extended periods, a paraeducator who was eventually dismissed from the School, and interpersonal relationship issues among adults. There were six students in the classroom eligible to receive special education or related services as children with a disability per the Individuals with Disabilities Education Act (IDEA).

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Complainant and staff in the District.

Allegation #1

The District failed to provide an environment appropriate to the instructional program being provided. K.A.R. 91-40-52(d)(3).

1. On August 19th, 2024 and again on August 26th, 2024, in an email from the Special Education Teacher to the Principal, Assistant Principal, and Director of Special Education it was mentioned that the Special Education Teacher has a PICC line (Peripherally Inserted Central Catheter) on their right arm and would be returning to the School with this. The Special Education Teacher also provided a doctor's note stating "[Special Education Teacher] cannot lift more than 10 lbs with right arm for [the] duration of having IV in place… ."

2. On multiple occasions between September 9th, 2024 and September 26th, 2024, the Special Education Teacher was observed by the Complainant and Paraeducator 1 administering Intravenous Fluids through a PICC line in the Autism Classroom.
3. In an email dated September 26, 2024, the Special Education teacher stated they will be getting their PICC line removed the next day.
4. On October 1, 2024, it was noted in the "BMMS Autism Consultant Meeting Notes" that on September 30, [2024] the Special Education Teacher had ADHD medication that was in an Ibuprofen bottle, in a lunch bag, and it went missing during the school day. The Special Education Teacher suspected it was the Complainant. The Autism Behavior Consultant recommended the Special Education Teacher report this to administration.
5. On October 4, 2024, it was noted in the "BMMS Autism Consultant Meeting Notes" that the Special Education Teacher reported to the Autism Behavior Consultant that "more medication was missing out of [Special Education Teacher]'s purse (2 Adderall) before [Special Education Teacher] had a chance to get them to the nurses office for safe keeping." It is also noted that the Special Education Teacher was reporting the theft to the School Resource Officer.
6. On October 9, 2024, it is noted in the "BMMS Autism Consultant Meeting Notes" that the Special Education Teacher reported to the Autism Behavior Consultant that, via text message, the Complainant admitted to stealing the Special Education Teacher's medication.
7. On November 11, 2024, it is noted in the "BMMS Autism Consultant Meeting Notes" the Complainant was "let go" and the Special Education Teacher was pressing charges for theft. It was also noted that on November 7, [2024] the Complainant "blew up" and "yelled…through the hallways" at the Special Education Teacher.
8. The Autism Behavior Consultant reported that the Special Education Teacher had "IV Antibiotics" that were administered usually a time of day where things were relatively calm in the room, but we just don't have enough staff for [them] to be completely out of the space… [they] would sit in the back corner at [their] desk with [their] IV." It was also stated, "[Special Education Teacher] wasn't able to interact with students physically" and "I never witnessed a time where it prevented [them] from doing what [they] needed to do to help or get help."
9. The Autism Behavior Consultant reported that there were students ("probably three") in the classroom while the Special Education Teacher was administering medication through the PICC line.
10. The Autism Behavior Consultant reported that the Special Education Teacher's medication was stored in a classroom refrigerator that does not lock and students "technically" have access to.
11. The Special Education Teacher stated, they "had to do an infusion once a day at two o'clock every day." They stated, "there was never a student in the classroom."

12. The Special Education Teacher reported [The Director of Special Education] provided an area and time of day to do the IV infusions, but they were not able to get to that location, so they did it in the classroom. They stated they worked on their computer at their desk during this time.
13. The Special Education Teacher reported that their IV medication was stored in their desk and said they kept the desk locked.
14. The Special Education Teacher reported that one time they had their ADHD medication (Adderall) in their lunchbox in a childproof container in the classroom.
15. The Special Education Teacher reported that the Complainant admitted to stealing their Adderall out of their lunchbox that was in the refrigerator and the Complainant was "fired for stealing medication."
16. The Special Education Teacher was shown photos provided by the Complainant and stated, it must have been after the infusion and "I probably just didn't take the bag down." In addition they reported they did not know who the person in the yellow shirt is and they think it is Paraeducator 3.
    a. Paraeducator 3 started working in this classroom in November, 2024 after starting the school year working at an elementary school in the district.
17. The Complainant reported the provided photos were taken September 19th, [2024].
18. Paraeducator 1 reported that the Special Education Teacher did an infusion through her PICC line during the day when there was "maybe only one student and another para." Paraeducator 1 observed this one time and reported that Student 4, along with the Complainant, were in the room.
19. The Principal reported that the Special Education Teacher had ADHD medication (Adderall) under their desk and not locked up.
20. The Principal stated, when asked where the best place would be to administer medication through the PICC line, the Special Education Teacher said it would be administered in the classroom when there was "no one else in the room."
21. The Assistant Director of Special Education indicated the Nurse was asked about where the IV could be administered and the Nurse identified a space that was not in the classroom.
22. The Principal reported the Special Education Teacher performing the procedure with their PICC line in the classroom was an accommodation due to a medical condition.
23. The Complainant reported the Special Education Teacher administered IV medications in the classroom at least four times during the middle of the day with students and other adults in the classroom.
24. The Complainant reported there was a bag of needles behind the Special Education Teacher's desk and that medication was stored in the unlocked classroom refrigerator, visible to students and staff.

25. The Complainant reported that students have access to the classroom refrigerator.
26. The Complainant reported that the Special Education Teacher had a "narcotic" in their lunchbox at school.
27. The Complainant reported staffing issues and the lack of people trained in Safe Crisis Management (SCM) created a less safe environment in the classroom.
28. In a follow up email dated April 2, 2025, the Assistant Director of Special Education noted that "[Special Education Teacher] reports she kept [IV medicine] in a small zipped pouch that was locked in [the] desk."
29. In a follow up email dated April 2, 2025, the Assistant Director of Special Education noted that "[Special Education Teacher] reported "when [the Complainant] stole my meds, my ADHD meds were in a childproof locked pill bottle in the zipper pocket of my lunch bag in the refrigerator."
30. In a follow up email dated April 2, 2025, the Assistant Director of Special Education noted that the Principal recalled "[Special Education Teacher] did have personal medicine (prescription and OTC) that [they] kept in [their] purse in a marked non-student area and in [their] teacher desk." The Special Education Teacher was instructed by the Principal to lock up the medication from that point forward.
31. In a follow up email dated April 2, 2025, the Assistant Director of Special Education noted that the Director of Special Education confirmed that the classroom refrigerator is in a shared area and that students are not in the space without supervision.

Allegation #2

The District failed to provide qualified staff to implement IEPs for the Students enrolled in the Autism Classroom. K.A.R. 91-31-34; 34 C.F.R. 300.156.

1. On August 29th, 2024, records reflect that the Special Education Teacher was not at work. One record reflects the Autism Behavior Consultant substituted, but a text message from them to the Complainant on August 29th, 2024, 7:17 a.m. states "…I'll be there this morning to help get everyone settled, but then I have to get home."
2. On September 12th, September 13th, and September 16th, 2024 records reflect that the Special Education Teacher was not at work and there is no record of certified classroom coverage for the afternoons.
3. On Monday, September 16th, 2024, the assigned certified substitute was in the Autism classroom from 8:00 a.m. -10:00 a.m. only.
4. On Monday, September 16th, [2024], a text message was sent from the Complainant to the Speech Therapist that stated, "…it's just [Paraeducator 1] and I this morning. But we will figure it out."
5. On Monday, September 16th, [2024], a text message was exchanged between the Complainant and the Autism Behavior Consultant as follows:

Complainant: "Good Morning, so [Paraeducator 2] is running late, so [Paraeducator 1] has to get them off the bus, and I am not sure how I am going to get [Student 3] and [Student 4] this morning? Any idea if anyone is coming in today?"

Autism Behavior Consultant: "I don't know and I am not able to be there. Let your administration know you need help. Click your button [three] times if you have to."

6. On September 25th, 2024, an email was written by the Complainant and addressed to the Special Education Teacher, the Principal, the Speech Therapist, the Autism Behavior Consultant, and "everyone who [the Complainant] could think of that has been in [the] classroom at [the Middle School] lately," requesting the need for "more people to be SCM trained in case of emergency."
7. On October 3rd, 2024 records reflect that the Special Education Teacher was not at work and there is no record of certified classroom coverage for that day.
8. On Tuesday, October 8th, 2024, the Special Education Teacher was the only adult present in the Autism Classroom who was trained in SCM. There were five out of six students present in the classroom on this day. Four of these students are on a Behavior Intervention Plan (BIP). Student 3 escalated in behavior and untrained staff, Paraeducator 2, "attempted a hold from behind on [Student 3] in order to get [them] moving back towards the school building."
9. On November 4th, 2024 records reflect that the Special Education Teacher was not at work. One record showed a substitute did cover, but a text message from the Substitute on November 4th, 2024 at 6:46 a.m. stated "I will not be in as well today."
10. On January 28th and February 6th, 2025 records reflect that the Special Education Teacher was not at work in the morning and there was no record of certified classroom coverage during that time.
11. SCM certifications are valid for one year. The following is a list of trained staff with certification dates: Principal (June 13, 2024 recertification), Complainant (October 23, 2023 certification, October 2, 2024 recertification), Special Education Teacher (October 2, 2024 certification), Paraeducator 1 (October 11, 2024 certification), Autism & Behavior Consultant (October 24, 2022 recertification).
12. The Autism Behavior Consultant reported they were a long-term sub assigned to the Autism classroom at the beginning of the school year through September 9th [2024] due to the teacher being out on medical leave. They also stated they were "pretty consistently in the classroom" through October 24th [2024].
13. The Special Education Teacher stated, the students that require one-on-one support always had somebody with them during the day.
14. Paraeducator 1 reported there had been a day or two where the Special Education Teacher was absent and a certified person was not in the classroom "all day long."
15. The Principal stated, "we always had a certified staff member in the room" and if there was somebody missing, support would be found. It was also stated that on occasion

the Principal or the Assistant Principal would stay in the room until someone with a special education background arrived.

16. The Complainant reported, at the beginning of the school year (August through September), there was no certified substitute provided on "most days." It was also reported that the Autism Behavior Consultant was in the classroom during these times.

Allegation #3

The District failed to implement the IEPs of the Students enrolled in the Autism Classroom when the Special Education Teacher was absent. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

Student 1

1. Student 1 is eligible for special education services due to Autism and is described as "really smart and great with technology.

   Student 1 had a BIP with "problem behaviors" listed as "Vocal Disruptions, Biting, and Aggression." Student 1's BIP called for daily data collection to monitor progress.

   Student 1's IEP required staff to have training on guided access, reading a schedule, logging into various academic websites, speech goals, behavior management, data collection, and supporting a student in general education.

   Student 1's IEP required direct speech services in the special education setting 20 minutes, 2 times per week, in 3 out of 4 weeks. Student 1's IEP required special education support in Math, English Language Arts (ELA), Social Studies, Elective(s), and Science for a total of 120 minutes 1 day per week, 110 minutes 1 day per week, and 140 minutes 2 days per week, and 90 minutes 1 day per week. The IEP also required adaptive PE services in the special education setting for 90 minutes 1 time per week and swimming 45 minutes 1 time per week.

   By December 18, 2024 (based on Student 1's IEP dated October 17th, 2024), Student 1 demonstrated "Progress adequate to meet annual goal" on 12 out of 25 measurable objectives/goals. 1 out of 25 measurable objectives/goals was "not yet introduced" and 12 out of 25 measurable objectives/goals had not been reported on at this time.

Student 2

2. Student 2 is eligible for special education due to Autism and is described as showing more confidence and improvement in being able to advocate for [themself], along with following procedures well.

   Student 2 had a BIP with "problem behaviors" listed as "Verbal Disruptions, Property Destruction, and Self Injurious Behavior." Student 2's BIP called for daily data collection to monitor progress.

Student 2's IEP required staff to "be apprised of the visual supports, strategies, accommodations and modifications needed to support [Student 2] in the educational setting." The IEP also required staff to have training on using aided language simulation on the communication device.

Student 2's IEP required direct speech services 20 minutes 2 times per week and indirect speech services 20 minutes once a month. Student 2's IEP required special education support in Social Studies, Elective(s), and Science for a total of 70 minutes 3 days per week, 40 minutes 1 day per week, and 60 minutes 1 day per week. Also required was transportation in the mornings and afternoons, along with indirect occupational therapy (OT) services. The IEP also required adaptive PE services in the special education setting for 90 minutes 1 time per week and swimming 45 minutes 1 time per week.

By December 18, 2024, Student 2 demonstrated "Progress adequate to meet annual goal" on 8 out of 17 measurable objectives/goals and Student 2 met the objective benchmark in 5 out of 17 measurable objectives/goals. 2 out of 17 measurable objectives were "not yet introduced" and 2 out of 17 measurable objectives/goals had not been reported on at this time .

Student 3

3. Student 3 is eligible for special education due to Autism and Speech and Language Impairments. Student 3 is described as building independence and a participant of group activities to engage in social skills.

   Student 3 did not have a BIP in the 2023 IEP. In the 2024 IEP, Student 3 did have a BIP with "problem behaviors" listed as "aggression, self-injury, eloping, property destruction," and "pours out soaps and lotions on the floor, licks/mouths everything, throws items on floor/across room." Student 3's BIP called for daily data collection to monitor progress.

   Student 3's IEP required staff to have training on how to facilitate specialized instruction and interventions. In addition, once per semester, "all adult support (special education, general education, related services, paraprofessionals and other consistent adults in Student 3's day) will collaborate and be trained on how to facilitate specialized instruction and interventions in both the general and special education setting, for at least thirty minutes. New staff that will be working with Student 3 will be trained directly by the Student's case manager and previously trained staff, for at least a week prior to the staff being scheduled to work independently with Student 3. The IEP also required staff support during school pick up and drop off.

   Student 3's IEP required direct speech and language therapy services for 20 minutes 2 times per week for 3 out of 4 weeks and indirect therapy services for 10 minutes 1x

every 2 weeks. Student 3's IEP required direct OT (Occupational Therapy) services for 20 minutes 1 time every 3 out of 4 weeks and indirect OT services for 15 minutes 1 time every 4 weeks. Student 3's IEP also required 35 minutes per day 5 times per week in attendant care. "This will cover special education staff coverage during lunch (25 minutes per day, 5 days per week) and special education staff coverage during arrival and dismissal routines (10 total minutes per day, 5 days per week)." The IEP also required adaptive PE services for 40 minutes 1 time per week and swimming 60 minutes 1 time per week.

By October 15, 2024, Student 3 demonstrated "Progress adequate to meet annual goal" on 4 out of 15 measurable objectives/goals and Student 3 met the objective benchmark in 2 out of 15 measurable objectives. 6 out of 15 measurable objectives/goals had not been reported on at the time and 3 out of 15 objectives/goals had progress reported prior to the start of the 2024-25 school year. Student 3 also showed growth in OT during quarter 1 in the 2024-2025 school year.

Student 4

4. Student 4 is eligible for Special Education due to Multiple Disabilities (other than Deaf-Blind). Student 4 is described as playful, funny and joyful when emotionally regulated.

   Student 4 had a BIP with "problem behaviors" listed as "Physical Aggression: scratching, pinching, biting; Vocal Aggression: screaming, yelling; and Self-injury: biting hands." Student 4's BIP called for frequency data to monitor progress.

   Student 4's IEP required staff to have training on using aided language stimulation on the communication device.

   Student 4's IEP required speech therapy services for 15 minutes 3 times per week for 3 out of 4 weeks. In the 4th week the Student was required to receive 15 minutes of indirect speech services. The IEP also required direct OT services for 20 minutes every 4 weeks and consultative OT services for 25 minutes per month. The IEP also required direct instruction for vision impairment for 20 minutes every week and indirect vision impairment services for 30 minutes every 4 weeks.

   By December 18, 2024, Student 4 demonstrated "Progress adequate to meet annual goal" on 12 out of 35 measurable objectives/goals and Student 4 met the objective benchmark in 1 out of 35 measurable objectives/goals. 4 out of 35 measurable objectives/goals were "not yet introduced" at the time and 18 out of 35 had progress reported prior to the start of the 2024-25 school year.

Student 5

5. Student 5 is eligible for special education due to Autism. Student 5 is described as happy and one who enjoys engaging in physical activities.

Student 5 did not have a BIP.

Student 5's IEP required staff to have training on aided language stimulation on the communication device.

Student 5's IEP required direct speech services 20 minutes twice per week for 3 out of 4 weeks of the month and indirect collaborative speech therapy once per month for 20 minutes. It also required direct OT services 20 minutes every 2 weeks and indirect OT services for 20 minutes every quarter. Also required was direct music therapy for 30 minutes once per week, and special education support in the general education setting for 184 minutes 2 out of 3 days every 4 weeks, 139 minutes for 2 days every 2 weeks, 94 minutes 1 day per week and 137 minutes 1 day per week. The IEP also required adaptive PE services 47 minutes 1 time per week.

By December 18, 2024, Student 5 demonstrated "Progress adequate to meet annual goal" on 13 out of 31 measurable objectives/goals. 18 out of 15 measurable objectives/goals had not been reported on at the time.

Student 6

6. Student 6 is eligible for special education due to intellectual disability. Student 6 is described as personable, easy going and eager to participate in fine motor activities.

   Student 6 did not have a BIP during the time period of this investigation, although it was noted in an email from the Special Education Teacher to the Autism Behavior Consultant dated November 5, 2024, that they should start the process of adding a BIP to Student 6's IEP.

   Student 6's IEP did not require "supports for school personnel."

   Student 6's IEP required direct speech services 2 times per week for 20 minutes, 3 out of every 4 weeks and indirect speech services 1 time per month for 15 minutes. It also required that Student 6 receives direct OT services for 20 minutes 1 time every 3 out of 4 weeks and indirect OT services for 15 minutes 1 time every 4 weeks. Also required was adaptive PE 40 minutes 1 day per week and special education support within the general education setting for 90 minutes focusing on peer interactions and language. The IEP also required adaptive PE services for 40 minutes 1 time per week.

   By December 19, 2024, Student 6 demonstrated "Progress adequate to meet annual goal" on 14 out of 34 measurable objectives/goals and 20 out of 34 measurable objectives/goals had not been reported on at the time.

7. On August 28, 2024, it was noted in the "BMMS Autism Consultant Meeting Notes" that data for student IEP's had not been taken by staff yet due to being "short staffed" and having staff who are "brand new to supporting students with autism." The expectation was set for data collection to start September 3, [2024].

8. On Monday, September 16th, [2024], a text message was exchanged between the Complainant and the Autism Behavior Consultant that stated there were only two paraeducators on staff that morning and shared concern about Paraeducator 1 having to get Student 3 and 4 off the bus.
9. On the week of September 16 through September 20, 2024, the following OT and speech services were provided:
    a. Student 1 OT- None
    b. Student 1 speech services- 105 total minutes, 3 days
    c. Student 2 OT- None
    d. Student 2 speech services- 115 total minutes, 3 days
    e. Student 3 OT- 20 minutes, 1 day
    f. Student 3 speech services-125 total minutes, 3 days
    g. Student 4 OT- None (services provided the prior week and the following 2 weeks)
    h. Student 4 speech services- 85 minutes, 2 days (student absent September 18, 2024)
    i. Student 5 OT- None (services provided the prior week and the following week)
    j. Student 5 speech services- 55 minutes, 1 day (student absent September 18, 2024)
    k. Student 6 OT- None (services provided the prior week and the following 2 weeks)
    l. Student 6 speech services- 55 minutes, 1 day (student absent September 16 and 17, 2024)
10. On the week of September 30 through October 4, 2024, the following OT and speech services were provided:
    a. Student 1 OT- None
    b. Student 1 speech services- 30 minutes, 1 day
    c. Student 2 OT- None
    d. Student 2 speech services- 30 minutes, 1 day
    e. Student 3 OT- 20 minutes, 1 day
    f. Student 3 speech services- 40 minutes, 2 days
    g. Student 4 OT- 20 minutes, 1 day
    h. Student 4 speech services- 30 minutes, 1 day
    i. Student 5 OT- 20 minutes, 1 day
    j. Student 5 speech services- 0 minutes, 0 days (student was absent October 4, 2024)
    k. Student 6 OT- 20 minutes, 1 day
    l. Student 6 speech services- 30 minutes, 1 day (student was absent October 4, 2024)
11. On the week of November 4 through November 8, 2024, the following OT and speech services were provided:
    a. Student 1 OT- None

b. Student 1 speech services- 30 minutes, 1 day
c. Student 2 OT- None
d. Student 2 speech services- 30 minutes, 1 day
e. Student 3 OT- 20 minutes, 1 day
f. Student 3 speech services-70 minutes, 3 days
g. Student 4 OT- 30 minutes, 1 day
h. Student 4 speech services- 30 minutes, 1 day
i. Student 5 OT- 20 minutes, 1 day
j. Student 5 speech services- 50 minutes, 2 days
k. Student 6 OT- 20 minutes, 1 day
l. Student 6 speech services- 30 minutes, 1 day (student was absent November 6, 2024)

12. The Autism Behavior Consultant stated, there has always been enough staff to implement the IEP's of students in this classroom.
13. The Special Education Teacher stated, they have a weekly meeting with the Autism Behavior Consultant.
14. Paraeducator 1 recalled, during days when the classroom did not have a certified teacher, IEP work was done throughout the day, though it was not "to the peak of it" and "the principals and speech pathologists [were] coming in to make sure that we had everyone accounted for and under control."
15. Paraeducator 1 stated, the inconsistency of staff made it difficult for student routines to be performed.
16. The Complainant stated, IEP accommodations not being met were: Student 3 and Student 4 were "supposed to have one-on-one [paraeducators]" but did not; students had a certain amount of time in general education class that was not met "for at least the first month or so" due to not having enough paraeducators and having "such behavioral issues" in the classroom; and some students did not get adaptive PE days.

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide an environment appropriate to the instructional program being provided. K.A.R. 91-40-52(d).

According to K.A.R. 91-40-52(d), Each agency shall ensure that all facilities for exceptional children shall be comparable to those for non-exceptional children within the same school building. If an agency operates a facility solely for exceptional children, the facility and the services and activities provided in the facility shall be comparable to those provided to nonexceptional children. All facilities for exceptional children shall be age appropriate

environments, and each environment shall be appropriate for the instructional program being provided.

The Complainant alleged, "This is a Specialized Classroom. This is also a classroom with multiple aggressive behavior students. [The Special Education Teacher] had to [sit] [there] multiple times, several days in a row, for almost an hour each time with an IV bag and all hooked from the wall to [their]arm."

The District acknowledged that the Special Education Teacher returned to work on September 9, 2024 after significant illness and had a PICC line in which infusions would be done daily at 2:00 PM and last for 30 minutes. The Human Resources Director reported this as an allowable accommodation. The District maintained that an appropriate environment was provided for this classroom and this accommodation did not pose "danger to students."

The District also acknowledged that the Special Education Teacher had brought narcotic/pain medication to school in an unmarked container, but contended that as soon as the Principal learned this, the Special Education Teacher was directed to lock up the purse in which the medication was located.

The Special Education Teacher administered IV fluids through their PICC line in the Autism Classroom on multiple occasions between September 9th and 26th, 2024. The Assistant Director of Special Education indicated the Nurse identified a space outside the classroom for the IV to be administered. The Principal stated the procedure being done in the classroom was a medical accommodation and the Special Education Teacher said they would administer medication in the classroom when no one else was present.

The Special Education Teacher stated they administered infusions daily at 2:00 p.m. and there were never students present. They also stated they did the infusions in the classroom because they couldn't easily get to the provided area. The Special Education Teacher was shown photos that were taken on September 19th, 2024 that showed people in the room while they were administering medication with the PICC line. The Special Education Teacher said they were likely taken after an infusion and they didn't recognize one of the people in the photos, but they thought it might be Paraeducator 3. Paraeducator 3 was not working in this classroom until November 2024, which is after the Special Education Teacher had the PICC line removed.

The Autism Behavior Consultant reported the Special Education Teacher administering IV antibiotics in the classroom, sometimes with students present. Paraeducator 1 reported seeing the Special Education Teacher do an infusion with one student and another paraeducator present. The Complainant reported the Special Education Teacher administered IV medications in the classroom at least four times with students and other adults present.

The Special Education Teacher said their IV medication was stored in a locked desk. They also reported having Adderall in a childproof bottle in their lunchbox in the classroom refrigerator. The Autism & Behavior Consultant and Complainant reported medications being stored in the

unlocked classroom refrigerator. The Complainant added that this medication was visible to students and staff. The Complainant stated the Special Education Teacher had a "narcotic" in their lunchbox. The Principal reported the Special Education Teacher had ADHD medication (Adderall) under their desk, in their purse and not locked up. When the Principal learned this, they instructed the Special Education Teacher to lock it up.

The Director of Special Education stated the classroom refrigerator was in a shared classroom area, but also noted that students were supervised. Employees who directly work in the classroom (the Complainant, Paraeducator 1, and the Autism Behavior Consultant) all stated that students had access to the unlocked refrigerator.

The Special Education Teacher's ADHD medication (Adderall) went missing from their lunchbox in the classroom, and they suspected the Complainant. More medication later went missing and the Special Education Teacher reported the theft to the School Resource Officer. The Complainant later admitted to stealing theSpecial Education Teacher's medication and was subsequently terminated. The Special Education Teacher was pressing charges against the Complainant for theft.

These three requirements are intended to add substance to the Least Restrictive Environment (LRE) portion of the Kansas Special Education for Exceptional Children Act. The second part of requirement (3), that "each environment shall be appropriate for the instructional program being provided," refers to the extent to which a child is in a regular education classroom, a special education classroom, self-contained classroom, special school, homebound, etc., and whether that "environment is appropriate for the instructional program being provided." It does not refer to procedures that school officials adopt in the ordinary course of operating a public school, including the kinds of safety concerns presented in this issue. Such procedures often involve judgements, the soundness of which may be questioned publicly or privately, but the special complaint process is not the proper (or legal) forum to do so.

The evidence ***does not suppor***t the allegation that the district failed to provide an environment appropriate to the instructional program being provided, as that requirement is intended under K.A.R. 91-40-52(d)(3).

After reviewing documentation and interviews with the Complainant and District staff, it was determined that according to Kansas special education regulations the District provided an age-appropriate environment that was appropriate for the instructional program being provided.

Issue Two

Whether USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide qualified staff to implement IEPs for the Students enrolled in the Autism Classroom. K.A.R. 91-31-34; 34 C.F.R. 300.156.

According to 34 C.F.R. 300.156 and K.A.R. 91-31-34(b)(2)(3)(4)(5)(A), If a teacher holding an appropriate license or certificate is not available, the education system shall use a substitute teacher holding a valid Kansas teacher or administrator license or certificate at any level or in any field or subject. If a substitute teacher holding a valid Kansas teacher or administrator 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.

The Complainant alleged there had been many days that there has been no certified staff in the classroom when the Special Education Teacher has been out sick. Multiple times the paraprofessionals had been responsible for running the classroom with a no certified substitute to provide qualified instruction.

The District responded that qualified staff had been secured to implement IEPs for students in this classroom.

On August 29, 2024, the Special Education Teacher was absent. The Autism Behavior Consultant was present in the morning to help settle students, but then had to leave. There is no record of certified classroom coverage for this afternoon.

September 12th, 13th, and 16th, 2024, the Special Education Teacher was again absent, and there was no record of certified classroom coverage for the afternoons. On Monday, September 16, 2024, the assigned certified substitute was only in the Autism classroom from 8:00 a.m. to 10:00 a.m. A text message from the Complainant to the Speech Therapist that morning indicated that only Paraeducator 1 and the Complainant were present. The Complainant also texted the Autism Behavior Consultant about staffing issues, and they stated they could not be there on that day.

On October 3, 2024, the Special Education Teacher was absent, and there was no record of certified classroom coverage. On November 4, 2024, the Special Education Teacher was absent, and although the long term substitute was scheduled, they texted at 6:46 a.m. that they would not be on that day.

In addition, on January 28th and February 6th, 2025, the Special Education Teacher was absent in the morning, and there was no record of certified classroom coverage during those times.

The Principal stated, “we always had a certified staff member in the room” and if there was somebody missing, support would be found. It was also stated that on occasion the Principal or the Assistant Principal would stay in the room until someone with a special education

background arrived. Paraeducator 1 reported there had been days where the Special Education Teacher was absent and a certified person was not in the classroom "all day long."

After reviewing documentation and from interviews with the Complainant and District staff, it was determined that according to IDEA and Kansas special education regulations the District *failed to provide* qualified staff to implement IEPs for the Students enrolled in the Autism Classroom.

Issue Three

Whether USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEPs of the Students enrolled in the Autism Classroom when the Special Education Teacher was absent. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

According to K.A.R. 91-40-16(b)(3) each agency shall ensure that an IEP is in effect for each exceptional child at the beginning of each school year.

The Complainant alleged that in the Autism Classroom, specialized instruction must be delivered according to the IEP and the concern revolved around multiple and lengthy absences by the Special Education Teacher, along with staffing shortages, which resulted in student IEPs not being followed as written.

The District responded that student IEPs were appropriately implemented and that each student in the classroom had received a Free and Appropriate Public Education during the Special Education Teacher's absence.

The Complainant stated that IEP accommodations were not always met and specifically cited issues with one-on-one paraeducators for certain students, insufficient time in general education classes due to staff shortages and behavioral issues, and some students missing adaptive PE days.

The Autism Behavior Consultant believed there was always enough staff to implement IEPs. Paraeducator 1 recalled that while IEP work was done on days without a certified teacher, it wasn't at the peak of what could normally be done. Paraeducator 1 also noted that staff inconsistency made it difficult to maintain student routines, but principals and speech pathologists helped ensure student accountability and control on days there was not a certified teacher. The Special Education Teacher mentioned having weekly meetings with the Autism Behavior Consultant, which helped with communication about implementation of IEP's.

Based on service logs and student attendance reports, the IEP requirements for all 6 students for speech and occupational therapy services were met during the times when the Special Education Teacher was absent. In addition, all 6 students demonstrated adequate progress on their IEP goals/objectives to meet the requirements of the IEP.

After reviewing documentation and from interviews with the Complainant and District staff, it was determined that according to IDEA and Kansas special education regulations, the District *did implement* the IEPs of the students enrolled in the classroom while the Special Education Teacher was absent.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. A violation occurred in the following area:

A. State regulations at K.A.R. 91-31-34 specify a clearly defined order in which certified substitute teachers should be provided in a classroom. IDEA regulations at 34 C.F.R. 300.156 specifies that school districts must ensure that all personnel necessary to carry out the requirements of the IDEA are appropriately and adequately prepared and trained.

In this case, the evidence supports the finding that USD #497 did not provide certified substitute teachers as defined in K.A.R. 91-31-34. The provided materials and Interviews document this.

Based on the foregoing, USD # 497 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #497 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.156, and K.A.R. 91-31-34 by providing an age-appropriate environment for the instructional program being provided and by ensuring certified substitute teachers are provided in the classroom.
2. Within 30 calendar days of this report, USD#497 will review policies related to substitute requirements and will provide a clear directive to school administrators that outlines a step-by-step procedure to ensure qualified substitutes in classrooms.

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.gov 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. 497,
Lawrence Public Schools: 25FC497-002

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on March 3, 2025, by ------- (former district employee), on behalf of students enrolled in a district autism program.. In the remainder of this decision, ------- will be referred to as "the complainant." An investigation of the complaint was undertaken by a complaint investigator on behalf of the Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, a Complaint Report, addressing the allegations, was issued on April 11, 2025. That Complaint Report concluded that there was a violation of special education statutes and regulations with regard to Issue 2, and no violation with regard to the remaining issues.

Thereafter, the district filed this appeal of the Complaint Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the original complaint, the Complaint Report, and the district's notice of 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.

Discussion of Issues on Appeal

From Complaintant

The issue on appeal is Issue Two:

Issue Two

Whether USD #497, in violation of state and federal regulations implementing the IDEA, failed to provide qualified staff to implement Individual Education Programs (IEPs) for the Students enrolled in the Autism Classroom. K.A.R. 91-31-34; 34 C.F.R. 300.156.

The investigator summarized the findings and reached a conclusion on this issue on pages 23 and 24 of the report, as follows:

On August 29, 2024, the Special Education Teacher was absent. The Autism Behavior Consultant was present in the morning to help settle students, but then had to leave. There is no record of certified classroom coverage for this afternoon.

September 12th, 13th, and 16th, 2024, the Special Education Teacher was again absent, and there was no record of certified classroom coverage for the afternoons. On Monday, September 16, 2024, the assigned certified substitute was only in the Autism classroom from 8:00 a.m. to 10:00 a.m. A text message from the Complainant to the Speech Therapist that morning indicated that only Paraeducator 1 and the Complainant were present. The Complainant also texted the Autism Behavior Consultant about staffing issues, and they stated they could not be there on that day.

On October 3, 2024, the Special Education Teacher was absent, and there was no record of certified classroom coverage. On November 4, 2024, the Special Education Teacher was absent, and although the long term substitute was scheduled, they texted at 6:46 a.m. that they would not be on that day.

In addition, on January 28th and February 6th, 2025, the Special Education Teacher was absent in the morning, and there was no record of certified classroom coverage during those times.

The Principal stated, "we always had a certified staff member in the room" and if there was somebody missing, support would be found. It was also stated that on occasion the Principal or the Assistant Principal would stay in the room until someone with a special education background arrived. Paraeducator 1 reported there had been days where the Special Education Teacher was absent and a certified person was not in the classroom "all day long."

After reviewing documentation and from interviews with the Complainant and District staff, it was determined that according to IDEA and Kansas special education regulations the District failed to provide qualified staff to implement IEPs for the Students enrolled in the Autism Classroom.

Using a state general education regulation, K.A.R. 91-31-34, the investigator determined that the district was in violation of this regulation because, "the District failed to provide qualified staff to implement IEPs for the Students enrolled in the Autism Classroom (Report, p. 26)."

On appeal, the district asserts that the district made reasonable attempts to provide substitute teachers in the classroom during the special education teacher's absences, although that was not

always possible. In its appeal, the district also asserts that it always provided paraeducator staff who were adequately trained and supervised when a substitute teacher was unavailable.

The relevant federal regulation is 34 C.F.R. 300.156(b)(2)(iii), which describes the extent to which paraprofessionals may be used to provide special education and related services. That regulation says that qualifications of special education personnel must:

> *(iii) Allow 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 (emphasis added).*

In its appeal, the district correctly points out that Kansas policy regarding special education personnel is recorded in the Kansas Reimbursement Guide. Page 29 of that document states that paraeducators may assist in the delivery of special education and related services, with the following supervision requirement:

> *"Unless otherwise indicated, instructional paraeducators must be directly supervised a minimum of 10% of the time they are working with students."*

The reimbursement guide then includes further directions for situations not involved in this complaint, except for the additional requirement that, "When the assigned special teacher is not present, a paraeducator must have a designated principal or teacher available in the building for assistance and supervision as needed."

The Appeal Committee finds that the absence of a qualified teacher for the specified portions of the school day described above, and on pages 23 and 24 of the complaint report, when a qualified and adequately supervised paraprofessional was present in the classroom, is not a failure to provide qualified staff. This finding is consistent with the investigator' conclusion in Issue 3 that the district, "did implement the IEPs of the students enrolled in the classroom while the special education teacher was absent (Report, p. 25)."

Conclusion

For the reasons stated above, the conclusion in Issue two of the report is reversed.

All corrective action is rescinded.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 6th day of May, 2025.

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 #423 MOUNDRIDGE PUBLIC SCHOOLS
ON MARCH 6, 2025

DATE OF REPORT: APRIL 22, 2025

This report is in response to a child complaint filed with the Kansas State Department of Education against USD #423 Moundridge Public Schools on behalf of ------ by her parents, ------. In the remainder of the report, ------ will be referred to as "the student" and ------ will 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 #423 Moundridge Public Schools and in the remainder of the report will be referred to as "the district". The McPherson County Special Education Cooperative (McCSEC) provides special education support for the district; however, Moundridge Public Schools remains the agency responsible for the student's educational services. 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 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 6, 2025 with a planned ending date of April 6, 2025. The complainants and district agreed to mediation which occurred on April 14, 2025 suspending the investigation pending the outcome. Following the successful mediation the parent requested that the investigation continue. This report considers the mediation agreement decision and the evidence and interviews provided by the district and complainants in the investigation.

Evidence Reviewed

During the investigation, the Complaint Investigator Dr. Donna Wickham reviewed the following evidence and spoke with the father by phone on March 10, 2025 about facts of the investigation. Additionally, the investigator spoke with the director of the coop on March 11, 2025 and requested additional written documentation on April 16, 2025 and April 21, 2025.

- Consideration of Special Education Evaluation and/or Reevaluation (All Eligibility Categories) in consideration of 3 year Reevaluation date of May 25, 2024, signed by IEP school team members, November 28, 2023 and signed by parents and school representative on February 2, 2024
- Re-Evaluation Not Needed Agreement waiver Request, signed by parents February 2, 2024

- IEP Amendment, dated August 20, 2024, signed by parent and school administrator October 28, 2024
- 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 20, 2024, signed by parent on October 28, 2024
- Student meeting notes dated January 24, 2025
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated January 24, 2025
- Email from school psychologist to principal, dated January 28, 2025 at 6:14 p.m.
- IEP meeting notes dated February 7, 2025
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated February 10, 2025
- Email from the father to the KSDE District Resolution Coordinator and investigator, dated March 10, 2025 at 1:53 p.m.
- Signed mediation, dated April 14, 2025
- District timeline to investigator, undated
- Coop handbook sections regarding Parent Requests for Evaluation, Initial Evaluation, Eligibility Determination and Documentation, Reevaluation, Notice of Meeting Requirements Pages 9-13, undated

Background Information

This investigation is on behalf of a fifteen-year old high school freshman eligible for special education services as a student with other health impairments with a medical diagnosis of ADHD. The parent reported that the student used a tutor during elementary grades to assist with academics. During elementary school, the student was also diagnosed with ADHD. During the pandemic, the student attended two separate virtual schools. The father reported that the second virtual school did routine testing and discovered the student tested two to three grades below in some content areas needs and recommended special education evaluation and/or services. The student was initially evaluated and qualified for special education and related services May 25, 2021. During the 2023-2024 school year the school requested a re-evaluation, but the parents refused, and the school agreed to waive the re-evaluation. The student has since transitioned to high school and according to the school staff continued to progress and use general education supports.

Issue One

Did the district follow IDEA procedures when conducting evaluation of a student who is eligible for special education and related services?

Applicable Law

Federal regulations at 34 C.F.R. 300.305(e) state that a public agency must evaluate a child with a disability before determining that the child is no longer a child with a disability.

Federal regulations at 34 C.F.R. §300.300(c)(1)(i) state the district must obtain informed parent consent prior to conducting any re-evaluation of a child with a disability.

Analysis: Findings of Fact

Parent Position

The complainant alleged in the complaint of March 6, 2025 that the student's IEP meeting was conducted on January 24, 2025 with the intention of dismissing the student from special education services "before the parents had opportunity for input." The complaint further alleges that a follow-up email from the school psychologist on January 27, 2025 verified the district's feedback from the student's teacher for re-evaluation without giving equal weight to the student's classroom grades, low state assessment scores, and low Pre-ACT scores.

District Position

The district responded that they were following routine IDEA regulations and district procedures when proposing to conduct a re-evaluation for the student whose re-evaluation had previously been scheduled by May 25, 2024 and waived for one year already. The district stated their intention was not predetermined to dismiss the student from special education service, however the school believed a re-evaluation was needed due to the student's continued progress and overall success as the 2024-2025 school year continued. This caused the school to initiate conversation with the parent to explain the re-evaluation process and a meeting to determine a possible plan for the re-evaluation. The parents have continued to refuse to give consent for a re-evaluation. Mediation occurred on April 14, 2025 and an agreement was made to conduct an outside evaluation that will be considered by the district.

Analysis: Findings of Fact

The student's initial and most current special education evaluation was May 25, 2021.

The meeting notes for the January 24, 2025 meeting between school staff and parents documented that the district staff shared data, teacher perspective, grades, and Fastbridge and stated these data sources indicated that the student no longer needed specially designed instruction and that the district described three options as next steps in light of these findings: 1) Re-evaluate the student to dismiss; 2) Revoke services so no re-evaluation is needed; or 3)

Review records or Re-Evaluate to determine if the student continues to need special education or related services.

The father stated during his phone conversation with the investigator on March 10, 2025 that they attended a meeting with the intention of determining the student's new IEP and the district staff came in with an agenda to discontinue the student's special education services. The father stated that the student has continuing needs and the data they provided to demonstrate the student did not need services did not consider the student's grade, assessment scores and pre-ACT scores.

The PWN dated January 24, 2025 proposed to evaluate the student to assess a continued need for special education services since the student is performing well academically with minimal special education support. The document recorded that the IEP team considered not to reevaluate, but at this time the IEP team feels that it would be beneficial to determine the student's continued need for special education services and that the evaluation would be conducted with Input from parents, teachers, standardized assessments, curriculum based measures, classroom performance, and record review. The PWN documents that this notice was hand delivered to the parents on January 24, 2025, but was not signed.

The February 7, 2025 meeting minutes between the parents and school staff verified that the parents refused the request by the district to reevaluate and that the district would continue to provide the services to the student as currently written in spite of the parents requesting changes to the IEP for additional services and accommodations.

The PWN dated February 10, 2025 documented the decisions made at the February 7, 2025 meeting " This PWN is in response to the IEP team meeting held on 02/07/2025 concerning the continued IEP services for [student]. [Parents] have requested the initiation of a new annual IEP with additional services and accommodations for their [student]. The [district] and the [coop] are (sic) refusing to initiate a new annual IEP for [student] without completing a comprehensive reevaluation to determine continued eligibility and need for special education services." The PWN documented the explanation of refusal as, "The IEP team does not have sufficient data to demonstrate the need for a new annual IEP to be initiated at this time. The IEP team would like to conduct a reevaluation in order to determine the continued need for special education services at this time. [Parent] have refused to consent to the special education reevaluation." This PWN was hand delivered to the parents on February 10, 2025 and was not signed. Finally, the PWN added one additional consideration as, "The [parents] have also requested that accommodations be made specifically in relation to [student's] ability to take science tests over several sessions, rather than all at once, in order to increase [student's] ability to focus and recall content more easily. [School] will make these accommodations through general education interventions at this time."

The April 14, 2025 Mediation Agreement recorded that "parents agree to outside testing" with specifics noted as "Woodcock cognitive, academic rating, classroom observation, student/teacher interview in addition to testing."

Conclusion

In this case the district followed regulations at 34 C.F.R. 300.305(e) by citing reasons for requesting a re-evaluation and the parents refused to consent. Federal regulations at 34 C.F.R. §300.300(c)(1)(i) are clear that a district must obtain informed parent consent prior to conducting any re-evaluation of a child with a disability.

Later the parents and district agreed to mediation and a decision was made to conduct some outside evaluation that may be provided to the district for consideration (34 C.F.R. §300.502(c)(1)).

Therefore, it is found that the district is *IN of compliance* with 34 C.F.R. §300.300(c)(1)(i) and 34 C.F.R. 300.305(e). The district followed IDEA procedures when requesting parent consent to conduct a re-evaluation of a student who is eligible for special education and related services. It did not receive the necessary consent and so was precluded from conducting the proposed re-evaluation.

Summary of Conclusions/Corrective Action

Issue One: A violation of 34 C.F.R. §300.300(c)(1)(i) and 34 C.F.R. 300.305(e) was not found, based on the 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.gov 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 MARCH 19, 2025

DATE OF REPORT: APRIL 15, 2025

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 #402 Augusta Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #402.

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 19, 2025, and the 30-day timeline ended on April 18, 2025.

Allegations

The following issues will be investigated:

ISSUE ONE: Whether USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), on March 11, 2025, failed to implement the Student's Individual Education Program (IEP) when a substitute teacher did not follow the Student's behavior intervention plan (BIP). K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

ISSUE TWO: Whether USD #402, in violation of state and federal regulations and the IDEA, failed to inform the substitute teacher of their roles and responsibilities in implementing the Student's IEP on March 11, 2025. K.A.R. 91-40-16(b)(5); 34 C.F.R. 300.323(d)(2).

Investigation of Complaint

The Complaint Investigator interviewed the Parent and District staff by video on April 8, 2025.

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

1. District Response, no date
2. Communication Logs, re: March 11, 2025, 03/09/2025-03/11/2025
3. Individualized Education Program, 10/04/2024

4. Chronological Timeline of Events, 08/30/2024-03/11/2025
5. County Special Education Process Handbook, Publish Date 08/01/2024

Background Information

This investigation involved a 13-year-old seventh-grade student enrolled at a Middle School in USD #402. The Student receives services as a child with a disability per the IDEA.

Findings of the Investigation

The following findings are based on a review of documentation provided by the parties.

1. In the District Response, Teacher 1 described that the Student was "roaming around" the classroom. Teacher 1 stated that when they asked the Student to return to their seat, the Student was "argumentative" but did so. Teacher 1 stated that when the bell rang at 2:06 p.m., Teacher 1 went to the classroom door, and the Student left their seat and headed for the door. Teacher 1 said the Student's name and explained that the Student, "… deliberately shoulder[-]checked me, (with the intent of knocking me down), and pushed their way out the door." (D1)

   Teacher 1 stated they followed the Student to another room and asked them to go to the office. Teacher 1 described that the Student would not leave the room and said Teacher 1 did not need to yell at them. The IEP Manager arrived and helped escort the Student to the office. Teacher 1 reported the Student's behavior to the Principal. (D1)
2. The District Response indicated, "… based on the information from staff, while the substitute teacher had not read [the Student's] IEP, there was a special education staff member assigned to the class that is very familiar with [the Student], [their] IEP and [their] behavior intervention plan." (D3)
3. Communication Logs regarding March 11, 2025 indicated:
   a. March 11, 2025 at 2:45 p.m.
      i. The Principal and the Assistant Principal contacted one of the parents to inform them of the classroom incident and assign consequences.
   b. March 11, 2025 at 2:59 p.m.
      i. The Parent called the School and asked if Teacher 1 had been provided with the Student's behavior plan. The Parent was informed that Teacher 1 had not received it, but that a paraprofessional was in the classroom. (D4)
4. The Student's IEP, dated October 4, 2024, indicated:
   a. The Student experienced a primary exceptionality of an Other Health Impairment (OH).
   b. The Impact of Exceptionality stated, "Due to difficulties in regulating [their] attention and emotional responses, [the Student] requires support with [their] organizational skills, in staying on task during class, and being able to implement coping strategies when emotionally dysregulated. Due to [the Student's]

difficulties in regulating [their] emotions, [the Student] requires gentle redirection, friendly reminders, provided breaks, and emotional understanding from [their] teachers to be able to regulate [their] emotions and continue to participate in the general education and special education classroom settings."

c. Strengths and Needs:
    i. The Student actively participated in class discussions and asked relevant questions. The Student struggled with organization, following directions, accepting feedback, completing assignments, and staying on task. The Student would talk out of turn and seek attention more frequently than their classmates. They had difficulty with multi-step instructions and were easily distracted.
d. Current Performance:
    i. Teacher and parent rating scales indicated the Student demonstrated significantly elevated levels of hyperactivity compared to their peers and elevated or significantly elevated levels of inattentiveness, atypicality, and anxiety, which were correlated with school problems. The Student's twice-daily visits to the special education room have improved their ability to maintain attention in class while also offering opportunities to recharge and minimize sensory overload.
e. Accommodations/Modifications/Supplementary Supports in the special education and general education settings, from October 4, 2024 through October 3, 2025 included:
    i. Extra time (not to exceed 1.5 times that of general education peers);
    ii. A quiet and separate setting for school and state assessments;
    iii. Small breaks when the Student is dysregulated and/or showing signs of escalation;
    iv. A scribe when a written exercise exceeds more than one paragraph in length;
    v. Shortened assignments when general education and special education teachers determine the assignment or assessment is too difficult; and
    vi. Notes provided when the Student is asked to copy information during whole group instruction.
f. The BIP indicated:
    i. "[The Student] engages in off-task or inappropriate behavior (breaking classroom or school rules) resulting in redirection from school staff. Needing redirection from school staff can escalate [the Student's] frustration and potentially lead to [the Student] becoming verbally and physically aggressive."
    ii. The Student's behavior occurred within all of their core classes and was more likely to occur during afternoon classes such as ELA or Science.

The Student had the most difficulty with off-task behavior, resulting in redirection during ELA class. The Student also struggled during unstructured times, such as passing periods and lunch.

iii. The Student's behavior could interrupt the learning environment for themself and their peers when needing redirection, which could escalate the Student's frustrations and potentially their aggressive behavior, verbal or physical. The Student's refusal and off-task behaviors could lead to the Student falling behind in instruction/assigned work, which could impact their understanding of material and grades.

iv. Staff Response to Targeted Behavior:

1. "Staff will gently and [with] the use of general rules [,] will redirect the Student."
2. "Staff will walk away after redirection immediately."
3. "Staff observe from [a] distance."
4. "If [the Student] starts to argue [,] staff will ignore and walk away."
5. "If [the Student] begins cussing excessively and arguing [the IEP Manager] will be called or [the Paraeducator] … to remove [the Student] from class: [they] will take a walk, practice self-regulation strategies such as yoga, deep breathing and or drawing."
6. "If these strategies work [,] [the Student] will be allowed to go back to class with a clean slate. If not [,] administration will be contacted." (D5)

5. A documentation log indicated that on March 11, 2025, the Student received an out-of-school suspension for two days due to physical contact. The log stated, "During English, a teacher told the class that they needed to wait until [they] dismissed them to ensure everything was handled in the classroom. [The Student] proceeded to use [their] body to push the teacher out of the way. [The Student] left the classroom, when the teacher asked [them] to come back, [they] proceeded to say 'You can't tell me what the fuck to do. I can do whatever the fuck I want.'" (D6)
6. The County Special Education Interlocal Special Education Process Handbook indicated that:
    a. An IEP "needs to be provided to all general education teachers responsible for providing services or accommodations or modifications for the student."
    b. "Distribution must occur no later than September 1."
    c. "IEPs at a Glance may need to be sent throughout the year as annuals or amendments occur which impact accommodations, modifications, behavior plans, etc." (D39-D40)

Interview Summaries

The following findings are based on interviews with the District and the Parent and have been compiled as interview summaries.

Teacher 1

7. In an interview with the Complaint Investigator, Teacher 1 described that they were a full-time 6th-grade English teacher in the building and covered (substituted) for Teacher 2 for one period on March 11, 2025. (P2, 05:01)
8. According to Teacher 1, "I was asked to cover a seventh-grade English class in the afternoon, and when I reached the class, I was met at the door by the teacher next door asking me if I had seen [their] email. I told [them] I hadn't, and [they] said it was a forwarded email from the office with [Teacher 2's] lesson plans. So I opened that up. Once I got seated at the desk, I read it briefly. I explained my expectations. Most of them [students] knew who I was because I'm a sixth-grade teacher. They were working on some rough drafts for a paper, and midway through, [the Student] was wandering between two desk areas. I asked [the Student] to sit down, [the Student] got a little argumentative. I asked [them] again, and [the Student] returned to [their] seat. Then the hour continued. The hour ended at 2:06. At 2:04, I asked the students who had me last year, I asked if any of them could raise their hand and remind everybody what my policy was for dismissal. And one of the kids raised their hand and said, '[Teacher 1] dismisses the class. [Teacher 1] stands by the door, [Teacher 1] dismisses the class.' The bell rang at 2:06. I was standing by the door. I was saying, 'You may go … you may go.' [The Student] was out of [their] seat, heading towards the door. I pointed back to [their] chair. [The Student] continued to come forward. I said [their] name, [the Student], and [the Student] came straight up to the door. I was standing off to the side, and … a little bit of me was in front of the door. [The Student] shoulder checks my right shoulder and then goes out the door." (P1, 01:06)

   Teacher 1 continued, "[The Student] went straight to [their] seventh-hour class, and I was in the hallway. I asked [the Student] from the doorway to go to the office, and [the Student] said that I couldn't talk to [the Student] like that because I wasn't [the Student's] [parent]. … I requested for [the Student] to go to the office. [The Student] wouldn't come out of the room. And [the Student] said I did not need to yell at [the Student] because I was not [their] [parent]. And then [the IEP Manager] arrived at [Teacher 3's] room. Shortly afterwards, [the IEP Manager] began escorting [the Student] to the office and [the IEP Manager] asked me to accompany so I could explain what happened." (P1, 03:21)
9. Teacher 1 indicated that the email they received with the lesson plans contained "… nothing … about anyone's behavior plan." (P2, 04:43) Teacher 1 shared that they were aware that the Student was a part of the special education program, "… but I didn't know anything about a behavior plan." (P3, 05:33) Teacher 1 explained that they were not provided any information about Student 1's IEP or behavior plan before covering the class period on March 11, 2025. (P3, 05:46)

The Paraeducator

10. In an interview with the Complaint Investigator, the Paraeducator said they supported the Student with the Student's work when needed and encouraged the Student to

focus. According to the Paraeducator, sometimes the Student listened, sometimes not, depending on the day. The Paraeducator shared that the Student was working on that specific day, March 11, 2025. (P4, 07:02)

11. The Paraeducator was present in the classroom on March 11, 2025 when Teacher 1 covered a class period for Teacher 2. The Paraeducator described, "During that time in class, it was a little different. We had a teacher, [Teacher 1], who was subbing, and it was a different feeling in the room because [Teacher 1] likes to keep things a little more tight than maybe the regular teacher. And so the kids knew to hold … still do their work, not any talking really, which was fine. The kids were doing great. … Towards the end of the class, there's a little more movement. At that point, [the Student] wanted to talk to another student. [The Student] just got up and did it, but [the Student] was standing in the middle of the room also. And that's when [Teacher 1] was asking [the Student] to sit down, and they went back and forth with … more of an argument. Eventually, though, [the Student] sat down. At that point, it felt like [the Student] was deescalated, and there was no other thing to do. There was maybe five minutes before class was getting ready to let out. So at that moment, [Teacher 1] preferred to release the students instead of just going out of the class, stand up, walk out [sic]. And so [the Student] bolted out of the classroom without being told to go, and that's when [the Student] ran into [Teacher 1]." (P2, 01:53)
12. The Paraeducator described that typically, with Teacher 2, students gather their belongings a couple of minutes before the bell and are often standing by the door, ready to leave. This differed from Teacher 1's approach, where students were told to stay seated until explicitly released. On March 11, 2025, the exit procedure differed from the usual routine in Teacher 2's class. (P2, 03:27) When asked how the Student responds to "different" regarding the classroom procedures, the Paraeducator said, "I would say that [the Student] might do it but not like it. [The Student] might argue a little bit more, but if you can tell [the Student], just hold on, it's almost time to go or whatever, [the Student] [will] do it. But in this case, [the Student] did, for the most part, stay quiet. [The Student] stayed where [the Student] was supposed to be, and [they] stayed in [their] seat until it was time to go. But [the Student] didn't wait for … 'You may be dismissed,' [the Student] just left." (P3, 05:46)
13. After the Student left the classroom, the Paraeducator shared, "… I heard the confrontation when [the Student] was leaving. [The Student] went to [their] next class, and that's when [Teacher 1] went to the next room and confronted [the Student] in there for what [the Student] had done by running into [Teacher 1]." The Paraeducator said that the Student did not respond well to confrontation or adult directives unless mutual respect had been established. (P3, 05:30)

The IEP Manager

14. In an interview with the Complaint Investigator, the IEP Manager described that the Student was in one of their classes and shared that the Student struggled with impulse control and became dysregulated if they did not feel heard. The IEP Manager described, "If [the Student] sees other people … getting in trouble or [the Student] feels that

they're not getting justice, [the Student] would take it into [their] own hands and [their] words to try to make everything okay." (P2, 03:25)

15. The IEP Manager described that on March 11, 2025, they were not in the classroom where the "shoulder-checking" incident occurred, "I was in another classroom and it was passing and I came out to go to my classroom and [the Student] and another teacher were engaged in a conversation about what had happened, and I got [the Student] to calm down and just got [the Student] out of the situation and brought [the Student] to the office." (P1, 01:56) The IEP Manager described, "[The Student] was just engaging, yelling with the other adult … I just told [the Student], 'Let's not do this in the hallway. You're making a scene. It's embarrassing. We're going to go to a private area, and we can discuss it there.' [The Student] continued to yell at [Teacher 1], and I just told [the Student] to, 'Please stop. We would discuss it when we got to the office' and [the Student] stopped talking in the hallway until we got into the office." (P1, 01:56)
16. The IEP Manager recalled the Student saying things like, "'[Teacher 1] wasn't going to keep me in the classroom. [Teacher 1] can't hold me there.' [The Student] said that [they] had not shoved [Teacher 1], but kind of moved [Teacher 1] out of the way." The IEP Manager's impression was that the Student felt Teacher 1 couldn't keep them in the classroom and took steps to ensure that did not happen. (P1, 02:28) The IEP Manager described that en route to the office, the Student was "upset, obviously, but I think [the Student] was fine. I mean, until [the Student] got a consequence and then [the Student] was upset about the consequence." (P3, 04:36)
17. When asked about the Student's ability to negotiate changes in procedures, the IEP Manager indicated that the Student's reaction to new procedures was dependent on how the Student was feeling. (P3, 05:01)
18. The IEP Manager indicated that Teacher 1 knew the Student from last year and knew that the Student had an IEP. (P3, 05:48)

The Parent

19. The Parent shared in an interview with the Complaint Investigator that the Student experienced ADHD and anxiety that were "pretty well managed." The Parent shared that the Student struggled to employ appropriate coping mechanisms when upset and that the Student was learning how to manage the diagnosis of Disruptive Mood Dysregulatory Disorder. The Parent indicated that the behavior plan was in place for the Student's and others' safety. The Parent described, "So that headstrong inability to employ any kind of rational thought with [the Student] is a lot of what we see with [the Student's] disability' which was evidenced by verbalizations and "sometimes physical aggression with peers" and resulted in multiple suspensions. (P2, 07:10)
20. The Parent shared their perception of events involving the Student on March 11, 2025. The Parent said, "So [the Student] was in [their] English class with a substitute teacher. [The Student] reported to me that I think some things had not been picked up in the classroom by other students and the teacher asked the whole class to stay after the bell rang. [The Student] does have multiple mental health conditions, one of them

being anxiety, and [the Student] had received some counsels for being late to the class that directly follows English. And so [the Student] said, 'My stuff's picked up. I'm leaving.' And the teacher put [themself] between [the Student] and the door. [The Student] said [Teacher 1] was physically barricading [the Student] in the classroom, and [the Student] pushed past [Teacher 1] to get out the door. After that, [Teacher 1] accosted [the Student] out in the hallway to further discuss the issue and told [the Student] that [they] needed to come back and [the Student] did cuss at [Teacher 1] and … told [Teacher 1], 'You can't tell me what the fuck to do. I'll do whatever the fuck I want.' Or something along those lines." (P1, 00:50)

21. When asked to describe "accosted," the Parent said, "[The Student] said that [Teacher 1] ran out of the classroom after [the Student] left and came out into the hallway and was yelling at [the Student] and telling [the Student] [they] needed to come back. And that's when [the Student] turned around and cussed at [Teacher 1] and said, 'No, I'm not going to do that.'" (P2, 04:06)
22. The Parent indicated they were concerned about the School's lack of adherence to the Student's behavior plan, felt the Student had been physically restrained, and that Teacher 1 engaged in a verbal interaction with the Student in the hallway, an action that was contrary to the Student's behavior plan. (P1, 01:39)
23. According to the Parent, the Principal said, "'Well, I don't even think the teacher was aware of [the Student's] behavior plan. We don't share that information with our substitute teachers. That's confidential.' And I said, 'Well, if there are any kids whose plans should be shared with subs, I would think it would be your behavior kids.' And [the Principal] said, 'Sometimes they get a list of accommodations, but they are not privy to that information.' … my concern was, I felt like the School did not follow that behavior plan … ." (P1, 02:40)
24. The Parent listed the parts of the Student's behavior plan they believed should have been implemented:
    a. "Staff will walk away after redirection is given immediately." According to the Parent, "This was not done. After [Teacher 1] told [the Student] to sit back down."
    b. "If [the Student] starts to argue, staff will ignore and walk away." The Parent said, "Apparently there was some kind of conversation that occurred in the classroom between [the Student] and [Teacher 1] when [the Student] said, 'No, I'm leaving.' And [Teacher 1] said, 'No, you're not.'" According to the Parent, the Student reported that "… if [the Student] began cussing excessively or arguing, [the IEP Manager] or [the Paraeducator] will remove [the Student] from the classroom. That did not happen." (P2, 04:46)
    c. The Parent shared, "[The Student] also knows that if there is an incident that occurs during the classroom, that it is not [the Student's] to handle and that it will be handled by [the] administration. So the minute that [Teacher 1] thought [they] had a problem with [the Student], there should have been a call either to

> [the IEP Manager] or to the Principal to say, 'We have an issue. Can somebody please come down and address this … .'" (P5, 15:28)

The Principal

25. In an interview with the Complaint Investigator, the Principal shared that on March 11, 2025, Teacher 2 had an emergency and "… ended up leaving … sometime in the morning, so it came out of nowhere. [Teacher 2] didn't even have a lot of time to make sub plans. [Teacher 1] kind of made them up on the fly and knew that the kids were working on a paper … ." The Principal shared that the sub plans were more generic than if a teacher were to have written plans for a scheduled absence. The Principal shared. "… because it was so late in the day, we couldn't find a substitute, so we had a certified teacher cover those classes during [their] plan time." The Principal shared that when a teacher covers a class for another teacher, they do not have access to the Student Information System like the assigned teacher. The Principal confirmed that teachers do not have universal access to student information in the Student Information System. (P2, 06:25)
26. According to the Principal, after the incident with the Student, they spoke with Teacher 1, who was upset about being physically contacted by a student. The Principal shared that they consulted with the assistant principal, who talked to the Student. The Principal also spoke with the Paraeducator and students to gather more information. Ultimately, the Principal decided to issue consequences for the Student's actions and communicated with the Student's parents. (P1, 00:59)
27. The Principal shared that the Parent "… was frustrated that the sub didn't have access to [the Student's] behavior plan. I shared with [the Parent] that we don't usually share that information with subs because it's pretty confidential information and we don't want a sub folder to be left out on a teacher's desk with confidential information on it." The Principal stated that they shared with the Parent that "… there was a Para in the classroom who did know [the Student's] behavior plan and who was actually named in [the Student's] behavior plan. … [The Paraeducator] worked with [the Student] when [the Student] was a sixth grader and also when [they] were a seventh grader, so [the Paraeducator] [was] pretty knowledgeable in what [the Student's] behavior needs are." The Principal indicated that the Paraeducator had taken the Student out of classrooms following the Student's behavior plan when the Student had been elevated in the past. The Principal said, "… We felt comfortable that [the Paraeducator] knew how to help support [the Student] in that situation." (P2, 03:41)
28. The Principal explained that Teacher 1 likely knew the Student by sight due to the Student's presence in the sixth-grade hallway and the Student's history of behavior issues at the School, which led to a behavior plan. However, because Teacher 1's team did not include special education teachers the previous year and Teacher 1 hadn't taught the Student directly, Teacher 1 would not have had access to the specifics of [the Student's] behavior plan despite knowing the Student received special education services due to the resource classroom's proximity to Teacher 1's classroom. (P2, 05:08)

29. The Principal shared that it was common class dismissal practice for a teacher to say, "I dismiss you, not the bell." (P1, 02:45)
30. The Principal described the Student's behaviors, "[The Student] is very physical. I have seen [the Student] physical with peers more so than anything else. I have not seen [the Student] physical with staff members until this instant [sic]. But [the Student] has a track record of being physical with other peers and sometimes in a playful manner, sometimes not in a playful manner … ." (P3, 09:18) When asked about the Student's ability to navigate a change in procedure, the Principal stated, "[The Student] is a hardheaded child who, if [the Student] wants to do something, [the Student's] going to do it. And if [the Student] doesn't want to do it, [the Student's] not going to do it. This might be a change in procedure for this one particular class. … [The Student's] a very strong relationship kid and [the Student] didn't have a relationship with … [Teacher 1]. So asking [the Student] to do something [they] didn't want to do wasn't going to go over well. That doesn't excuse the fact that [the Student] still has to follow our code of conduct at our building." (P3, 10:08)

The Director of Special Education

31. In an interview with the Complaint Investigator, the Director of Special Education described that the Paraeducator had access to the Student's IEP and behavior plan and was "… specifically mentioned in [the Student's] behavior intervention plan as a strategy for non-productive behaviors." (P2, 03:39)
32. The Director of Special Education indicated that the Student was suspended for physical aggression toward Teacher 1. (P3, 04:59)
33. The Director of Special Education shared that "… as a system, we do share IEP and behavior plan information with long-term subs. … This was a unique situation where it wasn't really a sub, it was a teacher taking over for a class." (P4, 07:33)

On March 19, 2025, the Parent filed this complaint.

Positions of the Parties, Applicable Regulations, and Conclusions

ISSUE ONE

Whether USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), on March 11, 2025, failed to implement the Student's IEP when a substitute teacher did not follow the Student's behavior intervention plan. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

According to K.A.R. 91-40-16(b)(3) and 34 C.F.R. § 300.323, an IEP must be in effect for each exceptional child at the beginning of each school year.

The Parent alleged that on March 11, 2025, the Substitute Teacher violated the Student's behavior intervention plan. The Student shoved past the teacher to leave the classroom. The

Substitute Teacher approached the Student in the hall afterwards, and it was reported that the Student was verbally inappropriate. Due to making bodily contact with staff, the Student received two days of out-of-school suspension.

In their Response, the District indicated that there had not been a violation of the Student's IEP. The District said neither an IEP nor a BIP removes the option to issue a disciplinary action for a code of conduct violation. The District indicated that physical aggression toward a staff member was a severe code of conduct violation that warranted disciplinary action.

The District's Response did not address the allegation in this Complaint. While it is correct that a District may impose a short-term suspension, even for behavior that is a manifestation of a student's disability (34 C.F.R. 300.530(b)), that does not excuse the District's duty to provide a Free Appropriate Public Education (FAPE) by implementing the IEP. The issue in this Complaint is not that the District suspended the Student, but rather, that it failed to implement the Student's IEP when a Substitute Teacher did not follow the Student's BIP.

On March 11, 2025, when Teacher 1 covered a class for Teacher 2 due to an emergency, the District and Teacher 1 both acknowledged that Teacher 1 had not been provided with the Student's IEP or BIP. K.A.R. 91-40-16(b)(3) and 34 C.F.R. § 300.323 requires an IEP to be in effect, implying that all relevant staff responsible for the Student's education should be aware of and able to implement it. Although testimony revealed that Teacher 1 knew that the Student had an IEP, they were unaware of the specific details, which impacted their ability to follow the IEP and BIP.

The BIP outlined specific staff responses to the Student's behavior, including the following:

a. "Staff will gently and [with] the use of general rules [,] will redirect the Student."
b. "Staff will walk away after redirection immediately."
c. "If [the Student] starts to argue [,] staff will ignore and walk away."

Teacher 1 was not privy to the specifics of the IEP or BIP, despite knowing the Student was on an IEP, and their ability to respond appropriately in certain situations was compromised. If Teacher 1 had been furnished with the necessary information and had responded to the verbal interactions with the Student in accordance with the BIP, the subsequent escalation and physical interaction, which ultimately led to the Student's two-day suspension, might have been avoided.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is substantiated*** that the District failed to implement the Student's IEP when a substitute teacher did not follow the Student's behavior intervention plan, which resulted in a material failure to implement the IEP, denying the Student a FAPE.

ISSUE TWO

Whether USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to inform the substitute teacher of their roles and responsibilities in implementing the Student's IEP on March 11, 2025. K.A.R. 91-40-16(b)(5); 34 C.F.R. 300.323(d)(2).

According to K.A.R. 91-40-16(b)(5) and 34 C.F.R. 300.323(d)(2), each agency shall ensure that each teacher and provider is informed of the following: that 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.

The Parent alleged that the School acknowledged that they do not share behavior plans with substitute teachers and violated the Student's plan.

The District responded that while the Substitute Teacher had not read the Student's IEP, there was a special education staff member assigned to the class who was familiar with the Student and their IEP and behavior intervention plan.

On March 11, 2025, when Teacher 1 covered a class for Teacher 2 due to an emergency, the District and Teacher 1 both acknowledged that Teacher 1 had not been provided with the Student's IEP or BIP. K.A.R. 91-40-16(b)(5) and 34 C.F.R. § 300.323(d)(2) requires each teacher (which would include a substitute teacher covering a class) to be informed of their specific responsibilities for the implementation of a Student's IEP. Testimony indicated that Teacher 1 knew that the Student had an IEP but may not have known the specifics, which impacted their ability to follow the IEP and BIP. Reinforcing this point, the Principal indicated that the District does not "usually share that information with subs because it's pretty confidential."

Although the Paraeducator was aware of the Student's BIP and was present during Teacher 1's class coverage, there was no evidence beyond the Paraeducator's observation that indicates they actively facilitated the BIP's implementation by Teacher 1. Consequently, the argument that the Paraeducator's presence ensured IEP/BIP implementation is unsupported. While the Paraeducator's familiarity with the IEP is a mitigating circumstance, it does not relieve the District of its duty to ensure Teacher 1, the responsible adult for instruction and classroom management on March 11, 2025, received specific information regarding their role in the Student's IEP implementation.

Despite the emergent nature of the need to have a class period covered, the District was obligated to inform Teacher 1 of their responsibilities regarding the implementation of the Student's IEP and BIP, even for a single period. The law does not provide an exception for short-term substitutes related to providing this information.

Additionally, the District's policy of not sharing behavior plans with substitute teachers, while potentially intended to protect confidentiality, creates a barrier to implementing IEPs in situations involving substitute coverage and is contrary to the law.

Relevant caselaw includes:

- Michigan City Area Schools, 74 IDLER 272 (2019)
- Robertson V. East Baton Rouge Parish [school]. Bd., 61 IDELR 201 (2013)
- Douglas County School District, 70 IDELR 111 (2017)

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is substantiated*** that the District failed to inform the substitute teacher of their roles and responsibilities in implementing the Student's IEP on March 11, 2025, which resulted in a material failure that denied the Student a FAPE.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. A violation occurred in the following area:

A. Federal regulations at K.A.R. 91-40-16(b)(3) and 34 C.F.R. § 300.323 specify that an IEP must be in effect for each exceptional child at the beginning of the school year.

In this case, the evidence supports the finding that USD #402 did not implement the Student's IEP when a substitute teacher did not follow the Student's BIP. Documentation and Interviews document this.

B. Federal regulations at K.A.R. 91-40-16(b)(5) and 34 C.F.R. 300.323(d)(2) specify that each agency shall ensure that teachers and providers are informed of their specific responsibilities related to the implementation of a child's IEP.

In this case, the evidence supports the finding that USD #402 did not provide the substitute teacher with their specific responsibilities related to the implementation of the Student's IEP and BIP. Documentation, Interviews, and the District's undated Response letter document this.

Based on the foregoing, USD #402 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #402 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 K.A.R. 91-40-16(b)(3), 34 C.F.R. § 300.323, and K.A.R. 91-40-16(b)(5), 34 C.F.R. 300.323(d)(2) by designing and describing a system in which all substitutes, internal or external, have access to students' IEP information prior to the commencement of their role as a substitute.
2. Within 20 calendar days of the date of this report, USD #402 shall notify all relevant internal stakeholders of the revisions to substitute staff's access to IEP information. Verification of this notification shall be provided to the Department.

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.gov 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. 402,
Augusta Public Schools: 25FC402-002

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on March 19, 2025, by -------, on behalf of her child, -------. In the remainder of this decision, ------- will be referred to as "the complainant," and ------- will be referred to as "the student." An investigation of the complaint was undertaken by a complaint investigator on behalf of the Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, a Complaint Report, addressing the allegations, was issued on April 15, 2025. That Complaint Report concluded that there was a violation of special education statutes and regulations

Thereafter, the district filed an appeal of the Complaint Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the original complaint, the Complaint Report, the district's notice of appeal, and the parent's response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

Preliminary Matters

A copy of the regulation regarding the filing of an appeal [K.A.R. 91-40-51(f)] was attached to the Complaint Report. That regulation states, in part, that: "Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect." Accordingly, the burden for supplying a sufficient basis for appeal is on the party submitting the appeal. When a party submits an appeal and makes statements in the notice of appeal without support, the Committee does not attempt to locate the missing support.

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

Discussion of Issues on Appeal

From Complainant

The report identified two issues:

ISSUE ONE: Whether USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), on March 11, 2025, failed to implement the Student's IEP when a substitute teacher did not follow the Student's behavior intervention plan. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

ISSUE TWO: Whether USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to inform the substitute teacher of their roles and responsibilities in implementing the Student's IEP on March 11, 2025. K.A.R. 91-40-16(b)(5); 34 C.F.R. 300.323(d)(2).

The district appealed the decision rendered on both issues.

Issue One

> Whether USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), on March 11, 2025, failed to implement the Student's IEP when a substitute teacher did not follow the Student's behavior intervention plan. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

In its appeal of this issue, the district asserts that it did implement the student's IEP Behavior Intervention Plan (BIP) and that the investigator relied "on the parent's description of what happened on March 11, 2025."

The Appeal Committee disagrees with both assertions. Even disregarding all of the parents statements to the investigator, and relying solely on statements of school personnel made to the investigator, the Appeal Committee notes following facts:

The BIP specified that:

a. "Staff will gently and [with] the use of general rules [,] will redirect the Student."
b. "Staff will walk away after redirection immediately."
c. "If [the Student] starts to argue [,] staff will ignore and walk away."

The incident was described by the paraeducator to the investigator as follows:

> *"Towards the end of the class, there's a little more movement. At that point, [the Student] wanted to talk to another student. [The Student] just got up and did it, but [the Student] was standing in the middle of the room also. And that's when [Teacher 1] was asking [the Student] to sit down, and they went back and forth with ... more of an argument. Eventually, though, [the Student] sat down. At that point, it felt like [the*

> *Student] was deescalated, and there was no other thing to do. There was maybe five minutes before class was getting ready to let out. So at that moment, [Teacher 1] preferred to release the students instead of just going out of the class, stand up, walk out [sic]. And so [the Student] bolted out of the classroom without being told to go, and that's when [the Student] ran into [Teacher 1]." Report, p.8-9.*

The paraeducator further reported to the investigator that:

> *After the Student left the classroom, "… I heard the confrontation when [the Student] was leaving. [The Student] went to [their] next class, and that's when [Teacher 1] went to the next room and confronted [the Student] in there for what [the Student] had done by running into [Teacher 1]." Report, p. 9.*

It is clear from this account that teacher 1 did not comply with the portion of the student's IEP/ BIP, cited above. This issue has nothing to do with the suspension. The district had authority to suspend the student for this behavior. This issue is solely about whether the district implemented this student's BIP. The evidence supports the investigator's conclusion that teacher 1 did not implement the BIP, likely because teacher 1 was unaware of the BIP.

This was not just a procedural error. The error likely contributed to negative consequences for the student. As the investigator pointed out, on page 16 of the report, "If Teacher 1 had been furnished with the necessary information and had responded to the verbal interactions with the Student in accordance with the BIP, the subsequent escalation and physical interaction, which ultimately led to the Student's two-day suspension, might have been avoided."

With regard to the district's position that, although teacher 1 did not know of the student's BIP, the paraeducator did and that should be sufficient, that interpretation is in opposition to the clear language in the federal regulation that is addressed in Issue two and this case illustrates why the requirement in issue 2 is so important to ensure the implementation of IEPs.

Issue Two

Whether USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to inform the substitute teacher of their roles and responsibilities in implementing the Student's IEP on March 11, 2025. K.A.R. 91-40-16(b)(5); 34 C.F.R. 300.323(d)(2).

The pertinent federal regulation is 34 C.F.R. 300.323(d), which states (bold, underlined, print added for emphasis):

> *(d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that--*
>
> *(1) 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; and*
>
> *(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of--*
>
> *(i) His or her specific responsibilities related to implementing the child's IEP; and*
>
> *(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.*

The pertinent fact, provided by school personnel to the investigator, is that the District principal, special education director and Teacher 1 each acknowledged that Teacher 1 had not been informed of the Student's IEP or BIP (Finding 9 - p. 8, 25 - p. 12, 27 – p 13, 33 – p. 14). The conclusions of the investigator on both issues are fully supported by evidence presented by school district staff.

Conclusion

For the reasons stated herein, the Complaint Report is sustained in full.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 6th day of May, 2025.

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 #229, BLUE VALLEY PUBLIC SCHOOLS
ON APRIL 11, 2025

DATE OF REPORT: APRIL 28, 2025

This report is in response to a complaint filed with the Kansas State Department of Education against USD #229 (Blue Valley Public Schools) on behalf of ------- by his father -------. In the remainder of the report, ------- will be referred to as "the student", ------- as "the father" or "complainant". The student's mother is ------- and will be referred to as "the mother" in the remainder of the report.

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 student currently attends Indian Valley Elementary School which will be referred to as the "school" in the remainder of the report. School and district staff will be referred to In the remainder of this report as follows:

- Dr. Mark Schmidt, Assistant Superintendent Special Education
- Carol Lujano, School Psychologist
- Amanda Geyer, Student's Case Manager
- Samantha Lovgren-Uribe, Speech Language Pathologist (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 first complaint on April 10, 2025 and the second on April 11, 2025 .

Evidence Reviewed

USD #229 made the following staff available for interviews on April 18, 2025 as part of this investigation.

- Assistant Superintendent

During the investigation, the Complaint Investigator, Dr. Nikki Crawford, reviewed all evidence and documentation provided by the district and the father which included the evidence and final report from a similar complaint filed by the father on February 27, 2025. The complaint investigator contacted the father, director and school psychologist on April 15, 16, 17, 18, and 21, 2025 by phone and email to clarify evidence and documentation.

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:

1. Minutes from the IEP meeting on November 15, 2024
2. The district response to complaint 25FC229-003 dated March 4, 2025
3. IEP draft dated April 10, 2025
4. IEP meeting notes dated April 10, 2025
5. PWN for refusal of Extended School Year (ESY) dated April 10 2025, signed by the mother on April 16, 2025
6. PWN for reduction in minutes of speech language services dated April 10, 2025, signed by the mother on April 16, 2025
7. Email sent by the case manager to the IEP team including the father and mother with IEP draft, PWN for refusal of ESY, PWN for reduction in speech/language service minutes and procedural safeguards dated April 11, 2025 at 2:34 p.m.
8. Email reply from father to case manager claiming the PWNs were not attached to the email dated April 15, 2025 at 3:55 p.m.
9. Email reply from the assistant superintendent to the father pointing out that all of the required IEP documents were in fact attached to the email from the case manager on April 11, 2025; this reply from the assistant superintendent also included the required IEP documents and was sent April 16, 2025.
10. Phone call between the father and investigator on April 15, 2025 lasting one hour and 17 minutes
11. Phone call between the father, KSDE Dispute Resolution Coordinator and investigator on April 16, 2025 lasting 25 minutes
12. Email from school psychologist to the father and mother with attached PWN for the psychological evaluation sent April 16, 2025
13. PWN for the psychological evaluation dated April 16, 2025, signed by the mother on April 16, 2025
14. Phone interview with the Assistant Superintendent on April 18, 2025
15. Email from the school psychologist to investigator on April 21, 2025
16. District response dated April 21, 2025

Background Information

The subject of this complaint is a ten-year-old fourth grader with Speech/Language Disabilities as the qualifying exceptionality as noted in the most recent re-evaluation dated April 20, 2023.

The IEP dated April 17, 2024 lists four annual goals and includes 20 minutes of direct speech and language services in the special education classroom 2 days every week, 30 minutes of direct special education services in the special education classroom 5 days every week and 60 minutes of direct special education services in the general education classroom 5 days every week. The IEP lists that in addition to instruction targeting reading and writing goals, instruction will include guided and repeated practice, reteaching, and immediate feedback on decoding single and multi-syllabic words, encoding/spelling skills, high-frequency words, and syllable types. The student's IEP includes one accommodation, taking tests in a quiet, non-competitive setting. The IEP lists the student's strengths as, "[the student] is a respectful child. [The student] wants to do well and puts forth their best effort. [The student] is personable and friendly with peers and staff members. [The student] has strengths in reading fluency (accuracy and speed) and math. [The student] is highly motivated to do well. [The student] shows grit, perseverance, and is always willing to ask for help when needed. [The student] is very confident in his phonics skills and is always wanting to participate".

There was an IEP meeting on April 10, 2025 during the investigative period at which the team agreed to conduct a psychological evaluation, proposed a reduction in service minutes for speech language services and discussed the father's request for ESY.

Issues Investigated

Based on the written complaint and an interview with the complainant, three concerns which fall under the same IDEA regulations were identified and investigated.

Issue One

Did USD #229 consider and respond to the father's request on November 5, 2024 for a psychological evaluation?

Applicable Law

Federal regulations at 34 C.F.R. 300.503(a)(2) states that prior written notice needs to be provided to the parents of a child with a disability a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

Parent Position

The father's complaint dated April 10, 2025 states, "[the school psychologist] in the meeting on Nov 5, 2024 refused to do a psychological evaluation".

District Position

The district response notes, " [the school psychologist] has stated that she has not spoken to or communicated with [father] on November 5, 2025. In fact, she has not spoken to or communicated with [father] this year outside the IEP meetings that occurred on September 5, 2024, November 15, 2024 and April 10, 2025".

Additionally, "If [the father] intended to make this accusation about the November 15, 2024 IEP meeting, which took place during parent teacher conferences, the district again denies that they received any request for a psychological evaluation. This was also addressed in the district response to 25FC229-003".

Analysis: Findings of Fact

The following finding of facts is based upon a review of the documentation noted previously and interviews with all parties.

1. In the father's complaint he stated, " [the school psychologist] in the meeting on Nov 5, 2024 refused to do a psychological evaluation".
2. In the interview with the father on April 15, 2025 he stated that the school psychologist denied his request for a psychological evaluation made on November 5, 2024 without consulting with the IEP team, "the decision did not go to the IEP team".
3. In an email exchange with the school psychologist and as stated in the district's response there was no meeting between the father and school psychologist on November 5, 2024.
4. In the minutes from the November 15, 2024 IEP meeting notes make no mention of a psychological evaluation request.
5. The district response denies that the father requested a psychological evaluation at the November 15, 2024 IEP meeting.
6. In the minutes from the April 10, 2025 IEP meeting it notes that the father requested a psychological evaluation due to concerns about his child's behavior.
7. An email sent from the school psychologist to the father, mother, assistant superintendent, case manager and principal included an attached PWN for the psychological evaluation dated April 16, 2025.
8. The PWN for the psychological evaluation states, "[father] has requested that the district complete a "psychological evaluation" on [student] due to his behaviors in the classroom and at recess. At the annual IEP held on 4/10/25, the team discussed this request and agreed to complete behavior scales (specifically the Behavior Assessment System for Children, Third Edition) with [student]".
9. The mother signed the PWN for the psychological evaluation on April 16, 2025

Conclusion

In this case, the father's assertion that he met with the school psychologist on November 5, 2024 where she declined a request for a psychological evaluation is denied by the school psychologist. If the father has the dates confused and is referring to the November 15, 2024 IEP the district denies that they receive any request for a psychological evaluation at the November 15, 2024 IEP meeting, nor is there mention of a psychological evaluation in the IEP meeting minutes.

The father's request for a psychological evaluation at the most recent IEP meeting on April 10, 2025 was responded to with a PWN sent on April 16, 2025 requesting consent to conduct the psychological evaluation. The mother signed the PWN giving consent on April 16, 2025.

Based on the foregoing, there is no evidence of a meeting where a request was made for a psychological evaluation on November 5, 2024, nor at the November 15, 2024 IEP meeting. The district did respond to the father's request for a psychological evaluation when made at the April 10, 2025 IEP meeting with a PWN. Therefore the district *is IN compliance* with no corrective actions required.

Issue Two

Did USD #229 discuss and respond to the father's concerns related to the reduction in speech/language services as stated in the IEP?

Applicable Law

Federal regulations at 34 C.F.R. 300.503(a)(2) states that prior written notice needs to be provided to the parents of a child with a disability a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

Parent Position

In the father's second complaint on April 11, 2025 he states, "[the] school district wants to reduce services on my kids IEP for speech language and special education…".

District Position

As noted in the district's response, "The second PWN required parental consent as it decreased services by more than 25% for classroom adult support and [speech language pathologist] SLP services. As the notes show, during the meeting [the father] shared his concerns and the SLP and teacher reviewed the data that supported the proposals. The IEP Team, including the student's mother, ultimately believed that the reduction was appropriate and the student's mother signed the PWN consenting to the change".

Analysis: Findings of Fact

The findings of Issue One are incorporated herein by reference. The following finding of facts is based upon a review of the documentation noted previously and interviews with all parties.

1. The minutes from the IEP meeting on April 10, 2025 reflect discussions about the student's progress on his speech language goals including the father's disagreement and the district's rationale for proposing the change.
2. In the interview with the father he expressed concern that his child was not making appropriate progress on his speech language goals.
3. The meeting minutes reflect lengthy conversations about the student's progress and needs related to speech language services. The team agreed to continue with the student's reading, writing and language goals.
4. The meeting minutes reflect the following changes in services, "It is proposed to decrease [the student's] service for special education support in the general education classroom from 60 minutes to 30 minutes 5x weekly. It is proposed to reduce direct speech-language therapy services from 20 minutes 2x per week to 30 minutes 1x per week".
5. A PWN reflecting the proposal of reduction in services was sent to both parents on April 11, 2025 and signed by the mother giving consent on April 16, 2025.

Conclusion

It was clear in the April 15, 2025 interview between the investigator and father that the father believed the investigator had the power to direct the IEP team's decisions. The investigator clarified with the father several times that the power of the investigator in this case, is limited to ascertaining whether the father's concerns were considered in the IEP meeting and that the district followed the appropriate IDEA regulation for providing notice and obtaining consent for changes for which consent is required.

In this case, the district considered the father's disagreement with the reduction in speech language services at the IEP team meeting. The IEP team, other than the father, agreed that the reduction in speech language services was appropriate. The district issued a PWN for these changes which was signed by the mother. According to the Kansas State Department of Education Kansas Special Education Process Manual "Consent from one parent is sufficient. In the event that the school receives responses from both parents, with one providing consent 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." (page 19)

Based on the foregoing, the district followed the process as required by IDEA for consideration of issues raised by the IEP team and responded appropriately, in a timely manner with a PWN. The district *is IN compliance* and no corrective actions are required.

Issue Three

Did USD #229 discuss and respond to the father's request for Extended School Year (ESY)?

Applicable Law

Federal regulations at 34 C.F.R. 300.503(a)(2) states that prior written notice needs to be provided to the parents of a child with a disability a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

Parent Position

In the father's second complaint on April 11, 2025 he states, "ESY (extended school year) would be beneficial for his IEP improvement…"

District Position

As noted in the district's response, "[The father's] child was not eligible for ESY as noted on the parent signed April 17, 2024 IEP and the district proposed that [the student] again would not be eligible for ESY 2025. [The father] disagreed with this proposal and the district responded to his concerns as indicated in the first of two PWNs for the 4-10-2025 meeting. This PWN along with the meeting notes clearly shows that the district considered his input before deciding that the student did not qualify for ESY. As this was not a change to the IEP, parent consent was not necessary."

Analysis: Findings of Fact

The findings of Issues One and Two are incorporated herein by reference. The following finding of facts is based upon a review of the documentation noted previously and interviews with all parties.

1. In the notes from the April 10, 2025 IEP meeting, the request from the father for ESY was discussed as follows, "Extended School Year: [The case manager] reinforced that ESY is to remediate goals that are currently on [the student's] IEP. [The assistant superintendent] also clarified that the areas that [the father] is concerned about are more general education issues and those would not be addressed in ESY. [The assistant superintendent] asked both parents if either of them believe [the student] showed regression on [their] special education goals this year? If [the student] met all of [their] goals, we can't say [they] regressed. [The mother] agreed and stated that [student] reports that ESY is boring. [The father] again disagreed with the team proposal regarding ESY".
2. The district sent the PWN to refuse provision of ESY on April 11, 2025.
3. The mother signed the PWN giving consent on April 16, 2025.

Conclusion

In this case, the provision of ESY was discussed at the April 10, 2025 IEP meeting by members of the IEP team. The IEP team, other than the father, agreed that ESY was not appropriate.

Based on the foregoing, the district followed the process as required by IDEA for consideration of issues raised by the IEP team and responded appropriately, in a timely manner with a PWN. The district *is IN compliance* and no corrective actions are required.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. 300.503(a)(2) is not found based on the fact that a meeting between the father and school psychologist did not take place on November 5, 2024, the father did not raise the issue at the November 15, 2024 IEP meeting and once the request was made at the April 10, 2025 IEP meeting it was appropriately responded to by the district. Corrective action is not required.
2. ISSUE TWO: A violation of 34 C.F.R. 300.503(a)(2) is not found based on the district's consideration and response with a PWN for reduction in services. Corrective action is not required.
3. ISSUE THREE: A violation of 34 C.F.R. 300.503(a)(2) is not found based on the district's consideration and response with a PWN for denying ESY. 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.gov 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 #290
ON MARCH 27, 2025

DATE OF REPORT: APRIL 28, 2025

This report is in response to a complaint filed with our office on behalf of a student, ------- by their parents, -------. In the remainder of the report, the student will be referred to as "the Student" and the parents as "the Parents."

The Complaint is against USD #290, Ottawa Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #290.

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 27, 2025, and the 30-day timeline ended on April 26, 2025.

Allegations

The following issues will be investigated:

ISSUE ONE: Whether USD #290, in accordance with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), developed an IEP that included the "proper accommodations" for the Student. K.A.R. 91-40-18; 34 CFR §300.320.

ISSUE TWO: Whether USD #290, in accordance with state and federal regulations implementing the IDEA, implemented the Student's IEP. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

ISSUE THREE: Whether USD #290, in accordance with state and federal regulations implementing the IDEA, considered and offered the Student an IEP in their least restrictive environment. K.S.A. 72-3420, K.A.R. 91-40-1.(II), K.A.R. 91-40-21; 34 CFR § 300.116.

ISSUE FOUR: Whether USD #290, in accordance with state and federal regulations implementing the IDEA, conducted a re-evaluation for the Student. K.S.A. 72-3428(h)(1)(2); 34 CFR § 300.303.

ISSUE FIVE: Whether USD #290, in accordance with state and federal regulations implementing the IDEA, provided the Student with a free appropriate public education. K.A.R. 91-40-1(z); 34 C.F.R. § 300.101.

Investigation of Complaint

The Complaint Investigator interviewed the Parents by video conference on April 14, 2025. The following District staff were interviewed on April 14 and 15, 2025: a Middle School Special Education Teacher, a Special Education Teacher for the District, the Assistant Director of Special Education, the Director of Special Services, and a Resource Room Teacher.

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:

District Materials:

1. Daily Behavior Tracking, Monday [no date]
2. Daily Behavior Tracking, Tuesday [no date]
3. Daily Behavior Tracking, Wednesday 01/15 [no year]
4. Daily Behavior Tracking, 08/02/2024, 08/14/2024, 08/15/2024, 08/19/2024, 08/20/2024, 08/27/2024, 08/28/2024, 09/04/2024, 09/05/2024, 09/09/2024, 09/10/2024, 09/11/2024, 09/12/2024, 09/16/2024, 09/17/2024, 09/18/2024, 09/20/2024, 09/23/2024, 09/24/2024, 10/03/2024, 10/04/2024, 10/08/2024, 10/21/2024, 10/22/2024, 10/25/2024, 10/28/2024, 10/29/2024, 10/30/2024, 11/05/2024,11/06/2024, 11/07/2024, 11/08/2024, 11/12/2024, 11/13/2024, 11/14/2024, 11/19/2024, 12/03/2024, 12/04/2024
5. Daily Behavior Tracking, no date
6. Daily Behavior Tracking with comments on back, Thursday 01/16 [no year]
7. Daily Behavior Tracking with comments on back, Thursday 01/16 [no year]
8. Daily Behavior Tracking, 08/22 [no year]
9. Daily Behavior Tracking, 08/23 [no year]
10. Daily Behavior Tracking, 09/2024 [no date]
11. Daily Behavior Tracking, 10/09 [no year]
12. Daily Behavior Tracking, 10/10 [no year]
13. Daily Behavior Tracking, 10/24 [no year]
14. Prior Written Notice, 01/27/2025
15. Staffing Record, Special Services, 01/24/2025
16. Prior Written Notice, 02/25/2025
17. Staffing Record, Special Services, 03/03/2025

18. [Student] Functional Outline, 12/05/2024
19. Individualized Education Plan, 10/02/2024
20. Team Meeting Notes, 10/02/2024
21. Staffing Record, Special Services, 11/04/2024
22. IEP Amendment Form, 12/16/2024
23. Prior Written Notice, 12/17/2024
24. IEP Amendment Form, 01/24/2025
25. [Alternative School] [District] Referral Form, 11/22/2024-01/24/2025
26. IEP Team Meeting, 08/13/2024
27. Prior Written Notice, 09/02/2024
28. Prior Written Notice, 10/02/2024
29. Staff Record, Special Services, 12/16/2024
30. [Student] Transition to [Alternative School] Meeting Notes, 01/23/2025
31. Updated Plan for [Student], 01/09/2025 (Implemented 01/13/2025)
32. Letter, re: Children's Mercy Kansas City, 02/14/2025
33. General Correspondence, re: Doctor Note, 02/28/2025
34. Referral Report, 01/30/2025, 02/03/2025, 02/11/2025, 03/03/2025, 03/04/2025
35. Daily Points Score Sheet, 01/27/2025, 01/28/2025, 01/29/2025, 01/30/2025, 01/31/2025, 02/03/2025, 02/04/2025, 02/05/2025, 02/11/2025, 02/13/2025, 02/27/2025, 02/28/2025, 03/03/2025, 03/04/2025, 03/05/2025
36. Referral Log, 01/01/2025-03/14/2025
37. Staffing Record, Special Services, 03/12/2025
38. Parent Questionnaire for Initial Evaluation, 03/11/2025
39. Prior Written Notice, 03/04/2025
40. Staffing Record, Special Services, 10/09/2024
41. Email, re: I am so Sorry!, 10/03/2024
42. Email, re: [The Student], 10/01/2024-10/02/2024
43. Email, re: Today, 12/05/2024
44. Email, re: (no subject), 10/23/2024
45. Email, re: Good Morning, 11/15/2024
46. Email, re: [The Student], 10/06/2024-10/07/2024
47. Email, re: Checking In, 09/25/2024
48. Email, re: Next Week and Para Coverage, 01/23/2025
49. Email, re: Please Review, 10/03/2024
50. Email, re: IEP Meeting Notes, 10/03/2024
51. Email, re: Follow-up to IEP Meeting, 10/06/2024-10/13/2024
52. Email, re: [The Student], 10/22/2024-10/23/2024

53. Email, re: Status of BIP, 10/28/2024-10/29/2024
54. Email, re: [The Student] Draft BIP, 11/01/2024
55. Email, re: [The Student], 11/20/2024
56. Email, re: BIP, 11/20/2024-11/21/2024
57. Email, re: 2nd Draft BIP, 11/18/2024-11/22/2024
58. Email, re: BIP, 11/25/2024
59. Email, re: Proposed Changes for Consideration, 12/09/2024-12/17/2024
60. Email, re: BIP, 12/19/2024-12/20/2024
61. Email, re: [The Student] Write Up, 12/26/2024-01/01/2025
62. Email, re: [The Student] Support Schedule, 01/13/2025
63. Email, re: Student Update, 01/11/2025–01/13/2025
64. [The Student] Behavior Intervention Plan Summary, 01/09/2025
65. Email, re: IMPORTANT: Student Update, 01/17/2025-01/21/2025
66. Email, re: Document Shared With You: "1.9.25 [The Student] Behavior Intervention Plan," 01/22/2025
67. Email, re: Paperwork, 01/23/2025
68. Email, re: [The Student], 01/22/2025-01/24/2025
69. Email, re: [The Student] Academic Information, 01/26/2025
70. Email, re: PWN, 01/27/2025
71. Email, re: Amendment, 01/27/2025-01/28/2025
72. Email, re: Follow Up, 02/23/2025
73. Email, re: [The Student], 02/24/2025
74. Email, re: IEP Team Meeting, 02/25/2025-02/27/2025
75. Email, re: IEP Meeting, 03/04/2025-03/05/2025
76. Email, re: [The Student], 03/13/2025-03/23/2025
77. Email, re: A Couple of Questions, 03/24/2025-04/02/2025
78. Documented Phone Discussion with Parent to Address Email, re: Concerns, 08/29/2024-08/30/2024
79. Phone Conversation Documentation, 10/22/2024
80. Phone Conversation Documentation, 02/26/2025
81. Email, re: Invitation: IEP MEETING, 03/05/2025
82. Email, re: Two Paras Gone, 08/27/2024
83. Email, re: One Para Gone, 08/21/2024
84. Email, re: Amendment - 3 Paras Gone, 09/30/2024
85. Email, re: Three Gone, 10/03/2024
86. Email, re: 2 ½ Gone Today, 10/10/2024

Background Information

This investigation involved a seventh grade student enrolled at a school in USD #290. The Student was first found eligible for special education on February 4, 2015 under the exceptionality of Developmental Delay. The Student was adopted by their grandparents in November 2021. The Student is currently eligible for special education services due to an Other Health Impairment.

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. The Student's Daily Behavior Tracking sheets from August 2024 included August 14, 15, 23, 26 and 28, with no total points listed. On August 23, 26 and 28, no anxiety level was chosen. Anxiety Levels were on a scale from 1-10. The remainder of the sheets indicated:
    a. August 14, 2024
i. Anxiety Level of 10.
    b. August 15, 2024
i. Anxiety Level of nine.
1. ii. Comments: The Student did well and asked questions.
    c. August 19, 2024
    i. Anxiety Level of eight.
    ii. Comments: The Student was upset and took breaks, but also followed directions and worked hard.
    iii. Total points: 14/24.
    d. August 20, 2024
i. Anxiety Level of 10.
2. ii. Comments: The Student was nervous, but worked through it. The Student refused to participate with the group and eat lunch. The Student wanted to go home.
3. iii. Total points: 8/24.
    e. August 22, 2024
    i. Anxiety Level of seven.
    ii. Comments: The Student did not want to fully engage, but later did. They helped clean and were polite.
    iii. Total points: 22/24.
    f. August 23, 2024
i. Comments: The Student was in the green zone.

g. August 26, 2024

h. Comments: The Student was in the green zone in the morning, but later refused to work.

i. August 27, 2024

j. Anxiety Level of six and seven.

4. ii. Comments: The Student was in the green zone often.

5. iii. Total points: 22/24.

i. August 28, 2024

i. Comments: The Student started in the green zone. The Student was then upset, struggled to participate, and had to take a sensory break.

2. The Student's Daily Behavior Tracking sheets from September 2024 did not include total points. On September 4, 2024, no anxiety level was chosen. The remainder of the sheets indicated:

a. September 4, 2024

i. Comments: The Student was in the green zone often.

b. September 5, 2024

i. Anxiety Level of five.

ii. Comments: The Student had a good day in art but struggled to participate in music class.

c. September 9, 2024

i. Anxiety Level of three.

iii. Comments: Described the Student's daily activities.

d. September 10, 2024

i. Anxiety Level of four.

ii. Comments: The Student was in the green zone in the morning, but later struggled to stay in class.

e. September 11, 2024

i. Anxiety Level of three.

iii. Comments: The Student was in the green zone.

f. September 12, 2024

i. Anxiety Level of four.

6. ii. Comments: The Student was in the green zone in the morning, but refused to participate in music theory.

g. September 2024 (illegible date)

h. Anxiety Level of three and four.

7. ii. Comments: The Student struggled with anxiety.

i. September 16, 2024

j. Anxiety Level of three and four.

8. ii. Comments: The Student was in the green zone.

i. September 17, 2024

i. Anxiety Level of three.

ii. Comments: Description of the Student's activities.

k. September 18, 2024

i. Anxiety Level of three and four.

iii. Comments: The Student did great with participation.

j. September 20, 2024

i. Anxiety Level of two.

ii. Comments: The Student performed well in class.

k. September 23, 2024

i. Anxiety Level of three.

ii. Comments: The Student was in the green zone and asked for a sensory break.

l. September 24, 2024

i. Anxiety Level of three.

ii. Comments: The Student was initially hesitant to participate.

3. The Student's Daily Behavior Tracking sheets from October 2024 did not include total points. On October 4, 8, 9, 10, 28, 29 and 30, no anxiety level was chosen. The remainder of the sheets indicated:

a. October 3, 2024

i. Anxiety Level of two.

iii. Comments: The Student refused to participate, and escalated to throwing items. The Student later calmed down. The Student's behavior switched between complying and not complying.

b. October 4, 2024

i. Comments: The Student did well and asked for a break.

c. October 8, 2024

i. Comments: The Student had a good morning.

d. October 9, 2024

i. Comments: The Student started the day by taking things off of the wall and leaving the room. The Student improved by the end of the day.

e. October 10, 2024

i. Comments: The Student had a good day overall.

f. October 21, 2024

i. Anxiety Level of three.

iii. Comments: The Student tore up posters but cleaned it up. The Student improved in the afternoon.

g. October 22, 2024

h. Anxiety Level of two.

iii. Comments: The Student worked well and "did a good job."

i. October 24, 2024

j. Anxiety Level of two.

ii. Comments: The Student had a good day overall.

i. October 28, 2024

i. Comments: The Student was anxious during third and fourth hour classes, and social studies.

k. October 29, 2024

i. Comments: The Student refused to go to speech.

j. October 30, 2024

i. Comments: The Student did not want to participate, and wanted sensory breaks. The Student was given breaks and was given "a limit on them."

4. The Student's Daily Behavior Tracking sheets from November 2024 did not include total points or anxiety levels. The remainder of the sheets indicated:

a. November 5, 2024

i. Comments: The Student had a good morning and put posters back that they tore down. The Student was aggressive in art class, but improved later.

b. November 6, 2024

i. Comments: The Student completed their assignments. They were "a little anxious here and there."

c. November 7, 2024

i. Comments: The Student worked hard, was compliant to alternative choices, and completed their work.

d. November 8, 2024 and November 12, 2024

i. Comments: The Student had an overall good day.

e. November 13, 2024

i. Comments: The Student had challenges following directions.

f. November 14, 2024

i. Comments: The Student had good participation.

g. November 19, 2024

h. Comments: The Student had a good morning. In the afternoon, the Student refused to go into class, threw items and hit a teacher with one, and then ran into another room.

5. The Student's Daily Behavior Tracking sheets from December 2024. No total points for the day were listed during the below dates. On December 3, 2024, no anxiety level was chosen. The remainder of the sheets indicated:

    a. December 3, 2024

i. Comments: The Student tore up some items and asked for a break. The Student regulated and improved.

    b. December 4, 2024

i. Anxiety Level of two.

ii. Comments: The Student took a sensory break in the morning. They had an overall positive day.

6. The Student's Daily Behavior Tracking sheets from January 2025: No total points or anxiety levels were listed. The remainder of the sheets indicated:

    a. No date

i. Comments: The Student "did very well" in the first hour of the day. Then colored on the walls and refused to clean. With support, they cleaned the wall, then refused to continue, then cleaned some more.

    b. No date

i. Comments: The Student did well, but wanted a break in the third hour of the day.

    c. January 15, [2025]

i. Comments: The Student worked well, was compliant, and had a "great day."

    d. January 16, [2025]

i. Comments: The Student tore up the carpet. The Student said they wanted to go home, then tried prying a plaque off of the wall. The Student started rolling the cart of sensory items down the hall, pulled someone's hair, ripped decorations off of a door, and threw shoes at peers.

7. IEP Team Meeting notes, dated August 13, 2024, indicated:

    a. One of the Parents requested the meeting and wanted to consider a shortened school day for the Student.

    b. The Student had paraprofessional support throughout the school day, except when pulled out for direct special education services.

    c. The Student's anxiety level over the summer was high. One of the Parents stated the Student's increased anxiety started in January 2024.

    d. The District would consider doing an updated sensory profile to consider programming needs.

8. Emails about paraprofessional coverage between August 21, 2024 through October 10, 2024 indicated that on:

    a. August 21 and 27, 2024: The Student had no coverage during their second hour class.

    b. September 30, 2024: The Student had no coverage during lunch.

c. October 3, 2024: The Student had no coverage during their second and sixth hour class, and during lunch.

d. October 10, 2024: The Student had no coverage during second hour class and lunch.

9. Emails from one of the Parents indicated the Student was absent on the following days: September 26, 2024; October 1, 2024; October 7, 2024; October 9, 2024; October 23, 2024; November 15, 2024; and December 5, 2024.

10. Notes from a phone call between one of the Parents and the Principal on August 30, 2024 indicated:

a. The Parent's request for a Functional Behavior Assessment (FBA) was granted.

b. The Student had been receiving speech-language services since 2015. The Parent thought the services had stopped and was concerned about the effectiveness of the virtual services. The Principal shared the Student's progress report and that they were progressing.

c. The Principal shared the Student's IEP did not contain direct occupational therapy services, but the Student had indirect/consult services. The Principal indicated that when they received consent for the FBA, they would get consent to evaluate for fine motor to update sensory and fine motor needs.

d. The Parents did not feel the Student was ready to increase their day.

11. A Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent, dated September 5, 2024, indicated:

a. The District proposed to conduct a re-evaluation of the Student.

b. The team would collect data on Health/Motor Ability, Social/Emotional Status/Behavioral Status and Other (Sensory Processing, Functional Behavior Assessment, and Fine Motor).

c. The re-evaluation was requested by the Parents.

d. The Parents gave their signed consent on September 9, 2024.

12. The Student's IEP, dated October 2, 2024, stated the Parents were concerned the Student was not ready for a full schedule and wanted to add time slowly. The IEP indicated:

a. The Student had a history of a Developmental Delay. The Student had been diagnosed with Developmental Coordination Disorder/Dysgraphia.

b. The Wechsler Intelligence Scale for Children (WISC-5) was administered to the Student on September 28, 2023.

i. The Student scored Very Low or Extremely Low in 12 areas; and

iii. Results indicated concerns with the Student's overall intellectual functioning.

c. The Student's Autism, Attention-Deficit/Hyperactivity Disorder (ADHD) and Dysgraphia impacted their ability to independently comprehend text at

grade level, their ability to produce legible written work, and their ability to solve multi-digit math problems across all settings.

d. The Student's behavior significantly impeded the learning of them self and others. It was indicated that the family reported the Student had diagnoses of Autism Spectrum Disorder, ADHD, Generalized Anxiety and Post-Traumatic Stress Disorder (PTSD). The IEP indicated that the Student's anxiety could impact their ability to engage fully or without resistance in the school setting, and that the Student might become dysregulated. The IEP noted that building self-confidence, positive coping skills and emotional vocabulary might assist in decreasing their anxiety and improve participation. It was reported that the Student's emotional disability and inability to self initiate coping skills impacted their ability to engage adequately in the school environment.

e. The Student would require accommodations which included: separate task setting, hard copy of schedule, shortened assessments and assignments, scribe for writing tasks, frequent breaks, extra cues/prompts, hard copy of notes provided, and the ability to use the restroom whenever needed.

f. The Student required specially designed adaptive physical education.

g. Goals and Benchmarks/Objectives.

h. Anticipated Services to be Provided:

i. Indirect/consultation occupational therapy services;

ii. Direct special education service for ELA, Math and Life Skills;

iii. Support Services in the Student's elective class;

iv. Pull-out services for speech and language services;

v. Consult/indirect services for speech and language services;

vi. 15 minutes direct social work services, once a week, in a private area of current learning or with social worker as pull-out as tolerated;

vii. 10 minutes of consult services between treatment team to get a baseline of the previous month;

viii. Provide medication and bathroom support outside of the general education classroom;

ix. Provide direct math and reading support during the Extended School Year; and

x. Assistance provided before school during breakfast and in lunch in a separate setting and during passing periods between each class daily.

j. The Student would have the opportunity to participate with non-identified peers in all general education classes except for when they received direct special education for ELA, Math and Life Skills classes. The Student would have the opportunity to participate in clubs, sports, field trips, assemblies and special events to the same extent as non-identified peers.

k. Potential harmful effects of that placement were listed as:

i. Social stigma associated with receiving special education support; and

iii. The Student could become overly dependent on adult support for academics or behavioral reminders and prompts.

j. The Student required Extended Year Services.

k. The Student required text-to-speech/speech-to-text assistive technology.

13. Team Meeting Notes dated October 2, 2024 detailed what was reviewed in the aforementioned IEP. Notes also indicated:

a. The Student's psychiatrist recommended the Student continue with a shortened day schedule. The team disagreed with the suggestion, but later agreed a gradual increase would be best. The team agreed to tentatively extend the Student's day by 30 minutes every two weeks, starting October 8, 2024.

14. A PWN dated October 2, 2024 indicated that on the same day, the team met to review the evaluation/assessment data. The Request for Consent was signed on October 22, 2024. The PWN stated that starting October 2, 2024, the Student would receive the following services:

a. Continuing current Speech/Language Services.

i. Pull-out services two times a week for 20 minutes every 3 to 4 weeks, and indirect/consult services for 10 minutes, once a week, every 4th week.

b. Continuing occupational therapy services.

i. Continue indirect consultation occupational therapy services one time a quarter for 15 minutes to support fine motor skills, dysgraphia, and sensory supports.

c. Continuing special education services.

i. In-class support for electives daily. Pull-out for ELA, Math, and interventions in Life Skills daily. Attendant care for 45 minutes, 20 minutes before school/breakfast and lunch, to be provided in a separate setting. Attendant care for passing periods between each class daily.

d. Changing social work services.

i. Decrease direct services and consult services to 15 minutes, once a week.

e. Continuing nursing services

i. 10 minutes, five times a week, to administer medication.

f. The Student was eligible for Extended School Year.

g. The District offered the Student a full school day as part of the FAPE, but the Parents elected for a shortened school day.

15. In an email dated October 3, 2024 to the Director of Special Education, the Assistant Director of Special Education wrote, "Are you good with this statement for [the Student's] PWN? … The team … has developed a plan in collaboration with the family to gradually increase the length of [the Student's] school day. … The goal is to

have [the Student] return to a full school day by January, with adjustments as necessary based on [the Student's] progress and response to the increased time."

16. In an email dated October 3, 2024 to the School Psychologist, School Principal, and Special Education Teacher 1, the Assistant Director of Special Education wrote, "… make sure that the services minutes in the IEP reflect the services that would be provided to [the Student] if [they] were attending a FULL day of school, as this is our offer of FAPE."
17. Between October 6, 2024 and October 11, 2024, emails were exchanged between the Assistant Director of Special Education, Special Education Teacher 1, the School Principal and the School Psychologist regarding a Behavior Intervention Plan (BIP) for the Student.
    a. October 6, 2024: The Assistant Director of Special Education shared that one of the Parents asked if the Student had a BIP. They discovered they did not and directed one would need to be developed.
    b. October 11, 2024: The Assistant Director of Special Education asked for an update on the BIP. Special Education Teacher 1 replied that day and indicated it was in progress.
18. In an email dated October 22, 2024 to the IEP team, the Assistant Director of Special Education indicated:
    a. There was a plan to decrease the Student's dependency on their case worker, by attendant care being provided by other case workers.
    b. The Parents shared they were concerned about the plan to increase the Student's school day. One of the Parents requested to have the plan sent to them.
    c. One of the Parents asked about the BIP.
19. Between October 28 and 29, 2024, emails were exchanged between the Assistant Director of Special Education, Special Education Teacher 1, the School Principal and the School Psychologist regarding the BIP.
    a. October 28, 2024: The Assistant Director of Special Education asked if the draft was complete and if a meeting had been scheduled. The School Psychologist replied it was in progress.
    b. October 29, 2024: The Assistant Director of Special Education responded that the draft had to be completed "in the next day or two," and offered items to consider adding to the BIP.
20. The School Psychologist emailed the draft of the Student's BIP to the IEP team on November 1, 2024.
21. Staffing Record notes, dated November 4, 2024, indicated:
    a. The School Psychologist discussed the Student's FBA and BIP with the Parents.

b. The team agreed to implement the BIP and make the changes that were discussed.

22. Between November 18, 2024 and November 22, 2024, emails were exchanged between the School Psychologist and the IEP team about the second draft of the BIP. Some of the team sent corrections, and then the School Psychologist sent the third draft of the BIP.

23. In an email dated November 20, 2024 to the IEP team and the Superintendent, the Director of Special Education wrote that they needed to start the referral process by having the Alternative School staff observe the Student and offer guidance on any strategies to help maintain the Student at the School.

24. The School Psychologist emailed the Parents the current draft of the Student's BIP on November 25, 2024.

25. Between December 9, 2024 and December 17, 2024, emails were exchanged between the School Psychologist and the IEP team about proposed changes to the BIP and new items to add, which came from the Student's mental health team outside of school and the Parents.

a. December 9, 2024: Special Education Teacher 2 sent their responses.

b. December 11, 2024: The Assistant Director of Special Education wrote that if the triggers listed in the original email were added to the BIP, it needed to be stated they were "sometimes" triggers.

c. December 14, 2024: The School Psychologist attached the fourth draft of the BIP, which addressed the following items:

i. Triggers (added to either "triggers" section or as a "sometimes trigger"):

1. Others coughing, gagging, throwing up, loud noises, or unexpected noises;
2. Fatigue or lack of sleep;
3. Family health concerns;
4. Large groups of people;
5. Thunder or bad weather; and
6. Bus rides or driving on the interstate.

9. ii. Behavior Signals

1. Raises voice; and
2. Runs away from staff or out of the building.

iv. Preventative Strategies

1. Morning check-in with a trusted adult reviewing the Student's current zone and goal for the day;
2. Suggest immediate reward as the Student arrived to school as positive reinforcement;
3. Ask if the Student needs to use noise cancelling headphones, especially in loud environments. Staff should help get them or insist on usage;

4. Offer two options (staff choice) so the Student feels a sense of control;
5. When noticing escalatory behaviors, ask the Student to point to the zone they are in using a visual cue card. Remind them of coping strategies to return to green zone; and
6. Add specific rooms School staff or ELC staff can take the Student when needing a break.

v. Earned Privileges

1. After school check-out, review point sheet and cashing in for a reward item or desired food.

vi. Additional Remarks

1. Request laptop stay at school;
2. Release 10 minutes early from school to avoid crowds when back to a full day; and
3. Request adding time to the school day be measured by progress rather than interval.

d. December 16, 2024: The Assistant Director of Special Education wrote that releasing the Student 10 minutes early could be noted as an accommodation.

26. A Functional Outline, dated December 5, 2024, indicated:
    a. A re-evaluation or more testing to determine if all the Student's biological needs were being met with the current diagnoses, medications, and level of functioning.
    b. The use of the updated school plan (January 9, 2025) that shortened the day, decreased transitions, and used a more restrictive setting as the team worked to decrease the Student's anxiety and increase their compliance.
    c. Using a level system that would help the team determine when to add time to the day and increase the Student's workload.
27. An IEP amendment, dated December 16, 2024, indicated:
    a. A BIP would be added to the Student's supports they received through special services, and implemented as part of their school day.
    b. The Student should be allowed to leave before the bell rings at the end of the day to help with the transition home.
    c. Staff training for those who worked with the Student concerning de-escalation and implementation of the BIP.
    d. The effective date of change was December 17, 2024.
28. A PWN dated December 17, 2024 detailed what was described in the aforementioned IEP amendment.
29. One of the Parents shared via email on December 19, 2024 that they signed the BIP.

30. A document titled "Updated Plan for [Student] January 9, 2025 (Implemented January 13, 2025)" indicated:
    a. To support the Student's transition back to school after extended absences, their day would end at 10:30 a.m. through at least January 14, 2025. Then their schedule would be gradually extended in 30-minute increments as determined by the team.
    b. The Student would receive services in an individualized learning space for the first two hours of the day.
    c. Staff should review the Student's BIP to ensure the strategies and supports listed within were in place.
31. The Student's BIP summary, dated January 9, 2025, detailed notes regarding:
    a. Problem behaviors and replacement behaviors.
    b. Direct instruction.
    c. Preventative strategies.
    i. "Provide Independent Area/Space: Provide [the Student] with larger work areas and designate "Safe Areas" within and outside the classroom."
    d. Triggers.
    e. Warning signs.
    f. Steps to follow once escalated/displaying problem behaviors.

i. "Ensure Safety: If [the Student] displays any of the targeted behaviors and behaves dysregulated (yelling, throwing items, pulling hair, hitting, kicking, etc), determine safety for all involved first. If deemed UNSAFE, move to evacuation of the area."

    g. Steps to follow if nothing worked.

32. On January 10, 2025, the Case Manager emailed the Student's support schedule, which indicated support services on:
    a. Mondays: 11 a.m. to 12:30 p.m.
    b. Tuesdays: 11 a.m. to 12 p.m.
    c. Wednesdays: 10:45 a.m. to 11:45 a.m.
    d. Thursdays: 11:30 a.m. to 12:30 p.m.
    e. Fridays: 10:30 a.m. to 11:30 a.m.
33. On January 11, 2025, the Assistant Director of Special Education emailed the IEP team and shared that they were adjusting the Student's school day, and that the changes did not constitute a change in services or placement.
34. On January 17, 2025, the Assistant Director of Special Education emailed the IEP team and staff from the Alternative School and said, "The decision has been made that [the Student] will be moving to the [Alternative School]. [The Parents] fully support this plan."
35. On January 22, 2025, the Assistant Director of Special Education shared the Student's BIP with some of the Alternative School staff.

36. On January 23, 2025, the School Psychologist at the Alternative School asked via email for a copy of the Student's IEP and re-evaluation from October 2024.
37. Notes titled "[Student] - Transition to [Alternative School]" dated January 23, 2025, indicated:
    a. The School team proposed the Student start with a full day at the Alternative School. The Parents supported the plan.
    b. The Alternative School Special Education Teacher explained that staff used corrective teaching and that many items in the Student's current behavior plan were part of the Alternative School program. The behavior plan would be rewritten to address what the Student needed in addition to what was in place at the Alternative School. The team agreed a separate behavior plan was not needed.
38. A Referral Form, signed by the Parents and team on January 24, 2025, indicated the Student was being referred to the Alternative School due to refusal (verbal and nonverbal), disruptive and destructive behavior, and physical aggression. The form stated the Student had a behavior plan.
39. In an email dated January 26, 2025 to the Alternative School staff, the Assistant Director of Special Education shared a summary of the Student's academic performance in 6th and 7th grade in ELA, Math, and Intervention. They also indicated they were drafting an updated IEP for the Student.
40. A PWN dated January 27, 2025 indicated that on January 24, 2025, the team met to review the Student's evaluation/assessment data. The PWN indicated:
    a. School staff and Alternative School staff discussed the Student's transition to the Alternative School. The Student's school day would be from 8:20 a.m. to 2:30 p.m. Monday through Thursday, and 8:20 a.m. to 1:50 p.m. on Friday. The team agreed on the following changes to the Student's IEP:

i. Change of placement to the Alternative School;
    ii. Change of services to a full day of service in the special education setting;
    iii. Decrease of Attendant Care services;
    iv. Change of Nursing services to indirect services;
    v. Increase of direct Social Work services;
    vi. Removal of Behavior Intervention Plan; and
    vii. Removal of Accommodation: Alternate Passing Periods.
    b. An explanation of why the action was proposed indicated that the Student was demonstrating a need for a smaller learning environment that provided intensive daily behavioral and social skills support. All of the Student's classes would be provided in the special education setting at the Alternative School. This section stated that due to the behavioral components in place at the Alternative School, the Student's BIP was not necessary at that time.
    c. The Parent gave their signed consent on January 29, 2025.

41. A Staffing Record and IEP Amendment, dated January 24, 2025 contained meeting notes and information of what was discussed in the aforementioned PWN.
42. A letter from the Student's psychiatric nurse practitioner, dated February 14, 2025, requested that the Student was considered for engagement in 1:1 individual paraprofessional support and reduced school hours with incremental advances in duration. They also requested that an FBA be conducted and a BIP created.
43. An email from the Assistant Director of Special Education to one of the Parents and the Assistant Principal, dated February 23, 2025, was a follow up to a phone conversation and indicated the Assistant Director of Special Education:
    a. Discussed with the Assistant Principal about getting noise-cancelling headphones for the Student, asking staff to review the Student's IEP to ensure accommodations were being implemented, and addressing that the Student wanted to work in an isolated area.
    b. One of the Parents replied the next day and indicated they did not think the Student being in the classroom with other students would work, and that it was increasing the Student's fear and anxiety.
    c. The Assistant Director of Special Education responded by requesting an IEP team meeting to discuss concerns about the Alternative School and potential options.
44. Between February 25, 2025 and February 27, 2025, emails were exchanged between the Assistant Director of Special Education, the Parents and the Case Manager about scheduling an IEP meeting. It was scheduled for March 3, 2025 at 2 p.m.
45. Notes from a phone call with one of the Parents, dated February 26, 2025, indicated that the Student was experiencing more fear and anxiety, and did not want to return to school.
46. A letter from the Student's doctor, dated February 28, 2025, stated the Student's anxiety had worsened. They stated they did not feel the Alternative School program was right for the Student and that it seemed to be exacerbating the Student's anxiety. The doctor indicated they believed the Student did better on shortened school days.
47. A Staffing Record, dated March 3, 2025, indicated that the Parents were concerned about the Student's increased anxiety due to fear of their peers. Notes indicated the staff wanted to find a balance, push the Student when things were hard, and keep them around their peers as much as possible. It was reported that on days when the Student did not have a "big issue" they still showed signs of anxiety and stated their heart was racing. A re-evaluation and possible IEP update was recommended.
48. A PWN, dated March 4, 2025 indicated the District proposed to conduct a re-evaluation of the Student. The new data to be collected and reviewed would be Social/Emotional Status/Behavioral Status. The PWN indicated the team met and discussed the lack of information regarding academic and adaptive skills levels, and

determined a re-evaluation would be completed to get this information. It was signed by one Parent on March 5, 2025, and the other Parent on March 11, 2025.

49. An email from one of the Parents, dated March 4, 2025, indicated they did not want the Student at the Alternative School and around students that increased their fear and anxiety.
    a. The Director of Special Education replied that day and indicated they would schedule a meeting to discuss the Parents' concerns about the Student's placement. They sent a calendar invite for a meeting to be held on March 12, 2025.
50. A Parent Questionnaire For Initial Evaluation, signed by one of the Parents on March 11, 2025, indicated the Parents wanted to make sure the school staff were properly trained to handle the Student's disabilities. The form also reported the Student had been diagnosed with gastroesophageal reflux disease (GERD), chronic constipation, epilepsy, autism, ADHD, generalized anxiety, dysgraphia, and intermittent explosive disorder.
51. Staffing Record notes, dated March 12, 2025, indicated the Parents believed the Student should not be in the Alternative School setting.
52. On March 13, 2025, one of the Parents emailed the Director of Special Education and indicated they decided they did not want the Student at the Alternative School or another State Center that was proposed. One of the Parents wrote they wanted to transition the Student back to the School.
    a. The Director of Special Education acknowledged the Parents' concerns, but responded that the safety of the Student, their peers, and staff was their top priority. They explained they were working on a schedule to provide services and conduct evaluations while the Parents had the Student at home.
    b. On March 20, 2025, the Director of Special Education emailed the Parents and said, "We've been exploring ways to provide some level of continued instruction for [the Student] (outside [the Alternative School]), but due to staffing constraints, this isn't feasible at this time." Their response also indicated they would start the re-evaluation and shared possible adjustments to help reduce the Student's anxiety.
    c. One of the Parents replied on March 23, 2025 and reiterated they disagreed with sending the Student to the Alternative School or the State Center. They explained one of their major concerns was the lack of services from a certified Autism Specialist.
53. On March 24, 2025, the Director of Special Education emailed the Parents and asked if they wanted the District to perform cognitive testing for the evaluation, if they were interested in virtual speech/language services, and if they wanted to attend an informational meeting with the State Center.
    a. One of the Parents replied that day and decided to wait on the cognitive testing because they were concerned about the accuracy of the District's testing. They declined the speech/language services and the meeting.

54. Daily Points Score Sheets from January 27, 2025 through March 5, 2025 recorded the Student's scores for Classroom Tasks, Target Skills and Other Skills. They also record earned, lost and total points, in addition to Point Penalties.

55. Referral reports from January 30, 2025 through March 5, 2025 indicated:

    a. On January 30, 2025, the Student left their science class without permission.

    b. On February 3, 2025, the Student "didn't want to do science," and asked for and took a break. When they returned, the Student put on their headphones, threw their football and called someone a "bitch."

    c. On February 3, 2025, during their elective class, after someone did not accept their apology, the Student refused to go to time away. The Student threw their shoes and tried to hit the paraprofessional.

    d. During their math class on February 3, 2025, the Student wanted to go home.

    e. During lunch on February 3, 2025, the Student stated the other students were making fun of them. The Student left the room and tried to hit another student.

    f. On February 11, 2025, the Student did not want to go to science class. The Student refused to stay in time away and pulled posters off the walls.

    g. During second hour elective on March 3, 2025, the Student became overwhelmed and frustrated, and threw items around the room. The Student went to another room and continued to escalate. They "…grabbed and hit staff with furniture and objects."

    h. On March 3, 2025, the Student had returned to class and wanted to leave. The Student decided to draw on another student.

    i. During science class on March 4, 2025, the Student flipped over a desk, and started grabbing and hitting the paraprofessional on their way to time away.

Interview Summaries

The following findings are based on interviews with the District and the Parents and have been compiled as interview summaries.

Special Education Teacher 2

56. In an interview with the Complaint Investigator, Special Education Teacher 2 described the Student was placed in their class around December 2024 to receive more support with social skills. Special Education Teacher 2 explained their classroom was divided into three rooms: the classroom, an independent living area, and a sensory room with a bathroom. It was not a self-contained classroom.

57. Special Education Teacher 2 explained that sometimes the Student would be willing to engage in activities and sometimes they needed sensory breaks, choices given to them, or would refuse to participate. They indicated the Student was "refusing" the majority of the time. Special Education Teacher 2 explained the Student refused to work because the work was "baby-ish" or they simply did not want to do it.

58. Special Education Teacher 2 shared there were no issues implementing the Student's IEP. They indicated they implemented the following accommodations for the Student: providing choices, different seating, and someone to read with or to the Student. They said, "… when I did have activities with writing, [the Student] would join in most of the time or [they] would try." Special Education Teacher 2 explained that when there were writing assignments, the Student either had a piece of paper with everything spelled out for them, or if that was deemed too overwhelming, then either a paraprofessional or Special Education Teacher 2 would write for the Student.
59. Special Education Teacher 2 indicated the Student had one-on-one support in their classroom. They shared that in addition to themselves, there were two paraprofessionals in the classroom. Special Education Teacher 2 explained the Student had one-on-one support for lunch almost every day.
60. Special Education Teacher 2 perceived the Student's anxiety was brought on by the Student being "hyper-focused" on wanting to go home.
61. Special Education Teacher 2 perceived most of the Student's absences were due to medical reasons.
62. Special Education Teacher 2 said, "… if [the Student] was having a bad day, [they] would get extended time to think about [the] choices [they] wanted to make. If [the Student] requested a certain para[professional] to work with [them], we would try to work that out. … If [the Student] was requesting another [para] throughout the building, we would try to find out if they were busy, if they could come work with [them]."

Special Education Teacher 4

63. In an interview with the Complaint Investigator, Special Education Teacher 4 explained that the teaching methods at the Alternative School were proactive and individualized to the student. They indicated a point sheet was used.
64. Special Education Teacher 4 described that for the Student's referrals from January 30, 2025 through March 5, 2025, they used positive statements and told the Student they had lost points, but could earn them back. They said the Student worked through their referrals and earned some points back.
65. Special Education Teacher 4 explained the Student had daily opportunities to interact with non-disabled peers while at the Alternative School.
66. Special Education Teacher 4 did not recall any issues implementing the Student's IEP.
67. Special Education Teacher 4 explained that they followed a behavior plan from the Student's previous school when they came to the Alternative School. They explained some additional items were added to the plan, including breaks and shortened time. Special Education Teacher 4 indicated it felt like they were following two plans, "the one that was amended in" and the Specialized Behavior Program. They indicated there were no conflicts between the two programs.
68. Special Education Teacher 4 recalled the Student had anxiety, but indicated they had positive interactions with the Student.

69. According to Special Education Teacher 4, the Student spent four days at the Alternative School.

Resource Room Teacher

70. During an interview with the Complaint Investigator, the Resource Room Teacher described the Student's behavior as sometimes "erratic", and that the Student would often try to leave the classroom during the second hour. They shared the Student was not at school often. They recalled the Student would try to get out of doing work almost every day. The Resource Room Teacher did not recall issues implementing the Student's IEP. The Resource Room Teacher explained they implemented the Student's IEP by shortening their work, offering breaks, reading aloud to the Student and scribing for them. They did not recall any accommodations not being implemented.
71. The Resource Room Teacher recalled the Student would sometimes get nervous and they would offer the Student breaks, time to use their fidgets, or take a few breaths. They indicated it was "… hard to get [the Student] back after those breaks" and then the Student's anxiety would slowly increase to the point where the Student would not listen or participate.
72. The Resource Room Teacher recalled the Student was absent either due to illness or simply not wanting to attend.

Assistant Director of Special Education

73. In an interview with the Complaint Investigator, the Assistant Director of Special Education explained the Student engaged in some general education classes and received special education services at the School. They explained the Student was demonstrating behaviors such as destroying property, aggression, elopement, and taking their clothes off. They brought in an Educational Behavioral Consultant to observe the Student for about three hours one day in December 2024.

    They continued that the Educational Behavioral Consultant shared their input with the Parents during a virtual meeting, after which, a plan was created to reduce the Student's time in the general education classroom. They indicated the Student had been on a shortened day at the Parents' request.

    The Assistant Director of Special Education explained they discussed the continuum of services with one of the Parents. They described an incident where the Student had been suspended, and the Assistant Director of Special Education suggested the Student receive some special education services at the building which housed the Alternative School. The Assistant Director of Special Education reported that after that day, the Student shared that they wanted to attend the Alternative School, which triggered an IEP meeting with all parties involved, including the Parents. They indicated there was a need to change placement.
74. The Assistant Director of Special Education explained that they discussed doing a re-evaluation to get updated data on academic and social-emotional information for

the Student. The re-evaluation was going to start after spring break, but the Student did not return to the Alternative School, so other arrangements were made. They indicated a middle school teacher was conducting the academic assessments with the Student, and the teachers and Parents were completing the rating scales for the social-emotional portion. They shared there was no reason for a re-evaluation to be done prior to the one in March 2025. They said, "… there was never a request or a conversation about the need for a re[-]evaluation on our part until there was conversation about [the Student's] academic levels, and we determined that we were going to rewrite [their] IEP and to do that, we wanted updated academic information as well as social-emotional."

75. When asked about the Student's updated plan from January 13, 2025, the Assistant Director of Special Education shared that earlier in the year, the Parents had requested a shorter day and there was a plan to increase the Student's day slowly over time. When the Student returned after Christmas break, they had challenges transitioning back to school. One of the Parents asked to shorten the Student's day, which was done.

1. The Assistant Director of Special Education shared the plan with the Parents, who agreed to it. They explained that the plan changed to where the Student worked in their own classroom for first and second hour, and then went to Special Education Teacher 2's classroom for third and fourth hour. They shared this new information with the School staff via email on January 11, 2025.

76. The Assistant Director of Special Education did not recall any issues with implementing the Student's IEP.

77. The Assistant Director of Special Education indicated the Student had a BIP from the School. When it was decided the Student would attend the Alternative School, it was found that what was included in the Student's BIP was already built into the model of the Alternative School.

    The IEP team, including the Parents, agreed that the BIP would be removed from the Student's IEP and they would follow the Alternative School program. The Assistant Director of Special Education explained that if the IEP team later saw a need for something to be added, they would amend the IEP.

78. According to the Assistant Director of Special Education, the Alternative School used a specialized social-emotional and social skills curriculum that provided direct, explicit instruction to students. They explained the Alternative School also used a point system as part of that structure, and that the Student was able to get immediate feedback, rewards and incentives. They shared that the Alternative School implemented things that were already part of the Student's BIP.

79. The Assistant Director of Special Education indicated they received letters from outside physicians which stated that those professionals felt the Alternative School was not an appropriate placement for the Student. They recalled these were discussed

at an IEP meeting in March 2025. The Assistant Director of Special Education indicated they did not have any documentation that the Student had epilepsy.

80. The Assistant Director of Special Education shared that when the Student was in sixth grade, Special Education Teacher 3 was their special education case manager, and was also on the Autism Interdisciplinary Team in the District. They explained the District provided training for all staff members regarding disabilities, including autism. They indicated that Special Education Teacher 3 attended the last IEP meeting in March 2025 and was conducting the academic testing for the Student's re-evaluation.

81. The Assistant Director of Special Education stated the Student received full day support, including at the Alternative School, but did not recall the IEP stating it had to be one-on-one support.

82. According to the Assistant Director of Special Education, one of the Parents requested an FBA, which was completed and the results were discussed at the IEP meeting on October 2, 2024. The BIP was developed and added to the IEP as an amendment on December 17, 2024. They shared the BIP was removed when the Student moved to the Alternative School.

83. The Assistant Director of Education shared that the IEP team initially recommended the Student attend a full day at the Alternative School. It was determined the Student would have a shortened day, but one that was longer than their day at their previous school. This was agreed to by the Parents. They indicated the Student did not attend the Alternative School long enough to increase their hours.

Director of Special Services

84. In an interview with the Complaint Investigator, the Director of Special Services shared that the Student did not receive supports, accommodations or instruction after they were removed from the Alternative School in late March 2025. They said, "We told [the Parents] in the meeting when they decided to pull [the Student] that we would attempt to set something up just to keep [them] in contact with school staff and we don't have the staff to do it."

85. The Director of Special Services indicated that the Parents shared they did not believe the Alternative School was appropriate for the Student because of their autism diagnosis. They explained the Alternative School had staff well-trained to handle student behaviors, and the program included general education and special education students. They indicated they tried to tell the Parents that the Alternative School had several students who had autistic characteristics.

86. The Director of Special Services explained the District allowed the Student to remain on a shortened day when the Parents requested it, but maintained the offer of a full day.

87. The Director of Special Services explained the accommodations on the Student's IEP were determined by the IEP team, which include the Parents. They stated the Parents gave signed consent for the IEP accommodations.

The Parents

88. During an interview with the Complaint Investigator, the Parent stated they did not believe the Student's IEP had all the necessary accommodations. They indicated that the use of a sensory room was missing from the IEP. The other Parent shared that there was not a plan written into the IEP for what would happen if the Student needed to be removed from the classroom if they had an episode. The other Parent believed that issue was also not addressed in the Student's BIP, and indicated this was when the Student was at the Alternative School. The other Parent indicated they believed the Student's BIP was not implemented correctly.
89. The Parent explained there were IEP meetings on March 3, 2025 and March 5, 2025 to discuss where the Student was going after the Alternative School. The Student's last day of school was March 5, 2025.
90. The Parent shared the Student had anxiety on the highway and PTSD due to a car accident. The Parent indicated this was why they did not want the Student to go to the State Center, in addition to concerns about the Student's epilepsy. The Parent indicated they did not think the District went through the proper steps before moving the Student to the Alternative School, which they did not believe had the proper accommodations for the Student's autism.
91. The Parent shared the Student was not receiving scribe services for their dysgraphia while at the Alternative School.

    The other Parent indicated they did not receive a copy of the Student's class notes because they were never sent home with the Student. They shared that they never saw anything that had been scribed for the Student. The other Parent said, "On occasion, there would be completed papers that were sent home. … but everything on there was [the Student's] handwriting … ."
92. The Parent explained the Student was supposed to be on a point/award system at the Alternative School, but alleged that was not happening.
93. The other Parent said, "I think the least restrictive environment for [the Student] would be in a regular school setting with somebody to be supervising [them] the whole time and following the behavior intervention plan."
94. At the time of the interview, the Parent stated the re-evaluation had just started. The other Parent indicated they emailed the District and encouraged them to do all parts of the re-evaluation.
95. The Parent observed the Student's anxiety worsened after attending the Alternative School.
96. Describing the Student's time at the Alternative School, the other Parent said, "And then the following week, they integrated [the Student] into the regular classroom with a full class. … And [the Student had] been on a shortened day the entire year. … All of a sudden [the Student's in] in a full day environment."
97. The Parent explained that the Student had completed an in-school suspension at the Alternative School on January 17, 2025. The Parent recalled the Student had

told the Assistant Director of Special Education they wanted to attend the Alternative School. The Parent indicated they were told the Student would attend full days at the Alternative School, to which they disagreed, but stated were still implemented. The Parent described the Student had many episodes the second week they were going to the Alternative School.

98. The Parents shared they did not know why the Student's BIP was removed after the IEP meeting in January 2025 and it was not their suggestion. The other Parent recalled the Alternative School was going to use their behavior program model for the Student.

99. The Parent shared they were concerned the Student's speech and occupational therapy services were not done fully in person.

100. The other Parent indicated their understanding was that there was a paraprofessional in every classroom the Student was in. The Parent shared their understanding that the paraprofessional helped the Student stay engaged and focused.

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #290, in accordance with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP that included the "proper accommodations" for the Student. K.A.R. 91-40-18; 34 CFR §300.320.

According to K.A.R. 91-40-18 and 34 CFR §300.320, in developing or reviewing the IEP of any exceptional child, each agency shall comply with the requirements of K.S.A. 72-3429 and amendments thereto, and shall consider the results of the child's performance on any general state or district-wide assessment programs. If, as a result of its consideration of the special factors described in K.S.A. 72-3429 and amendments thereto, an IEP team determines that a child needs behavioral interventions and strategies, accommodations, assistive technology devices or services, or other program modifications for the child to receive FAPE, the IEP team shall include those items in the child's IEP. Each agency shall ensure that the IEP of each exceptional child includes the information required by K.S.A. 72-3429 and amendments thereto, and shall give the parent a copy of the child's IEP at no cost to the parent.

The Parents alleged the IEP was missing the accommodation of a sensory room and that it did not contain a specific plan regarding what to do if the Student had to be removed from the classroom.

The District indicated that the Student's IEP contained the proper accommodations.

IEP Team Meeting notes from August 13, 2024, indicated one of the Parents wanted the Student to have a shortened school day. The notes also reported the Student had paraprofessional support throughout the day. The Assistant Director of Special Education

stated the Student received full day support, including at the Alternative School, but did not recall the IEP stating it had to be one-on-one support. Notes from a phone call between one of the Parents and the Principal on August 30, 2024 indicated their request for an FBA was granted, and the Parents did not feel the Student was ready to increase their school day.

The Student's IEP, dated October 2, 2024, stated the Parents were concerned the Student was not ready for a full schedule and wanted to add time slowly. The IEP indicated the Student had been diagnosed with Developmental Coordination Disorder/Dysgraphia, and that their Autism, ADHD and Dysgraphia impacted their text comprehension, ability to produce legible written work, and their ability to solve multi-digit math problems. The Student also had diagnoses of Generalized Anxiety and PTSD. The IEP indicated that the Student's anxiety could impact their ability to fully engage in the school setting. The IEP included accommodations and services, but did not specifically state the Student had one-on-one support services. The Director of Special Services explained the Parents gave signed consent for the IEP accommodations.

On November 20, 2024, the Director of Special Education sent an email to start the referral process by having the Alternative School staff observe the Student and offer guidance on strategies to help maintain the Student at the School. A Functional Outline dated December 5, 2024 indicated a need to re-evaluate if the Student's biological needs were being met, and to use a plan that shortened the Student's school day. On January 17, 2025, it was decided the Student would attend the Alternative School, and reported that the Parents supported it. This was confirmed by the Assistant Director of Special Education.

The Assistant Director of Special Education shared that the IEP team initially recommended the Student attend a full day at the Alternative School. It was determined the Student would have a shortened day, but one that was longer than at their previous school, which the Parents agreed to. The Assistant Director of Special Education indicated the Student did not attend the Alternative School long enough to increase their hours. A letter from the Student's psychiatric nurse practitioner, dated February 14, 2025, requested that the Student be considered for one-on-one paraprofessional support and reduced school hours.

The Parents did not believe the Student was on a point system at the Alternative School, but there were Daily Points Score Sheets from January 27, 2025 through March 5, 2025. These recorded how the Student earned and lost points, point penalties, and total points. Referral reports from January 30, 2025 through March 5, 2025 detailed behavior incidents with the Student. The use of the score sheets and referral reports was confirmed by Special Education Teacher 4.

The Parents indicated the use of a sensory room was missing from the IEP, but Special Education Teacher 2 explained their classroom had a sensory room with a bathroom, and the Student had one-on-one support in their classroom. They also explained the Student was given extended time to think about choices and allowed to work with a preferred paraprofessional if requested.

The Student's IEP listed their diagnoses and how their disability impacted their ability to participate in the school environment, which informed the accommodations and services listed therein. While not a part of the IEP, the Parents stated several times they thought the Student wasn't ready for a full day, and a shortened day was accommodated by the District. The Parents' allegations that the Student was not using a point system or had access to a sensory room were refuted through documentation and interviews.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the District failed to develop an IEP that included the "proper accommodations" for the Student.

Issue Two

Whether USD #290, in accordance with state and federal regulations implementing the IDEA, failed to implement the Student's IEP. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

According to K.A.R. 91-40-16(b)(3) and 34 C.F.R. § 300.323, an IEP is in effect for each exceptional child at the beginning of each school year.

The Parent alleged that the District failed to implement the Student's IEP.

The District responded that there were no issues implementing the Student's IEP.

Emails about paraprofessional coverage between August and October 2024 indicated the Student had no coverage for specific times on five days. Team Meeting Notes from October 2, 2024 detailed what was reviewed in the IEP, and also stated the IEP team agreed to tentatively extend the Student's day by 30 minutes every two weeks, starting October 8, 2024. A PWN dated October 2, 2024 indicated that on the same day, the team reviewed the Student's evaluation/assessment data. It also stated that starting October 2, 2024, the Student would receive speech/language services, occupational therapy services, and special education services. The District offered the Student a full school day as part of a FAPE, but the Parents elected for a shortened school day, which the Director of Special Services confirmed. In an email dated October 3, 2024, the Assistant Director of Special Education stated the IEP team planned to gradually increase the Student's school day with the goal of a full return by January, with adjustments as needed.

Between October 6-11, 2024, School staff discussed developing a BIP for the Student. Between October 28-29, 2024, emails were exchanged between District staff regarding the BIP. The School Psychologist emailed the draft of the Student's BIP to the IEP team on November 1, 2024. Staffing Record notes from November 4, 2024 reported the School Psychologist discussed the Student's FBA and BIP with the Parents, and the team agreed to make changes and implement the BIP. Between November 18-22, 2024, the School Psychologist and the IEP team worked on the BIP. The School Psychologist emailed the Parents a draft of the BIP on

November 25, 2024. Between December 9-17, 2024, emails were exchanged between the School Psychologist and the IEP team about the BIP.

An IEP amendment, dated December 16, 2024, indicated the BIP would be added to the Student's supports. A PWN dated December 17, 2024 detailed what was described in the aforementioned amendment. The Parents signed the BIP on December 19, 2024. The other Parent alleged there was not a plan written into the IEP or BIP about what would happen if the Student needed to be removed from the classroom if they had an episode. The Student's BIP summary, dated January 9, 2025, detailed several items, including providing the Student with "safe areas" within and outside the classroom, and moving the Student to another area if they were dysregulated.

An updated plan for the Student, which was implemented on January 13, 2025, detailed the Student's day would end at 10:30 a.m. and then their schedule would be gradually extended. It also stated staff should review the Student's BIP. The Assistant Director of Special Education stated the Student's day was shortened at the Parents' request, and the plan was shared with staff on January 11, 2025.

On January 22, 2025, the Assistant Director of Special Education shared the Student's BIP with the Alternative School staff. The next day, the School Psychologist at the Alternative School asked for a copy of the Student's IEP and re-evaluation from October 2024. Notes from January 23, 2025 about the Student's move to the Alternative School reported that the School team and the Parents agreed the Student would start full-time at the Alternative School and the BIP would be rewritten to address the Student's needs. The Parents signed a referral form on January 24, 2025. On January 26, 2025 the Assistant Director of Special Education shared a summary of the Student's academic performance with the Alternative School staff.

A PWN dated January 27, 2025 indicated the Student's IEP had been changed, with adjustments to the change of placement, change of services to a full day of service in the special education setting, removing the BIP, and that the Student's classes would be provided in the special education setting at the Alternative School. The Assistant Director of Special Education explained that the IEP team, including the Parents, agreed the BIP would be removed from the Student's IEP and they would follow the Alternative School program. The Parents gave their signed consent on January 29, 2025, but the Parents shared they did not know why the BIP was removed. A Staffing Record and IEP Amendment from January 24, 2025 described what was discussed in the PWN. According to the Assistant Director of Special Education, the Alternative School used a specialized social-emotional and social skills curriculum, and implemented strategies that were already part of the BIP.

An email from the Assistant Director of Special Education to one of the Parents and the Assistant Principal, dated February 23, 2025, indicated the Assistant Director of Special Education talked to the Assistant Principal about staff reviewing the Student's IEP. An IEP meeting was scheduled for March 3, 2025. An email from one of the Parents on March 4, 2025

shared they did not want the Student at the Alternative School. A meeting was scheduled for March 12, 2025. One of the Parents signed a Parent Questionnaire For Initial Evaluation on March 11, 2025. The Student's last day of school was March 5, 2025.

During interviews, Special Education Teacher 2, Special Education Teacher 4, the Resource Room Teacher, and the Assistant Director of Special Education stated there were no issues implementing the Student's IEP. The Parent indicated they did not think the District went through the proper steps before moving the Student to the Alternative School, which they did not believe had the proper accommodations for the Student's autism diagnosis.

Special Education Teacher 2 indicated they implemented the following accommodations for the Student: providing choices, different seating, someone to read with or to the Student, and writing for the Student. The Parent claimed the Student was not receiving scribe services for their dysgraphia while at the Alternative School and never saw anything that had been scribed.

Special Education Teacher 4 explained that they followed a behavior plan from the Student's previous school when they came to the Alternative School. They indicated it felt like they were following two plans, but that the plans did not conflict. The Resource Room Teacher explained they implemented the Student's IEP by shortening their work, offering breaks, reading aloud to the Student and scribing for them. They recalled the Student would sometimes get nervous and they would offer the Student breaks, time to use their fidgets, or take a few breaths.

Evidence showed the District followed protocol for the IEP, PWNs, the BIP and meeting notes, and that they made regular updates to documents as necessary. Documentation showed the District engaged in other steps prior to the Student attending the Alternative School. During interviews, staff detailed how they implemented the Student's IEP.

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.

Issue Three

Whether USD #290, in accordance with state and federal regulations implementing the IDEA, failed to consider and offer the Student an IEP in their least restrictive environment. *K.S.A. 72-3420, K.A.R. 91-40-1.(II), K.A.R. 91-40-21; 34 CFR § 300.116.*

According to *K.S.A. 72-3420*, each school district shall be required, 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. Nothing in this section shall be construed to authorize the state board or any board to function as an admitting agency to the state institutions or to limit or supersede or in any manner affect the requirements of each board to comply with the

provisions of K.S.A. 72-3410, and amendments thereto, to provide special education services for each exceptional child in the school district unless and until such child meets the criteria for admission to a state institution and is so admitted by the state institution. Each state institution shall publish the criteria for admission to such state institution and shall furnish such criteria to each board upon request therefore.

K.A.R. 91-40-1.(ll) states that "Least restrictive environment" and "LRE" mean the educational placement in which, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled.

K.A.R. 91-40-21 and *34 CFR § 300.116* state that each agency shall ensure that the children with disabilities served by the agency are educated in the LRE.

The Parents alleged the Student was moved to the Alternative School without trying other options first, such as positive behavior supports, autism specialists, or a life skills classroom. They claimed this negatively impacted the Student.

The District responded that the Student was referred to the Alternative School due to continued behavior problems. The District indicated that due to the Student's struggles, a plan was created to pull back on their time in the general education classroom.

The Student's IEP from October 2, 2024 indicated the Student would have the opportunity to participate with non-identified peers in all general education classes, except for when they received direct special education. The Student would also have the opportunity to participate in clubs, sports, field trips, assemblies and special events to the same extent as non-identified peers.

The Assistant Director of Special Education explained the Student engaged in some general education classes and received special education services at the School. A Staffing Record from March 12, 2025 indicated the Parents believed the Student should not be in the Alternative School setting. Special Education Teacher 4 explained the Student had daily opportunities to interact with non-disabled peers while at the Alternative School. The Director of Special Services explained the Alternative School included general education and special education students. The other Parent thought the least restrictive environment for the Student was in a regular school setting with somebody supervising them.

The IEP indicated the Student would have opportunities to interact with non-identified peers, which was bolstered by statements from the Assistant Director of Education and Special Education Teacher 4. There was not substantial evidence to show the Student was kept from interacting with non-identified peers.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the District failed to consider and offer the Student an IEP in their least restrictive environment.

Issue Four

Whether USD #290, in accordance with state and federal regulations implementing the IDEA, failed to conduct a re-evaluation for the Student. K.S.A. 72-3428(h)(1)(2); 34 CFR § 300.303.

According to K.S.A. 72-3428(h)(1)(2) and 34 CFR § 300.303, each agency shall ensure that a reevaluation of each exceptional child is conducted if the agency 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. An agency shall 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.

The Parents stated they decided to pull the Student out of the Alternative School until the District could find a more appropriate placement and perform a re-evaluation.

The District indicated that a re-evaluation was started in March 2025.

A PWN dated September 5, 2024, indicated that the District proposed to conduct a re-evaluation of the Student, which had been requested by the Parents. The Parents gave their signed consent on September 9, 2024. A PWN dated October 2, 2024 showed the team met to discuss the Student's evaluation/assessment data and the proposed actions. A Staffing Record from March 3, 2025, indicated the Parents were concerned about the Student's increased anxiety, and a re-evaluation was recommended. A PWN from March 4, 2025 indicated the District proposed to conduct a re-evaluation. It was signed by one Parent on March 5, 2025, and the other Parent on March 11, 2025. The Assistant Director of Special Education explained the re-evaluation was supposed to start after spring break, but other arrangements were made when the Student did not return to the Alternative School.

On March 24, 2025 the Director of Special Education asked the Parents if they wanted the District to perform cognitive testing for the re-evaluation, and one of the Parents replied they wanted to wait. However, the other Parent indicated they emailed the District and encouraged them to do all parts of the re-evaluation. A middle school teacher was conducting the academic assessments with the Student, and the teachers and Parents were completing the rating scales for the social-emotional portion.

Based on the evidence, a re-evaluation of the Student was initiated in September 2024. A second re-evaluation was started in March 2025, and is ongoing at the time of this report.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the District failed to conduct a re-evaluation for the Student

Issue Five

Whether USD #290, in accordance with state and federal regulations implementing the IDEA, failed to provide the Student with a free appropriate public education. K.A.R. 91-40-1(z); 34 C.F.R. § 300.101.

According to K.A.R. 91-40-1(z) and 34 C.F.R. § 300.101, "Free appropriate public education" and "FAPE" mean 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.

The Parent alleged that the District did not follow the proper protocol before moving the Student to the Alternative School.

The District contended they did not deny the Student a FAPE and services were provided in alignment with the Student's IEP.

The Student's Daily Behavior Tracking sheets from August 2024 through January 2025 indicated the Student experienced observable anxiety on multiple occasions and showed the Student's behavior demonstrated a pattern of fluctuating emotional regulation, in addition to positive instances of Student participation and self-regulation. The evidence did not include a tracking sheet for every day. Emails from one of the Parents indicated the Student was absent seven times from September 2024 through December 2024. In an email from October 3, 2024, the Assistant Director of Special Education instructed that the service minutes in the Student's IEP reflect full-day school services.

Notes from a phone call with one of the Parents, dated February 26, 2025, indicated the Student was experiencing anxiety and did not want to return to school. A letter from the Student's doctor, dated February 28, 2025, stated the Student's anxiety had worsened and they did not feel the Alternative School was right for the Student. The Assistant Director of Special Education confirmed receipt of the letters, and that the issues were discussed in an IEP meeting in March 2025.

On March 13, 2025, one of the Parents emailed the Director of Special Education and indicated they did not want the Student at the Alternative School. The Director of Special Education responded they were working on a schedule to provide services and conduct evaluations while the Student was at home. On March 20, 2025, the Director of Special Education emailed the Parents and explained that due to staffing constraints, it wasn't feasible at the time. On March 23, 2025 the Parents explained one of their concerns was the lack of services from a certified Autism Specialist. The Assistant Director of Special Education explained the District provided training for all staff members regarding disabilities, including autism.

Special Education Teacher 2 perceived the Student's anxiety was brought on by the Student being "hyper-focused" on wanting to go home, and that most of the Student's absences were

due to medical reasons. The Resource Room Teacher recalled the Student was absent either due to illness or not wanting to attend. There was not substantial evidence to show absences were due to educationally-based reasons.

Through documentation and observations stated in interviews, it was determined the Student experienced anxiety, but that most of their absences were due to medical reasons and happened before they attended the Alternative School. While the District did not provide instruction for the Student after the Parents removed them from the Alternative School, and there were five documented instances where the Student did not have paraprofessional coverage, these did not amount to "material failures."

Relevant case law includes E.C. v. U.S.D. 385 Andover (2020), which held that the district's occasional deviations from the BIP did not amount to a material implementation failure. Because a Kansas district's failure to follow an elementary school student's BIP on three occasions did not cause any lasting harm, the student was not entitled to relief for the implementation failures. U.S. District Judge Eric F. Melgren noted that the 10th U.S. Circuit Court of Appeals, which includes Kansas, has not decided whether parents are only entitled to relief for a "material" implementation failure. Based on rulings from other federal Circuit Courts, however, the judge determined the parents in this case would need to prove a significant deviation from the BIP. Judge Melgren observed that the parents failed to meet that standard.

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.

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.gov 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 PUBLIC SCHOOLS
ON MARCH 17, 2025

DATE OF REPORT: MAY 2, 2025

This report is in response to a complaint filed with the Kansas State Department of Education against USD #229 Blue Valley Schools on behalf of ------, by her 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," or "the mother." A student who disclosed information relevant to issue 2 will be referred to in this report as the "classmate". Her mother will be referred to as the "classmate's mother."

The complaint is against USD #229 Blue Valley Schools. In the remainder of the report, USD #229 will be referred to as "the district." The student attends Blue Valley Southwest High 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 17, 2025 and the 30-day timeline ended on April 17, 2025. The investigator subsequently requested and received an extension with the timeline ending May 2, 2025.

Evidence Reviewed

During the investigation, the Complaint Investigator Dr. Donna Wickham reviewed all documentation provided by the district and the parent. The following was used in consideration of the issues. It is noted that some documentation is older than 12 months and was used to better understand the context of the complaint and was not used in determining the findings, but is listed below in the evidence.

- Evaluation Report, dated May 16, 2024
- IEP dated May 16, 2024
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent, dated May 16, 2024, signed by parent on August 13, 2025
- IEP Parent revisions with psychologist notes referenced in August 13, 2024 email
- Special Education Student Contact Log, dated August 5, 2024 through August 13, 2024 through

- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent, dated August 10, 2024.
- IEP at a Glance, dated August 27, 2024
- Email exchange between mother and ELA teacher dated between September 9, 2024 at 6:39 p.m. and September 11, 2024 at 11:59 a.m.
- Email from case manager to mother dated September 13, 2024 at 9:27 a.m.
- ELA Accommodation log dated from September 13, 2024 through April 14, 2025
- Email exchange between mother and school psychologist dated September 13, 2024 between 9:42 a.m. and 1:49 p.m.
- Student observations during ELA and Biology, dated November 20, 2024
- Notice of Meeting dated December 2, 2024
- Student Team Meeting Agenda, dated December 2, 2024
- Email exchange using Canvas Notifications between mother and case manager dated between December 9, 2024 between 7:27 p.m. and December 10, 2024 at 9:01 a.m.
- Email exchange between mother and ELA teacher dated December 10, 2024 between 3:00 p.m. and 9:59 p.m.
- Email from mother to biology teacher, district special education director and case manager dated December 19, 2024 at 8:02 a.m.
- Biology Accommodation log dated from January 9, 2025 through March 31, 2025
- Notice of Meeting dated January 10, 2025
- Email exchange between mother and case manager dated February 4, 2025 between 1:15 p.m. and 1:38 p.m.
- Student behavior in study skills/academic support time, dated February 11, 2025 through March 31, 2025
- Email from the case manager to mother dated February 13, 2025 at 3:00 p.m.
- Progress reports, dated March 14, 2025
- District response dated April 7, 2025
- District response timelines, undated
- Email between mother and school psychologist dated April 11, 2025 at 10:49 a.m.
- Email exchange between mother and assistant principal dated April 15, 2025 between 10:34 a.m. and 3:18 p.m.
- Seven completed and undated worksheets provided by student's mother printed from the www.themeasuredmom.com
- Blue Valley Southwest School District Student Handbook, undated
- Structured Literacy -ck, -tch, -dge Lesson Plan
- SDI description, progress, and recent teacher feedback, undated
- Academic Language-Reading Evaluation dated May 3, 2022

- Center for Research, Evaluation and Awareness of Dyslexia, Summary of Assessment dated May 26, 2021

The Investigator first spoke with the mother by phone on March 26, 2025 and again on April 11, 2025. The Investigator spoke with the district special education director by phone on March 10, 2025 and April 10, 2025 to clarify the issues and discuss requested evidence. The investigator interviewed the mother of the classmate who reported hearing a teacher disclose personally identifiable information during a phone conversation on April 9, 2025. The investigator interviewed Amanda Todd, School Psychologist; Michael Rasmussen, Assistant Principal; Kinsey Binger, ELA teacher; Kristi Childs Case manager; Leann Voor Vart, Special Education Consultant; and Jennie Perdieu, District Special Education Director on April 9, 2025 by video conference. The investigator then interviewed two paraeducators, Deb Prater-Newell and Leah Moser on April 21, 2025 by video conference with Amanda Todd, School Psychologist.

Background Information

The student is a fourteen-year-old ninth grader who is eligible for special education and related services under the category of specific learning disability, with a subcategory of dyslexia according to the student's initial special education evaluation dated May 15, 2024. According to the special education evaluation report the student received the diagnosis of dyslexia during May 2022 and prior to eligibility had a Section 504 plan to provide the following accommodations for the dyslexia: 1) One additional school day to complete assignments; 2) Advanced notice to practice before reading aloud; 3) Shortened assignments to demonstrate mastery; 4) Extended time (up to 1.5x) to complete exams; 5) Access to text-to-voice technology available on the school issued device; 6) Access to teacher-provided notes; 7) Allowed to have questions on a test read aloud; 8) Checklist for multi-step tasks (Ex: assignment directions, mathematical procedures, paper editing, etc.); 9) Provided directions in a variety of ways; 10) Preferential seating, near the teacher and away from distractions; 11) Utilize a quiet, separate setting for testing and/or completing assignments; and 12) Enrolled in the reading strategies class (an intervention class to help students work on reading skills) and FLEX class (focused and targeted on helping students complete work and work on their executive functioning skills)

The PWN dated May 16, 2024 recorded, "For the remainder of the 23-24 school year, [student] will have indirect services with [student's] special education teacher in order to ensure [student] is being provided with accommodations and modifications as the year ends. For the 2024-2025 school year, [student] will have access to the following special education services:- 90 minutes of special education services in the special education setting 2 days a week to address IEP goals related to encoding and decoding- 53 minutes of special education services in the special education setting 1 day a week to address IEP goals related to encoding and decoding- 90 minutes of special education services in the general education setting 2 days a

week to support learning in the ELA classroom- 53 minutes of special education services in the general education setting 1 day a week to support learning in the ELA classroom."

Issues Investigated

ISSUE ONE: Did the district implement the student's IEP specific to instructional and testing accommodations and direct instruction in decoding listed in the May 15, 2024 IEP during 2024-2025 school year?

ISSUE TWO: Did one of the student's teachers disclose personally identifiable information about the student to other students during the 2024-2025 school year?

Issue One

Did the district implement the student's IEP specific to instructional and testing accommodations and direct instruction in decoding listed in the May 15, 2024 IEP during 2024-2025 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.

K.S.A. 72-3429(c)(7) states that the IEP for each exceptional child shall include: the projected date for the beginning of the services and modifications described in provision (4), and the anticipated frequency, location, and duration of those services and modifications.

Parent Position

The Mother alleged that the student is not being given the accommodations listed in the student's IEP in spite of reaching out to each teacher, the assistant principal and director of special education. Further, the parent alleged that "There is no structured literacy instruction. When I pointed this out, one was implemented. I'm not allowed to see it and the assignments are due in class. It is also an online course of [student] teaches [self]." The parent stated that she was "offered a formal IEP meeting as my only option to discuss my concerns which, I believe, could be resolved with a change in [student's] special education teacher and some reinforcement from administration when accommodations are consistently ignored."

District Position

The district responded that teachers implemented the instructional and testing accommodations included in the May 15, 2024 IEP during the 2024-2025 school year.

Teachers were informed of the IEP accommodations through meetings and conversations and at the start of the school year and at the start of the second semester. In addition, an IEP at a Glance document was finalized on August 27, 2024 and automatically distributed to all of the student's teachers at that time.

During the school year teachers shared their concern that the student often refused the accommodation provided. These refusals were recorded by both the ELA and Biology teachers. When the student received poor grades for not completing assignments (with accommodations), the parent would believe that the teachers had refused to provide the accommodations. Time and again, the parent would communicate that the accommodations were not being followed. When the parent raised these issues, the school offered an IEP meeting to discuss the concerns. The parent refused to attend or did not respond to the offer.

In regard to allegation about providing literacy instruction, the district responded that the student has been provided structured literacy instruction in the case manager's study skills class since the beginning of the school year, using district resources and later an online resource for the student's practice. The district reports that the student has met and exceeded IEP goals, despite becoming increasingly disengaged in the class this semester and openly telling the case manager that the student does not have to participate.

Analysis: Findings of Fact

Accommodations:

The IEP dated May 16, 2024 in effect during the 2024-2025 school year lists the following accommodations under the section, Supplementary Aids and Services (Accommodations and Modifications) These listed accommodations do not list the start date, location, frequency, and duration.

1. Student will have up to one school day of extended time to complete class assignments.
2. Student may complete shortened assignments to demonstrate mastery (to be determined by the resource teacher, general education teacher, and student as needed as a team)
3. When written work is not being assessed for written expression, student will be offered the option to demonstrate knowledge via a video submission or answering questions orally, as determined by the teacher.
4. The student will have teacher-provided notes. Completed copies of notes and study guides will be handed directly to the student, if not readily available on Canvas.
5. The student will be provided directions in a variety of ways (i.e., verbally and written)
6. The student will be provided a checklist for multi-step tasks/assignments (Ex: assignment directions, mathematical procedures, paper editing, etc.) when the assignment is not already broken down in chunks for the whole class.

7. Student will be given advanced notice to practice before reading aloud (please do not call on student without prior notice to read aloud in class.)
8. The student will have preferential seating, near the teacher and away from distractions.
9. The student will be offered to use dictation software for written work.
10. The student will have text-to-voice technology available on the student's school issued device
11. The student will have access to audiobooks. Extended time will be considered based on the extended time it takes to listen to audio versus to read.
12. The student will have access to headphones during independent work time, but not during class times when the teacher is providing direct instruction. Noise-canceling headphones with no music are allowed in class. If the student needs a distraction-free environment for independent work, the student will be offered a quiet separate setting to complete assignments. Headphones can be used in a setting separate from other students.
13. If an assignment is to be completed without the use of word processing technology, points for incorrect spelling, punctuation, or capitalization should not be lost. Points will not be lost for errors in spelling, capitalization, or punctuation when using word processing technology when these skills are not being measured.
14. Three testing accommodations include: 1) the student will be allowed extended time (up to 1.5x) to complete exams; 2) the student will be offered to have questions on a test read aloud; and 3) the student will be offered (privately) to utilize a quiet, separate setting for testing.

The IEP dated May 16, 2024 in effect during the 2024-2025 school year additionally lists four accommodations for assessment that include: 1) take test in a quiet, non-competitive setting; 2) alternate testing format; 3) extended time; and 4) oral test administration and finally, one environmental accommodation to provide support with an organizational system. The assessment accommodations list the start date, location, frequency, and duration in the Assessment section of the IEP.

The district response records that on August 1, 2024 the middle school psychologist stated, "that major changes beyond what was discussed at the initial 8th grade IEP require a meeting with the high school team, copying [school psychologist] to take over".

Emails and documents show that during the summer the mother provided the school with revised accommodations to be made to the May 16, 2024 IEP. Early in August emails between the mother and school psychologists document that the mother intended for the accommodations to be revised to indicate that the accommodation will not be a choice for the student. The Prior Written Notice signed by the parent on August 13, 2024 do not document these changes.

Emails and Notices of Meetings document that the district proposed multiple IEP meetings during the 2024-2025 school year to discuss accommodations and other IEP issues, but no meetings were ever held.

The IEP at a Glance, dated August 27, 2024 included the accommodations listed in the May 16, 2024 IEP. During the interview, all staff indicated they had received or distributed this document and were familiar with the content. During the interview with the staff on April 9, 2025 the general education teacher and other staff were able to describe how the accommodations were implemented with the subject area.

The district stated that as a school their practice with their high school students is that while accommodations are always offered to students at the school they do honor a student's expression to not use an accommodation. Paras stated that when a student declines an accommodation that is included in a student's IEP that would be helpful they will privately talk with the student to learn why they might not be using the accommodation. One example of solving this is that students who can take tests in a quiet environment report directly to the "Satellite room" rather than have to report to the classroom get the test and then walk to the separate setting. The school reports that this is how the student's accommodation is provided for testing.

The paraeducators told the investigator that they are assigned to general education classrooms and then prior to the beginning of the semester during a professional development day they learn more about the accommodations, go over the student's IEP at a Glance document and discuss with the student's case manager and general education teacher how to deliver and use the accommodation in the content class.

The district disclosed in their district response and during interview that while compiling evidence to respond to this complaint, the district identified one time in when a testing accommodation was not offered immediately. The case manager discovered that the student had not received oral test administration for a biology quiz and a test taken in the Satellite testing center. By the time the parent reached out to raise the concern, the case manager had already rectified the situation by re-administering the quiz and test to the student orally.

Literacy Instruction:

The May 16, 2024 IEP includes two literacy goals: one for decoding and one for encoding. The August 10, 2024 PWN revises the service minutes written in the May 16, 2024 IEP to coincide with the high school schedule and lists 90 minutes of special education services in the special education setting 2 days a week to address IEP goals related to encoding and decoding- 53 minutes of special education services in the special education setting 1 day a week to address IEP goals related to encoding and decoding- 90 minutes of special education services in the general education setting 2 days a week to support learning in the ELA classroom- 53 minutes

of special education services in the general education setting 1 day a week to support learning in the ELA classroom.

The mother emailed the case manager February 4, 2025 stating, '[student] continues to have the lowest of all [student's] grades in your class and [student's] FastBridge scores demonstrate [student's] definitely not receiving any structured literacy or reading strategies instruction. [Student's] reading scores fell from the 49th to the 11th percentile in three months and [student's] auto reading dropped from the 33rd to the 25th percentile. It's disheartening to say the least." The case manager replied later that day the following explanation, "I am happy to share [student's] progress with you and the structured literacy instruction that [student] has received so far. I would interpret [student's] FastBridge scores with extreme caution – I had to prompt [student] to wake up several times during this computerized screener that is given to all freshmen. As a student with an IEP for reading, that is not a data point we heavily rely on, as we do more in-depth progress monitoring of specific reading skills [student] is practicing. As far as the "due now" assignments in my class, these are very short (~5-10 minute) assignments where the purpose is to engage in the learning in that moment. [Student] has 90 minutes (or 45 minutes on Fridays) to do these ~5-10 minute assignments, with my assistance. If [student] has a zero, it reflects refusal to engage in the assignment after multiple prompts. Today during Study Skills when we were going over the day's assignments (including the assignment you asked me to help [student] with), [student] said that [student] would just do them tonight at home. I am concerned about [student's] hesitancy to accept the help offered to [student] in my class and other classes as well as the sleeping. I would still very much like to schedule a team meeting, and we could even go ahead and update the annual IEP at that time since we have gotten to know [student]."

The student's case manager described how the service minutes to teach the student's literacy goals are taught during the study skills class. On a typical week, one particular literacy skill is addressed explicitly through a structured literacy lesson. The lesson is planned out using a lesson plan template that was provided by the district as part of the district's best practice regarding literacy instruction. This instruction is typically followed by a worksheet packet that allows the student to practice the skills that were explicitly taught. The packets generally contain a decodable reading passage as well as activities to practice spelling. The handouts are consistent with the student's FastBridge scores for reading at the 5th grade level. The case manager clarified that the handouts provided by the complainant from the measuredmom.com are examples of these and regularly used by all case managers teaching literacy in the district. These lessons introduce students to new words, provide a reading passage to practice comprehension/word-meaning skills, and allow practice of word meaning and word relationships.

The study skills class has a focus on reading instruction but also includes other topics such as executive functioning skills and transition skills (college and career exploration/readiness). In

addition, the student receives special education adult support in the general education ELA 9 class.

The complainant and case manager agreed that the student started using computer apps about three weeks before spring break to practice literacy skills. An email from the case manager on February 13, 2025 provided the mother a description of Lexia PowerUp Literacy, an online literacy program to be completed during class time on Canvas. The student was awarded points via Canvas assignments for completion. This program was added for additional practice on literacy skills and to allow the teacher to gather valid data on student engagement and potential growth.

The student's progress notes since the initial IEP document student progress: Decoding Baseline averaged 86%. The October Progress Report documented a 90% average. The December Progress Report reported a 88% average, and the March Progress Report documented a 97% average. For the Encoding goal the baseline was recorded at 80% average. The October Progress Report reported an 88% average. The December Progress Report reported an 85% average, and the March Progress Report reported a 91% average. It was further documented that due to an inconsistent schedule during the third quarter the assessment that was used the previous two quarters will be re-administered after the break.

Conclusion

The investigation indicates that a number of accommodations were written into the initial, May 16, 2024 IEP but they did not include a duration, location, or frequency except for those used in state and district testing. This is a procedural violation according to K.S.A. 72-3429(c)(7) which states that the IEP for each exceptional child shall include the projected date for the beginning of the services and modifications described in provision and the anticipated frequency, location, and duration of those services and modifications. Interview and emails reveal that there was disagreement between the mother and district about whether the student was refusing the accommodation written into the IEP or did not have the understanding or self-advocacy to ask for an accommodation. This was further complicated by the lack of any IEP meeting during the 2024-2025 school year to discuss and refine the accommodations. There were several Notices of Meeting, email exchanges and interviews that showed that the IEP team did not meet during the 2024-2025 school year. Documentation was collected in at least two of the student's classes showing that accommodation were offered to the student and that the student declined. The paraeducators reported that they often sought out students to problem solve with the student how to implement the accommodations.

In another case the district identified two instances where an accommodation was not provided but quickly corrected the error.

It is beyond the role of the investigation to determine if the student needs instruction in how to ask for and use accommodations and whether the student should be allowed to decline. This

is the role of the IEP team and should be recorded in the duration, frequency, and location of the accommodations. In summary, it is found that the district committed a procedural error by not including the duration, location and frequency and *is OUT of compliance for not implementing the student's accommodations*.

In regard to implementation of the literacy goals it is found that the staff were able to describe how the literacy goals were taught. The staff described lessons, materials, and how the literacy skills were supported in the general education classes. The location of instruction and student schedule was consistent with what the IEP services indicated. Progress goals showed that the student improved in literacy skills. Based on review of the services written into the IEP, descriptions of how the goals were taught and data from the progress reports it is found that the district *is IN compliance with implementing the literacy goals and services*.

Issue Two

Did one of the student's teachers disclose personally identifiable information about the student to other students during the 2024-2025 school year?

Applicable Law

Federal regulations at 34 C.F.R. §§300.610 through 300.626 identify the confidentiality requirements that apply to children under Part B of the IDEA. They protect the personally identifiable information (PII) in education records collected, maintained, or used under Part B of the IDEA. 34 C.F.R §300.32 defines PII as 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 of student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Under 34 CFR § 300.622(a) of the IDEA Part B regulations, parental consent must be obtained before PII is disclosed to parties, other than officials of participating agencies. Under IDEA Part B and pursuant to the FERPA regulations at 34 CFR § 99.31(a)(1), prior written consent is not required to disclose PII from student education records to school officials, including teachers, within the educational agency or institution, whom the agency or institution has determined to have legitimate educational interests. 34 C.F.R. § 99.31(a)(1)(i)(A).

Unless the district has parent consent, or a FERPA exception applies, a district must prevent the disclosure to any unauthorized person of personally identifiable information from student records. Disclosure is the release, transfer or other communication of records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic.

Parent Position

The parent alleged in the complaint that the student's "[general education] teacher was bragging to another class about not giving a dyslexic student [student's] accommodations (specifically shortening [student's] assignments) because [student] wouldn't work in class. [General education teacher] was very clearly referring to [student] and the other students happened to be friends of [student] and told [student]. The teacher even referenced where [student] sat in the class."

District Position

The district responded that the teacher did not know what the parent was referring to with the allegation and the district does not have any written documentation regarding the allegation. When approached with the allegation the teacher stated that [teacher] does not share confidential information with students about other students.

Analysis: Findings of Fact

The findings of Issue One are incorporated herein by reference.

The investigator interviewed the general education teacher on April 9, 2025 who denied the allegation stating that it would be highly unprofessional to speak of another student in front of other students. The teacher further stated during the interview on April 9, 2025 that if speaking with other staff about a student's assignments, accommodations, or behavior that that conversation would occur outside of student class hours.

The mother of the classmate who reported hearing the teacher disclose personally identifiable information stated her child had not told her about the incident. The classmate's mother stated that her child overheard the reported statements as the teacher was talking to another staff approximately one week before the complaint was filed. The mother reported that after hearing the statements her child repeated the statement to the student who then reported it to the complainant.

The investigator talked with two paraeducators who work in the teacher's class. In response to being asked what they do when they need to discuss a student with a general education teacher they reported they step out into the hallway. They stated that at the beginning of the semester during a professional development day they go over how to support the students and receive the IEP at a glance to learn what each student needs. They additionally reported they had not personally overhead any teachers talking with any student or teacher about any other student.

The complainant said that her student came to her and stated what the classmate said. The complainant said that her belief was that the teacher made the statement to students, not adults and is not sure if other adults are assigned to work in the classroom. The complainant said she did not report the incident to anyone at the school because she was already

considered a troublemaker in the school and did not think it would be taken seriously. The parent stated she thought the teacher was a good teacher but was no longer helping her child.

The accommodation log for the content area dated from September 13, 2024 through April 14, 2025 documents that accommodations were offered.

Conclusion

The investigation of this issue was conducted entirely through interview. The issue was complicated as the allegation were made through a thirdhand report and the disclosure was reported between minors (student and classmate). The investigator determined to not interview the minor classmate and instead interview the classmate's mother to ensure the classmate's identity was not disclosed. The conclusion for this allegation was investigated with two goals, 1) was personally identifiable information disclosed and 2) was the disclosure related to the teacher not providing accommodations. All persons interviewed were highly credible and believable so it was difficult to singularly determine if personally identifiable information was disclosed from the interviews. Since the issue was related to disclosing personally identifiable information about not providing accommodations the accommodation log was used to determine if accommodations continued to be offered following the timeframe that the statement was alleged to be made. As the accommodation log demonstrated that accommodations continued to be offered during the entire school year the investigator found that the district *is IN compliance* with IDEA regulations.

Summary of Conclusions/Corrective Action

ISSUE ONE: A violation of 34 C.F.R. §300.323(c)(2); K.A.R. §91-40-16(b)(2) was found, based on the facts above. Corrective action is required.

1. By May 30, 2025 USD #229 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. §300.323(c)(2); K.A.R. §91-40-16(b)(2) and K.S.A. 72-3429(c)(7) by implementing the student's IEP and including the projected date for the beginning of the services and modifications described in provision and the anticipated frequency, location, and duration of those services and modifications.
2. By the start of the 2025-2026 school year the district shall convene an IEP meeting with the student's IEP team to review each instructional and testing accommodations and include the required accommodations and include the projected date for beginning services, anticipated frequency, location, and duration for each. Additionally, the IEP team should discuss whether the student needs instruction on how to self-advocate for and use accommodations. The revised IEP/amendment and prior written notice shall be provided to Special Education and Title Services (SETS) within one week after the IEP meeting.

ISSUE TWO: A violation of 34 C.F.R §300.32; 34 C.F.R. §§300.610 through 300.626 was not found, based on the 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.gov 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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(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: 25FC229-006

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on March 17, 2025, by ------ on behalf of her child, ------. In the remainder of this decision, ------ will be referred to as "the complainant," and ------ will be referred to as "the student." An investigation of the complaint was undertaken by a complaint investigator on behalf of the Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, a Complaint Report, addressing the allegations, was issued on May 2, 2025. That Complaint Report concluded that there was a violation of special education statutes and regulations in Issue one, but not in issue 2.

Thereafter, the complainant filed an appeal of the Complaint Report, appealing the conclusion that no violation occurred with regard to Issue two. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the original complaint, the Complaint Report, the complainant's notice of appeal, and the district's response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

Preliminary Matters

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.

Discussion of Issues on Appeal

From Complaintant

The issue under appeal is issue 2, which is as follows:

> Did one of the student's teachers disclose personally identifiable information about the student to other students during the 2024-2025 school year?

In addressing this appeal, the Appeal Committee first finds that the investigator correctly cited the applicable law, saying:

> *"Under 34 CFR § 300.622(a) of the IDEA Part B regulations, parental consent must be obtained before PII is disclosed to parties, other than officials of participating agencies. Under IDEA Part B and pursuant to the FERPA regulations at 34 CFR § 99.31(a)(1), prior written consent is not required to disclose PII from student education records to school officials, including teachers, within the educational agency or institution, whom the agency or institution has determined to have legitimate educational interests. 34 C.F.R. § 99.31(a)(1)(i)(A)".* (Report, p. 14).

The supporting evidence for this issue that was provided to the investigator by the parent is described in two paragraphs in the report as follows:

> *"The parent alleged in the complaint that the student's "[general education] teacher was bragging to another class about not giving a dyslexic student [student's] accommodations (specifically shortening [student's] assignments) because [student] wouldn't work in class. [General education teacher] was very clearly referring to [student] and the other students happened to be friends of [student] and told [student]. The teacher even referenced where [student] sat in the class. (Report, p. 14-15)";* and
>
> *"The mother of the classmate who reported hearing the teacher disclose personally identifiable information stated her child had not told her about the incident. The classmate's mother stated that her child overheard the reported statements as the teacher was talking to another staff approximately one week before the complaint was filed. The mother reported that after hearing the statements her child repeated the statement to the student who then reported it to the complainant (Report, p.15)."*

The investigator acknowledged the difficulty of verifying conflicting accounts of what is essentially an allegation based largely on hearsay evidence, saying:

> *"The investigation of this issue was conducted entirely through interview. The issue was complicated as the allegations were made through a thirdhand report and the disclosure was reported between minors (student and classmate). The investigator determined to not interview the minor classmate and instead interview the classmate's mother to ensure*

> *the classmate's identity was not disclosed…All persons interviewed were highly credible and believable so it was difficult to singularly determine if personally identifiable information was disclosed from the interviews."* (Report, p. 16).

Because of the difficulty of verifying what may, or may not have been said among disputing parties, the investigator cited two pieces of neutral evidence:

First,

> *"The investigator talked with two paraeducators who work in the teacher's class. In response to being asked what they do when they need to discuss a student with a general education teacher they reported they step out into the hallway. They stated that at the beginning of the semester during a professional development day they go over how to support the students and receive the IEP at a glance to learn what each student needs. They additionally reported they had not personally overhead any teachers talking with any student or teacher about any other student."* (Report, p. 15-16).

Second,

> *"Since the issue was related to disclosing personally identifiable informtion about not providing accommodations, the accommodation log was used to determine if accommodations continued to be offered following the timeframe that the statement was alleged to be made. As the accommodation log demonstrated that accommodations continued to be offered during the entire school year the investigator found that the district is IN compliance with IDEA regulations."* (Report, p. 16).

In the appeal, the parent says she is appealing, in part, because her child "*and the other child who heard a conversation in a classroom, not a hallway, were not interviewed. Only the teachers, administrators, and paras were interviewed and I don't believe they were honest in their interviews.*"

The Appeal Committee understands the parent's concern that the children were not interviewed. However, the Appeal Committee grants investigators significant discretion on whether to interview children in a complaint against their teachers, with a strong preference for excluding the children from such complaints due to the effect such involvement can make on the vital relationship between student and teacher. That strong preference is particularly applicable, when, as in this case, there are others who can provide context to classroom activities, such as paraeducators who are present and observing classroom activities and physical records, such as accommodation logs indicating that services remain scheduled. The Appeal Committee finds that the investigator's decision not to involve the children in this. investigation was more than merely appropriate. It was the correct way to proceed.

The parent's appeal also states "*I would be glad to discuss the inconsistent responses. I've not appealed or dealt with this in the past, so I'm not sure if I'm supposed to list them here or in a separate document. Please advise.*"

The Appeal Committee notes that the complaint report is dated May 2, 2025, and the parent sent this appeal by e-mail on May 12, 2025, the last day by which an appeal could be filed. This left no time for an Appeal Committee to be formed and "advise." In any event, an Appeal Committee must remain neutral and so does not "advise" either party to an appeal. As noted in the "Preliminary Matters" portion of this decision, Kansas regulations put "the burden for supplying a sufficient basis for appeal" 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. A copy of the applicable Kansas regulation regarding appeal requirements was included at the end of the report that was issued to the parties.

After a thorough review of information provided by both parties in this appeal and the evidence and analysis contained in the Complaint Report, the Appeal Committee finds that the findings and conclusion in Issue two in the report should be sustained.

Conclusion

For the reasons stated herein, the Complaint Report is sustained in full.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 23rd day of May, 2025.

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 #383
ON APRIL 1, 2025

DATE OF REPORT: MAY 1, 2025

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

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 parent via Teams on April 3, gathering additional information and verifying the specific allegations to be investigated. Laura Jurgensen provided the specific allegations to be investigated to the parent via email on April 4. The parent did not dispute how the complaint investigator framed the issues to be investigated. The parent also provided documentation for the complaint investigator to consider as part of the investigation and the parent and investigator exchanged multiple emails. The district provided the investigator with a response to the issues the investigator identified, most documentation and data the investigator requested. The complaint investigator interviewed two district assistant directors of special education and exchanged multiple emails with the district special education director. The complaint investigator also interviewed the private school principal.

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

- Email from Former Private School Teacher to Special Education Director Regarding Special Education Services for Students with IEPs at Private School, Apr. 25, 2025.
- Paraeducator Schedule for Private School, Apr. 24, 2025. (District provided.)
- (Student's 1st, 2nd, and 3rd Quarters and Semester 1 2024–25 Report Card.)
- District's Response to the Complaint, Apr. 20, 2025.
- Email from Special Education Teacher to Special Education Director, Apr. 7, 2025.
- Student's 2024–25 Class Schedule, Apr. 14, 2025. (District provided.)
- Student's 2024–25 Class Schedule, Apr. 4, 2025. (Parent provided.)
- Letter from District to Parent Requesting to Move the Site for Services to the Public School, Apr. 3, 2025.
- Paraeducator Schedule for Private School, Apr. 2, 2025. (Parent provided.)

- Parent's Complaint, Apr. 1, 2025.
- Email from Special Education Teacher with Student's IEP, Apr. 1, 2025.
- Special Education Teacher Schedule for Private School, Apr. 2025.
- Email from Private School's Head of School to Private School Staff Regarding Special Education Teacher's Schedule, Mar. 27, 2025.
- Email from Private School Principal to Special Education Teacher, Private School Head of School, and Parent Requesting Support for Student in Health Class, Jan. 28, 2025.
- Email from Special Education Teacher to Parent Responding to Parent's Request for Support in Health Class, Jan. 21, 2025.
- Email from Parent to Special Education Teacher Requesting Support for Student in Health Class, Jan. 15, 2025.
- Email from Special Education Teacher with Student's IEP, Jan. 9, 2025.
- Email from Special Education Teacher to Parents, Dec. 18, 2024.
- Student's Nov. 13, 2024, IEP.
- Prior Written Notice and Request for Consent for Substantial Change in Placement, Nov. 13, 2024. (Consent Signed Nov. 18, 2024.)
- IEP Page Showing Special Education Services for Student 1 at Private School, Nov. 7, 2024.
- Notice of Nov. 13, 2024, IEP Meeting from District to Parent, Oct. 25, 2024.
- Email from Parent to Paraeducator Attaching Student's IEP, Oct. 24, 2024.
- Photograph of Handwritten Paraeducator Notes, Sept. 9–Oct. 8, 2024.
- Email from Special Education Teacher with Student's IEP, Aug. 14, 2024.
- Paraeducator and Special Education Teacher Schedule for Private School, Aug. 2024.
- Student Passport Book, Aug. 2024.
- District's Special Education Standard Operating Procedures 2024-2025.
- Student Daily Zones of Regulation Behavior Tracking, 2024–25 School Year.
- Private School 2024–25 Special Education Staff Schedule. (Provided in District's Response to Complaint.)
- Email from Parent to Special Education Teacher Requesting Different Paraeducator to Support Student, May 2, 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 April 1, 2024.

Background Information

The student at the focus of this investigation lives in the public school district at the focus of this investigation and attends a private school within the public school district.

Issues

In the written complaint and the complaint investigator's discussion with the complainant, the parent alleges five issues upon which this investigation will focus:

Issue One: Whether the district provided the student with special education services and accommodations. K.S.A. §§ 72-3462, -3463.

Issue Two: Whether the district ensured the student's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation. K.A.R. § 91-40-16(b)(4).

Issue Three: Whether the district ensured each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for the implementation of the student's IEP is informed of that 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).

Issue Four: In the 2024–25 school year, whether the district provided special education services for all students with IEPs attending the same private school as the student. K.S.A. §§ 72-3462, -3463.

Issue Five: Whether the district provided the parent with prior written notice in response to the parent's request for support for the student in health class. K.S.A. § 72-3430(b)(2).

Additionally, the parent alleged a concern regarding district personnel actions and the district's fulfillment of its contract to the student's private school. These are not allegations of a violation of special education law and this investigation does not have the authority to consider these concerns. K.A.R. § 91-40-51(a). During the investigation, the parent brought up a concern regarding retaliation for filing this complaint. The complaint investigator explained that this complaint process does not have authority to consider retaliation complaints and pointed the parent to the United States Department of Education's Office for Civil Rights.

Issue One

Special Education Services and Accommodations for the Student

Applicable Law

K.S.A. § 72-3462 requires "[e]very 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 Special education services provided under this section for exceptional children who attend a private, nonprofit elementary or secondary school are subject to the following requirements If the services are provided for in the private, nonprofit elementary or secondary school, amounts expended for the provision of such services shall not be required to exceed the average cost to the school district for the provision of the same services in the public schools of the school district for children within the same category of exceptionality . . .." K.S.A. § 72-3463 requires that "[n]o special education services shall be provided in connection with religious courses, devotional exercises, religious training, or any other religious activity."

Analysis: Findings of Fact

The student's Nov. 13, 2024, IEP states the student will receive 30 minutes of special education services daily in Study Hall. (Student's Nov. 13, 2024, IEP.) The provider is listed as the special education teacher and there is no language that indicates the special education services in Study Hall would be provided by anyone except the special education teacher. (Student's Nov. 13, 2024, IEP.) The student's IEP also indicates the student will receive 30 minutes of special education services, stated as "paraeducator support in English, Math, Bible, Social Studies and Science." (Student's Nov. 13, 2024, IEP.) The student's IEP provides for 13 accommodations and modifications to be provided in "All Areas," "All Settings," or "in all core subjects." The student's IEP includes a behavior intervention plan focused on keeping the student in class and required data collection. The student's IEP indicates the student is eligible for additional services at the public school, with transportation provided. (Student's Nov. 13, 2024, IEP.) The parent indicated she did not consent to these services as she did not want the student to leave the private school. (Parent Interview with Complaint Investigator, Apr. 3, 2025.)

The parent's particular concerns within this issue are that the student is not receiving 30 minutes of special education services daily from a special education teacher in Study Hall and that instead the student is receiving special education services from a paraeducator in Study Hall. (Parent Interview with Complaint Investigator, Apr. 3, 2025; Parent's Complaint, Apr. 1, 2025.) The parent is also concerned that the student is not receiving the number of special education services minutes of paraeducator support indicated in the student's IEP. (Parent Interview with Complaint Investigator, Apr. 3, 2025; Parent's Complaint, Apr. 1, 2025.) Additionally, the parent included a copy of the student's IEP with her complaint, highlighting the following accommodations the parent does not believe the district is providing:

- Avoid Penalizing for Spelling Errors
- Chunk assignments (give one assignment at a time)
- Provide an alternate/reduced (by half) assignment to show mastery of concepts
- Provide sensory break and rewards when [the student] meets [the] expectation based on the scores on the behavior chart.

- Provide sensory strategies to help reduce frustration (i.e., breaks, walking, using putty, going to a quiet location such as the library).
- Response dictated to scribe.

(Parent Interview with Complaint Investigator, Apr. 3, 2025; Parent's Complaint, Apr. 1, 2025.)

Finally, the parent indicated that she does not believe the district is implementing the student's behavior intervention plan that is part of the student's IEP. (Parent Interview with Complaint Investigator, Apr. 3, 2025; Parent's Complaint, Apr. 1, 2025.)

The district does not maintain documentation of the special education services and accommodations provided to students or behavior intervention plan implementation data. (District Interview with Complaint Investigator, Apr. 25, 2025.) As documentation that the student was provided with the special education services stated in the student's IEP, the district provided the student's class schedule, the paraeducators' and special education teachers' schedule as of August 2024, the current paraeducators' schedule (following a paraeducator resignation), and the current special education teacher's schedule (following a district reassignment of the special education teacher at the private school). (Student's 2024–25 Class Schedule, Apr. 4, 2025; Paraeducator and Special Education Teacher Schedule for Private School, Aug. 2024, Paraeducator Schedule for Private School, Apr. 24, 2025. (District provided.), Special Education Teacher Schedule for Private School, Apr. 2025.) Additionally, the district provided anecdotal data via emails discussing specific student assignments, accommodations, and the student's behavior intervention plan asserting that these emails show that the district provided all the special education services indicated in the student's IEP this school year. (District's Response to the Complaint, Apr. 20, 2025.)

The IEP Team clearly indicated the student's special education services in English, Math, Bible, Social Studies, and Science would be provided by a "paraeducator," but did not indicate the student's special education services in Study Hall would be provided by a paraeducator, listing the special education teacher as the provider of the student. (Student's Nov. 13, 2024, IEP.) The IEP Team makes an intentional distinction that the special education teacher will provide the student's special education services in Study Hall. (Student's Nov. 13, 2024, IEP.) The paraeducators' and special education teacher's schedule dated August 2024 shows the student is not scheduled for special education services during Study Hall with a special education teacher, instead the student is scheduled with a paraeducator. (Paraeducator and Special Education Teacher Schedule for Private School, Aug. 2024.) The current paraeducators' schedule indicates that the student is scheduled for special education services each school day during the student's Study Hall period (Period 6 from 1:01 to 1:48 p.m.) for 30 minutes. (Paraeducator Schedule for Private School, Apr. 24, 2025. (District provided.)) The special education teacher's schedule shows that she is at the private school day each day from 7:45 to 9:00 a.m. and her schedule does not include any time with the student. (Special Education Teacher Schedule for Private School, Apr. 2025.)

The August 2024 paraeducator schedule indicates the district has planned for the student to receive 30 minutes of paraeducator support in English, Math, Bible, Social Studies, and Science. (Paraeducator and Special Education Teacher Schedule for Private School, Aug. 2024.) Following the special education teacher's recognition that K.S.A. § 72-3463 requires that "[n]o special education services shall be provided in connection with religious courses, devotional exercises, religious training, or any other religious activity," the district removed the student's paraeducator support in Bible. (Email from Special Education Teacher to Parents, Dec. 18, 2024.) After a paraeducator resignation, the district developed the current paraeducator schedule. (Paraeducator Schedule for Private School, Apr. 24, 2025.) This schedule does not include any paraeducator support for the student in Social Studies and less than 30 minutes of paraeducator support in Science on Fridays. (Paraeducator Schedule for Private School, Apr. 24, 2025.) On April 3, 2025, the district sent a letter to the parent indicating that "to ensure that all agreed-upon services are provided effectively, it is necessary for our staff to have direct access to [the student]. This would require [the student] to be transported to a public school within our district where [the student] can receive the full scope of services as outlined in [the student's] IEP." (Letter from District to Parent Requesting to Move the Site for Services to the Public School, Apr. 3, 2025.)

Regarding the student's accommodations, the parent indicated that it is her understanding that some accommodations are implemented by the student's general education teacher and others are implemented by the paraeducator. (Parent Interview with Complaint Investigator, Apr. 3, 2025.) The parent teaches at the private school where the student attends and indicated it is her experience that there is typically a conversation between each general education teacher, special education teacher, and paraeducator to discuss who will implement each accommodation for a student. (Parent Interview with Complaint Investigator, Apr. 3, 2025.) The district indicated in the interview with the complaint investigator that general education teachers, in this case the private school general education teachers, are responsible for implementing accommodations for students with IEPs. (District Interview with Complaint Investigator, Apr. 25, 2025.)

Regarding the student's behavior intervention plan, the student's IEP indicates that the special education teacher and paraeducator bear most responsibility for implementation with "General Education Teachers" responsible for providing the student with "[a]dditional prompts for behavior correction [and] [p]rivate/quiet discussions with student while other students are working," as well as participating in the review of the student's behavior intervention plan and data. (Student's Nov. 13, 2024, IEP.) The behavior intervention plan indicates that the "Required Data Collection System" is "ABC documentation" and "Documentation of any discussed issues and duration of the event." (Student's Nov. 13, 2024, IEP.) The district did not provide specific documentation of behavior intervention plan implementation, including any data the behavior intervention plan indicates would be collected. The only documentation the district provided were a few emails with staff discussing the student's behavior, but not any emails that would

meet the behavior intervention plan requirement to "[document] any discussed issues and duration of the event." (District's Response to the Complaint, Apr. 20, 2025; Student's Nov. 13, 2024, IEP.)

Regarding the implementation of special education services, the district maintains that its paraeducator and special education teacher schedules ensure implementation as required by IEPs. (District Interview with Complaint Investigator, Apr. 25, 2025.) However, a schedule represents a plan to implement special education services and is not documentation that special education services occurred. For this student, the district did not schedule the student for special education services with a special education teacher during Study Hall, as required in the student's IEP. A schedule certainly cannot serve as documentation of implementation if the schedule does not represent what a student's IEP requires. Additionally, the district's current paraeducator schedule contains insufficient special education services for the student in Social Studies and Science.

Regarding the student's accommodations, district staff indicated in the interview with this complaint investigator that they believe the private school general education teachers are responsible for implementing this student's accommodations. (District Interview with Complaint Investigator, Apr. 25, 2025.) This belief seems to stem from the student's general education teachers participating in the student's IEP Team meetings. (District Interview with Complaint Investigator, Apr. 25, 2025.) K.S.A. § 72- 3462 requires "[e]very 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 " (emphasis added) There is nothing in this statute that would place the responsibility of IEP implementation with a private school teacher. The statute clearly places responsibility for providing special education services for a student with an IEP with the school district. District staff indicated the district does not have a contract with the private school for private school staff to provide the special education services outside of their regular work hours and under the supervision and control of the public school. (District Interview with Complaint Investigator, Apr. 25, 2025.) When the district consulted with the parent and the private school officials about the site for services for this student and then the district decided where this student's services would be provided, the district could have decided that the student's accommodations would be available only in a public school building, but there is no documentation that shows that. Alternatively, after deciding that the student's accommodations would be provided in the private school the district could have ensured that a district staff member (e.g., a paraeducator or special education teacher) carried out each accommodation, but the district also did not do this.

On the accommodations where the parent voiced implementation concerns, not all could have been carried out by district staff. In particular, "Avoid Penalizing for Spelling Errors, Chunk assignments (give one assignment at a time), [and] Provide an alternate/reduced (by half) assignment to show mastery of concepts" could not have been carried out by public school

staff as public school staff do not have the ability to impact the private school teachers' carrying out of and grading assignments. These are examples of accommodations that the district could have indicated it would provide in a public school, where public school teachers carry out and grade assignment. The accommodations, "Provide sensory break and rewards when [the student] meets [the] expectation based on the scores on the behavior chart, Provide sensory strategies to help reduce frustration (i.e. breaks, walking, using putty, going to a quiet location such as the library), [and] Response dictated to scribe" could have been carried out by public school staff and perhaps were, but the district does not maintain documentation of accommodation implementation. The parent does not provide information that would indicate that if these accommodations have not been provided whether they impacted the student's progress in the general education curriculum or on the student's IEP goals. The district provided progress information for the student, but there is no data or information that shows the impacts of these accommodations on the student's progress or lack of progress in each subject or IEP goal. (Student's 1st, 2nd, and 3rd Quarters and Semester 1 2024–25 Report Card.)

The portions of the student's behavior intervention plan that required implementation by general education teachers were established due to the district's mistaken belief that the student's private school teachers were responsible for implementing the student's behavior intervention plan. The private school teachers were not responsible for implementing any components of the student's behavior intervention plan.

However, the special education teacher and paraeducator were responsible for implementing the student's behavior intervention plan and the district does not have any documentation the behavior intervention plan indicates would be collected.

Setting aside the district's misunderstanding about private school staff being responsible for IEP implementation, there is one explanation regarding the district not providing all this student's special education services and accommodations that could make sense. K.S.A. § 72-3462 indicates that when the district provides services in the private school, ". . . amounts expended for the provision of such services shall not be required to exceed the average cost to the school district for the provision of the same services in the public schools of the school district for children within the same category of exceptionality " KSDE guidance further explains this portion of the statute by saying, "[i]n determining this cost, the public school must look to similar services in the public school for children with the same exceptionality. The average amount expended may or may not allow for the provision of services at a level that would provide a free appropriate public education. For services provided at a private school, state law simply requires the expenditure of this level of funding, however, and does not require the provision of FAPE." This complaint investigator asked the district whether it is undertaking this calculation and then using the calculation to determine the services offered at the private school. (Email from Complaint Investigator to District Staff, Apr. 25, 2025.) The

district special education director responded that "[t]he decision regarding whether services are delivered onsite at [the private school] or at a public school location is based on the specific nature of the services required and the resources needed to implement them appropriately—not as a result of any intent to limit funding." (Email from Special Education Director to Complaint Investigator, April 28, 2025.)

When providing services to students with IEPs in a private school, the district does not appear to be calculating "the average cost to the school district for the provision of the same services in the public schools of the school district for children within the same category of exceptionality." (K.S.A. § 72-3462.) This is something that K.S.A. § 72-3462 permits a district to do and could explain why the district has not fully provided services for this student. Instead, the district maintains that it has provided this student with the services, accommodations, and behavior intervention plan support the stuent's IEP requires until its recent letter indicating that the student's site for services need to be at the public school. The parent maintains she received this letter without any consultation from the district and the district special education director indicates that at the beginning of the school year, district staff, the parent, and private school officials discussed that if the district ever could not locate an appropriate number of staff to provide services at the private school, then services would be available at the public school with transportation provided. (Parent Interview with Complaint Investigator, Apr. 3, 2025; District Special Education Director Email to Complaint Investigator, Apr. 24, 2025.)

Conclusion

The district's current method for ensuring the provision of the student's special education services is scheduling district staff to provide the services in the student's IEP. However, the district's schedules fall short with this student as the district's 2024– 25 school year schedules never include a special education teacher providing the student with special education services. The current schedules also do not show the student receiving the required amount of special education services in Science or Social Studies, however the district has indicated these services are available to the student at the public school.

The district misunderstands staff responsibilities for implementing the student's accommodations and behavior intervention plan. For this student, this potentially impacted three of the student's accommodations that the parent is concerned are not being provided. The parent and district disagree about whether these accommodations have been provided and neither party has consistent documentation showing whether these accommodations have been provided. Despite the student's behavior intervention plan requiring data collection and documentation and most of the responsibility for implementation is with the special education teacher and paraeducator, the district does not have any implementation documentation.

Based on the foregoing, this investigation concludes that the *district violated K.S.A. § 72-3462*.

Issue Two

IEP is Accessible

Applicable Law

K.A.R. § 91-40-16(b)(4) requires ". . . each agency shall ensure that . . . [t]he child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation."

Analysis: Findings of Fact

The relevant portions of Issue One are incorporated here. In particular, the Issue One analysis found that the parent and district all misunderstood which staff were required to implement the student's IEP. Only district staff are responsible for implementing the student's IEP and, absent parent consent, the district was required to ensure the student's IEP was accessible to each special education teacher and paraeducator supporting the student.

Most of the parent's concern on this issue are focused on the student's regular education teachers, who are not responsible for implementation of the student's IEP. (Parent Interview with Complaint Investigator, Apr. 3, 2025; Parent's Complaint, Apr. 1, 2025.) The parent also indicated that in October 2024 she sent a copy of the student's IEP to a paraeducator because the paraeducator told the parent she did not know what was in the student's IEP. (Parent Interview with Complaint Investigator, Apr. 3, 2025.) The parent provided the investigator with the email from the parent to the paraeducator and the email is blank, other than the attached IEP. (Email from Parent to Paraeducator Attaching Student's IEP, Oct. 24, 2024.) The parent indicated the conversation with the paraeducator about her lack of access to the student's IEP was verbal. (Parent Interview with Complaint Investigator, Apr. 3, 2025.)

The district special education director indicated that, "paraeducators have full access to students' IEPs to ensure they have a comprehensive understanding of their individual responsibilities." (Email from Special Education Director to Complaint Investigator, Apr. 28, 2025.) The district special education director stated that the district provided the special education teacher and paraeducators with access to the student's IEP by keeping it with all other student IEPs in the special education classroom at the private school. (Email from Special Education Director to Complaint Investigator, Apr. 24, 2025.) The special education director indicated the special education teacher and paraeducators reference student IEPs regularly in their daily planning meetings. (Email from Special Education Director to Complaint Investigator, Apr. 24, 2025.) The district's procedure document indicates that after each IEP Team meeting the Case Manager must provide a copy of the IEP to "all staff who work with student " It is evident

from emails from the former and current special education teachers that they both had access to the student's IEP. (Emails from Former Special Education Teacher with Student's IEP, Aug. 14,

2024, and Jan. 9, 2025; Email from Current Special Education Teacher with Student's IEP, Apr. 1, 2025.)

Conclusion

There is not specific documentation that the paraeducators were provided with access to the student's IEP, but because the district is providing paraeducators with a hard copy and not an electronic copy it is reasonable there is not necessarily electronic documentation that the paraeducators received a copy of the student's IEP. The district's written procedure and explanation of how this is carried out at the private school is sufficiently detailed to show that the district ensured access of the student's IEP to the staff responsible for its implementation.

Based on the foregoing, this investigation concludes that the *district did not violate K.A.R. § 91-40-16(b)(4).*

Issue Three

Inform of IEP Responsibilities

Applicable Law

K.A.R. § 91-40-16(b)(5) requires ". . . each agency shall ensure that . . . [e]ach [regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its 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."

Analysis: Findings of Fact

The relevant portions of Issues One and Two are incorporated here. In particular, the Issue One analysis found that the parent and district all misunderstood which staff were required to implement the student's IEP. Only district staff are responsible for implementing the student's IEP and, absent parent consent, the district was required to ensure the student's special education teacher and paraeducator were informed of their specific responsibilities relating to implementing the student's IEP.

Most of the parent's concern on this issue are focused on the student's regular education teachers, who are not responsible for implementation of the student's IEP. (Parent Interview with Complaint Investigator, Apr. 3, 2025; Parent's Complaint, Apr. 1, 2025.) The parent also provided information, included in the Issue One analysis, which showed it was unclear which of the student's accommodations were to be provided by the special education teacher and paraeducator.

The district special education director indicated that the special education teacher created each paraeducator a "'passport book' that outlines the specific accommodations, modifications, supports, and services required by each student's IEP, including responsibilities

related to the implementation of behavior intervention plans." (Email from Special Education Director to Complaint Investigator, Apr. 28, 2025.) The special education director provided photographs of the "passport book" for this student. (Student Passport Book, Aug. 2024.) The photographs provided show the following pages from the student's IEP: special education services; program modifications, accommodations, and supplementary aids and services; state and district assessment accommodations; and the student's behavior intervention plan. (Student Passport Book, Aug. 2024.)

The district is required to ensure that any staff supporting the student, "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).) The photographs of the student's "passport book" show "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); Student Passport Book, Aug. 2024.)

Conclusion

There is nothing in the "passport book" that shows that the paraeducators were "informed of . . . [their] specific responsibilities related to implementing the child's IEP." (K.A.R. § 91-40-16(b)(5); Student Passport Book, Aug. 2024.) This is evident in that there is no information on what accommodations the paraeducator is expected to implement and no information on the paraeducator's specific responsibilities for carrying out the student's special education services in English, Math, Social Studies, and Science. Additionally, the special education teacher put together the "passport book" for the paraeducators, but there is no documentation to show that the district ensured the special education teacher was informed of her specific responsibilities related to implementing the student's IEP. With this student, there does not appear to be a process by which the district determined and assigned specific responsibilities for all components of the IEP.

Based on the foregoing, this investigation concludes that the *district violated K.A.R. § 91-40-16(b)(5).*

Issue Four

Special Education Services and Accommodations for All Students Attending the Private School

Applicable Law

K.S.A. § 72-3462 requires "[e]very 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 Special education services provided under this section for

exceptional children who attend a private, nonprofit elementary or secondary school are subject to the following requirements If the services are provided for in the private, nonprofit elementary or secondary school, amounts expended for the provision of such services shall not be required to exceed the average cost to the school district for the provision of the same services in the public schools of the school district for children within the same category of exceptionality . . . ." K.S.A. §72-3463 requires that "[n]o special education services shall be provided in connection with religious courses, devotional exercises, religious training, or any other religious activity."

Analysis: Findings of Fact

This concern stems from a March 27, 2025, email the private school head of school sent to private school staff and one district paraeducator following the change in special education teachers at the private school that states the district does "not have enough resources to support all" IEP service minutes. (Email from Private School's Head of School to Private School Staff Regarding Special Education Teacher's Schedule, Mar. 27, 2025.) The parent also provided information from her own experience as a teacher at the private school of students she knew to have IEPs where she indicated that paraeducators regularly did not come to her classroom, as scheduled, to provide special education services to her students. (Parent Interview with Complaint Investigator, Apr. 3, 2025.) As a teacher at the private school, the parent had a copy of the paraeducator and special education teacher schedule so she would know when paraeducators would be in and out of her classroom throughout the day. (Parent Interview with Complaint Investigator, Apr. 3, 2025.)

As stated in Issue One, the district does not maintain documentation of the special education services provided to students. (District Interview with Complaint Investigator, Apr. 25, 2025.) As documentation that all students with IEPs attending the private school were provided with the special education services stated in the students' IEPs, the district provided the paraeducators' and special education teachers' schedule as of August 2024, the current paraeducators' schedule (following a paraeducator resignation), and the current special education teacher's schedule (following a district reassignment of the special education teacher at the private school). (Paraeducator and Special Education Teacher Schedule for Private School, Aug. 2024, Paraeducator Schedule for Private School, Apr. 24, 2025. (District provided.), Special Education Teacher Schedule for Private School, Apr. 2025.)

The district also provided what it indicated were "paraeducator logs documenting the provision of services." (Email from District Special Education Director to Complaint Investigator, Apr. 25, 2025.) These were photographs of handwritten notes from September 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 24, 30 and October 3, 4, 7, and 8, 2024. (Email from District Special Education Director to Complaint Investigator, Apr. 25, 2025.) These handwritten notes provide blocks of time on each date sometimes accompanied by descriptions like "in class" or "study hall." (Email from District Special Education Director to Complaint Investigator, Apr. 25, 2025.)

Sometimes there are initials next to a block of time that the district indicated are the initials of the student being served during that time. Certain dates are accompanied by the word "absent." (Email from District Special Education Director to Complaint Investigator, Apr. 25, 2025.)

The district also provided IEP Team meeting summaries for two students, which did not include specific services those students were to receive. (Email from District Special Education Director to Complaint Investigator, Apr. 28, 2025.) The district also provided an email from a private school teacher that no longer works for the private school that, in that teacher's experience, the students with IEPs in that teacher's classroom received the special education services their IEPs required. (District's Response to the Complaint, Apr. 20, 2025.) The April 3, 2025, letter referenced in the Issue One analysis went to each student with an IEP indicating that each student's site for services need to be at the public school. (District's Response to the Complaint, Apr. 20, 2025.) For each student with an IEP at the private school whose parents refused services at the public school or did not respond, the district provided email documentation. (District's Response to the Complaint, Apr. 20, 2025.)

What is missing from this extensive documentation is any information about what these students' IEPs require them to receive. The complaint investigator requested the district provide, "documentation showing the services their IEPs indicated they were to receive and documentation these services were actually provided." (Complaint Investigator Email to District, Apr. 25, 2025.) The district special education director responded detailing the information previously provided, all listed above, indicating those documents "collectively demonstrate that services are being provided in accordance with each student's IEP." (Email from District Special Education Director to Complaint Investigator, Apr. 28, 2025.) Additionally, nearly all of the documentation provided does not show that the district delivered all services as indicated in student IEPs. The "paraeducator logs" were very informal, did not contain sufficient information, and were for only a small part of the school year.

Additionally, because the district and the parent disagree about whether the district ensured special education services were provided for each student with an IEP attending the private school, this complaint investigator interviewed the private school principal. The private school principal indicated that the former special education teacher regularly did not come to the private school during her scheduled time and would later inform private school staff she had been pulled into other buildings in the district. (Complaint Investigator Interview with Private School Principal, Apr. 29, 2025.) The private school principal indicated the former special education teacher provided her with IEPs for all students with IEPs attending the private school and she has reviewed them. (Complaint Investigator Interview with Private School Principal, Apr. 29, 2025.) The private school principal does not believe it is possible that the district is providing all special education services indicated in student IEPs, pointing to the regular absences of the former special education teacher, the current special education teacher's

schedule (the schedule shows only 30–45 minutes of direct services to students each day), and several experiences of the private school principal finding paraeducators in the special education classroom when she knew they were scheduled to be in a student's general education classroom providing services. (Complaint Investigator Interview with Private School Principal, Apr. 29, 2025.)

Conclusion

The district's current method for ensuring the provision of special education services is scheduling district staff to provide the services in the students' IEPs. However, the district did not provide any information on the services each student's IEP requires and does not have any mechanism to ensure services are provided with a public-school staff member responsible for providing services in the public school is pulled to another district building. The district provided documentation that all services are available to each student at the public school, but that only speaks to the availability of services after April 3, 2025, not prior to that in the 2024–25 school year. The district's misunderstanding of staff responsibilities for implementing accommodations and behavior intervention plans is likely impacting all students with IEPs at the private school. The parent's and private school principal's account of whether the district is providing services undermines the district's assertion that it is providing services as indicated in student's IEPs.

Based on the foregoing, this investigation concludes that the *district systemically violated K.S.A. § 72-3462*.

Issue Five

Support in Health Class

Applicable Law

K.S.A. § 72-3430(b)(2) requires, "[t]he 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: (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 student started health class during second semester and was without paraeducator support, which included no implementation of the student's accommodations and behavior intervention plan. (Parent Interview with Complaint Investigator, Apr. 3, 2025.) District staff indicated that IEP Team meeting notes do not indicate the IEP Team discussed whether the student would need support in health class. (District Interview with Complaint Investigator, Apr. 25, 2025.) District staff stated that the private school health teacher was responsible for

implementing the student's accommodations and behavior intervention plan during health class. (District Interview with Complaint Investigator, Apr. 25, 2025.)

On January 15, 2025, the parent emailed the special education teacher and requested "a preemptive plan for health class " The parent maintained the special education

teacher did not respond to this email. (Parent Interview with Complaint Investigator, Apr. 3, 2025.) The special education teacher sent an April 7, 2025, email to the district special education director that she followed up "verbally" with the parent. (District's Response to the Complaint, Apr. 20, 2025.) On January 21, 2025, the parent emailed the special education teacher and asked if she "had a chance to think through the email I sent you about support for health, because if [the student] needs a para there then we" may as well include that in an IEP amendment on which they were working. (District's Response to the Complaint, Apr. 20, 2025.) The special education teacher responded to the parent the same day stating, "Unfortunately, we cannot provide support for a class prior to a demonstrated need. We can keep an eye on the situation. I will check in with [the health teacher] and even do some observations to watch for any signs of need." (District's Response to the Complaint, Apr. 20, 2025.) At the end of January, the parent and private school principal decided to move the student to independent study in health class with the parent. (Parent Interview with Complaint Investigator, Apr. 3, 2025.)

Conclusion

The parent's request for support in health class was a request that impacted the student's free appropriate public education. This obligated the district to respond with a Prior Written Notice. The district first responded verbally and then responded in an email, denying the request. Neither method is permitted when a parent makes a request that impacts their child's free appropriate public education. The only appropriate method was for the district to respond with a Prior Written Notice.

Based on the foregoing, this investigation concludes that the *district violated K.S.A. § 72-3430(b)(2).*

Summary of Conclusions/Corrective Action

Issue One

The district violated K.S.A. § 72-3462, 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, the district must submit a written statement to KSDE Special Education and Title Services (SETS) that it will comply with state legal requirements at K.S.A. § 72-3462 which requires every school district to provide special education services for exceptional children who reside in the school district and attend a private, nonprofit elementary or secondary school. If

the services are provided for in the private, nonprofit elementary or secondary school, amounts expended for the provision of such services shall not be required to exceed the average cost to the school district for the provision of the same services in the public schools of the school district for children within the same category of exceptionality.

2.

a. The district must offer to the parent to provide compensatory special education services to the student in an amount KSDE will determine after submitting the following information. The offered compensatory services are not subject to the average cost calculation in K.S.A. § 72-3462. The district must provide 30 minutes of special education services for each day the student was in school for the 2024–25 school year until the date the district begins to provide the student with special education services from a special education teacher as stated in the student's IEP. Within 11 calendar days of the date of this report, the district must provide KSDE with the student's 2024–25 attendance data and undertake staffing efforts to provide the student with 30 minutes of special education services from a special education teacher as indicated in the student's IEP.

b. Within one school day of beginning to provide the student with special education services from a special education teacher, the district must communicate to KSDE that it has done this. KSDE will then calculate the amount of compensatory services the district must offer to the parent based on the days of the 2024–25 school year the student was in session before the district provided special education services from a special education teacher and communicate that to the district.

c. Within five business days of KSDE communicating the amount of compensatory services, the district must send the parent a Prior Written Notice offering compensatory services from a special education teacher at the private school and, on that same day, send the Prior Written Notice to KSDE. Prior to sending the parent the Prior Written Notice, the district must make reasonable efforts to collaborate with the parent and student on the proposed schedule for compensatory services. In the Prior Written Notice, the district must provide the parent with fifteen school days to accept all, some, or none of the compensatory services.

d. On the same day the district receives the parent's response, it must provide the response to KSDE. If the parent accepts some or all compensatory services, the district must also provide KSDE with the proposed end date for compensatory services based on the proposed schedule.

e. If the parent accepts some or all the compensatory services, the district must maintain documentation of the provision of compensatory services. One business day following the proposed end date for compensatory services, the district must provide this documentation to KSDE.

3. Within 11 calendar days of the date of this report, the district must consult with the parent and private school officials about the location for each of the student's special education services, accommodations, and behavior intervention plan implementation; decide the location for each of the student's special education services, accommodations, and behavior intervention plan implementation; and communicate this decision to the parent, private school officials, and KSDE.
4.
    a. Within 11 calendar days of the date of this report, the district must begin collecting data under the student's behavior intervention plan as stated in the plan.
    b. By May 16, the district must provide KSDE with the data collected under the student's behavior intervention plan.
5.
    a. Within 15 calendar days of this report, the district must develop and submit to KSDE a draft procedure as to how the district will consult with parents and private school officials for students with IEPs in private school the district is serving under K.S.A. § 72-3462 about the location for all services, accommodations, modifications, and support for school personnel included in a student's IEP. KSDE will request any needed revisions to this draft procedure and communication confirmation when the district may finalize the procedure.
    b. Within 15 calendar days of this report, the district must develop and submit to KSDE a draft procedure that assigns staff responsibility and a timeline to create schedules for public school staff serving students in private schools. This draft procedure must include reviewing and revising staff schedules, if needed, each time the IEPs of students in the private school are changed. The draft procedure must also include a step where a public-school staff member that did not create the schedule reviews the schedule and student IEPs to ensure that the schedule includes the support listed in each student's IEP. The draft must also include how services will be provided when a staff member is unable to provide services during a scheduled time due to district staffing decisions. KSDE will request any needed revisions to this draft procedure and communication confirmation when the district may finalize the procedure.
    c. Within three business days of KSDE's confirmation, the district must place the draft procedures into its Special Education Standard Operating Procedures and communicate the procedures to any public-school staff with responsibility for implementing the procedures. On this same date, the district must send to KSDE its Special Education Standard Operating Procedures with the draft procedures included and its communication to relevant staff regarding the procedures.

d. By August 21, 2025, the district must submit to KSDE the public school staff schedule for services the district will provide at the private school, documentation for each student with an IEP attending the private school that show the services and accommodations the district will provide at the private school, and confirmation that the district has followed its procedure to review the schedule. KSDE will review the schedule and IEP pages to ensure that the district has created a staff schedule to implement the services and accommodations for each student that the district will provide at the public school. If, after consultation with each parent of a student with an IEP attending the private school and private school officials, the district decides not to provide services and accommodations at the private school in the 2025–26 school year, the district will communicate this to KSDE on the date indicated at the beginning of this paragraph.

6. Due Dates:
   e. May 12, 2025: 1, 2.a., 3., and 4.a.;
   a. Within one school day of beginning to provide the student with special education services from a special education teacher: 2.b.;
   b. Within five business days of KSDE communicating the amount of compensatory services: 2.c.
   c. On the same day the district receives the parent's response on compensatory services: 2.d.
   d. One business day following the proposed end date for compensatory services: 2.e.
   e. May 16, 2025: 4.b., 5.a., and 5.b.;
   f. Within three business days of KSDE's confirmation of the draft procedures: 5.c.; and
   g. August 21, 2025: 5.d.

Issue Two

This investigation found no violations and there is no corrective action.

Issue Three

The district violated K.A.R. § 91-40-16(b)(5), 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, the district must submit a written statement to KSDE Special Education and Title Services (SETS) that it will comply with state legal requirements at K.A.R. § 91-40-16(b)(5) which requires each agency to ensure that each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation is informed of that 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.

2. Within 11 calendar days of the date of this report, the district must create a document for each public school staff member responsible for implementation of the student's IEP detailing each staff member's specific responsibilities related to implementing the student's IEP, use this document to inform each public school staff member responsible for implementation of the student's IEP of their specific responsibilities related to implementing the student's IEP, and provide this document to KSDE along with confirmation that the district has informed each staff member of their responsibilities.
3.
    a. Within 15 calendar days of this report, the district must develop and submit to KSDE a draft procedure as to how the district will inform each public-school staff member responsible for implementation of each private school student's IEP of their specific responsibilities related to implementing each student's IEP. This procedure must include how the district will document that it has carried this out. KSDE will request any needed revisions to this draft procedure and communication confirmation when the district may finalize the procedure.
    b. Within three business days of KSDE's confirmation, the district must place the draft procedures into its Special Education Standard Operating Procedures and communicate the procedures to any public-school staff with responsibility for implementing the procedures. On this same date, the district must send to KSDE its Special Education Standard Operating Procedures with the draft procedures included and its communication to relevant staff regarding the procedures.
    c. By August 21, 2025, the district must submit to KSDE the documentation indicated in the district's procedure as to how the district will inform each public-school staff member responsible for implementation of each private school student's IEP of their specific responsibilities related to implementing each student's IEP.
4. Due Dates:
    a. May 12, 2025: 1 and 2;
    b. May 16, 2025: 3.a;
    c. Within three business days of KSDE's confirmation of the draft procedures: 3.b.; and
    d. August 21, 2025: 3.c.

Issue Four

The district violated K.S.A. § 72-3462, based on the findings of fact listed above. Corrective action is required, as follows:

1. Within 11 calendar days of the date of this report, the district must consult with the parent and private school officials about the location for the special education

services, accommodations, modification, supports for school personnel, and behavior intervention plan implementation for each student with an IEP attending the private school; decide the location for each of the student's special education services, accommodations, and behavior intervention plan implementation; and communicate this decision to the parent, private school officials, and KSDE.

2. Corrective action ordered in Issue One: 1. and 5. also applies to this issue.
3. Due Date:
    a. May 12, 2025: 1.

Issue Five

The district violated K.S.A. § 72-3430(b)(2), 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, the district must submit a written statement to KSDE Special Education and Title Services (SETS) that it will comply with state legal requirements at K.S.A. § 72-3430(b)(2) which requires the district to provide the parents of exceptional children written prior notice in accordance with K.S.A. § 72-3432, whenever the district proposes to initiate or change or refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.
2. Within 11 calendar days of the date of this report, the district must provide the parent with a Prior Written Notice of its decision to provide support to the student in health class in the current independent study with the parent and should the parent decide to return the student to the regular health class. If the parent disagrees with the district's decision, the parent could ask the district to go to mediation or could file a due process complaint on the district's decision. If the parent believes that the district's failure to implement the student's IEP in health class impacted the student's right to a free appropriate public education, the parent can file a formal complaint or a due process complaint on that issue as that issue was not included in this investigation.
3. Due Dates:
    a. May 11, 2025: 1 and 2.

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.gov 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. 383,
Manhattan-Ogden Public Schools: 25FC383-003

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on April 1, 2025, by ------, on behalf of her child, ------. 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 was issued on May 1, 2025. That Complaint Report concluded that there were violations of special education statutes and regulations

Thereafter, the district filed an appeal of the Complaint Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the original complaint, the Complaint Report, and the district's notice of 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.

Discussion of Issues on Appeal

From Complaintant

Issue One

Whether the district provided the student with special education services and accommodations. K.S.A. §§ 72-3462

The investigator concluded that the district violated K.S. 72-3462 by failing to implement the student's IEP to provide sufficient implementation of:

Services in the Study Hall classroom (Report, p. 6)
Services in Social Studies (Report, p. 6)
Services in Science (Report, p. 6)
Accommodations (Report, p. 7)
Behavior Intervention Plan (Report, p. 7)

The district's appeal argues that, K.S.A. § 72-3462 "requires school districts to provide equitable services—not FAPE—to eligible students enrolled in private schools," and that "In Kansas, equitable services do not have to be identical to those provided in public school, nor do they constitute FAPE under IDEA." The Appeal Committee finds no such language in the statute, nor any language in the statute that supports such an interpretation. The only references to the term "equitable" in Kansas special education law are the "equitable participation" requirement in K.A.R. 91-40-42(a)(1) and the "participate equitably" requirement in K.A.R. 91-40-42a(a)(2)(A), both of which refer to "child find" processes, not to implementation of an IEP.

The investigator's conclusions in the complaint report were based on: (a) a lack of documentation of implementation, rejecting the district's reliance on mere schedules (Report, p. 7); and (b) statements made by district staff during interviews with the investigator. Those statements made to the investigator confirmed that district staff believed the duty to implement IEP accommodations belonged to the private school staff (Report, p. 8). The investigator correctly determined that,

> *"There is nothing in this statute that would place the responsibility of IEP implementation with a private school teacher. The statute clearly places responsibility for providing special education services for a student with an IEP with the school district (Report, p. 8)."*

As explained by the investigator, on the same page, K.S.A. § 72- 3462 requires that:

> *"[e]very 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. (emphasis added)."*

The full (relevant) statement in this statute is:

> *Every school district s**hall 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** (emphasis added).*

The plain reading of this statute is that, for these exceptional children enrolled in a private school, the district must **provide** the IEP services **requested** by the child's parents.

The district rightly points out that this statute does not obligate it to provide any IEP services at a private school. However, when a district elects to provide all or a portion of the IEP services requested by parents at a private school, as this district did, it must provide those services.

The district's appeal also cites the statute's provision that when, "the services are provided at the private school, the school district of residence is not required to spend more than the "average cost" of providing the same service in public school. This provision in the statute does not mean the district may simply disregard the bulk of services in an IEP for a student attending and receiving services at a private school, whenever it determines that such services would exceed the average cost of providing the same services in a public school. Such an interpretation of this statute would substantially interfere with the parent's right to be informed of any district proposal related to FAPE before implementation of such proposal, under 34 C.F.R. 300.503.

When a district chooses to limit services to the "average cost" of providing the same service in a public school, it must first notify parents of that decision in a Prior Written Notice (PWN). That PWN must notify the parents of what parts of the IEP will not be provided at the private school and include an explanation why the district is proposing to exclude those services. The district's explanation must be sufficiently complete to enable the parents to make decisions regarding their right to accept services at the public school or to exercise procedural safeguards, such as initiating mediation, due process or complaint procedures.

The district did not provide a PWN notifying the parents that it would limit services to the "average cost" of providing the same service in public school. Lacking such prior written notice, it cannot now assert that it was employing the "average cost" process to limit the services it was providing to this student at the private school.

For the reasons cited above, the Appeal Committee sustains the investigator's conclusion on this issue.

*The term "equitable services" is defined in federal regulation 34 C.F.R. § 300.137 to mean services provided to children with disabilities attending a private school. Under federal law, these equitable services are services provided by a services plan, not by an IEP. These equitable services need only be provided until a district has spent its proportionate share of federal IDEA funds on children with disabilities attending a private school. Under the applicable federal regulations no child has any individual right to any service. Kansas law greatly exceeds this minimal federal service/spending requirement. K.S.A. 72- 3462 is the governing statute for Kansas exceptional children enrolled by their parents in a private school, and the "equitable services" provision in federal law and corresponding "services plan" has no application to how IEP services are to be provided to these Kansas children.

Issue Three

Whether the district ensured each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for the implementation of the student's IEP is informed of that 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).

The district's appeal of this issue is summed up in this statement:

> *While the finding alleges a lack of individualized assignment of accommodations to staff, such specificity is not required under K.A.R. § 91-40-16(b)(5) or IDEA. The legal standard is informed responsibility, not explicit delegation in writing unless needed for clarity, which the district's procedures already support.*

In its appeal, the district cited the correct regulation. K.A.R. 91-40-16(b)(5) says:

> *(5) **Each** teacher and provider described in paragraph (4) of this subsection **is informed of** the following:*
>
> *(A) **That individual's specific responsibilities** related to implementing the child's IEP; **and***
>
> *(B) the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.*

The Appeal Committee agrees that this regulation does not require that personnel be informed of their specific responsibilities in writing. However, the district further asserts that its responsibility under this regulation was fulfilled by distributing a copy of the IEP and what it called a "passport" to all involved staff. This assertion does not address the investigators finding that:

> *The photographs of the student's "passport book" show "the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." (Report, p. 13).*

However, the investigator also found that:

> *There is nothing in the "passport book" that shows that the paraeducators were "informed of . . . [their] specific responsibilities related to implementing the child's IEP." (K.A.R. § 91-40-16(b)(5); Student Passport Book, Aug. 2024.) This is evident in that there is no information on what accommodations the paraeducator is expected to implement and no information on the paraeducator's specific responsibilities for carrying out the student's special education services in English, Math, Social Studies, and Science. Additionally, the special education teacher put together the "passport book" for the paraeducators, but there is no documentation to show that the district ensured the special education teacher was informed of her specific responsibilities related to implementing the student's IEP. With this student, there does not appear to be a process by which the district determined and assigned specific responsibilities for all components of the IEP. (Report, P. 13-14).*

By providing an IEP and passport book to all staff, the staff were informed of the services that needed to be provided, but these sources did not inform staff of each of their individual "specific responsibilities."

The investigator found a violation because this portion of the regulation goes beyond mere access to an IEP. It also requires that any individual who is responsible for implementation of any part of an IEP "is informed of…that individual's specific responsibilities." The IEP and "passport book" did not provide that information and nothing in this appeal supports a finding that paraeducator staff were informed of their "individual specific responsibilities" under this student's IEP.

Accordingly, the conclusion of the investigator on this issue is sustained.

Issue Four

> In the 2024–25 school year, whether the district provided special education services for all students with IEPs attending the same private school as the student. K.S.A. §§ 72-3462, 3463.

The district's appeal is based on the district's assertion that the complainant does not have a parental right, or standing, to lawfully file a systemic complaint on behalf of other students, and so this issue is beyond the "jurisdictional scope" of K.A.R. 91-40-51(a).

The Appeal Committee sees nothing in the cited regulation that supports the district's reading of this regulation. K.A.R. 91-40-51(a) says: "Any person or organization may file a written, signed

complaint alleging that an agency has violated a state or federal special education law or regulation (emphasis added)." The applicable federal regulation (34 C.F.R. 300.153) has a similar provision. Thus, the Appeal Committee finds that this complainant, like "any person," has a right to file a systemic complaint on behalf of students for which she is not a parent.

The investigator found that:

> *"the district did not provide any information on the services each student's IEP requires and does not have any mechanism to ensure services are provided when a public-school staff member responsible for providing services in the public school is pulled to another district building. The district provided documentation that all services are available to each student at the public school, but that only speaks to the availability of services after April 3, 2025, not prior to that in the 2024–25 school year. The district's misunderstanding of staff responsibilities for implementing accommodations and behavior intervention plans is likely impacting all students with IEPs at the private school. The parent's and private school principal's account of whether the district is providing services undermines the district's assertion that it is providing services as indicated in student's IEPs."*

The Appeal Committee agrees with the investigator's findings and conclusion on this issue. When public school staff report an understanding that the duty to implement provisions in an IEP belongs to private school staff and not to public school staff, and the principle of the private school reports that public school staff are not implementing those provisions, those factors are strong evidence undermining the district's assertion that public school staff are providing all services within the IEPs of all students with disabilities in the private school.

The Appeal Committee sustains the conclusion of the investigator on this issue.

Issue Five

Whether the district provided the parent with prior written notice in response to the parent's request for support for the student in health class. K.S.A. § 72-3430(b)(2).

The district argues that it did not deny the parent's request for support in the health class when the special education teacher responded to an e-mail from the parent requesting said support. The e-mail response said; "Unfortunately, we cannot provide support for a class prior to a demonstrated need. We can keep an eye on the situation. I will check in with [the health teacher] and even do some observations to watch for any signs of need." (District's Response to the Complaint, Apr. 20, 2025.) (Report, p. 18). The investigator found this response to be a refusal of the parent's request, which required a Prior Written Notice (PWN). The Appeal Committee agrees. Any response to a parent's request for additional support for their child that starts with,

"Unfortunately, we cannot…" is likely a refusal of the request, at least for a period of time. The Appeal Committee finds that this response was clearly a refusal that required a PWN.

The district also argues that "A violation cannot be found where no adverse action occurred." The district asserts that delivery of a PWN is merely a procedural requirement and so failure to deliver a PWN is merely a procedural violation of law.

No statute or regulation addresses this issue with respect to state complaints, such as this one. There is a provision in federal regulations (at 34 C.F.R. 300.513) that states that a hearing officer in a due process hearing must:

> *Base any determination of whether a child received FAPE on substantive grounds and that a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies—*
>
> *(i) Impeded the child's right to a FAPE;*
>
> *(ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or*
>
> *(iii) Caused a deprivation of educational benefit.*

That regulation adds that:

> *(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements*

Even though this regulatory provision applies only to hearing officers in a due process hearing, Special Education and Title Services (SETS) often applies it to state complaints. In doing so, SETS recognizes the parameters of this federal regulation, as follows:

> *It includes more than just the provision of FAPE to the child.*
>
> *It also includes significant impediment of the parent's opportunity to participate in the decision-making process and includes deprivation of educational benefit to the child. Additionally, the regulation includes, even when none of the above applies, that the hearing officer may order the district to comply with the procedural requirement. Thus, this regulation authorizes corrective action even when a hearing officer finds no substantive violation.*

In this complaint, the investigator found a procedural violation for not providing the parent with a PWN. There was no analysis in the complaint report regarding whether this procedural violation was also a substantive violation because it "significantly impeded the parent's opportunity to participate in the decision making process." The Appeal Committee finds that there is no need to ascertain whether this procedural violation was also a substantive violation because, in either case, the investigator (like hearing officers) has authority to order the district to "comply with procedural requirements." The corrective action on this issue does just that. There was no finding of a violation of FAPE for the Appeal Committee to overturn. The corrective action in the report merely

orders the district to submit a written statement of assurance that it will comply with the procedural requirements relating to prior written notice and provide the parents with the PWN that it should have provided. These corrective actions are simply "ordering an LEA to comply with procedural requirements," as authorized in the federal regulations for hearing officers.

Finally, the district also appealed corrective action. There is no appeal process for corrective action. The pertinent regulation, K.A.R. 91-40-51(f) permits an appeal of only the "findings or conclusions" in a complaint report. SETS removes corrective action when an Appeal Committee reverses a decision concluding that a violation has occurred, but that does not apply here, where there is no reversal of any conclusion.

The Appeal Committee sustains all of the conclusions in the complaint report that are under appeal.

Conclusion

For the reasons stated herein, the Complaint Report is sustained in full.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 23rd day of May, 2025.

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 #305
ON MARCH 26, 2025

DATE OF REPORT: MAY 1, 2025

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 "parent", or the "mother".

The complaint is against USD #305 (Salina Public Schools) who contracts with the Central Kansas Cooperative in Education (CKCIE) to provide special education services to students enrolled in the school district. In the remainder of the report, both of these responsible public agencies may also be referred to as "the district", "the local education agency (LEA)", or "the school". Individually, they will be referred to by "USD #305" and "CKCIE" respectively.

The Kansas State Department of Education (KSDE) allows for a 60-day timeline to investigate a complaint and allow for an appeal process 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 March 26, 2025 and assigned the case for investigation on March 27, 2025.

Evidence Reviewed

Both parties were contacted via telephone during the investigation to gather and clarify information. Both the parent and the 305 LEA representative were interviewed on March 28, 2025 and the parent was interviewed again on April 18, 2025. After an internal investigation, the LEA acknowledged noncompliance for all three issues and an interview was determined to not be necessary.

The LEA provided multiple documents for review and consideration during the investigation. All this documentation was reviewed and considered by the investigator. The following written documentation was viewed as most relevant and primarily used in consideration of the issues:

1. USD #457 Individualize Education Program (IEP) dated March 22, 2024
2. Contact Notes with Angela Alarcon, Oakdale School Administrative Assistant dated March 6 – March 26, 2025
3. Administrative Conversations with Angela Dorzweiler, Oakdale School Principal and April Mayorga, Lead Teacher, dated March 6 – March 31, 2025

4. Timeline of Contacts with Kent Trimmell, School Psychologist dated March 11 – March 31, 2025
5. Communication/Information/Timeline with Lori Thornton, Oakdale School Special Education Coordinator, dated March 11 – April 4, 2025
6. Meeting Notes dated March 27, 2025
7. USD #305 IEP dated April 4, 2025
8. Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change of Services, Change of Placement, and Request for Consent dated April 4, 2025
9. IEP Conference Summary dated April 4, 2025
10. Resolution Meeting Notes dated April 4, 2025
11. Response to the Allegations dated April 14, 2025 written by Sarah Loquist, CKCIE General Counsel

Background Information

The student is an eight-year-old boy who is currently enrolled in in the third grade at Meadowlark Ridge Elementary School in USD #322 for the 2024-25 school year. He was initially evaluated and found eligible for early childhood special education services at the age of three and the student has continuously received special education services to the present time. His most recent reevaluation was conducted on March 22, 2024 and it was determined that he continued to be a child with an exceptionality and in need of special education under the category of autism.

Issues Investigated

Based on the written complaint and an interview with the complainant, three issues were identified and investigated.

Issue One

Did the district provide free appropriate public education (FAPE) to the student, including services comparable to those described in the student's IEP from the previous school district special education services during 2024-2025 school year following a move from one Kansas school district to another?

Applicable Law

Federal regulations at C.F.R. §300.323(e) and state regulations at K.S.A. 72-3429(g) state that if a child with a disability who had an IEP that was in effect in a previous public agency within the same State transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency, in consultation with the parents, must provide FAPE to the child including services comparable to those described in the child's IEP from the previous public agency, until the new public agency either 1) Adopts the child's IEP

from the previous public agency; or develop, adopt, and implement a new IEP that meets the applicable requirements at C.F.R. 300.320 through 300.324.

Analysis: Findings of Fact

The following findings of fact are based upon interviews and record review.

The parent and LEA both reported the initial contact regarding enrollment occurred on Thursday, March 6, 2025 and that the parent visited the neighborhood school, Oakdale Elementary School on the afternoon of Friday, March 7, 2025 and provided the required enrollment documentation. The LEA reported that the parent provided a copy of the student's IEP Goal Progress Report at that time; however, she did not provide a copy of the student's current IEP from USD #457, the previous Kansas school district.

Angie Dorzweiler, the Oakdale Elementary School Principal, reported speaking with the parent about the previous educational program for the student on that same day and discussing that the student was partially integrated but also in a behavior classroom where he received supports for social emotional learning and behavior.

The enrollment documentation was processed on Monday, March 10, 2025 and the LEA requested a copy of the student's IEP from USD #457. It is noted that the student's sibling began attending the neighborhood school, Oakdale Elementary School, on Tuesday, March 11, 2025.

According to district staff, a copy of that IEP was not received until Wednesday, March 12, 2025. That IEP was reviewed by the Oakdale team on Thursday, March 13, 2025 The IEP from USD #457 required 60 minutes per day of specialized instruction in social/emotional skills in the special education setting; 180 minutes per day of specialized instruction in the general education setting; 20 minutes per week of social work services, and indirect Autism consultation for 10 minutes one time per each nine-week period.

On March 14, 2025, a referral was sent to Opportunity Now and Meadowlark Ridge Elementary School, the two district programs for students needing emotional and behavioral special education support services.

It is noted that all students in the district were out of school between Friday, March 14 and Friday, March 21, 2025.

Meeting notes kept by Angela Mayorga, Lead Teacher, describes a meeting with the parent on Monday, March 24, 2025 as follows:

Mother arrived at Oakdale asking questions on where we are on the student's paperwork . . . During the meeting Mr. Trimmell [School Psychologist] reviewed the placement piece from the current IEP, inquiring about the behavior school. Mom stated it was not a behavior school, he was in general education as much as possible throughout the day. I asked Mom what his typical day looked like. Mom shared that he would work for 15 minutes, then have breaks

throughout the day and that he had some behaviors that occurred. Mom also shared that she would meet with the IEP team every couple of months to check on goals and what is working or not working.

Mom asked about the programs we have in Salina. Mr. Trimmell reviewed the programs that we have in Salina and Mom immediately said no self-contained at all, I do not want that. Mr. Trimmell shared that a meeting to discuss appropriate placement is scheduled for Monday, March 31st at 9:30. Mom is concerned that brother has being going to school, but not the student. Mr. Trimmell stated that we cannot deny you (the student) enrollment starting now. Mom said that will not work for him to start here (Oakdale) then go somewhere else in a week. April [Oakdale Lead Teacher] discussed with Mom that we can send some work and activities home with him, Mom agreed. We assured her that someone will reach out to her Monday to follow up after the meeting. She agreed. At the end of the meeting, we reviewed her concerns and next steps. Mr. Trimmell re-stated that he can begin attending Oakdale today as we work through the process and meeting. Mom again said that will not work for him and agreed to wait for someone to contact her after the meeting. Materials were sent home with sibling at the end of the school day.

On Thursday, March 27, 2025, the parent, the student's IEP team at USD #322 and the student's IEP team from USD #457 met to review the IEP and discuss the student's services. Lori Thornton, Special Education Coordinator for USD #305, reviewed the placement options available in the district and arranged tours for the parent.

On March 31, 2025, an internal team determined that the most appropriate program in the district for the student would be at Meadowlark Ridge Elementary School.

The student's IEP team met on Friday, April 4, 2025 to develop a new IEP for the student. A prior written notice was provided to the parent describing the special education services proposed and the parent provided written consent for these services.

Also at this IEP team meeting, the LEA offered to provide compensatory services "due to the district's delay in determining comparable services and processing the student's enrollment." USD #305 provided the parent with a prior written notice dated April 8, 2025 offering the following services:

It is proposed that the student will be provided an equivalent of 10 days (430 minutes per day) of compensatory education due to delay in his enrollment in school. This compensatory education will be provided in ESY between the dates of 6/2/2025-7/15/2025. The time in service will be provided over the course of 20 days at 215 minutes per day.

The parent did not provide written consent for these services.

Conclusion

In this case, ***USD #305 acknowledged noncompliance*** with the requirement to provide FAPE upon the student's transfer from USD #457 by not providing comparable services between March 11, 2025, the date the student's sibling began attending school in USD #305, and April 4, 2025, the date the IEP team met and developed a new IEP for the student.

While the LEA made two offers of services to the student after enrollment, neither of these made comparable services available to the student. First, the district offered the parent the option for the student to begin attending the neighborhood school but comparable services to those provided in the previous school district were not available in this school building and the parent was not in agreement. The district also offered the parent the option of providing classwork while the student remained at home awaiting an IEP team meeting to develop a new IEP but, while the parent agreed, the district did not provide any specialized instruction to the student to address the social/emotional and behavioral support services required in the previous IEP.

The LEA did offer to provide compensatory services but only proposed 10 days of compensatory services when the student was actually denied comparable services for a total of 12 days between March 11, 2025 and April 4, 2025, excluding the days students in the district did not attend school between March 14 and March 21, 2025.

It is unclear how USD #305 determined the student was owed a total of 430 minutes per day of special education services as comparable services. According to the previous IEP, a total of 240 minutes per day of specialized instruction [60 minutes in the special education setting and 180 minutes in general education setting] were required to be provided. In addition, the comparable services offered to the student did not include any weekly social work services or indirect Autism consultation.

Issue Two

Did the district follow IDEA procedures for the eligible student when moving from one Kansas school district to another during 2024-2025 school year by adopting the student's IEP from the previous school district or developing and implementing a new IEP?

Applicable Law

Federal regulations at C.F.R. §300.323(e) and state regulations at K.S.A. 72-3429(g) state that if a child with a disability who had an IEP that was in effect in a previous public agency within the same State transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency, in consultation with the parents, must provide FAPE to the child including services comparable to those described in the child's IEP from the previous public agency, until the new public agency either 1) Adopts the child's IEP

from the previous public agency; or develop, adopt, and implement a new IEP that meets the applicable requirements at C.F.R. 300.320 through 300.324.

The Kansas Special Education Process Manual in Chapter Four, Section G: Transfer within the State and From Out of State notes that when a student moves within the state, eligibility has already been established and a reevaluation is not required. This chapter delineates the following steps for meeting the in-state transfer process requirements:

> *Step 1: When a student moves into a new school district, the school district must take reasonable steps to promptly obtain the child's records, including the individualized education program (IEP) and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school district in which the child was enrolled. The previous school district in which the child was enrolled must take reasonable steps to promptly respond to the request from the new school district. Parent consent is not required to transfer education records to a school where a student intends to enroll, or is already enrolled.*
>
> *Step 2: When a child with an exceptionality transfers to a new school district in Kansas, with a current IEP in a previous school district in Kansas, the new school district, in consultation with the parents, must provide a free appropriate public education (FAPE) to the child, including services comparable to those described in the child's IEP from the previous school district.*
>
> *Step 3: Once the new district receives the current IEP the new school district may adopt the child's IEP from the previous school district or develop and implement a new IEP. If the new district develops a new IEP, parent consent is required for any substantial change in placement or any material change in services proposed in the new IEP.*

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, educational placement, or the provision of FAPE to the student.

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 following findings of fact are based upon interviews and record review.

The findings of Issue One are incorporated herein by reference.

The IEP team met on Friday, April 4, 2025 to develop an IEP for the student. The LEA proposed to provide 60 minutes per day of specialized instruction in the special education setting and 180 minutes per day of specialized instruction in the general education setting to address social/emotional skills as well as indirect behavior consultation for 10 minutes one time per each nine-week period. These services would not be provided in the neighborhood school but instead at Meadowlark Ridge Elementary School.

Also at this IEP team meeting, the LEA offered to provide compensatory services "due to the district's delay in determining comparable services and processing the student's enrollment."

USD #305 provided the parent with a Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change of Services, Change of Placement, and Request for Consent dated April 4, 2025 describing the 60 minutes per day of specialized instruction in the special education setting and 180 minutes per day of specialized instruction in the general education setting to address social/emotional skills and the indirect behavior consultation for 10 minutes one time per each nine-week period.

In addition, the PWN proposed the following compensatory services:

> *It is proposed that the student will be provided an equivalent of 10 days (430 minutes per day) of compensatory education due to delay in his enrollment in school. This compensatory education will be provided in ESY between the dates of 6/2/2025-7/15/2025. The time in service will be provided over the course of 20 days at 215 minutes per day.*

The PWN did not describe the deletion of the 20 minutes per week of social work services nor did the parent provide written consent for this material change in services.

Conclusion

In this case, the *district again acknowledged that it did not follow the required procedures* for the transfer of a student with an IEP between two school districts within the same State.

In addition, noncompliance is identified for not providing the parent with appropriate prior written notice to remove the social work services from the proposed IEP and obtaining parental consent for a material change of services following the April 4, 2025 IEP team meeting.

Issue Three

Did the district meet the student's IEP team to review the student's IEP annually during the 2024-2025 school year?

Applicable Law

Federal regulations at C.F.R. §300.324(b)(1)(i) that each public agency must review the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved.

Analysis: Findings of Fact

The district noted the student's previous IEP was developed on March 22, 2024 in USD #457; however, that IEP was not received by USD #322 until March 12, 2025 through the in-state transfer process. The district reported the district's spring break for student's started on March 14 and ended on March 21, 2025 and there was no opportunity to conduct an IEP review within 365 days of March 22, 2024.

Documentation shows the student's current IEP was developed at an IEP team meeting held on April 4, 2025 in USD #322. The district acknowledged noncompliance and plans to conduct another IEP team meeting with the parent in May to come back into compliance with the requirement for the student's current IEP to be reviewed and revised, as necessary, with 365 days of April 4, 2025.

Conclusion

In this case, *USD #322 acknowledged the student's IEP was not reviewed and revised*, as necessary, within 365 days of March 22, 2024, the previous IEP team meeting date. Based on the foregoing, noncompliance with the requirements of federal regulations at C.F.R. §300.324(b)(1)(i) is found.

Summary of Conclusion s/Corrective Action

ISSUE ONE: USD #305 acknowledged noncompliance with the requirement to provide FAPE upon the student's transfer from USD #457 by not providing comparable services between March 11, 2025, the date the student's sibling began attending school in USD #305, and April 4, 2025, the date the IEP team met and developed a new IEP for the student. It is noted the LEA did make an offer of compensatory services, but the parent did not provide consent to the prior written notice dated April 8, 2025 which described the offered services. Based on the foregoing, corrective action is required.

Corrective Action

1. The LEA will contact TASN to arrange for training to be provided to the special education staff and building administrators working at Oakdale and Meadowlark Ridge

Elementary Schools in USD #322 and special education staff working with USD # 322 employed with CKCIE regarding the appropriate in-state transfer procedures, specifically the requirement to provide comparable services to the student until such time the LEA adopts the transfer IEP or develops a new IEP for the student no later than August 1, 2025. The LEA will provide KSDE with the date of the training, the name of the trainer, and a copy of any handouts or presentation materials no later than one week following the date of the actual training.

2. Because of the noncompliance, the student was not provided with comparable services for a total of 12 days school days based upon when the sibling began attending school on March 11, 2025 and the date of the IEP team meeting on April 4, 2025. Based upon the March 22, 2024 IEP, the student should have been provided with a total of 12 hours of special education instruction in social/emotional skills in the special education setting (60 minutes per day); a total of 36 hours of special education services for social/emotional skills in the general education setting (180 minutes per day); and 40 minutes of social work services (40 minutes per week) during that timeframe. The LEA will create a plan to provide the student with a minimum of these amounts of compensatory services being provided to the student by the end of the first quarter of the 2025-26 school year. This plan will be provided to the parent no later than May 23, 2025. The parent may choose to accept all, some, or none of these services. The LEA will notify KSDE of the parent's decision no later than 10 days from the date of the parent's decision. If any amount of compensatory service is accepted by the parent, the LEA will provide KSDE with documentation of the provision of these services by the end of the first quarter of the 2025-26 school year.

ISSUE TWO: Again, USD #305 acknowledged noncompliance because it did not follow the procedures for the transfer of a student with an IEP between two school districts within the same state as required by federal regulations at C.F.R. §300.323(e) and state regulations at K.S.A. 72-3429(g). In addition, noncompliance is identified for not providing the parent with appropriate prior written notice to remove the social work services from the proposed IEP and obtaining parental consent for a material change of services following the April 4, 2025 IEP team meeting. Based on the foregoing, corrective action is required.

Corrective Action

3. USD #322 and CKCIE will review their policies, procedures and practices for in-state transfer students with IEPs and develop a checklist form to be used to document the appropriate steps in the process. A copy of the checklist will be provided to KSDE no later than July 1, 2025 for approval. Once approved by KSDE, a copy of this checklist will be shared with all special education staff and building administrators no later than August 1, 2025.
4. The LEA will contact TASN to arrange for training to be provided to the special education staff and building administrators working at Oakdale and Meadowlark Ridge Elementary Schools in USD #322 and special education staff working with USD # 322 employed with CKCIE regarding the appropriate in-state transfer procedures and the

checklist no later than August 1, 2025. In addition, this training will include information about the requirements for providing appropriate prior written notice to parents, specifically addressing material changes in service and significant changes of placement. The LEA will provide KSDE with the date of the training, the name of the trainer, and a copy of any handouts or presentation materials no later than one week following the date of the actual training.

5. The LEA will reconvene the student's IEP team no later than May 30, 2025 to review and revise, as appropriate, the provision of social work services to the student as required by the March 22, 2024 IEP and provide the parent with appropriate prior written notice following that IEP team meeting. The LEA will provide KSDE with a copy of the prior written notice within 10 days of the date of the IEP team meeting.

ISSUE THREE: Again, the LEA acknowledged the student's IEP was not reviewed and revised, as necessary, within 365 days of the development of the previous IEP. The previous IEP was developed on March 22, 2024 and the student's current IEP was developed on April 4, 2025. It is noted that the student transferred into the district on March 10, 2025, which was only 12 calendar days prior to the annual review date and that eight of those 12 calendar days were the district's spring break. However, based on the foregoing, the district is determined to be out of compliance with the requirement to review and to revise, as necessary, each student's IEP at least annually.

Corrective Action

6. The LEA will provide KSDE with an assurance statement that it will review each student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved, and to revise each student's IEP as necessary.

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.gov 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 26, 2025
Against Unified School District No. 305

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced on March 26, 2025, with the parent, ------, filing a complaint on behalf of her child, ------. This decision will refer to ------ as "the parent," and ------ 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 May 1, 2025. The complaint report concluded that there were four violations of special education law under three issues.

On May 9, 2025, 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 complaint report, the district's response to the parent's complaint and the district's accompanying exhibits that the district referenced in its appeal, and the parent's complaint. 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)(1), with the complaint report. That regulation states, in part, " 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 provide a detailed statement of the basis for alleging that the report is incorrect." Accordingly, the KSDE Appeal Committee may only consider appeals of findings or conclusions and 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 raises three allegations that the findings and conclusions from the complaint report are incorrect. The district also raises concern regarding one of the corrective actions ordered. Corrective action is not appealable; only findings or conclusions are appealable under K.A.R. § 91-40-51(f)(1). The Appeal Committee will address the following three allegations:

Allegation One: Date District Began Comparable Services

> Allegation that the complaint investigator's conclusion regarding the district's start date of comparable services should have been the date the student started school in the district. This allegation is connected to complaint report Issue One.

Allegation Two: Comparable Services in Student's Neighborhood School

> Allegation that the complaint investigator's conclusion that the district did not make comparable services available in the student's neighborhood school is not supported by the evidence the district provided in its response. This allegation is connected to complaint report Issue One.

Allegation Three: Material Change of Services Consent Finding

> Allegation that the complaint investigator did not sufficiently investigate prior to concluding that the district violated K.A.R. § 91-40-27(a)(3). This allegation is connected to complaint report Issue Two.

Allegation One: Date District Began Comparable Services

> Whether the complaint investigator should have based the Issue One conclusion of the district providing compensatory services on the date the student started school.

Applicable Law

The regulation at focus in Issue One of the complaint is 34 C.F.R. § 300.323(e), "If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either—

(1) Adopts the child's IEP from the previous public agency; or

(2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324."

Relevant Facts

The district's response indicates that the student began attending school at Meadowlark Ridge Elementary on April 2, 2025. (District's Response, 2, Apr. 14, 2025.) In support of this statement, the district's response points to Exhibit 2, the special education coordinator's notes. (District's Response, 2, Apr. 14, 2025.)

The complaint report indicates that on "March 31, 2025, an internal team determined that the most appropriate program in the district for the student would be at Meadowlark Ridge Elementary School." (Complaint Report, 5, May 1, 2025.) The complaint report further indicates that the "student's IEP team met on Friday, April 4, 2025 to develop a new IEP for the student." (Complaint Report, 5, May 1, 2025.) The complaint report does not include the date the student started school at Meadowlark Ridge Elementary. (Complaint Report, 6, May 1, 2025.)

The complaint investigator concluded that the "LEA made two offers of services to the student after enrollment" and neither offer "made comparable services available to the student." (Complaint Report, 6, May 1, 2025.) The complaint investigator concluded these two offers of non-comparable services were at the student's neighborhood school (Oakdale Elementary) and to provide work for the student to complete at home. (Complaint Report, 6, May 1, 2025.)

The complaint investigator ordered compensatory services for the student based on a calculation that ended on "April 4, 2025, the date the IEP team met and developed a new IEP for the student." (Complaint Report, 6, May 1, 2025.) During the complaint investigation the district offered the parent compensatory services based on a calculation that ended on April 2, 2025, the date the district maintains it began to provide the student with comparable services. (District's Appeal, 2, May 9, 2025.) The district disputes the investigator's conclusion that the district did not provide compensatory services until April 4, 2025, and the corresponding compensatory services calculation the complaint investigator used to determine corrective action. (District's Appeal, 2, May 9, 2025.)

Allegation One Conclusion

Based on its review, the Appeal Committee finds support for the April 4 date the complaint investigator used in the Issue One conclusion as there is no clear evidence that the district clearly communicated to the parent that comparable services were available for the student until April 4. The parent provided enrollment documentation on March 10, the district received the student's IEP from the former district on March 12, staff with the student's neighborhood school reviewed the student's IEP on March 13, staff with the neighborhood school met with the parent on March 24, the student's current and former district IEP Teams met on March 27. On any of these dates the district could have communicated to the parent that comparable services were available to the student and did not. The district also did not provide any evidence both during the investigation and the appeal that the district actually provided comparable services beginning April 2. Based on

this evidence and analysis, the Appeal Committee upholds the complaint investigator's conclusion in Issue One on the start date of compensatory services.

Allegation Two: Comparable Services in Student's Neighborhood School

Whether the complaint investigator correctly concluded in Issue One that the district did not make comparable services available in the student's neighborhood school.

Applicable Law

The regulation at focus in Issue One of the complaint is 34 C.F.R. § 300.323(e), "If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either—

(1) Adopts the child's IEP from the previous public agency; or

(2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324."

Relevant Facts

The district's response indicates that at a March 24, 2025, meeting between the parent, school psychologist, and the lead teacher at the student's neighborhood school, the school psychologist informed the parent that the student could attend the neighborhood school immediately. (District's Response, 2, Apr. 14, 2025.) The district's response indicates the parent chose not to send the student to the neighborhood school because there was a possibility the student may attend a different school when the district developed, adopted, and implemented a new IEP. (District's Response, 2, Apr. 14, 2025.) The district points to Exhibit 1, the neighborhood school's principal's notes, and Exhibit 8, the school psychologist's notes in support. (District's Response, 2, Apr. 14, 2025.)

The complaint report included findings that directly quote from the lead teacher's March 24, 2025, meeting notes stating, "[the school psychologist] stated that we cannot deny you (the student) enrollment starting now. Mom said that will not work for [the student] to start here (Oakdale) then go somewhere else in a week. . . . [The school psychologist] re-stated that [the student] can begin attending Oakdale today as we work through the process and meeting." (Complaint Report, 5, May 1, 2025.) The complaint investigator concluded "the district offered the parent the option for the student to begin attending the neighborhood school but comparable services to those provided in the previous school district were not available in this school building and the parent was not in agreement." (Complaint Report, 6, May 1, 2025.)

The district's appeal asserts that the complaint investigator did not ask the district whether comparable services were available at the student's neighborhood school. (District's Appeal, 2, May 9, 2025.) The district's appeal indicates that "the behavior program at Meadowlark is a better fit for [the student], Oakdale could have provided comparable services to [the student] until the IEP meeting was held." (District's Appeal, 2, May 9, 2025.)

Allegation Two Conclusion

The Appeal Committee does not believe the district provided information during the investigation or on appeal to indicate comparable services were available at the neighborhood school. If the district had relevant information to provide regarding comparable services, it could have provided it during the investigation or the appeal and did not. The complaint investigator interprets the district's offer for the student to attend the neighborhood as simply allowing the child to attend the neighborhood school and not as a communication that it would provide comparable services. The complaint investigator bases this conclusion on the district's focus on the student's likely placement being a school other than the student's neighborhood school. In the district's Exhibit 7, included with the district's response to the complaint, the school psychologist notes indicate that at the March 24 meeting with the parent, "I explained that [the student] can begin school at [the student's neighborhood school] today and it will be up to the [neighborhood school] to do their best in providing special education services." The Appeal Committee finds that "to do their best in providing special education services" does not communicate to the parent that comparable services will be provided in the neighborhood. The Appeal Committee finds that the district cannot have it both ways. The district cannot communicate to the parent that the student must ultimately attend a non-neighborhood school and that comparable services can also be provided at the neighborhood school. Based on this evidence and analysis, the Appeal Committee upholds the complaint investigator's conclusion in Issue One that the district did not make comparable services available in the student's neighborhood school.

Allegation Three: Material Change of Services Consent Finding

Whether the complaint investigator correctly concluded in Issue Two that the district violated K.A.R. § 91-40-27(a)(3).

Applicable Law

The regulations at focus in Issue Two of the complaint are 34 C.F.R. § 300.323(e), K.S.A. § 72-3429(g), 34 C.F.R. § 300.503(a), and K.A.R. § 91-40-27(a)(3). Relevant to this allegation, the complaint investigator found a violation of K.A.R. § 91-40-27(a)(3), "[E]ach each agency shall obtain parental consent before . . . making a material change in services to . . . an exceptional child . . . ."

Relevant Facts

The parent's complaint did not include an alleged violation of K.A.R. § 91-40-27(a)(3). The district's response does not provide any information on a material change of services, other than pointing to the Prior Written Notice where the district indicates it will implement a new IEP for the student and does not request parent consent for any services changes. (District's Response, 2, Apr. 14, 2025; Prior Written Notice, Apr. 4, 2025.)

The complaint investigation report indicated that the student's IEP from their previous district required, "20 minutes per week of social work services." (Complaint Report, 4, May 1, 2025.) In explaining the removal of the social work services, the complaint investigator points to the Prior Written Notice the district provided the parent during the complaint investigation offering compensatory services. (Complaint Report, 9, May 1, 2025.) The district pointed out in its appeal that in the investigator's focus on the removal of social work services, the investigator instead should have pointed to the Prior Written Notice the district provided to the parent indicating it would implement a new IEP for the student and not requesting parent consent for any services changes. (District's Appeal, 2, May 9, 2025; Prior Written Notice, Apr. 4, 2025.)

The district's appeal maintains the complaint investigator should have asked the district for information on why social work services were removed from the student's IEP. (District's Appeal, 2, May 9, 2025.) The district indicated in its appeal that the district discussed with the parent that the student will receive "social skills support in the special education classroom for 60 minutes a day . . . provided by his special education teacher . . . [and] . . . access to the building's social worker any time he needs it, just like any other student in the building." (District's Appeal, 2, May 9, 2025.) The district indicated the removal of social work services from the student's IEP should have been "clearly identified on the PWN" and that the district would issue a new PWN and provide the parent "the opportunity to meet with the team again to discuss it further." (District's Appeal, 2, May 9, 2025.) The complaint investigator ordered corrective action for the LEA to "reconvene the student's IEP team no later than May 30, 2025 to review and revise, as appropriate, the provision of social work services to the student as required by the March 22, 2024 IEP and provide the parent with appropriate prior written notice following that IEP team meeting" as well as KSDE. (Complaint Report, 13, May 1, 2025.)

Allegation Three Conclusion

If the district had relevant information to provide regarding social work services, it could have provided it during the investigation and did not. The district provides information regarding the removal of social work services on appeal and also admits a violation of K.A.R. § 91-40-27(a)(3). The investigator cited sufficient evidence to show that the district was required to seek the parent's consent to remove social work services and the district did not do that. Based on this evidence

and analysis, the Appeal Committee upholds the complaint investigator's conclusion in Issue Two that the district violated K.A.R. § 91-40-27(a)(3).

Appeal Committee

Brian Dempsey: Assistant Director of Special Education and Title Services

Dr. Crista Grimwood: Dispute Resolution Coordinator

Melissa Valenza: Coordinator

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #385
ON MARCH 31, 2025

DATE OF REPORT: APRIL 30, 2025

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 #385, Andover Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #385.

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 31, 2025, and the 30-day timeline ended on April 30, 2025.

Allegations

The following four issues will be investigated:

ISSUE ONE: Whether USD #385 conducted evaluations of the Student and made eligibility determinations in accordance with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA). K.A.R. 91-40-8, K.A.R. 91-40-9, K.A.R. 91-40-10(a)(1); 34 CFR §§ 300.8, 300.303-306.

ISSUE TWO: Whether USD #385, in accordance with state and federal regulations implementing the IDEA, offered the Student the least restrictive environment for their unique needs. K.S.A. 72-3420(a), K.A.R. 91-40-21; 34 C.F.R. § 300.116.

ISSUE THREE: Whether USD #385, in accordance with state and federal regulations implementing the (IDEA, offered an appropriate IEP that met the needs of the Student, K.S.A. 72-3429, K.A.R. 91-40-18; 34 CFR § 300.320.

ISSUE FOUR: Whether USD #385, in accordance with state and federal regulations implementing the IDEA, provided the Parent with IEP progress reports. K.A.R. 91-40-16(b)(3), K.S.A. 72-3429(3); 34 C.F.R. § 300.323.

Investigation of Complaint

The Complaint Investigator, interviewed the Parent by telephone on April 22, 2025. The following District staff were interviewed on April 15, 2025:

The Assistant Director of Special Education,
The Special Education Resource Teacher,
The Speech Language Pathologist, and
The Vision Specialist.

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:

1. Email, re: Request IEP Meeting to finalize Label, Assistive Tech., Access to FAPE, 02/11/2025-02/28/2025
2. Email, re: [the Student] IEP Meeting Feb 3, 2025, 02/03/2025-02/05/2025
3. Email, re: Requesting Functional Vision Assessment for Education Access, 08/19/2024-08/22/2024
4. Email, re: Amendment Paperwork, 08/23/2024
5. Email, re: Request Contact Information for Teachers for [the Student], 08/19/2024
6. Email, re: Request for IEP Meeting: [the Student], 08/23/2024-08/31/2024
7. Email, re: [the Student]: Short Clips 1 of 3, 09/08/2024
8. Email, re: Video for Homework Document, 09/11/2024
9. Email, re: CVI Diagnosis [the Student], 10/01/2024-10/04/2024
10. Email, re: Evaluating [the Student], 10/25/2024
11. Email, re: Videos, 10/08/2024
12. Email, re: LVCC+ Appointment Confirmation, 10/14/2025
13. Email, re: Eye Gaze Results, 11/04/2024-11/05/2024
14. Determination Meeting and IEP Meeting, 04/16/2024-04/18/2024
15. Parent Requested IEP Meeting, 02/03/2025
16. Team Meeting Notes, 05/22/2024
17. Team Meeting Notes, 09/06/2024
18. Team Meeting Notes, 08/12/2024
19. Team Meeting Notes, 12/12/2024
20. Team Meeting Notes, 11/22/2024
21. Determination Meeting and IEP Meeting, 04/16/2024
22. Low Vision Collaboration Clinic +, Eye Report, 10/24/2024
23. Individualized Education Program, 09/06/2024

24. Rubric for Determining Student Eligibility for KS Alternate Assessment (DLM) for Students with the Most Significant Disabilities, 04/16/2024
25. Progress Report, 12/12/2024
26. Team Meeting Notes, 02/03/2025
27. Progress Report, 04/16/2024
28. Individualized Education Program DRAFT, 12/12/2024
29. Letter, re: Invitation to IEP Meeting, 04/16/2024
30. Team Meeting Notes, 12/12/2024
31. Team Meeting Notes, 05/22/2024
32. Individualized Education Program, 04/16/2024
33. Amendment IEP, Amendment Date 08/12/2024, Initiation Date 09/06/2024
34. Present Levels of Academic and Functional Performance, 04/16/2024
35. Eligibility Determination, 04/16/2024
36. Student Information Sheet - DLM, 04/16/2024
37. Kansas Department of Education Alternate Assessment Notification, no date

Background Information

This investigation involved a seventeen-year-old student enrolled at Andover Central High School (School) and Erin Is Hope Foundation Private School (Private School), in USD #385. The Student is currently receiving special education or related services as a child with a multiple disability per the IDEA. In the fall of 2024, the Student was diagnosed as legally blind from ophthalmologist and optometrist evaluations. Beginning in pre-school, the Student had received special education services for speech and language. The first IEP meeting for the Student at the School was held in April 2024. The Student was found eligible for a Multiple Disability, which the Parent did not agree with. The Parent wanted the Team to consider Traumatic Brain Injury, Learning Disability, or Other Health Impaired. The Student received services in the resource room for writing and math and received reading and English services at the Private School. The Student received direct speech/language services at the Private School and consultative speech services at the School. The Student lives at home with their 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. The Student is seventeen years old, in the 9th grade, and attends the District four hours a day and the Private School for three hours a day.
2. On April 16, 2024, the Student was found eligible for special education services under the category of Multiple Disabilities (MD). The Student was found eligible for

Vision Impairment (VI) on December 12, 2024. The Student was diagnosed with Cerebral Palsy, Global Hypotonia, Epilepsy, Apraxia, apnea, and visual impairment.

3. Relevant items from the IEP dated April 16, 2024 indicated the following:
    a. The Student's exceptionality of multiple disabilities "will impact [the Student's] ability to access the general education curriculum across all academic areas when [the Student] is expected to perform age-appropriate skills including reading, math, and writing," as compared to peers.
    b. The Student's Present Levels of Academic and Functional Performance included:
        i. The overall Nonverbal Index score was in the extremely low range according to the Wechsler Intelligence Scale for Children Fifth Edition (WISC-V). Scores for Fluid Reasoning, Visual-Spatial Index, Working Memory, and Processing Speed were also in the extremely low range when compared to peers.
        ii. Student Strengths: The Student is respectful, very friendly, eager to learn, and likes to engage in conversation.
        iii. Parent Input: The Parent reported "no big concerns with hearing/vision." The Parent reported no seizures for five years and had noticed occasional tics. No other concerns were noted by the Parent.
        iv. Social Emotional: The Student "struggles to initiate friendships and carry a conversation about a specific topic for three or more minutes."
        v. Communication: The Student "continues to demonstrate delays which fall well below those of [the Student's] same aged peers." According to the Clinical Evaluation of Language Fundamentals, 5th Edition, (CELF-5), the Student's scaled scores in all areas fell well below the average range, except on the Understanding Spoken Paragraphs.
        vi. Motor: The Student will receive physical education instruction with modified activities to meet the Student's physical ability.
        vii. Reading: The Student successfully read 1st grade material, using the text as a resource for comprehension, understanding at a higher level when presented auditorily. The Wechsler Individual Achievement Test-4 (WIAT-4) word reading- 2%ile, Listening Comprehension - 2nd %ile, and Receptive Vocabulary - 8th%ile.
        viii. Written Language: The Student "needs repetition of foundational writing skill, writing simple sentences." The WIAT-4 writing scores were Spelling - .05 %ile and Sentence Composition - < 0.1 %ile.
        ix. Math: The Student needs "mastery of foundational skills for subtraction, identifying & counting money, time, [and] rote counting." The WIAT-4 indicated:
            1. Mathematics score - < 0.1 %ile, Extremely Low.

2. Math Problem Solving - <0.1%, Extremely Low.
3. Numerical Operations - 0.1%, Extremely Low.

x. Adaptive Behavior: The Student needed to understand procedures for contacting services in an emergency situation, advocating for themselves, initiating with an adult or peers, counting money, and cooking measurements. According to the Adaptive Behavior Assessment System -Third Edition (ABAS-3), the Educational Environment Rating indicated General Adaptive Composite—5th %ile.

c. The Student's goal for reading was, "By April 15, 2025, [the Student] will be able to read a 2nd grade reading passage with support with a read-aloud measured by 2nd grade reading curriculum answering 18 out of 23 comprehension and sequencing questions with a 80% accuracy."

d. The Student's goal for written language was, "By April 15, 2025, [the Student] will be able to write a simple sentence using three to five words with capital letters and ending punctuation measured by worksheets in 4 out of 5 with 80% accuracy."

e. The Student's goal for math was, "By April 15, 2025, [the Student] will be able to add and subtract single digit numbers up to 20 using a number chart measured by teacher-made worksheets and activities in 8 out of 10 opportunities with an 80% accuracy."

i. Benchmark 1: "[The Student] will be able to write all personal information inclusive of address and phone number in 4 out of 5 opportunities with support."

f. The Student's goal for Employability was, "By April 15, 2025, [the Student] will be [able to] build employability and life skills measured by teacher-made worksheets and computerized standard based curriculum in 7 out of 10 opportunities with 70% accuracy."

g. The Student's goal for adaptive behavior was, "By April 15, 2025, [the Student] will initiate appropriate peer interaction measured by teacher observation with data collection in 4 out of 5 opportunities with an 80% success rate." (D119)

h. Transition Services:

i. Record 1: Self-Advocacy Questionnaire - not completed - 4/10/2024.

ii. Record 2: Student Transition Survey:

1. Strengths - Very social and active within the community.
2. Needs - Daily Life and Employability Skills.
3. Interests - Music, computers, outside activities.
4. All include the dates of 04/10/24.

i. Special Education and Related Services:

i. Speech Services - Starting 04/16/2024 through 4/15/2025, 15 minutes per week, every fourth week - Location - indirect/consult Services/Speech-Language support.

ii. Special Education Services - Starting 08/14/2024 through 04/15/2025, 50 minutes, five days per week - Location - regular education classrooms with special education support - during content/activity of social studies.

j. The following Accommodations/Modifications/Supplementary Supports were listed with the location "General and special education classroom," a start date of September 6, 2024, and an end date of April 15, 2025.

i. Record 1: "Read aloud using human or computer-generated voice."

1. Frequency: "When given an assignment, test, or quiz with a reading passage to encourage comprehension."
2. Duration: "The time given for the assignment, quiz, or text."

ii. Record 2: "Separate/quiet environment for working on assignments and testing."

1. Frequency: "When given a test or assignment."
2. Duration: "The time needed to complete the assignment or text."

iii. Record 3: "Visuals will be provided to communicate directions, schedule or other instructions."

1. Frequency: "When given directions, schedule, or instructions to encourage independence."
2. Duration: "The time needed to understand the task by interpreting the visuals."

iv. Record 4: "All assignments, tests, or quizzes will be shortened and broken into smaller pieces and modified by 50% to that of peers the same age."

1. Frequency: "When given assignments, tests, or quizzes."
2. "The time needed to complete the test, quiz, or assignment."

v. Record 5: "Extra time will be provided for [the Student] to complete tests, quizzes, assignments, or assessments in collaboration with the general education and special education teacher."

1. Frequency: "When given a test, quiz, assignment, or assessment."
2. Duration: "For the duration of the assignment, test, or assessment."

vi. Record 6: "Word predictions will be provided through technology or written prompts."

1. Frequency: "When working on classroom assignments, tests, quizzes, or assessments."
2. Duration: "For the duration of the assignment, test, or assessment."

vii. Participation with Non-Disabled Students in the Regular Education Environment:

1. The Student will not have the opportunity to participate with non-identified peers in all general education classes.
    a. Explanation: "Due to [the Student's] cognitive ability being significant[ly] lower than peers of the same age, [the Student] will have all core classes and life skills classes in the special education resource classroom."
2. The Student will not participate in the same general education curriculum as non-identified peers.
    a. Explanation: "[The Student's] curriculum will be adapted to meet [their] cognitive ability and needed life skills which will be met in the special education resource classroom."
3. The Student will have the opportunity to participate in field trips, assemblies, special events, etc., to the same extent as their non-identified peers.
    a. Explanation: "Regularly scheduled special education and related services may not occur during these times."

k. Assessment: The Student will take the DLM/Alternate assessment.

i. Reason: "[The Student] has a significant cognitive disability which makes the alternate assessment more appropriate to [the Student's] learning needs. [The Student] also requires extensive direct individualized instruction and substantial supports to achieve measurable gains in the grade-and-age appropriate curriculum."

l. Assistive Technology: "The IEP team has determined that [the Student] does not require assistive technology at this time."

m. Progress Reports: "Parents will receive written progress reports at the same time intervals and in the same manner as general education. The progress report will address the [S]tudent's progress toward completion of IEP goals and objective/benchmarks."

i. Goal 1 Health: "By December 12, 2025 when asked by a staff member in the educational environment, [the Student] will be able to explain [their] eye condition and needed accommodations 75% of the time.
    1. Baseline: "[The Student] can explain [their] eye condition and needed accommodations 0% of the time."
    2. Progress: The goal had not yet been addressed with [the Student] due to being a new goal. Progress report emailed on 12/20/2024.

ii. Goal 2 Written Language: "By December 12, 2025, [the Student] will be able to write a simple sentence using three to five words with capital

letters and ending punctuation measured by worksheets in 4 out of 5 with 80% accuracy."

1. Baseline: "[The Student] is able to write two to three words and develop a simple sentence without correct spelling or punctuation independently. With support, [the Student] is able to write the sentence with 80% accuracy.
2. Progress: Due to [the Student] not attending the brick and mortar building for English, this goal has not been measured." The progress report was emailed on 12/20/2024.

iii. Goal 3 Adaptive: "By December 12, 2025, [the Student] will initiate appropriate peer interaction measured by teacher observation with data collection in 4 out of 5 opportunities with an 80% success rate."

1. Baseline: "[The Student] currently interacts with [their] peers with simple conversation when initiated by [their] peer, but [the Student] struggles to initiate appropriate on-going conversations with [their] peers 6 out of 10 opportunities at a 60% success rate." Teacher observations will measure progress.
2. Progress: "[The Student] has a good group of friends for lunch which [the Student] has a peer that will help assist in appropriate conversation and word choices. When in the classroom, [the Student] will ask for word choices when having a conversation when [the Student] is unable to find the word that [the Student] needs to continue the conversation. [The Student] can be impulsive in conversation at times when [the Student] wants to participate in conversations, but is unsure how to enter into the conversation. Status - maintained performance at 60%, emailed to Parents on 12/20/2024."

iv. Goal 1 Math: "By April 15, 2025, [the Student] will be able to add and subtract single-digit numbers up to 20 using a number chart or touch math tool measured by teacher-made worksheets and activities in 8 out of 10 opportunities with an 80% accuracy."

1. Baseline: "[The Student] is able to add single digit numbers under ten with inconsistencies. [The Student] will add single digit subtraction problems instead of subtracting."
2. Progress: "[The Student] was able to add single digits given a touch math worksheet with the support of a touch math strip. ... [The Student] was working on double-digit touch math addition with regrouping. [The Student] required one-on-one support. Progress was made toward [the] goal, emailed to Parents on 05/18/2024."

v. Goal 2 Reading: "By April 15, 2025, [the Student] will be able to read a 2nd grade reading passage with support with a read-aloud measured by 2nd grade reading curriculum answering 18 out of 23 comprehension and sequencing questions with 80% accuracy."
   1. Baseline: "[The Student] is currently performing at the following levels according to the WIAT-4:
      a. Word Reading - 0.2%ile, extremely low.
      b. Listening Comprehension - 2nd %ile, extremely low.
      c. Receptive Vocabulary - 8th %ile, low.
   2. Progress: Progress was made. "[The Student] completed two assignments in the 100% Reading: Decoding & Word Recognition Book 1. … [The Student] successfully completed assignments on [their] chromebook." Progress emailed to Parents on 05/18/2024.

vi. Goal 3 Written Language: "By April 15, 2025, [the Student] will be able to write a simple sentence using three to five words with capital letters and ending punctuation measured by worksheets in 4 out of 5 with 80% accuracy."
   1. Baseline: "[The Student] is able to write two to three words and develop a simple sentence with and without making sense."
   2. Progress: Progress was made. "[The Student] was able to copy a sentence, but struggled to put together [their] own sentence." Progress emailed to Parent on 05/18/2024.

vii. Goal 4 Adaptive: "By April 15, 2025, [the Student] will be build employability and life skills/telling [time] using a digital clock by the hour and identifying coins and values to a quarter measured by teacher made worksheets and computerized standard base curriculum in 7 out of 10 opportunities with 70% accuracy."
   1. Baseline: "[The Student] is unable to identify coins and their value. [The Student] is unable to read a digital clock at home."
   2. Progress: Progress was made. "When given worksheets with analog clocks to the hour only, [the Student] was able to answer 7 out of 10 opportunities with 100% accuracy." Progress report emailed to Parents on 05/18/2025.

n. Meeting notes indicated all required IEP participants attended, including the Parent. The Parent asked about paraprofessionals. The Assistant Director of Special Education discussed paraprofessional needs in the buildings and discussed alternative graduation plans due to credits.

4. According to a Moby Max Mathematics score summary sheet dated May 17, 2024, the Student's overall grade level score was at the 11th percentile for Operations and Algebraic Thinking, Number and Operations in Base Ten, and Geometry.

5. According to Meeting Notes dated May 22, 2024, which the Parent attended, the Special Education Resource Teacher discussed the Student's progress and performance, reviewing each section of the Progress Report with the Parent.
6. On August 19, 2024 the Parent emailed the Special Education Resource Teacher that the Student had been struggling with Cortical Visual Impairment (C.V.I.) for a long time. The Parent had scheduled the Student to see a vision specialist. The Parent also asked how the Student was doing in school, specifically World Geography.

   "By April 15, 2025, [the Student] will initiate appropriate peer interaction measured by teacher observation with data collection in 4 out of 5 opportunities with 80% access rate. … Modification of test and quizzes will be shorten[ed] to multiple choice at 50% and number of questions will be shortened to allow for completion of tests and quizzes."
7. On August 22, 2024 the Parent emailed the Special Education Resource Teacher information regarding observing the Private School President working with the Student on writing exercises at the Private School. The Parent felt the observation would help the Student with appropriate accommodations and access to the curriculum. The Special Education Resource Teacher responded by telling the Parent the Student was finding their way to classes with the help of a visual schedule. The Special Education Resource Teacher asked if the Parent had reviewed the IEP amendment that allowed the Special Education Resource Teacher to adjust the Student's minutes and adjust goals according to the class environment.
8. In an email exchange between the Parent and the Special Education Resource Teacher dated August 23, 2024, the Parent requested to schedule an IEP meeting because the Student didn't have anyone in the classroom to assist the Student, according to the Parent. The Parent didn't agree with the ID label, the Student needed a para pro or agreed upon support, and health and safety concerns were noted. The Assistant Director of Special Education responded on August 28, 2024, that they would happily schedule a meeting that fits the reconvening time set from the previous meeting. The Assistant Director of Special Education noted the Parents concern and asked them questions to assist them at the meeting.

   The Parent responded regarding immediate concerns about the Student's health and safety per Epilepsy. The Student had been on a ketogenic diet that had seemed to help. The Student had some intermittent partial seizures in the past 18 months. The Parent stated that the Student was receiving low levels of Trileptal again and monitoring it. The Parent assumed the staff at the School was also monitoring the Student.
9. On August 29, 2024 the Special Education Resource Teacher emailed the IEP Team regarding a proposed meeting agenda:
   a. Review services as proposed in the amendment.
   b. Review data/observations regarding classroom supports and hallways.

c. Determine needs.

d. Review the Student's credits and graduation plan.

e. Review the exceptionality.

f. Review other issues, such as health.

10. In an email exchange between the Parent and the District Vision Specialist dated September 8, 2024, the Parent sent a video of the Student and a teacher working on reading and writing. The Parent stated the Student fatigues easily when working on visual tasks.

11. On September 11, 2024 the Special Education Resource Teacher emailed the Parent a video for the Student and the Parent to watch, which explained how to get homework documents in Google Classroom with log-in information.

12. The Parent emailed the Special Education Resource Teacher on October 1, 2024, saying, "Please let me know that you've received my request to have Vision added to [the Student's] IEP and to have an FVE performed." The Vision Teacher responded that they did receive the email and gave the Parent information regarding a low vision clinic.

13. On October 23, 2024, the Principal emailed the Parent, "The IEP Team is comprised of the school, yourself, and the [staff from the Private School]. You are part of the team and were part of the decisions that were made for [the Student]. … You continue to mention a para. [W]hen [the Student] first came to [the School], you told us [the Student] didn't need any support. At our August meeting, the need for a one-on-one para was discussed and was not presented until after that meeting." The Principal explained that the general education teachers indicated the Student was doing well and that the Student was getting direct support in World Geography."

14. A Low Vision Eye Report dated October 24, 2024 indicated the Student had Cerebral/cortical visual impairment (CVI) and proptosis in the left eye, with a systemic diagnosis of periventricular leukomalacia. The Student met the definition of legally blind. Vision acuity is 20/200 or less in the better eye with the best correction. Recommendations included:

    a. Environment: "Decrease complexity, simplify, may have difficulty running into things on the left side. This would need assessment in the environment."

    b. Visual Material: "Decrease clutter. This may mean fewer problems on a page, more spacing, increased font size, sans font. Give [the Student] plenty of time to complete a task as it may take [the Student] longer than peers because of the CVI."

    c. Activities of Daily Living: "Monitor for O & M needs used CVI strategies."

    d. Communication: "The Student is a good communicator! [The Student] should be encouraged to advocate for [themself]."

    e. Orientation and Mobility: "To be determined by team after assessment, with the left field neglect should consider assessment at school and community."

f. Glasses: "[The Student] has been using readers + 1.25. This may help with crowding that [the Student] would have from CVI. The glasses magnify. It is okay to use if [the Student] feels it helps [them]."

g. Evaluations for Team Consideration:

i. "Medical workup for the proplosis is in progress under [the Vision Physician's] recommendation with [the Student's] PCP."

ii. "Visual field testing may be useful, however, with the eye gaze showing left neglect, and knowing [the Student] has PVI, [it's] not essential at this time."

iii. "Team should review the evaluation from the questionnaire from [the Research Group] on HFQVI. It may have some recommendations of strategies. [The Student's] Parents would have the report."

15. On October 25, 2024 the Special Education Resource Teacher emailed the IEP team to update them regarding the vision evaluation and OT evaluation progress for the Student.

16. On November 4, 2024 the Vision Physician emailed the Vision Teacher the following:

a. "[The Student] has PVI (periventricular leukomalacia) from in utero, documented by MRI at age 5 days. This certainly explains why [the Student] has CVI. It is the most common CVI."

b. "In reviewing the eye gaze, there is left-sided neglect of the visual field. This could be related to the PVL."

c. It is hard for the family to come to [the City] just for a visual field. I'm not sure at this time [sic] urgent, as we have evidence to diagnose CVI, and also make some intervention strategies based on information and evaluations to date."

d. "There are some other ocular/medical issues that are being evaluated. I don't believe it is part of the CVI."

The Special Education Resource Teacher responded requesting any information that would benefit the Student concerning the CVI or other vision impairments.

17. On November 7, 2024, the Parent emailed the Principal and requested a working copy of the Student's IEP.

18. On December 2, 2024, the Special Education Resource Teacher emailed the Parent to set up an IEP meeting concerning the Student's second-semester schedule and possible modifications concerning the preparation of materials for vision.

19. On December 6, 2024, the Vision Teacher emailed the Parent regarding the Student's possible overstimulation signs in the hallways and what that would look like. The Vision Specialist indicated, "I asked [the Student] what [they] thought of the hallways during passing period and all [the Student] said was "traffic." I asked [the Student] if [they] would rather leave at a different time when the hallways are clear and [the Student] emphatically said, "no." The Vision Specialist also requested to schedule a tint evaluation for sunglasses for the Student.

20. A Draft IEP dated December 12, 2024 indicated the Student was given a Functional Vision Assessment/Learning Media Assessment and a CVI Assessment from September 4, 2024, through November 13, 2024. Assessment results indicated the Student's "main diagnosis of visual impairment is CVI. … [The Student] met the definition of legally blind because [the Student's] visual performance is reduced by brain injury or dysfunction when visual function meets the definition of blindness as determined by an eye care specialist."

    The Student was able to process the following visual information:

    a. Object recognition: Using CVI Complexity Sequencing Cards, the Student could locate the basketball in all cards but had a delayed answer with the last two cards because the item changed location.

    b. Motion: In PE, the Student could visually follow the ball moving at various speeds/directions. Movement was not needed to get the Student's attention unless it was out of the Student's field of vision.

    c. Letter/words: The Student could read the Arial font 14 faster and without skipping lines than the Student did on size 10, 12, and 16.

    d. Facial recognition: The Student identified familiar people from at least 15 feet away, as evidenced by recognizing staff when they walked into the classroom.

    e. Assistive Technology: The Student had access to a Chromebook issued by the School District. The Student used Google Classroom, assignments, quizzes, tests, and research. The Student could manage the Chromebook and could enlarge material on the screen by using the trackpad but prefers a mouse. The Student had access to a computer with a large monitor in Photojournalism class but did not use it. The Student had access to a smartphone and could text on the phone. "This is an area of need for [the Student]. It is always helpful to have multiple tools to the assistive technology toolbox and be able to use multiple applications on a particular device."

    f. Career Education: "This is an area of need for the Student. [The Student] has opinions and interests but does not know how to find possible training or jobs that match [the Student's] interest. This can be addressed by school staff."

    g. Compensatory Skills: "[The Student] communicates verbally. [The Student] handwrote the answers to [their] assignments. [The Student] does best when a line is provided. Sometimes it helps to highlight the space [the Student] is to write in. … [The Student] is a visual and auditory learner as evidenced by observations in the classroom. [The Student's] area of need in this area would be to determine which assignments would be better to listen or which would be better to read."

    h. Sensory Determination: "[The Student] uses [their] glasses for near work."

    i. A health plan was provided to teachers with whom the Student worked.

    j. Summary: "Based on interviews, observations, review of records and formal testing, [the Student] demonstrates a need for support from a Teacher of

Students with Visual Impairments through consultation with the team, accommodations in the classroom and specialized instruction in the areas of Assistive Technology, Career Education, Self Determination, and Sensory Efficiency in the Expanded Core Curriculum." (D135)

k. Eligibility: "Under current Kansas State Department of Education guidelines, based upon ophthalmologist/optometrists reports, the need for educational adaptations for learning, and the educational significance of the visual impairment, [the Student] does qualify for services under the category of visual impairment."

l. Assistive Technology recommendations:
   ii. Provide an external mouse to use with the computer.
   iii. Chromebook with a 14-inch screen.
   iv. Provide high-contrast/color-coded stickers for the keyboard.

m. Accommodations to print materials:
   i. Print assignments should be provided in size 14 Arial font.
   ii. Utilize orange or blue highlighting to color-code reading materials.
   iii. Provide a line to write on when answering questions.
   iv. Reduce visual clutter by adding extra spaces between lines on assignments.
   v. Provide extra time on assignments.

n. Instruction and Consultation:
   i. Consultation services from the TSVI once every other week.
   ii. Direct instruction from the TSVI once every other week to address the needs in the Expanded Core Curriculum.

o. The Student's IEP goal for Vision was "By December 12, 2025 when asked by a staff member in the educational environment, [the Student] will be able to explain [their] eye condition and needed accommodations 75% of the time."
   i. Baseline: "[The Student] can explain [their] eye condition and needed accommodations 0% of the time."
   ii. Evaluation Procedures: Teacher-made checklist.

p. Social Emotional: The Student's behavior does not impede the learning of others or self.

q. Communication: The Student underwent a re-evaluation of their communication skills in the fall of 2024. Language Assessment results included:
   i. The Clinical Evaluation of Language Fundamentals-Fifth Edition (CELF-5) Core Language 43 SS, <1%. Receptive Language Index 48SS <1%, Expressive Language Score 45SS <1%, Language Content Index 47SS <1%,
   ii. Formulated Sentences:
      1. Strengths: using nouns, pronouns, prepositions.
      2. Weaknesses: using verbs, adjectives, and adverbs.

iii. Recalling Sentences:
    1. Strengths: recalling basic sentence structures in shorter tasks.
    2. Weaknesses: recalling basic sentence structures in longer tasks and more complex structures.

iv. Understanding Spoken Paragraphs:
    1. Strengths: responding to questions about basic stories.
    2. Weaknesses: responding to questions about more complex story sequences and inferences and responding to questions about a story's main idea, detail, and event prediction.

v. Sentence Assembly:
    1. Strengths: creating a basic sentence when given a limited set of words/word sets.
    2. Weaknesses: creating more than one sentence or creating more complex sentences when given an increased number of words/word sets, which included multiple elements and structures of language.

vi. Pragmatic Profile:
    1. Strengths: following conversational rituals, participation, giving or asking for information, understanding or expressing intentions, reading and using body language.
    2. Weaknesses: understanding humor, awareness of prosodic cues, and sharing or responding to reactions.

vii. Vocabulary: The Peabody Picture Vocabulary Test (PPVT-5) 71 SS 3 %ile.

viii. Articulation: The Goldman Fristoe Test of Articulation-Third Edition (GFTA-3) 40 SS, <1%ile.
    1. The Student's "functional intelligibility during this assessment period was judged to be good with familiar and unfamiliar listeners in the educational setting.

ix. The Student had received services for many years in the "private realm" for communication delays. "The Student does not have any special communication needs," according to the updated IEP. The Private School Speech Therapist indicated the level of aphasia the Student has: "known words are difficult for [the Student] under pressure of the moment to produce."

x. The Parent indicated the Student had motor aphasic speech.The Parent stated that they had never seen the Student skip or gallop as reported in the Physical Therapy evaluation.

xi. Motor: Based on the most recent evaluation and ongoing data collection, the Student does not have needs in the Motor area that require special education or related services.

xii. The Student uses their finger to track when writing.

r. Math: The IEP indicated the Student was receiving math services at the Private School. "[The Student's] math needs are being supported at [the Private School]. (

s. Reading: The IEP indicated the Student was receiving reading services at the Private School. "[The Student's] English/reading needs are being supported at [the Private School]."

t. The Student's goal for written language was as follows: "By December 12, 2025, [the Student] will be able to write a simple sentence using three to five words with capital letters and ending punctuation measured by worksheets in 4 out of 5 with an 80% accuracy." The Parent asked about paraprofessional support for English. The Special Education Resource Teacher responded, "Yes. Right. At this point in time, I mean, we're trying to."

   i. Baseline: "[The Student] is able to write two to three words and develop a simple sentence without correct spelling or punctuation independently. With support, [the Student] is able to write the sentence with 80% accuracy."

   ii. Benchmark 1: "[The Student] will be able to write all personal information inclusive of address and phone number in 4 out of 5 opportunities with support."

u. The Student's goal for Adaptive Behavior was, "By December 12, 2025, [the Student] will initiate appropriate peer interaction measured by teacher observation with data collection in 4 out of 5 opportunities with an 80% success rate."

   i. Baseline: "[The Student] currently interacts with [their] peers with simple conversation when initiated by [their] peer, but [the Student] struggles to initiate appropriate ongoing conversation with [their] peers 6 out of 10 opportunities at a 60% success rate."

v. Transition Services:

   i. Transition Assessment

      1. Record 1: Student Interest Inventory.

         a. Strengths: "[The Student] enjoys helping out working with other people."

         b. Needs: "[The Student] needs assistance in job exploration, life skills, and understanding possible options as [the Student] enters into adulthood."

         c. Interests: "[The Student] enjoys socializing with [their] peers. [The Student] enjoys listening to music and being creative in the area of drawing and painting. 12/10/2024."

      2. Record 2: Self-Advocacy Questionnaire - was not completed, 04/10/2024.

3. Record 3: Student Transition Survey.
    a. Strengths: "Very social and active within the community."
    b. Needs: "Needs Daily Life and Employability Skills."
    c. Interests: "Music, computers, outside activities. 04/10/2024."

w. The Student's goals for the Desired School Outcome were,
    i. "By December 12, 2025, [the Student] will be able to write a simple sentence using three to five words with capital letters and ending punctuation measured by worksheets in 4 out of 5 with an 80% accuracy."
    ii. "By December 12, 2025, [the Student] will initiate appropriate peer interaction measured by teacher observation with data collection in 4 out of 5 opportunities with an 80% success rate." According to meeting notes, the Student sits with other students at lunch and attends extracurricular activities with them.
    iii. "By December 12, 2025 when asked by a staff member in the educational environment, [the Student] will be able to explain [their] eye condition and needed accommodations 75% of the time."

x. Special Education and Related Services from December 12, 2024, through December 11, 2025, indicated:
    i. Speech - 15 minutes, 1 day a week, every 4th week, Indirect consult service for speech and language support.
    ii. Special Education Service - 20 minutes 1 day per week, every other week, indirect/consult service for vision.
    iii. Special Education Service - 20 minutes 1 day per week, every other week in the special education classroom for vision.
    iv. Special Education Service - starting 01/06/2025 and ending 12/11/2025 for 100 minutes, 5 days per week, every week in the special education room for resource/English.
    v. Special Education Service - starting 08/14/2025 and ending 12/11/2025 for 50 minutes, 5 days per week, every week in the special education room for math.
    vi. Special Education Service - starting 08/14/2025 and ending 12/11/2025 for 50 minutes, 5 days per week, every week in the special education room for math.
    vii. Special Education Service - starting 01/06/2025 and ending 12/11/2025 for 50 minutes, 5 days per week, every week, in the regular education classroom with special education support for an elective.
    viii. Special Education Service - starting 08/14/2025 and ending 12/11/2025 for 100 minutes, 5 days per week, every week, in the regular education classroom with special education support for electives.

y. Accommodations/ Modifications/Supplementary Supports starting 12/12/2024 and ending 11/21/2025:

i. Record 1: "Read aloud using human or computer-generated voice."

1. Frequency: "When given an assignment, test, or quiz with a reading passage to encourage comprehension."
2. Location: "General and special education classroom."
3. Duration: "The time given for the assignment, quiz, or test."

ii. Record 2: "Separate/quiet environment for working on assignments and testing."

1. Frequency: "When given a test or assignment."
2. Location: "General and special education classroom."
3. Duration: "The time needed to complete the assignment or test."

iii. Record 3: "Visuals will be provided to communicate directions, schedule or other instructions."

1. Frequency: "When given directions, schedule, or instructions to encourage independence."
2. Location: "General and special education classroom."
3. Duration: "The time needed to understand the task by interpreting the visuals."

iv. Record 4: "All assignments, tests, or quizzes will be shorten[ed] and broken into smaller pieces and modified by 50% to that of peers the same age."

1. Frequency: "When given assignments, tests, or quizzes."
2. Location: "In the general and special education classrooms."
3. Duration: "The time needed to complete the test, quiz, or assignment."

v. Record 5: "Extra time will be provided for [the Student] to complete tests, quizzes, assignments, or assessments in collaboration with the general education and special education teacher."

1. Frequency: "When given a test, quiz, assignment, or assessment."
2. Location: "General and special education classroom."
3. Duration: "For the duration of the assignment, test, or assessment."

vi. Record 6: "Word predictions will be provided through technology or written prompts."

1. Frequency: "When working on class assignments, tests, quizzes, or assessments."
2. Location: "General and special education classroom."
3. Duration: "For the duration of the assignment, test, or assessment."

vii. Record 7: "Provide high contrast/color-coded stickers for the keyboard."
   1. Frequency: "When using a keyboard."
   2. Location: "General and special education classroom."
   3. Duration: "For the duration of the assignment, test, or assessment."

viii. Record 8: "Chromebook with a 14-inch screen."
   1. Frequency: "When using a Chromebook."
   2. Location: "General and special education classroom."
   3. Duration: "For the duration of the assignment, test or assessment."

ix. Record 9: "Print assignments should be provided in size 14 Arial Font."
   1. Frequency: "When given print or digital material to read."
   2. Location: "General and special education classroom."
   3. Duration: "For the duration of the assignment, test, or assessment."

x. Record 10: "Utilize orange or blue highlighting to color code reading materials."
   1. Frequency: "When given print material."
   2. Location: "General and special education classroom."
   3. Duration: "For the duration of the assignment, test, or assessment."

xi. Record 11: "Provide a line to write on when answering questions."
   1. Frequency: "When a line is not provided for written work."
   2. Location: "General and special education classroom."
   3. Duration: "For the duration of the assignment, test, or assessment."

xii. Record 12: "Reduce visual clutter by adding extra spaces between lines on assignments."
   1. Frequency: "When written work is provided for written work."
   2. Location: "General and special education classroom."
   3. Duration: "For the duration of the assignment, test, or assessment."

xiii. The Parent was given a plan option to consider for the Student to attend the School full time to earn credits.

21. A PWN dated December 12, 202[4] indicated a change in placement that resulted in the movement of more than 25% of the Student's school day from a less restrictive environment to a more restrictive environment. The Student will have an increase of 100 minutes of direct support 5 days a week in the special education resource classroom.

22. On December 5, 2024, the Principal emailed the Parent, "If [the Student] will only be attending [the School] in the afternoon 2nd semester, we do not have any drawing classes available. … we only have drawing available in the morning. … In terms of a

diploma from [the School], there is not a Special Education diploma; everyone gets the same diploma and has the same expectation of earning 25 credits."

23. On January 20, 2025, the Special Education Resource Teacher emailed the Assistant Director of Special Education and the Principal to schedule a meeting to inform the Parent of "the materials being used and how they meet the cognitive and visual needs of the Student."

24. Meeting notes dated February 3, 2025 indicated the Parent stated again that they did not agree with the exceptionality of MD for the Student. The Parent stated that they would not fight it but wanted it noted that they did not agree with it. The Parent stated that they felt the Student would benefit from more support.

25. On February 11, 2025, the Parent emailed the Principal to request an IEP meeting to go over Parent questions, access to curriculum, reading programs, and inclusion. The Assistant Director of Special Education responded with the following timeline of events:

    a. April 16, 2024, Initial eligibility meeting: A Notice of IEP Meeting was sent to the Parent. There was a discussion regarding options for vocational education opportunities and alternative graduation plans due to the lack of credits the Student had earned. The Team agreed to reassess the credits for a "clear path for transition-based services." The Parent wanted the Student to attend the School and the Private School. Meeting notes indicated the SLP wanted to re-administer the CELF but had to wait until after June. The team created an IEP. The Special Education Resource Teacher would like Touch Point Math added to the goal.

    b. April 18, 2024, Continuation of eligibility meeting: The Team reviewed exceptionality and reviewed Certificates of Eligibility. The Team felt MD was the best fit, and the Student met all criteria. The team agreed the Student would attend the School from 9:45 a.m. - 3:00 p.m. daily. The Student will attend the Private School prior to attending the School.

    c. May 22, 2024: The team agreed to discuss exceptionality after assessments for Occupational Therapy (OT), Physical Therapy (PT), and Speech- Language (SL), which would be completed in the fall.Meeting notes indicated the Parent would like to keep services at both the School and the Private School.

    d. August 12, 2024: The team discussed exceptionality. The Parent and the Private School team asked to postpone the conversation. Meeting notes indicated the Student's classes would be pass/fail with modifications. The Parent agreed with the proposed schedule. The Student attended the School from 10:45 a.m. -3:00 p.m. as agreed by the team.

    e. September 6, 2024: The Parent requested that exceptionality be discussed. The Parent and the Private School team disagreed with the exceptionality. The Parent had previously signed the consent for the MD exceptionality. The Parent felt that OHI was the best exceptionality. Meeting notes indicated the team reviewed the amendment proposed during the last meeting. Diploma options were discussed. The Principal shared that the Private School was a non-accredited school

registered with the State, "they can actually issue [The Student] a diploma with 21 credits. So the State can." The Parent gave permission for a consent to evaluate for VI, SLP, OT, and PT. A Prior Written Notice was signed.

The Special Education Resource Teacher indicated that the team needed to revisit the agreement to the amendment.

November 22, 2024: The Parent requested an additional meeting to discuss the exceptionality. Evaluation data was reviewed, and the Student "performed exceptionally well." A recommended accommodation for the team to consider was "[t]ransitions to and from class prior to the halls being full." The Vision Specialist stated the Student meets the eligibility of legally blind per the Vision Physician. The team agreed that Arial font size 14 seemed best for the Student. The Parent discussed having a touch screen vs. a laptop. The Vision Specialist suggested adding a goal to the IEP about the Student's ability to discuss the issues with their vision. The Vision Specialist recommended direct services and consultative services, "20 minutes 1 time every other week direct; 20 minutes 1 time every other week consultative."

Orientation and Mobility Services were not recommended at that time. Tint options and wraparound sunglasses were suggested to assist the Student's vision.

The Special Education Resource Teacher stated that the Student met the definition of legally blind. The Occupational Therapist indicated no need for OT services based on the Student's accommodations.

The evaluation was completed, and direct VI services were added.

A PWN dated November 22, 2024 indicated a change in services. "It is proposed that [the Student] receive vision support:

- "20 minutes once every other week on consult[ation]."
- "20 minutes once every other week direct services within the resource room."
- "Speech/Language services will remain the same."

f. December 12, 2024: The Student's exceptionality was discussed, and the Parent conditionally agreed to it, "but that [the Parent] doesn't agree." The Parent was informed that they could write a dissent that would be included in the notes. There was no dissent on file as of the meeting date. The IEP was reviewed. Accommodations and modifications were discussed to assist the visual pieces. Transition services were discussed. The Parent wanted to add a statement to the exceptionality. A PWN indicated a substantial change in placement. "Spring 2025 Semester. [The Student] will have an increase of 100 minutes of direct support 5 days a week, every week in the special education resource classroom." Progress reports were to be sent to the Parent on December 20, 2024.

g. February 3, 2025: The Parent stated that they wanted included in the meeting notes that "they do not agree with the exceptionality, but will not fight it." Meeting notes indicated [the School Psychologist] explained to the Parent that it just wasn't the IQ testing that went into the exceptionality, but it was also a full comprehensive review of all data. The Parent agreed but said they would need to review the data.

   The School Psychologist indicated that the testing done by the School Psychologist/Autism Specialist in the past was invalid because the correct test was not given to the Student. The Student had aged out. The Student was also tested within a year of the School Psychologist's testing with the same test. The team met to review services and IEP. The team discussed curriculum options.

h. February 11, 2025: The Parent emailed to request an IEP meeting to "discuss the finalization of the label," among other topics. The Parent requested an IEP meeting to discuss access to FAPE.

26. According to the Assistant Director of Special Education, on February 11, 2025, the Student had access to FAPE. The Student attended the School since the Student's placement and was receiving special education services. "As a [P]arent, you have chosen to have a dual education experience with [the Student] attending [the Private School] setting, previous to attending [the School] and the first 2-3 hours of each school day. This has been a topic discussed at multiple meetings, as it was unclear when we first met, the path you were seeking - a diploma or a certificate of completion."

27. In an email exchange between the Parent and the Special Education Resource Teacher, dated January 16, 2025, the Parent requested an IEP meeting to discuss the Student and plans for the semester. The Special Education Resource Teacher responded on January 17, 2025 asking the Parent to note questions and concerns via email or phone. On January 22, 2025, the Special Education Resource Teacher emailed the Parent to set up an IEP meeting to review and explain how the Parent could access the curriculum.

28. In an email exchange between the SLP and the Special Education Resource Teacher, dated February 4, 2025, the SLP stated, "Talk Path seems to be more of a home program … In an educational setting, I have found that the most beneficial approach is integrating skills into real-life, meaningful opportunities. If the team determines that [the Student] requires additional assistive technology to access the curriculum, I recommend reaching out to our Assistive Technology Specialist. [The Assistive Technology Specialist] can observe [the Student] in [their] educational environment and provide informed recommendations based on [the Student's] specific needs."

   The Parent requested "to speak directly with the ATS person at [the District] and get [their] feedback and ask [them] some other questions that relate directly to [the Student] and challenges [the Student] faces as [they] try to access the curriculum."

29. On February 21, 2025, the Parent emailed the Assistant Director of Special Education requesting to utilize the Readability app and Ello that could be used on iOS devices, which would provide speech recognition at school since they were used at home.
30. According to a Private School Video of the Student working with the Private School SLP, the Student could read orally using glasses. The Private School SLP pointed and tapped at each word while the Student read orally. The Student made five decoding errors with the SLP correcting. The SLP asked comprehension questions with the Student reading the answer.
31. According to a video recorded on April 3, 2025, the Student could read orally using a computer screen without glasses and without decoding errors.
32. According to the Vision Teacher (TSVI) based on their evaluation and records review, the Student does qualify for Visual Impairment. (Vision Teacher) Regarding accommodations and modifications the TSVI shared that they look at what the Student is doing in the classroom, making sure that the print size and materials are appropriate for the Student. The TSVI asked for a larger screened Chromebook with Ariel Font size 14. The TSVI indicted the Student was not aware that they had a visual impairment. The TSVI and the Student conducted conversations about the visual impairment and "I'm trying to get [the Student] to be able to label it like with the acronym CVI, which [the Student] is able to do and now we're working on cortical visual impairment." The TSVI shared they did not know about Transition Services for the Student.
33. The Assistant Director of Special Education indicated that the team met in May to discuss a possible full-time placement at the School and a variety of options for scheduling. The team met again in August 2024 and the Parent wanted to continue having the Student part time at the Private School and part time at the School. The Assistant Director of Special Education shared that the Private School was a private agency, non-accredited school that served students with speech language and "possibly some ABA therapy." The Student had been receiving services there since around fourth, or fifth grade. The District considered the Student enrolled in a private school, not receiving home-school services.

    The Assistant Director of Special Education indicated that vision services were never brought up as a concern in the original evaluation. The original eligibility of MD was chosen because none of the other disabilities fit as "stand-alone exceptionalities." The team looked over learning disability criteria and the Student didn't meet that eligibility based on assessments. The team chose MD. Later in the summer the Parent brought the concern regarding vision. The Student does not have a communication goal.
34. The SLP stated that they re-evaluated the Student in the fall of 2024. When asked to describe how the scores of the CELF influenced the decision that the Student did not need direct services, the SLP replied, "I also did an observation … to see if the accommodations, modifications, and supports that we had in place and

implemented were meeting the needs that I found on the testing. And it did. So I felt it was a pretty good indicator that if we support the weaknesses that we found in those testings, that [the Student] can be successful in [their] setting." The SLP provided consultative services. The SLP did not recall if autism was considered on the eligibility.

35. The Special Education Resource Teacher indicated the Student used Google Classroom and Cami, which assisted the Student being able to enlarge print. It was a read aloud program, as well as speech to text. The program highlights and the Student could draw as specified by the Student's IEP modifications. The Special Education Resource Teacher indicated that the Student attended an Art class where the Special Education Resource Teacher checked in and the Student attended a computer class with 100% one-on-one paraprofessional support. The Student received English instruction in the Special Education classroom. The Parent declined career education classes for the Student.

    When asked how the team addressed career education, the Special Education Resource Teacher stated, "We tried to implement for the Student to attend our vocational program at our other high school, learning some skills in the kitchen and also some financial assistance. … The Parent refused to allow the Student to attend that program."

    The Special Education Resource Teacher indicated the Student's service time was reduced by 200 minutes because there was a change in the Student's schedule and "at that point in time, [the Student] was receiving services from me for math and an additional resource time. So that time was reduced because of the request from the Parent wanting [the Student] to be in the general education classroom."

36. During an interview with the Complaint Investigator, the Parent indicated they did not talk to the Assistive Technology Specialist from the District but the Parent had suggested several programs that could be helpful to the Student at school. The Parent stated, "I've been saying in every meeting multiple times, I didn't think that's the correct label. … They didn't acknowledge the psychologist report that was done August 1, 2023. They just used the one that they did in February of 2024 by their own psychologist. … The other two professional psychologists who have interviewed my [Student] and have pointed out [their] strengths and they've really ignored those."

    The Parent didn't think the identified disability was the appropriate one for the Student. The Parent shared that a psychologist tested the Student seven months prior to the Student's public school enrollment and their testing indicated the Student had a learning disability. The Parent shared the report with the District but the District did not consider it because the School Psychologist gave the same test within a year of the School District assessment.

    The Parent shared that the Student had CVI that was found in October of 2024. Because of the diagnosis the Parent had safety concerns for the Student. The Parent stated that the Student takes a PE class on their own, with no support, and some

bullying were reasons for their safety concerns.

The Parent shared that when they went into Google Classroom and reviewed the Special Education Resource Teacher's notes that stated what the Student completed, "It looks to me like nothing of real significance at all. I can't go in there and see what [the Student] is really working on." The Parent shared that they have not received IEP progress reports.

37. A Witness Statement from the Private School SLP indicated they did not agree with the Multiple Handicap label, and felt that the Student qualified as a Student with the exceptionality of a Learning Disability. The Private School SLP went on to state that the Student had two other evaluations from outside assessors that recommended the Student have a Specific Learning Disability. The District team indicated that they did not know the Student that well and the team decided to wait until the fall to revisit the label since there was only four weeks of school. The Private School SLP indicated that the Parent signed the Multiple Handicap eligibility because they wanted to attend the School. The Private School SLP stated that the IEP team refused to look at the materials and methods that were used with the Student at the Private School and felt the Private School staff's input was "completely rejected."
38. According to a Witness Statement from the Private School Clinic Instructor, they did not agree with the Multiple Handicap label and felt that a Specific Learning Disability label was more appropriate. The Private School Clinic Instructor stated, "When [the Private School SLP] and I tried to discuss the mislabel, we were told that we were not allowed to have any input." The Private School Clinic Instructor indicated that they felt the Parent signed in agreement to the Multiple Disability eligibility so the School could get to know the Student and would be revisited. The Private School Clinic Instructor felt the Student should be in the general education classroom with a para professional full time. They felt that having the Resource Teacher be the inclusion teacher was problematic.

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #385 conducted evaluations of the Student and made eligibility determinations in accordance with state and federal regulations implementing the IDEA. K.A.R. 91-40-8, K.A.R. 91-40-9, K.A.R. 91-40-10(a)(1); 34 CFR §§ 300.8, 300.303-306.

According to K.A.R. 91-40–8 and K.A.R. 91.40-9, as part of an initial evaluation, if appropriate, and as a part of any re-evaluation, each agency shall ensure that members of an appropriate IEP team for the child and other qualified professionals, as appropriate, comply with the requirement that the evaluation team shall review existing evaluation data on the child, including evaluations and information provided by the Parent of the child, current classroom -

based assessments, local and state assessments and observations by teachers and related service providers. Based on that review and input from the child's Parent, the evaluation team shall identify what additional data, if any, is needed to determine whether the child has a particular category of exceptionality or, in the case of a reevaluation of a child, whether the child continues to have such an exceptionality. In addition the evaluation team needs to consider what the present levels of academic achievement and educational and related developmental needs of the child are, whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services. In the case of a reevaluation of the child, any additions or modifications to the special education and related services currently being provided to the child 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. If the team determines that additional data is required to make any of the determinations, after giving proper written notice to the Parent and obtaining Parental consent, shall administer those tests and evaluations that are appropriate to produce the needed data.

The Parent alleged the IEP team canceled the Parent's input in the determination of the Student's exceptionality determination. The team refused to consider other exceptionalities. The team stated that they did not know the Student, so they could not consider other exceptionalities. The team refused to consider test results from two other psychologists.

The District received a referral for special education comprehensive testing for the Student on February 21, 2024. At that time, the Student was attending a Private School full time. The team conducted a comprehensive evaluation of the Student and considered the exceptionalities of Learning Disability (Parent request), Other Health Impairment (Parent request), Intellectual Disability (exceptionality from previous evaluation), and Multiple Disabilities. Test results indicated Multiple Disabilities was the identified exceptionality because of co-existing impairments that caused severe educational needs that could not be accommodated in special education solely for one of the impairments.

According to the Parent and a non-District evaluation report, seven months before the Student enrolled in the School, a psychologist assessed the Student and identified a learning disability. The District shared that the intelligence test given by the non-District Psychologist was invalid because the Student aged out of the test prior to the test being given. The District's School Psychologist administered the same test within a year of the District's assessment.

During a meeting on September 6, 2024, the Parent requested a discussion regarding the Student's exceptionality. However, both the Parent and the private school team expressed disagreement with the current exceptionality at the meeting. It was noted that the Parent had previously provided consent for the MD exceptionality. In contrast to this, the Parent voiced the opinion that OHI would be the most appropriate exceptionality for the Student. The Private School SLP and the Private School Clinic Instructor indicated that they felt the Student qualified

for a Specific Learning Disability because outside assessors recommended that qualification. The District School Psychologist indicated that the intelligence test administered by the outside assessor could not be considered because the Student "aged-out" at the time the test was administered.

The original eligibility of MD was chosen because none of the other disabilities fit as "stand-alone exceptionalities." The team looked over learning disability criteria and the Student didn't meet that eligibility based on assessments the District had completed. The team chose MD. Later in the summer the Parent brought the concern regarding vision. The Assistant Director of Special Education indicated that vision services were never brought up as a concern during the original evaluation time period.

During the meeting on February 3, 2025, the Parent reiterated their disagreement with the Student's MD exceptionality. Although the Parent stated that they would not contest it, the Parent wanted their disagreement documented by the District. The Parent chose not to complete the District form in writing to dissent to the MD exceptionality category but wanted it noted that they did not agree. On December 24, 2024, the Student was found eligible for Vision Impairment after reviewing visual tests, classroom observations and ophthalmologist reports.

Based on the foregoing, according to IDEA and Kansas special education regulations ***it is not substantiated*** that the District failed to conduct evaluations and made appropriate eligibility determinations for the Student.

Issue Two

Whether USD #385, in accordance with state and federal regulations implementing the IDEA, offered the Student the least restrictive environment (LRE) for their unique needs. *K.S.A. 72-3420(a), K.A.R. 91-40-21, 34 C.F.R. § 300.116.*

According to K.S.A. 72-3420(a) and K.A.R. 91-40-21 each agency shall give notice to the Parent of any meeting to discuss the educational placement of the child. The notice shall meet the requirements of K.A.R. 91-40-17. Each school district shall be required, 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 of severity of the disability of the child is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily. Each agency shall ensure that the children with disabilities served by the agency are educated in the LRE.

The Parent alleged that because of the Multiple Handicap exceptionality label, the Student could not be educated in the LRE. Regular Classroom opportunities are scheduled with the Special Education Resource Teacher, and other resource students are in attendance. The Student was required to leave the general education classroom early to return to the Resource Room.

The District team conducted a comprehensive evaluation that determined the need for services. The Student was a 17-year-old student with zero credits. Vocational opportunities were discussed, and the Parent was not interested in enrolling the Student in the program. The Student attended the School for the last five weeks. The Parent wanted the Student to continue to attend the Private School for a portion of the day. The Student arrived at the School at 9:45 a.m. daily. The team discussed a proposed schedule with full-time attendance at the School, which included Math and English in the resource room and two electives (Drawing and PE, which did not require additional support). The Parent wanted the part-time attendance schedule with the Student enrolled in World Geography with support and Photojournalism. The team agreed to make the amendment.

The Parent alleged that during the IEP team meeting on August 23, 2024, when the IEP was amended and the Student's instructional minutes and goals were adjusted, the Parent stated that this action occurred because the School "didn't want to let [the Student] have an inclusive role in the general curriculum earlier in the summer," reportedly stating, "They just said this is what [the Student] can do." The Parent indicated their agreement with the amendment was because the Parent wanted the Student to attend Public School part-time and Private School part-time.

The District indicated the Student's multiple disabilities exceptionality was determined to have impacted their ability to access the general education curriculum across all academic areas when the Student was expected to perform age-appropriate skills such as reading, math, and writing, in comparison to their peers. “Due to [the Student’s] cognitive ability being significant[ly] lower than peers of the same age, [the Student] will have all core classes and life skills classes in the special education resource classroom.” The District amended the IEP and changed the Student’s class schedule to attend PE class with other students, as well as World Geography, and Photojournalism.

The Student attended the School four hours a day and the Private School for three hours a day. Accommodations, modifications, and supplementary supports were listed with the location specified as "General and special education classroom." These supports had a start date of September 6, 2024, and an end date of April 15, 2025. The Special Education Resource Teacher indicated that the Student attended an Art class where the Special Education Resource Teacher checked in and the Student attended a computer class with 100% one-on-one paraprofessional support. The Student received English instruction in the Special Education classroom.

Ultimately, the team agreed to make the amendment reflecting the Parent's preference. The Parent voiced concerns about safety for the Student during PE.

The signed PWNs, IEP, IEP amendments, and email exchanges between both the Parent and District demonstrate that the Parent consented to the placement but wanted more support in

the general education classrooms for the Student. The District did provide extra support in the Photojournalism class and Special Education Resource support for World Geography.

Based on the foregoing, according to IDEA and Kansas special education regulations ***it is not substantiated*** that the District failed to offer the Student the LRE for their unique needs.

Issue Three

Whether USD #385, in accordance with state and federal regulations implementing the IDEA, offered an appropriate IEP that met the needs of the Student. K.S.A. 72-3429, K.A.R. 91-40-18; 34 CFR § 300.320.

According to K.S.A. 72-3429 and K.A.R. 91-40-18 when conducting the initial IEP meeting for a child who was previously served under Part C of the federal law, an agency, at the request of the Parent, shall send an invitation to attend the IEP meeting to the services coordinator or other representation to assist with the smooth transition of services. Each agency ensures that a continuum of alternative educational placements are available to meet the needs of children with disabilities. These alternative educational placements shall include instruction in regular classes, special classes, and special schools. Further, each agency shall make provisions for supplementary services, including resource room and itinerant services, to be provided in conjunction with regular classroom placement.

In determining the educational placement of a child with a disability, each agency shall ensure that the placement decision meets the following requirements: the decision shall be made by a group of persons, including the parent and other persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options. In addition, the decision shall be made in conformity with the requirement of providing services in the LRE.

The Parent alleged that at the first IEP meeting in April of 2024 that the Student was found eligible for Multiple Handicapped. The Parent did not agree with that exceptionality. The Parent appealed the exceptionality and suggested consideration of Traumatic Brain Injury, Learning Disability or Other Health Impaired but was rejected by the team. The Parent alleged that the team did not recognize the discrepancy of low verbal skills versus higher social, receptive, and behavioral skills.

The District team made every effort to create an IEP that was appropriate and met the needs of the Student. The team made several amendments to the IEP, which indicated the team's willingness to work with the Parent. The team discussed each semester that the Student needed to attend the School full time to complete credits needed for a diploma by 21. The Parent continued to have the Student attend the School part-time.

During a meeting on September 6, 2024, the Parent requested a discussion regarding the student's exceptionality, expressing disagreement with the Multiple Disabilities (MD) exceptionality for which they had previously signed consent. The Parent believed Other Health

Impairment (OHI) was the more appropriate classification. Meeting notes showed the team reviewed an amendment proposed in the prior meeting, and diploma options were discussed. The Principal explained that the Private School, while non-accredited but registered with the State, could issue a diploma with 21 credits, as could the State. The Parent granted permission for evaluations in Visual Impairment (VI), Speech-Language Pathology (SLP), Occupational Therapy (OT), and Physical Therapy (PT), and a Prior Written Notice was signed.

The District indicated that the Student was found eligible for special education on April 16, 2024. The Student's IEP outlined goals in reading, written language, math, adaptive behavior, and transition services. Related services consisted of speech service consultation, and special education resource room support. The IEP detailed accommodations and modifications for both special education and general education settings. Special education services were specified as 50 minutes daily, five days a week, to be delivered within the regular education classroom with special education support. The IEP indicated that the Student would not participate with non-identified peers in all general education classes.

A PWN dated August 19, 2024, indicated a change in services and a substantial change in placement. The SLP explained that the CELF scores were considered alongside an observation to determine if existing accommodations, modifications, and supports effectively addressed the Student's identified needs. The observation confirmed that these measures were successful. Consequently, the SLP concluded that with continued support for the identified weaknesses, the Student could succeed in their current setting, justifying the decision to provide consultative rather than direct services. While the initial IEP stated the Student did not require assistive technology, this changed when vision services were added on December 12, 2024, at which point the Student began receiving assistive technology support.

A Prior Written Notice (PWN) dated December 12, 2024, documented a change in placement that increased the Student's time in a more restrictive environment by more than 25% of their school day. Specifically, the Student would receive an additional 100 minutes of direct support five days a week within the special education resource classroom. In response to an inquiry about career education, the Special Education Resource Teacher explained that the team attempted to enroll the Student in the District’s vocational program at another high school. This program aimed to teach kitchen skills and provide financial assistance knowledge. However, the Parent declined to allow the Student to participate in that program.

Based on their evaluation and a review of records, the Vision Teacher (TSVI) determined that the Student qualified for Visual Impairment services. Regarding classroom accommodations, the TSVI explained their focus on ensuring appropriate print size and materials for the Student. They requested a larger screened Chromebook with Arial font size 14. The TSVI noted that the Student was unaware of their visual impairment and reported having ongoing conversations with the Student to help them understand and label it, specifically mentioning their work on the term CVI. The TSVI also indicated a lack of awareness regarding transition services for the

Student. According to a video recorded on April 3, 2025, the Student could read orally using a computer screen without glasses and without decoding errors.

The signed PWNs, the IEP, and the IEP amendments between both the Parent and District demonstrated that the Parent consented to the actions and agreed with the actions even though they verbally disagreed with the exceptionality identification.

Based on the foregoing, according to IDEA and Kansas special education regulations ***it is not substantiated*** that the District failed to offer an appropriate IEP that met the needs of the Student.

Issue Four

Whether USD#385, in accordance with state and federal regulations implementing the IDEA, provided the Parent with IEP progress reports. K.A.R. 91-40-16(b)(3), K.S.A. 72-3429(3); 34 C.F.R. § 300.323.

According to K.A.R. 91-40-16(b)(3) and K.S.A. 72-3429(3) an IEP is in effect for exceptional children at the beginning of each school year. 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.

The Parent alleged that the School refused reasonable transparency. Because of this, the Parent was not allowed reasonable information about the Student's daily academic or social experiences.

The District sent progress reports on December 12, 2024, and May 18, 2024, which was as frequently as progress was reported for non-disabled peers at the School.

The Parent believed the District's Google Classroom was difficult to follow and the information didn't really inform the Parent of what the Student was doing, and how they performed because the notes were not clear to the Parent. During interviews, the Parent stated that they did not receive any IEP progress reports.

The District indicated the IEP outlined that the Parent would receive written progress reports at the same intervals and in the same manner as general education reports. These progress reports were intended to detail the Student's progress toward achieving their IEP goals and objectives/benchmarks.

The Parent observed that the recorded completed work appeared to lack significant substance. Meeting notes from February 3, 2024, reflected that the Special Education Resource Teacher reviewed Google Classroom and told the Parent they had access "to Google Doc, with all of the Student's classroom information."

According to meeting notes from a meeting held on May 22, 2024, which the Parent attended, the Special Education Resource Teacher discussed the Student's progress and performance, reviewing each section of the Progress Report with the Parent.

On September 11, 2024, the Special Education Resource Teacher emailed the Parent a video for the Student and the Parent to watch, which explained how to get homework documents in Google Classroom with log-in information. Progress reports indicated being sent to the Parent on December 20, 2024.

The meeting notes in which the progress reports were discussed between both the Parent and District demonstrate that the Parent did receive progress reports and progress report reviews in person.

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 Progress Reports.

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.gov 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 15, 2025

DATE OF REPORT: MAY 14, 2025

This report is in response to a complaint filed with our office by ------ on behalf of one of her students, ------ as well as four other students in her classroom. For purposes of this investigation, the five students identified by the complainant will be identified as "Student One," "Student Two," "Student Three," "Student Four," and "Student Five" for the remainder of this report. ------ will be referred to as "Student Four." ------ will be referred to as "the complainant." USD #259 will be referred to as "the district."

Investigation of Complaint

Any individual or organization may file a formal complaint if they believe that - within the 12-month period prior to the receipt of that complaint by KSDE - a school district did not comply with federal or state laws or regulations relating to special education.

If the complaint involves a specific child, the formal complaint must include

- the name and address of the child;
- 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 (K.A.R. 91-40-51).

The complainant is a teacher in a district middle school. She has been assigned to teach a "Mixed Abilities" class. The complainant provided the name of one of her students to the Education Program Consultant at the Special Education and Title Services (SETS) division of the Kansas State Department of Education (KSDE). That student is identified in the appointment letter sent by the consultant to the parties and to the complaint investigator on April 14, 2025 as "Student 1 of 5."

The complainant did not, however, include the name of any of the other four students referenced in her formal complaint nor did she provide any contact information regarding the parents of the students.

Additionally, the facts provide by the complainant provide few specifics to direct the investigator toward any individual student. While Student One is identified by name in this complaint, the facts listed under Student One in the written complaint show that the family of

Student One "speaks Vietnamese" which the family of the student named as Student One does not.

While she included copies of prior written notice documents in support of her complaint, all student-specific information had been redacted. A screen shot of a text included in the submitted complaint contained the first name of one student but no other identifying information.

The investigation of a formal complaint requires the investigator to contact the complainant in order to gather additional information and verify specific allegations of noncompliance that may be relevant to the investigation. To that end, the investigator spoke by telephone with the complainant on April 17, 2025.

During the telephone conversation, the investigator requested that the complainant provide the names of the five students referenced in her complaint so that each specific case could be investigated. The investigator also requested that the complainant share contact information regarding the parents of each of these students so that the investigator could reach out to those individuals regarding issues specified in the complaint.

The investigator received an email from the complainant on the evening of April 17, 2025, stating that

> *"After receiving legal counsel on this matter today, I have been advised not to share parents names to you (sic). I can provide contact information to parents if you would like. This would allow you to speak with you if they feel safe to. I believe there was enough information provided including the attachments sent to the district. If your office decides that an investigation is necessary, I can only imagine that USD 259 will fully cooperate...I do not have any further vested interest in this district, therefore, I have no other reason to communicate with you."*

The investigator responded to the complainant via email telling the complainant she could share the investigator's contact information, but the investigator received no follow up call from any of the parents. The mother of one of the students (the student identified in the complaint as "Student 1 of 5") did, however, send an email to the Director of Special Education and Title Services (SETS) providing her contact information.

On April 17, 18, and 23, and on May 1 and 8, 2025, the complaint investigator spoke via telephone with the Mediation/Due Process Supervisor for the district. With input from the investigator and the Mediation/Due Process Supervisor, the district was able to determine the identity of Student One, Student Two, and Student Four. Student Three and Student Five could not be positively identified.

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

- Documents related to Student One:
    - Consideration for Waiver Review dated March 28, 2025

  - Waiver of Reevaluation Agreement Form dated March 28, 2025 (English language version)
  - Waiver of Reevaluation Agreement Form dated April 1, 2025 (Vietnamese language version)
  - Special Ed Student Contact log regarding this student covering the period of August 22, 2017 through April 25, 2025
  - Child Study Team (CST) agendas for February 4, 11, and 25 and March 4, 11, and 25, and April 1 and 8, 2025
- Documents related to Student Two:
  - Consideration for Waiver Review dated January 29, 2025
  - Waiver of Reevaluation Agreement Form dated March 28, 2025
  - Special Ed Student Contact log regarding this student covering the period of March 12, 2018 through April 23, 2025
  - Email exchange dated April 23, 2025 between the school social worker and the student's mother
  - CST agendas for January 28, February 4, 1, and 25, March 4, 11, and 25, and April 8, 2025
- Documents related to Student Four:
  - Consideration for Waiver Review dated February 11, 2025
  - Waiver of Reevaluation Agreement Form dated February 11, 2025
  - Special Ed Student Contact log regarding the student covering the period of August 27, 2016 through April 23, 2025
  - Email dated April 15, 2025 from the mother of Student Four to the Director of SETC
  - Email exchange dated April 22, 2025 between the school social worker and the mother of Student Four
  - Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated April 23, 2025
- Email dated April 15, 2025 from the mother of Student to the Director SETS
- Evaluation and IEP Procedures Chart dated August 2024
- Triennial Reevaluation Waiver Process guidelines dated August 2024
- Consideration for Waiver Review (sample form)

Issues

In her complaint, the complainant identified two issues related to the reevaluation of students:

Issue One

The district has failed to obtain the informed written consent of parents when waiving the three-year reevaluation.

Position of the Complainant

The complainant asserts that the district sent the parents of four of her students documents requesting their written consent to waive the triennial reevaluation of their child. Affixed to these documents were "sticky notes" and/or arrows pointing to the signature line indicating where the parent was to sign the form.

According to the complainant, the parents of two of these students had previously told her that they wanted their child to be reevaluated. The complainant reports that she was told by these parents that no one from the district had discussed the waiver of reevaluation form with them before the form was sent home. The complainant states that these parents (one whose primary language is Vietnamese) told her that they did not understand the form and were not aware that by signing the form they were waiving the student's right to a reevaluation.

The complainant further contends that district documents related to the waiver of reevaluation showed that she had participated in a meeting regarding the waiver and agreed with the recommendation. It is the position of the complainant that she neither participated in that meeting nor agreed with the recommendation to waive the reevaluation.

Applicable Statutes and Regulations

An evaluation that is conducted for a child currently identified with an exceptionality, is considered a reevaluation. The reevaluation process is required in order 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; and
(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.

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. Reevaluations may not occur more than once a year, unless the parent and the school agree otherwise. New requirements also allow the parent and the school to agree that a three year reevaluation is not necessary (K.S.A. 72-3428(h)(2)(B); 34 C.F.R. 300.303(b)(2)). The district and the parents must agree that a child's triennial reevaluation can be waived.

Documentation of this agreement must be maintained (Federal Register, August 14, 2006, p. 46640, 46641).

At K.S.A. 72-3428, Kansas statutes state:

> *"(k) If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be an exceptional child and the child's educational needs, the agency:*
> *(1) Shall notify the child's parents of:*
> *(A) That determination and the reasons for it; and*
> *(B) the rights of such parents to request an assessment to determine whether the child continues to be an exceptional child and the child's educational needs; and*
> *(2) shall not be required to conduct such an assessment unless requested by the child's parents."*

The agreement to waive reevaluation extends the date for the next three-year evaluation to three years from the date when the last signature is placed on the agreement, whether that is the district's signature or the parent's signature.

Position of the District

The district asserts that it has complied with special education statutes and regulations regarding special education reevaluations, has established a process to be followed by staff when determining whether or not to waive a triennial reevaluation, has provided written guidance that instructs teams on how to correctly follow that process, and has provided targeted training to staff regarding the process. It is the position of the district that, in the case of Student One, Student Two, and Student Four, the district's established process was correctly implemented, and the informed written consent of the parents of each of these students was obtained before the three-year reevaluation of these students was waived.

Investigative Findings

> *As of August 2024, the district had established a "Triennial Reevaluation Waiver Process" to "be used...at the middle and high school levels...[That process may] be considered for student with the sole exceptionality of Gifted in grades K-12." The process is summarized in a district-developed document which states that*
>
> *"A reevaluation is to occur at least once every three years, unless the parent and the school agree that a reevaluation is unnecessary (K.S.A. 72-3428(h)(2)(B); 34 C.F.R. 300.303(b)(2)). 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 (Federal Register, August 14, 2006, p. 46640, 46641). Documentation of this agreement must be maintained."

In August 2024, the district also developed a document entitled "Evaluation and IEP Procedures Chart" which was intended to provide guidance to staff regarding the organization and maintenance of special education student records. The chart specified what forms were to be utilized in various situations (Initial Evaluation, Reevaluation, Annual IEP, IEP Amendment, etc.) The chart includes a section entitled "Waiver of Reevaluation." In that section, staff was directed to use two forms:

- Consideration for Waiver Review Form, and
- Reevaluation Waiver Agreement Form.

Signature pages from these forms are to be "submitted to IEP Support." Teams are directed to "begin [the] review process a minimum of 2 months before the reevaluation due date" and to "make sure both Parent and School Representative sign the Waiver Agreement Form" utilizing electronic signatures when possible.

Beginning in August 2024, the district put in place the following written guidance to assist school staff in making decisions regarding reevaluation.

"1. Team completes the Consideration for Waiver Review Form in [the student information system] as part of the process for determining whether a triennial reevaluation is needed.

- *If the team determines a reevaluation is needed, see the Reevaluation Process document.*
- *If the team determines a waiver of reevaluation is appropriate, proceed with step 2.*

Consideration for Waiver Review Form Notes:

- *The Consideration for Waiver Review form should be started well in advance (recommended 6 to 8 weeks) of the student's triennial reevaluation due date.*
- *The Consideration for Waiver Review form does not require signatures or entry of all IEP team members. You only need to include the names of CST members completing the form.*
- *Formal teacher reports are not required as part of the Consideration for Waiver Review Process. CST should work with the student's IEP manager to discuss information relevant to whether a reevaluation is needed and if teacher reports are needed to make the determination.*
- *Teams should finalize the Consideration for Waiver Review form when completed. There is no need to wait for parent signature on the Waiver of Reevaluation Agreement Form.*

2. *Team collaborates with parent. Parent input is a critical part of determining whether a triennial reevaluation is needed. CST should discuss information on the Consideration for Waiver Review Form with parents well in advance of the reevaluation due date.*
    - *If parent agrees to waive reevaluation, proceed to step 3.*
    - *If parent does not respond or does not agree to waive reevaluation, prepare PWNE for reevaluation and send to parent with copy of Parent Rights.*

    Parent Collaboration Notes:

    - *Parent signature is not required on the Consideration for Waiver Review Form, only on the Reevaluation Waiver Agreement Form.*
    - *Teams do not need to give a copy of the Consideration for Waiver Review Form to parents but can do so if parents request or if it would help the parent meaningfully participate in determining whether a triennial reevaluation is needed.*
3. *Obtain parent signature (paper or electronic)* on Waiver of Reevaluation Agreement Form in [the student information system] via one of the following:*
    - *Regularly scheduled IEP meeting if before reevaluation due date*
    - *Conference between parent and designated support staff*
    - *Phone call between parent and designated support staff with Waiver of Reevaluation Agreement Form mailed or emailed and returned.*

    **You must have parent signature and school representative signature on the Waiver of Reevaluation Agreement Form. If unable to obtain parent signature, pursue Reevaluation Process.*
4. *Finalize Waiver of Reevaluation Agreement Form and send signature page (if paper signature) to IEP Support.*
5. *Waiver is complete."*

According to district practices, the Consideration for Waiver Review does not require a formal convening of a student's IEP team. Instead, it is the Child Study Team that reviews information regarding the need for reevaluation. Formal teacher reports are also not required as a part of the waiver review process. However, when completing the Consideration for Waiver Review document, the CST is expected to work with the student's IEP manager to discuss information relevant to the decision-making process.

At the building where the students identified in this complaint are assigned, the CST is made up of one or more counselors, one or more social workers, a school psychologist, the building principal, the assistant principal and other individuals such as a school nurse and classroom and/or special education teachers who may have relevant information. The CST reviews the possibility of a reevaluation waiver for any given student over a period of several weeks beginning well before the reevaluation due date.

The review process forms allow for the listing of individuals who contributed information regarding the need for a reevaluation but does not require the signatures of those individuals. The date on the waiver review form reflects the CST meeting date when the team has determined from the school's perspective that a reevaluation is not needed. That date does not reflect all the meetings wherein the possible waiver was discussed.

After the CST has completed the Consideration for Waiver Review form and the team has made the determination that it would be appropriate to consider waiving a reevaluation, the CST collaborates with parents to gain their input in making the final decision regarding whether or not a reevaluation is needed. A designated CST member reviews the information on the Consideration for Waiver Review Form with parents in advance of the reevaluation due date. If the parent also feels that it would be appropriate to waive the reevaluation, the parents are sent a Waiver of Reevaluation Agreement Form for their signature. A CST representative must also sign off on the form to show agreement regarding the waiver of the reevaluation.

The district-created Waiver of Reevaluation Agreement Form contains all of the components of the Kansas State Department of Education (KSDE) sample form (see the "Re-evaluation Not Needed Agreement Form 8-05" at https://www.ksde.gov/Default.aspx?tabid=544) including the statement that “both parties understand that a reevaluation may be requested by either party at any time in the future”.

Special education statutes and regulations do not specify a timeline for when the consideration for waiving a reevaluation process must begin. The district has determined that two of its guidance documents are inconsistent in statements directing teams when to begin the consideration process ("2 months" vs. "6-8 weeks" prior to the due date of the reevaluation) and is taking steps to amend its guidance for consistency. (The timing of the implementation of the waiver process is not at issue in this complaint.)

Training with School Psychologists (a school psychologist serves on this school's CST) on waiver procedures was conducted in January of 2024. Additional staff training was provided in both October 2024 and January 2025.

Student One:

This student was determined eligible for special education services under the category of Autism. He currently receives support for math, ELA, social studies, and science through the Mixed Abilities program and also receives speech and language services. Student One requires adult assistance to move to and from classes and to walk from his last hour class to the bus. The IEP team met for the student's annual IEP review on March 11, 2025.

This student's reevaluation due date was May 12, 2025. CST agendas produced by the district show that, on February 4, 2025, the CST began discussing a potential waiver for the student's reevaluation. Additional discussions of the need for reevaluation were documented on February 11 and 25, and March 4, 11, and 25, 2025. In completing the Waiver Review form,

the CST received input from the school psychologist, speech/language pathologist, and social worker. The CST consulted with the student's IEP Manager (who is not the complainant) in the Consideration for Waiver Review process, completing the form on Mach 28, 2025, at which time the Principal accepted and signed the Waiver of Reevaluation Agreement form.

The school social worker was assigned responsibility for contacting the student's mother to solicit her input regarding the waiver of reevaluation. Although the student information system for the school shows that the parent designated English as the primary language of the home, the district states that the school has routinely used a Vietnamese translator service when communicating with the parent and has provided written notice to the parents in both English and Vietnamese.

On April 1, 2025, the social worker called the student's mother via the district's Multilingual Educational Services (MES) translator. In the course of the call, the parent agreed to the waiver process in lieu of conducting a reevaluation and asked for paperwork to be sent home with student. On April 1, 2025, the social worker sent home copies of the waiver of reevaluation agreement via the student's backpack. One version of the form was in English, the other in Vietnamese. On April 2, 2025, a second Vietnamese version of the form was sent home to the student's mother who signed the form that same date and returned it to the school.

The CST kept the student on their meeting agendas for April 4 and 11, 2025 to discuss and update the team about receiving the parent signature on waiver and finalizing the process.

In an effort to ensure that the student's mother had clearly understood that she had agreed to waive the triennial reevaluation of the student, the school social worker placed a call to the parent via the MES translator the morning of April 25, 2025. The school psychologist sat in on the call. The parent told staff that she wished to proceed with the waiver of the reevaluation as previously agreed and had no questions or concerns at that time. The school social worker again told the student's mother that parents have the right to request a reevaluation at any time.

Student Two:

This student was determined eligible for special education services under the category of Intellectual Disability. He receives core instruction in the Mixed Abilities program and attends elective classes with paraprofessional support. He also is supported by a paraprofessional for lunch/recess. The IEP team met for the student's annual review on March 11, 2025.

This student's reevaluation due date was May 9, 2025. His last previous reevaluation was completed on May 10, 2022. According to CST meeting agendas provided by the district, the CST began discussing a potential waiver for the student's reevaluation on January 28, 2025 (although the Consideration for Waiver Review form is dated January 29, 2025). Additional discussions of the need for reevaluation were documented on February 4, 11, and 25 and March 4, 11, and 25, 2025. In completing the Waiver Review form, the CST received input from

the school psychologist. The IEP Manager (the complainant) was - according to the waiver review form - consulted on January 30, 2025. No specific input from the complainant is, however, documented on the waiver review form. Based upon the documentation provided by the district, it is unclear when the waiver review was finalized. The Principal accepted and signed the Waiver of Reevaluation Agreement form on March 28, 2025.

A district-produced contact log for this student shows that the school social worker placed a call to the student's mother on April 1, 2025 regarding the waiver of reevaluation. When the parent did not answer, the log notes that the social worker left a voicemail message regarding "paperwork." The social worker placed a second call to the student's mother on April 2, 2025 at 10:10 AM to discuss the potential waiver of reevaluation. The school psychologist also sat in on the call. According to the contact log, the student's mother stated that she had "not yet listened to the voicemail" left the previous day by the social worker. The parent reported that "she just got off the phone with the IEP manager [the complainant] who "relayed incorrect information about the waiver process." According to the contact log, the parent had "no concerns for [the student] at [that] time, other than [his] transition to high school. "Mother states that she is happy with the placement and services he is currently receiving...and states that she would like him to remain in that program through high school."

The contact log shows that the "mother confirmed that she [was] willing to proceed with waiver, [and] asked social worker to resend waiver paperwork home with [the student]." The parent electronically signed the waiver of reevaluation agreement form on April 2, 2025.

An April 23, 2025 entry in the contact log shows that the school social worker placed another call to the student's mother on that date to discuss the waiver and confirm that the parent was comfortable with the district's recommendation that a formal reevaluation be waived. The parent stated that she had been "confused by additional information given/sent by the IEP manager [complainant]." The social worker reviewed the waiver process, the reasons for a reevaluation, and the CST's reasons for recommending that a reevaluation be waived. According to the log, the social worker told the parent that she could request a reevaluation at any time.

The parent agreed to send an email to the district confirming her agreement with the waiver. That confirmation email from the parent was sent at 10:40 PM on April 23, 2025.

Student Three:

The complainant did not identify this student by name. While her written complaint included the statement that "all documents are available upon your request and clearance," the complainant did not provide any documents to support her contention that the parents of Student Three had repeatedly asked for a reevaluation of the student.

No evidence was provided by the complainant to show that this student had not had a reevaluation report "put into the IEP since the child was 6" or to support the complainant's

contention that the student had "not been reevaluated since age 6; she [emphasis added] is now 14." In an effort to determine the identity of this student, the district reviewed the files of all female students on the complainant's caseload who were scheduled to be reevaluated during the 2024-25 school year. All had been reevaluated after the age of 6.

Because this student could not be identified, circumstances surrounding Student Three were not investigated further.

Student Four:

This student was determined eligible for special education services under the category of Autism. He receives core instruction in the Mixed Abilities program and attends elective classes with special education support. He also is supported for lunch/recess. The IEP team met for the student's annual review on March 21, 2025.

This student's reevaluation due date was March 7, 2025. His last previous reevaluation was completed on March 8, 2022. CST agendas provided by the district show that on January 14, 2025, the CST began discussing a potential waiver for the student's reevaluation. Additional discussions of the need for reevaluation were documented on January 28, and February 4 and 11, 2025. In completing the Waiver Review form, the CST reviewed data from the student's previous IEP and considered the student's current grades. Input was provided by the school psychologist who had previously consulted with the IEP Case Manager. The Consideration for Waiver Review process was completed on February 11, 2025, at which time the Principal accepted and signed the Waiver of Reevaluation Agreement form.

According to the contact log provided by the district, the school social worker contacted the student's mother on February 11, 2025 regarding the reevaluation waiver. The contact log shows that the parent "agrees to waiver process and states she can sign electronically.

On February 22, 2025, the mother of Student Four electronically consented to waive the triennial reevaluation of Student Four. The Waiver of Reevaluation Agreement Form signed by the parent states

> *"Special Education law requires a re-evaluation of a child with an exceptionality at least once every three years, unless the school and the parents(s), or other legally authorized education decision maker, of the student agree that a re-evaluation is unnecessary. The above named parent(s)/legal decision maker and the school representative, representing the consensus of the Child*
>
> *Study Team, agree that a re-evaluation for the above named student is not necessary at this time, and therefore no reevaluation will be conducted. Both parties understand that a reevaluation may be requested by either party at any time in the future. The above named student will continue to be considered a student with an exceptionality and will continue to receive the special education services identified in the Individual Education Plan."*

On February 25, 2025, the CST again reviewed Student Four, confirming parental agreement with the reevaluation waiver and finalizing the waiver process.

The mother of Student Four sent an email to the Director of SETS on April 15, 2025 stating

> *"It has come to my attention that I signed the waiver form for re-evaluation. It was NOT my intention to sign the waiver form as I want my child...to continue with the re-evaluation every 3 years."*

The school social worker placed a call to the student's mother on April 22, 2025 to discuss the reevaluation waiver. When the parent did not answer, the social worker requested a return phone call. The parent subsequently called the social worker. In their conversation, the contact log states that the parent

> *"...reports that she was confused by additional paperwork that was sent home by IEP manager at the same time and states that she was under the impression that in signing the waiver form, she was exiting her child from the Mixed Abilities program [but] after social worker explained the purpose and the reevaluation process and clarified the waiver process, parent reports that she better understands the waiver process and agrees with the team's original recommendation that a reevaluation is not necessary at this time."*

On April 22, 2025, the school social worker sent an email to the mother of Student Four summarizing their telephone conversation regarding the waiver process. The social worker wrote

> *"If you wish to proceed with the team's proposal to waive the reevaluation at this time, please copy and paste this statement in your reply email:*
>
> *"I [parent's name] agree to waive the triennial reevaluation as originally proposed on February 11, 2025.'*

The parent responded to the social worker via email on April 22, 2025 including the above statement.

On April 23, 2025, the district sent the parent a prior written notice form summarizing the history of the district's request for parental consent to waive the reevaluation of Student Four as follows:

> *"On 4/22/25 social worker spoke to mother...Social worker informed mother that this worker was calling to touch base about the concern submitted to clarify any confusion and answer any questions about the waiver process. Mother reports that she was confused by additional paperwork that was sent home by IEP manager at the same time and states that she was under the impression that in signing the waiver form, she was exiting her child from the Mixed Abilities program. Social worker explained that schools are required to conduct a reevaluation every three years unless the parent and the school agree that a reevaluation is unnecessary. [Student Four] was due for a reevaluation this school year. After reviewing his*

> *special education file, previous evaluations, and current performance, the team felt a reevaluation to determine if [Student Four] continues to need special education and related services under the exceptionality of Autism was not warranted at this time and [Student Four] continues to qualify under this exceptionality and placement within the Mixed Abilities program. The team believes that any changes needed in the IEP can be made by the IEP team without standardized assessments or the reevaluation process. Mother and social worker spoke via phone previously on 2/11/25 about this waiver process. Social worker relayed to mother that as a parent, she can request a reevaluation at any time. After social worker explained the purpose of the reevaluation process and clarified the waiver process, parent reports that she better understands the waiver process and agrees with the team's original proposal that a reevaluation is not necessary for [Student Four] at this time. Mother stated that she wants her son to remain in the Mixed Abilities program and to continue to receive the services he is currently receiving in his IEP. Mother also responded via email on 4/22/25 that she agreed to waive the triennial reevaluation as originally proposed on 2/11/25 and agreed for [Student Four] to remain in the Mixed Abilities program and continue to receive services provided in his current IEP."*

The investigator spoke by telephone with the mother of Student Four on May 6, 2025. During that conversation, the parent confirmed that she was in agreement with the decision to waive the reevaluation of the student, stating

> *"I got myself confused and thought that [the student] would be excluded from the Mixed Abilities class if he didn't have a reevaluation."*

According to the parent, the student has been very successful in the program, and she didn't want him to be removed from it. The parent stated that she sent the email to KSDE because the complainant had encouraged her to do so. The parent reported that she didn't remember getting a call regarding the waiver from the school in February 2025 but noted that the call from the school in April had helped her fully understand the waiver process. The parent acknowledged that she was told that her son did not have to be reevaluated at this time in order to continue in the Mixed Abilities program but that she could request a reevaluation in the future should she want to do so.

Summary and Conclusions

The complainant alleged that the district failed to obtain the consent of the parents of four students before waiving those student's triennial reevaluation. Only three of those four students could be positively identified through information provided by the complainant.

The investigation of those three students determined that the district has established and published procedures regarding the process to be implemented when determining whether or not to waive a student's triennial reevaluation. Staff training has been provided on this process

which requires teams to obtain the written agreement of the parent before the reevaluation can be waived.

The parents of all three of these students agreed to the waiver of their children's triennial reevaluation prior to the date this complaint was received by KSDE, and these same parents subsequently confirmed that earlier decision after the complaint was made.

The district has provided documented evidence to show that the written agreement of the parents of the three students who were able to be definitively identified in this complaint was obtained before waiving the triennial evaluations of those students. A violation of special education statutes and regulations *is not substantiated* on this issue.

Additional Comments

The complainant contends that she did not participate in any meeting regarding the waiver of reevaluation for Student Four, did not provide information to anyone regarding such a waiver, and was unaware that such a waiver was being considered.

The Consideration for Waiver Review form for Student Four provided by the district identifies the "IEP Manager" for the student as the complainant and notes that "Communication with IEP Manager" occurred on February 11, 2025, but the complainant asserts that she was not working on that date and could not have communicated with the CST on that date.

The waiver review form documents input from a "Special Education Teacher" other than the complainant, but the complainant is not cited as the source of any of the information that the team reviewed.

Special education statutes and regulations require only that the parent and the school reach an understanding that a triennial reevaluation is not needed before such reevaluation is waived (Federal Register, August 14, 2006, p. 46640, 46641). The law does not specify how such an understanding is to be reached, who will participate in the process of reaching such an understanding, or how such an agreement should be documented. Therefore, because special education statutes and regulations do not include any requirements that would address this aspect of the complaint, the participation of the complainant in the determination of waiver of reevaluation for this student was not investigated.

No corrective actions are required because a violation of special education statutes was neither investigated nor substantiated. However, in the interest of accuracy, the district is encouraged to review the Consideration for Waiver Review form for this student and to make any changes needed to ensure that the participation of this complainant is correctly represented.

Issue Two

The findings of the reevaluation of Student Five were not available to the team when that student's IEP meeting was held.

Position of the Complainant

The complainant asserts that while the annual IEP review meeting for Student Five was held several weeks following the completion of that student's reevaluation, the results of the reevaluation were not made available to the team when revising the student's IEP.

Applicable Statutes and Regulations

The information gathered as a result of the reevaluation provides valuable information about child progress and needs. In addition to using the information to determine whether the child continues to be eligible for special education and related services, this information should be used to review the IEP, revising it if necessary, in accordance with K.S.A. 72-3428(h)-(l), as well as 34 C.F.R. 300.301 through 300.311: K.S.A. 72-3428.

As noted above under Issue One, the results of a student's reevaluation are to be used by the IEP team to determine

(1) the educational needs of the child;
(2) the present levels of academic achievement and functional performance (related developmental needs) of the child; and
(3) 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.

Investigative Findings, Summary and Conclusions

The complainant did not provide any specific identifying information regarding Student Five aside from stating that the "IEP reevaluation Meeting was postponed due to scheduling." The district made a good faith effort to try to identify this student and provided the investigator with a response to allegations regarding a student who was deemed "probable" to be Student Five. However, the district also confirmed that the IEP meetings for other students have been postponed due to scheduling. Because the identity of this student could not be definitively determined, *this allegation was not investigated*.

Corrective Action

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

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.gov 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 #322
ON APRIL 3, 2025

DATE OF REPORT: MAY 16, 2025

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

It is noted that the student is 18 years of age and her own legal guardian. However, the student has signed and provided a written copy of a Durable Power of Attorney for Health Care and Education Related Decisions dated March 5, 2025 which states that the student's parents will "serve as the decision maker in educational related matters related to my education, including, but not limited to enrollment in secondary or post-secondary school or schools, administration of the IEPs".

The complaint is against USD #322 (Onaga Public Schools) who contracts with the Holten Special Education Cooperative (HSEC) to provide special education services to students enrolled in the school district. In the remainder of the report, both of these responsible public agencies may also be referred to as "the district", "the local education agency (LEA)", or "the school". Individually, they will be referred to by "USD #322" and "HSEC" respectively.

The IDEA allows for the investigation of allegations of noncompliance for a period up to 12-months from the date on which a complaint was filed. The Kansas State Department of Education (KSDE) allows for a 60-day timeline to investigate a complaint and issue a final report from the date on which a complaint 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 March 27, 2025 and additional complaints on April 3, 2025. These complaints were combined into one investigation and the 60-day timeline extended to begin on April 3, 2025. It is noted that the investigation timeline was extended due to the number of allegations and the amount of documentation provided by both parties that needed to be reviewed and carefully considered during the investigation.

Based upon the written complaint, six issues were identified to be investigated. It is noted that several issues included in the parent's complaint fell outside of the 12-month investigation window and will not be addressed in this investigation.

These issues are related to the issuance of the IEP Goal Progress Report in February 2025 and the in-state IEP transfer process which occurred in August 2023. The parent should review the

IDEA Procedural Safeguards for other options for resolving complaint and may want to consider having these allegations of noncompliance addressed through a due process complaint which allows for the investigation of allegations of noncompliance for a period up to two years from the date on which a complaint is filed.

Evidence Reviewed

The parent was interviewed by telephone on April 18, 2025 and the LEA staff provided written responses to interview questions on May 1, 2025.

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed over 400 pages of documentation provided by both the LEA and the parent. While all of the documentation was taken into consideration for context, the following written documentation was used in consideration of the issues:

1. Psychoeducational evaluation report dated April 25, 2022
2. Individualized Education Program (IEP) dated January 17, 2024
3. 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 17, 2024 and signed by the parent on that same date
4. Log documenting daily check-ins and stress pass Use dated between January 22, 2024 and April 8, 2025
5. February 5, 2024 Amendment to the January 17, 2024 IEP
6. PWN dated February 5, 2024 which was signed by the parent on February 12, 2024
7. Email exchange dated March 28, 2024 between the parent and Tracy Reisinger, Special Education Teacher regarding remaining in class and computer access
8. Email exchange dated May 16, 2024 between the parent and the Special Education Teacher regarding course of study for senior year and credits for graduation
9. IEP Goal Progress Reports for 23-24 school year
10. Email exchange dated August 13, 2024 between the parent and the Special Education Teacher regarding the ACT and SAT
11. Email dated August 20, 2024 written by the Special Education Teacher regarding ACT scores from 2023-24 school year with the ACT score summary attached
12. Notifications of Meetings dated November 26, 2024, January 13, 2025 and January 22, 2025
13. Meeting Notice dated December 3, 2024 which was signed by the parent on the same date
14. Email dated December 10, 2024 written by the Special education Teacher to the parent regarding the upcoming reevaluation and options
15. Email dated December 13, 2024 written by the Special Education Teacher to the parent regarding inviting Pre-ETS and Independent Living Specialist from Kansas Department of Children and Families to the IEP team meeting

16. Draft IEP dated December 19, 2024
17. PWN dated December 19, 2024 which the parent refused to sign
18. Email exchange dated December 19, 2024 between the parent; Jennifer DeShazer, Pre-Employment Transition Services (Pre-ETS) Specialist; and Anton Johnson, Pre-ETS Manager, regarding supported post-secondary college programs at Johnson County Community College and Kansas University
19. Pre-ETS Application dated December 19, 2024
20. Email dated December 20, 2024 written by the Special Education Teacher to the parent regarding changing the services back from the proposed indirect to the original direct
21. Pre-ETS Service Agreement dated December 23, 2024
22. Email dated January 9, 2025 written by the parent to the Special Education Teacher regarding reconvening the IEP team
23. Email dated January 16, 2025 written by the Special Education Teacher to the parent regarding need to obtain signatures on the December 19, 2024 in order to remain in compliance and indicating a new IEP could be written at a later date
24. Email dated January 17, 2025 written by the Pre-ETS Specialist to the parent and the Special Education Teacher regarding inviting representative from Vocational Rehabilitation to the IEP team meeting
25. Email dated January 17, 2025 written by the parent to the Special Education Teacher listing the concerns with the draft version of the December 19, 2024
26. Email exchange dated January 20, 2025 between the parent and the Special Education Teacher with handwritten note regarding Xello
27. Notice of Meeting to the parent and the student dated January 22, 2025
28. Draft version of an December 19, 2024 IEP provided to the parent on January 22, 2025
29. Email exchange dated January 24, 2025 between the parent and the Special Education Teacher regarding collaboration with outside agencies and potential community work-based program
30. Draft version of the December 19, 2024 IEP provided to the parent on January 27, 2025
31. IEP and Transition Meeting Notes dated January 28, 2025 written by the Director of Special Education
32. Updated draft version of the December 19, 2024 IEP provided to the parent on January 28, 2025 with the original PWN dated December 19, 2024
33. Email exchange dated February 4 and February 7, 2024 between the parent and Alia Capps, Supervisor for Permanency at KVC Kansas regarding change in post-secondary goal and services available
34. Email exchange dated February 11, February 21, and February 24, 2025 between the parent and Trisha McNally, the High School Counselor regarding the student's course of study and transition services including assessments, work study, and job shadowing

35. Email exchange dated February 26, February 27, February 28, March 3, and March 4 between the parent and the Special Education Teacher regarding signing the updated version of the IEP and PWN resulting from the January 28, 2025 IEP team meeting
36. Updated draft version of the IEP dated December 19, 2024 provided to the parent on March 6, 2025 and updated version of the PWN reflecting the changes discussed at the January 28, 2025 IEP Team Meeting
37. Email dated March 12, 2025 written by the student to the Special Education Teacher to request an IEP team meeting, to indicate that the draft IEP was still incorrect, and to notify the district that the parent had POA for her education decisions
38. Handwritten Meeting Notes dated March 13, 2025 between student; Peyton Bowers, School Psychologist; and Special Education Teacher related to reevaluation discussion
39. Screenshots of texts between the student and the parent dated March 13, March 15, and March 27, 2025 regarding the reevaluation meeting
40. Email dated March 14, 2025 written by the parent to the Special Education Teacher refusing to sign the PWN as written and sharing concerns with the different draft versions of the IEP developed at the January 28, 2025 IEP team meeting provided to the parent between January and March 2025 which are all dated December 19, 2024
41. List of IEP Concerns dated March 14, 2025, written by the parent
42. Re-evaluation Not Needed Agreement Form dated March 14, 2025 , signed by the parent on March 27, 2025
43. Email dated March 15, 2025 at 5:01 PM written by the School Psychologist to the student's IEP team members regarding the three-year reevaluation meeting with the student
44. Email dated March 15, 2025 at 5:29 PM by the parent to the School Psychologist regarding her concerns with the reevaluation meeting with the student
45. Email dated March 24, 2025 written by the School Psychologist to the parent regarding the three-year reevaluation and continued eligibility
46. Email dated March 27, 2025 written by the Special Education Teacher to the parent and the student regarding scheduling an IEP team meeting
47. IEP Goal Progress Reports for first – third quarters of 24-25 school year
48. Notice of Meeting dated March 31, 2025
49. Interview Statement dated March 31, 2025 written by Trish McNally, High School Counselor regarding the provision of accommodations
50. Email exchange dated April 8-9, 2025 between the parent and Amy Haussler, Director of HSEC indicating the parent would not participate in the IEP team meeting scheduled for April 10, 2025 and the district requesting the parent reconsider
51. Email dated April 10, 2025 written by the Special Education Teacher to the parent providing a draft version of an IEP addressing the parent concerns of March 14, 2025
52. PWN dated December 19, 2024 summarizing the actions proposed in December 2024, January 2025, and April 2025

53. Interview Statement dated April 10, 2025 written by Crystal Brunner, former Principal regarding the provisions of accommodations
54. LEA Response to the Allegations dated April 14, 2025 written by the Director of HSEC
55. Email exchange dated April 22-23, 2025 between the parent and the Special Education Teacher LEA Response to Interview Questions dated May 1, 2025
56. USD #322 School Calendar for the 2024-25 school year

Background Information

The student is an 18-year-old female who is currently enrolled in the 12th grade at the Onaga Senior High School in USD #322 for the 2024-25 school year. The student was initially evaluated on March 24, 2022 and determined eligible for special education and related services under the exceptionality category of Emotional Disturbance in Olathe Public Schools. It is noted that the required three-year reevaluation, which was due on March 23, 2025, is the subject of Issue Five in this evaluation report.

Records and interviews found the student began receiving special education services during the 9th grade following the eligibility determination. She transferred into USD #322 from at the beginning of her 11th grade year during the 2023-24 school year from Topeka Public Schools while in the custody of the Kansas Department of Children and Family Services (DCF). She currently lives with a foster family and has a case manager at KVC through a contract with DCF. The student became her own educational decisionmaker when she turned 18 on March 6, 2025 but signed a Power of Attorney (POA) document naming her parents as her educational decision makers. It is reported that the student has met graduation requirements and is scheduled to graduate with a high school diploma on May 17, 2025.

Issues Investigated

Issue One

USD #322, 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 allow the use of stress pass during the past 12 months.

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 following findings of fact are based upon interviews and record review.

The parent and district both identify the last agreed upon IEP for the student as being developed on January 17, 2024. It is noted that the district reconvened the IEP team on December 19, 2024 to review this IEP and revise, as needed. The district provided the parent with prior written notice PWN of the proposed changes to move from direct special education services to indirect special education services at that time but the parent refused to provide consent for this substantial change of placement. Since that time, the parent and the district have made multiple and ongoing efforts to reach an agreement on an IEP that provides a free appropriate public education for the student. However, since no agreement has been reached, the January 17, 2024 IEP is in effect at this time and will be the IEP to be used for determining whether or not the district is in compliance with the requirements of the IDEA.

The January 17, 2024 IEP requires the following accommodation related to the stress pass:

> *When the student is experiencing an upsetting event and is unable to self-regulate, she can ask for a stress pass to see her contact person or school counselor.*

The parent reports the student has not been allowed to use a stress pass to remove herself from upsetting events on a regular basis during the past 12 months. She specifically refers to an email dated March 28, 2024 written by the Special Education Teacher which states, "*She had a rough time waiting to hear about her probation. Once she was cleared, I told her she had to go and stay in all her classes. She was not happy about that*". The parent believes the stress caused by the student not being allowed to use a stress pass was a contributing factor to the student being hospitalized approximately two weeks later.

The Special Education Teacher reported that the student was actually using her stress pass accommodation to practice using the calming strategies in the special education setting to address her upset in regard to the probation prior to learning the outcome of the situation. These strategies were successful, and the student was able to return to class although she would have preferred to remain in the special education classroom for the remainder of the day. The daily expectation is that the student will remain in her general education classes but that she always has the option of using a stress pass if an upsetting event that may occur during the class period. This was the same expectation for the student on March 27, 2024.

The LEA provided a Log dated between January 22, 2024 and April 8, 2025 which shows the student used the stress pass on March 26, 2024 to remain in the special education room for approximately three hours that day. In addition, the Log shows the student used a stress pass to visit with the High School Counselor on April 19, 2024 and that she was hospitalized on April 22, 2024.

The High School Counselor stated that the student is often anxious and needs to have "down time" to reset or talk through her concerns. She indicated that the student can visit with her or

the Special Education Teacher at these times. She also noted that the student typically attends the one hour and thirty-minute general education classes for the lectures (approximately one hour) and can use her pass to come to the special education classroom or counselor's office to work on homework and de-stress.

The former High School Principal also reported that the student was allowed to use the stress pass whenever she needed a break during the school day for sensory and self-regulation breaks. She noted, "*These visits were often a necessary part of her coping strategy and self-care routine, and they allowed her to remain engaged in her academic and social environments".*

Conclusion

In this case, the IEP in effect does contain an accommodation which allows the student to use a stress pass to visit with the High School Counselor and the Special Education Teacher when she is experiencing an upsetting event. Documentation and interviews show that the student has used this accommodation during the past 12-months and there is no evidence directly connecting the implementation of this accommodation to the student's hospitalization in April 2024.

Based on the foregoing, the district is found to be *IN compliance* for implementing the student's IEP, specifically the accommodation to use a stress pass when she is experiencing an upsetting event.

Issue Two

USD #322, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by not providing the specialized instruction required to address the IEP goal related to personal safety during the past 12 months.

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 findings of Issue One are incorporated herein by reference.

The January 17, 2024 IEP has one goal which states, "*By the end of this IEP, the student will be able to use strategies (deep breathing, coloring, fidgets) to return to her regularly scheduled class during the day within 15 minutes".*

The January 17, 2024 IEP requires 10 minutes per day, five days per week of resource/ pull-out special education services to address this goal. The IEP includes the following explanation regarding these services, "*The student needs to have a daily check-in for social / emotional support*".

The district reported that the student checks in every morning with the Special Education Teacher. The student provides two numbers - one for self-harm (e.g: cutting) and one for suicidal ideation. The rating is on a scale from 1-10, with 1 being she feels safe and nothing is going to happen. The special education teacher provides explicit instruction and review of the self-regulation strategies and also involves asking the student to confirm who her contacts and resources are if she needs help throughout the day so that she can use her strategies to remain in the general education setting as much as possible to access the general education curriculum.

The district provided a Log dated between January 22, 2024 and April 8, 2025 which shows the student checked-in with the Special Education Teacher.

The parent believes the January 17, 2024 IEP should also have included 45 minutes per day of direct special education instruction in addition to the check-in minutes. She reported these minutes were discontinued when the student transferred into the district in August 2023. As noted previously, this allegation falls outside the one-year investigation window allowed in the state complaint process and the parent is referred to the IDEA Procedural Safeguards section on dispute resolution addressing due process which allows for a two-year investigation window.

Conclusion

In this case, the IEP in effect does contain a goal related to personal safety and specialized instruction for 10 minutes per day, five days per week to address that goal. Documentation and interviews show that the student checks in each morning with the Special Education Teacher and rates how she is feeling that day in regard to self-harm and suicidal ideation. The special education teacher provides explicit instruction and review of the student's self-regulation strategies and also asks the student to confirm who her contacts and resources are if she needs help throughout the day so that she can use her strategies to remain in the general education setting as much as possible to access the general education curriculum. The district provided a Log showing data supporting the check-in process being implemented with the student.

Based on the foregoing, the district is found to be *IN compliance* for implementing the student's IEP, specifically the special education services to address the personal safety goal.

Issue Three

USD #322, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop measurable goals and benchmarks to address the areas of need identified in the present level of performance in the student's IEP during the past 12 months.

Applicable Law

Federal regulations at 34 C.F.R. 300.320(a)(2) require school districts to develop an IEP for each eligible student with a disability which includes a statement of measureable annual goals, including academic and functional goals, designed to meet the student's needs that result from the student's disability in order to enable the student to be involved in and make progress in the general education curriculum as well as meet each of the student's other educational needs that result from the student's disability.

According to Chapter 4, Section 2.b of the Kansas Special Education Process Manual, measurable goals must contain a timeframe, a description of the conditions, a description of the behavior, and the criterion established for meeting the goal.

Federal regulations at 34 C.F.R. 300.320(b)(1)(i) require school districts to review each student'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: 1) any lack of expected progress toward the annual goals and in the general education curriculum; 2) the results of any reevaluation conducted; 3) information about the child provided to, or by, the parents; 4) the child's anticipated needs; or 5) other matters.

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

In addition, Kansas state regulations at K.A.R. 91-40-27(a)(3) require school districts to obtain parent consent before making a material change in services or a substantial change in placement. "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 findings of Issue One and Two are incorporated herein by reference. This allegation will be investigated looking at both the last agreed upon IEP as well as the process for reviewing and

revising that IEP, as necessary, to identify appropriate goals and services to provide a free appropriate public education (FAPE) to the student.

Documentation shows the parent attended the IEP team meeting on January 17, 2024 when the IEP currently in effect was developed. The parent was provided with PWN following that meeting and signed consent for the IEP on that same date. The investigator will not second-guess the IEP team's decisions regarding the chosen goals and services to address the student's needs described in the present level as the parent had the opportunity to participate in the process and gave consent for the special education services required by this IEP.

The January 17, 2024 IEP has one goal. This goal includes a timeframe for achieving the goal "*By the end of this IEP*". The IEP reflects the anticipated start date of the IEP was January 17, 2024 and the anticipated end date was January 16, 2025. The conditions of the goal are for the student to use strategies such as deep breathing, coloring, or fidgets when she is upset during the school day. The observable behavior in the goal is for the student to return to her regularly scheduled class during the day. The criterion for the goal is for the student to return to her regularly scheduled class within 15 minutes from the time she began using the self-regulation strategies.

The district scheduled and held an IEP team meeting on December 19, 2024 to review and revise the IEP, as appropriate, and the parent attended and participated in that IEP team meeting. Also participating in the meeting were the following school staff: Staci Claycamp, General Education Teacher; Brian Sixbury, High School Principal; the Special Education Teacher; the Pre-ETS Specialist; the Pre-ETS Manager; and the Supervisor of Permanency at KVC Kansas.

Following the IEP team meeting, the district provided the parent with a PWN proposing changes in services from direct to indirect; however, the parent refused to provide consent at that time because she disagreed with proposed changes as well as the transition plan for the student. The parent believed that a follow-up IEP meeting would be scheduled to further discuss her concerns regarding the necessary services and transition plan which would provide FAPE to the student.

The district reported a snow day occurred on the original rescheduled meeting date at the beginning of January. However, the parent indicated that the district did not contact her about the meeting and she requested another IEP team meeting via an email on January 9, 2025.

On January 16, 2025, the Special Education Teacher emailed the parent regarding the need to obtain signatures on the December 19, 2024 IEP in order to remain in compliance with the IDEA requirement to review the IEP at least annually. The parent attached a "fixed" copy of the IEP moving the proposed services back to direct special education services rather than the proposed indirect services because of the parent's concerns with this proposed change of placement. The Special Education Teacher also provide the parent with another copy of the PWN, still dated December 19, 2024, which now stated, "*This action* [changing from direct

services to indirect services] *is proposed but rejected because parents want to continue with the current IEP and meet again at the beginning of the 2nd semester after Pre-Ets* (sic) *and Voc-Rehab services are in place*".

In the January 16, 2025 email, the Special Education Teacher stated, "*As I look at the calendar and the IEP, I notice that we will be out of compliance if we cannot meet on or before the 17th. In order to stay in compliance, I need your signature on the IEP I fixed after our last meeting using that date. I can create a new IEP when we meet again*".

On January 17, 2025, the parent refused explaining that, if she signed the documents, it would indicate that she was in agreement, and she was definitely not in agreement with the IEP as written. The parent provided the Special Education Teacher with a list of her specific concerns regarding the draft version of the December 19, 2024 IEP on that same date. The parent stated in her email written to the Special Education Teacher,

> *In terms of your request for me to sign the IEP, I understand the need for compliance deadlines, however, the proposed plan does not include the required transition plan or services. Signing the IEP is an indication that we agree with it, which does not reflect our position. As we plan to meet to address the concerns, we are choosing to exercise the "stay put" provision of IDEA to maintain the student's previous IEP until a new one is developed by the team that includes a transition plan and services.*

On January 22, 2025, the district sent a Notification of Meeting scheduling an IEP team meeting for January 28, 2025. On January 27, 2025, the Special Education Teacher sent the parent an updated draft version of the IEP which incorporated the parent's list of concerns and on January 28, 2025, the following persons met to review this updated draft version of the IEP: the parent; the student; the Special Education Teacher; the High School Principal; the School Psychologist; the Director of Special Education; the Pre-ETS Specialist; the Pre-ETS Manager; the Supervisor of Permanency at KVC Kansas; and Addie Larson, Secondary School Psychologist. It is noted that a general education teacher did not participate and that additional school staff joined the IEP team at this IEP team meeting.

Following the January 28, 2025 IEP team meeting, the district provided the parent with an updated version of an IEP, still dated December 19, 2024, which included the list of parent concerns and now included statements of how each concern would be addressed by the district. The district provided the parent with the same PWN, still dated December 19, 2024, keeping the direct special education services rather than changing the services to indirect.

The parent refused to sign the PWN and, subsequently, the Special Education Teacher and the parent exchanged multiple emails during February and March 2025 trying to come to an agreement on what needed to be changed in the draft version of the IEP and PWN. On March 6, 2025, the Special Education Teacher provided the parent with another copy of an IEP and a PWN, both still dated December 19, 2024.

The student turned age 18 on March 6, 2025 and, on March 12, 2025, she requested the IEP team be reconvened to review and revise the IEP, as needed. On March 14, 2025, the parent sent an email to the Special Education Teacher again refusing to sign the PWN as written and sharing another list of concerns for the different draft versions of the IEP provided to the parent between January and March 2025 , all of which are dated December 19, 2024.

On March 31, 2025, the district provided a Notification of Meeting scheduling an IEP team meeting for April 10, 2025. The parent canceled this meeting on April 8, 2025 because she had filed a formal complaint with KSDE and wanted to wait for the completion of the investigation of her allegations. The Special Education Director encouraged the parent to attend this IEP team meeting to discuss another draft version of the IEP that addressed all of the concerns that had been shared with the district. A copy of this most recent draft version of the IEP and a PWN with a summary of the December, January, and April proposals, all still dated December 19, 2024, were emailed to the parent on April 10, 2025.

Conclusion

In this case, there sufficient evidence to support a finding that the current IEP dated January 17, 2024 does address the areas of need identified in the present level of performance as determined by the IEP team, which included the parent, and that the IEP does include a measurable goal which includes a timeframe, a description of the conditions, a description of the behavior, and the criterion for measuring achievement of the goal.

However, there is also sufficient evidence to support a finding that the district failed to review the IEP at least annually and to revise the IEP based on information provided by the parent at the IEP team meetings held on December 19, 2024 and January 28, 2025.

While the district made multiple and ongoing attempts to address the parent's concerns by creating the multiple versions of the IEPs and PWNs over a four-month period, the end result was very confusing as all the various versions continued to be dated December 19, 2024. It is also noted that these versions were developed by different IEP teams and included updates and referred to discussions that were not known or had not happened at the time of the original meeting date on December 19, 2024.

There are situations when it is appropriate to schedule a continuation of an IEP team meeting with the same IEP team members over a short period in order to allow for additional time to discuss all issues and allow the district to propose the final IEP and to provide the parent with appropriate PWN, if necessary. However, in this situation, the various IEPs were developed by different IEP teams and, after almost four months, the district is still proposing final IEPs and providing PWNs with the original IEP meeting date of December 19, 2024.

This situation is complicated by the parent's belief that "signing the IEP" means she agrees with the IEP and, that by refusing to sign the IEP, "stay put" provisions take effect. The IEP does not have to be signed because the IDEA only requires the IEP to include a listing of the IEP team

members who attended the IEP team meeting, their positions, and their method of attendance. Instead, parent written consent is requested through PWN and is only required for initial evaluations, reevaluations with assessment, initial services, material changes in services, and substantial changes of placement. The IDEA only requires "stay put" when a parent has filed for a due process hearing and this concept is not triggered by the parent refusing to provide written consent for a proposed action described in a PWN.

Further complicating the situation, it appears that the district misunderstood the PWN requirement for notifying the parent of proposed changes to the IEP and when parental consent must be obtained. It appears the district originally proposed changing the special education services from a direct to an indirect delivery model at the December 19, 2024 IEP team meeting which would be considered a substantial change of placement and require parental consent. However, the parent was not in agreement with this proposal and would not agree to provide consent. The parent wanted the services to remain the same until the IEP team was able to meet again to continue the discussion regarding services and the transition plan.

On January 16, 2025, the district sent the parent an updated draft of the IEP changing the services back to the original direct services delivery model and provided the parent with a PWN explaining the district was rejecting their previously proposed change to indirect services because the parents wanted to "*continue with the current IEP and meet again at the beginning of the 2nd semester after Pre-Ets (sic) and Voc-Rehab services are in place*". These two documents appear to be an accurate reflection of what was ultimately decided at the December 19, 2024 IEP team meeting and both the draft IEP and the PWN were accurately dated December 19, 2024.

The Special Education Teacher requested the parent sign the updated IEP and PWN, and on January 17, 2025, the parent refused to sign and then provided the district with a list of all the things that needed to be changed in the draft IEP dated December 19, 2024. This started the ongoing cycle of draft versions of IEPs and PWN, all of which were dated December 19, 2024, which were responding to the multiple lists of concerns from the parent. However, in looking at the IEP and PWN provided to the parent on January 16, 2025, there was no need to obtain written parent consent as the district was proposing nothing that changed from the student's previous IEP.

The documents resulting from the subsequent January 28, 2025 IEP team meeting held with a different group of IEP team members would have then described the proposed changes resulting from the review and discussion of the parents' January 17, 2025 written concerns. In this way, each subsequent IEP team meeting and the resulting decisions could have been more accurately shared with all parties and avoided the confusion which was caused by the constant stream of updated IEPs and PWN, all of which were dated December 19, 2024.

Based on the foregoing, the district is found to be ***OUT of compliance*** with the requirements to review the IEP periodically, but at least annually, and to revise the IEP as appropriate to include information shared by the parent and to address the student's anticipated needs because the

IEP has not been reviewed and revised, as needed, for more than 16 months. In addition, the district also failed to provide the parent with appropriate PWN for any proposed changes in the IEP because all PWNs are inaccurately dated December 19, 2024 and contain information which was not discussed or was unavailable as of December 19, 2024.

Issue Four

USD #322, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop and implement an IEP with appropriate transition services, specifically by failing to conduct appropriate transition assessments, failing to involve external agencies in transition planning with parent consent, and failing to create and appropriate course of study aligned with the student's post-secondary goals during the past 12 months.

Applicable Law

Federal regulations at 34 C.F.R. 300.320(a)(2) require that , beginning not later than the first IEP to be in effect when the student turns 16 and updated annually, school districts must develop IEPs that include 1) appropriate measurable post-secondary goals based on age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, and 2) transition services, including a course of study, needed to assist the student in reaching those goals.

However, Kansas statutes at K.S.A. 72-3429(c)(8)) require this transition planning to begin at the age 14. In addition, at age 16, these Kansas statutes require a statement of needed transition services for the student, including, when appropriate, a statement of the interagency responsibilities or any needed linkages.

Federal regulations at 34 C.F.R. 300.322(b)(ii) require that the school district notify the parent of any agency that will be invited to send a representative when the purpose of the IEP team meeting is to consider the post-secondary goals and transition services for the student.

Analysis: Findings of Fact

The findings of Issues One, Two, and Three are incorporated herein by reference. This allegation will be investigated looking at both the last agreed upon IEP as well as the process for reviewing and revising that IEP, as necessary, to develop an appropriate post-secondary transition plan for the student.

The student was 16 years of age when the January 17, 2024 IEP was developed. This IEP documents that two transition assessments were administered to the student and the results considered in the development of the transition plan. Charting Your Life Course and Xello are both programs designed to allow students to assess and explore interests and strengths for potential vocational paths. Xello is used district-wide to develop each student's Individual Plan

of Study (IPS) and the Charting Your Life Course is used by students in the special education program for obtaining data to assist IEP teams in developing post-secondary transition plans.

Summarized results of these two assessments noted the student enjoys drawing and prefers to work in a quiet environment. She wants to have a professional career, live on her own, and care for her own needs. She has a Creator/Artistic and Helper/Social personality style and her preferred Career Clusters fall in the Arts, Communications, Law, Public Safety, and Audio/Visual Technology. The student prefers to make her own decisions and identified that continuing to work on her mental health is important for her to be able to meet her life goals.

This IEP also includes post-secondary goals for the student. The goal in Education/Training is "*After finishing high school, I will pursue education / training in the following areas: college in the area of counseling". The goal for Employment is "After completing high school, I will work in the following job/profession: Counselor in the area of Art Therapy*". No goal was identified for Independent living skills because "*The student has adequate skills in this area*". The current IEP identifies the annual measurable goal addressing the social/emotional skills of self-regulation as being related to the student's post-secondary outcomes.

The anticipated course of study states the student will earn her high school diploma by earning credits based on Kansas graduation requirements and that the student is currently on course to graduate in May 2025. Art, music and band are shown as elective classes the student will take based on her post-secondary goals and preferences.

The IEP notes the student was initially referred to Vocational Rehabilitation at age 15 on March 25, 2022 by the Olathe Public Schools when she was initially determined eligible for special education services. The IEP team did not identify any agency collaborations as necessary for grades 9, 10, and 11. The IEP team determined the student did not require any additional transition services in instruction, employment, adult living and post school objectives, related services, community experience, functional vocational assessment or daily living beyond what was being provided through the general education curriculum.

As noted in Issue Three, noncompliance was identified for the district in regards to reviewing and revising the student's IEP at least annually. This delay has impacted the development of an appropriate post-secondary transition plan for the student for at least five months to date. However, interviews and documentation show the district was able to collaborate with the Pre-ETS program to provide some pre-employment transition services during the second semester of the student's 12th grade school year prior to the anticipated graduation date.

Notifications of Meetings provided to the parent and student dated November 26, 2024, January 13, 2025 and January 22, 2025 all contain the following statement, "If necessary, and with your consent, staff from other agencies that may be able to provide appropriate transition services/linkages will be invited to our meeting. The agencies they represent are shown below: Voc-Rehab, Pre-ETS". The documentation shows the parent signed these Notifications of Meetings.

In an email dated January 17, 2025 explaining why she refused to sign the proposed IEP resulting from the December 19, 2024 IEP team meeting, the parent stated, "*During the last meeting the majority of time was focused on the lack of transition services up to this point and the unjust ramifications of it*".

During the January 28, 2025 IEP team meeting, the IEP team included multiple representatives from the Pre-ETS program as well as the Supervisor of Permanency at KVC Kansas. Notes of this meeting written by the Director of Special Education stated, "*The student described everything she is planning to do, and speaks very well on her own, has a plan, and doesn't seem to need additional support*".

The student reported that she had decided to change her post-secondary goals and now wanted to "take a gap year" to get a job and find a place to live prior to studying for a career in the culinary field. The notes reflect discussions related to obtaining necessary personal documents including a social security card and birth certificate for obtaining a driver's license, applying for a job, getting a bank account, etc. Information about the plan for services being provided through the foster care program through KVC Kansas prior to the student "aging out of the system" was also shared. It was also noted that another referral for Vocational Rehabilitation was being made.

The district provided the parent with a draft IEP and PWN following this meeting which the parent refused to sign because she believed the transition plan was inadequate. As noted previously, this started the cycle of draft IEPs being created in response to lists of concerns provided by the parent followed by the parent refusing to provide consent for the proposed changes in the transition plan.

Conclusion

In this case, there is sufficient evidence to support a finding that the current IEP dated January 17, 2024 does include an appropriate transition plan as determined by the IEP team, which included the parent. It is noted that the investigator will not second guess the content of the decisions made by the IEP team.

There is also evidence that the district did invite external agencies to the student's IEP meetings held during the 2024-25 school year with parent consent. In addition, the student received transition assessments both in the general education and special education setting through the use of Xello and Charting Your Life Course.

However, as noted in Issue Three, noncompliance was identified for the district reviewing and revising the student's IEP at least annually. This delay has impacted the development of an appropriate post-secondary transition plan for the student and the district is found to be ***OUT of compliance*** with 34 C.F.R. 300.320(a)(2).

Issue Five

USD #322, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the appropriate procedures to conduct the required three-year reevaluation of the student during the 2024-25 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.303(b)(2) require public agencies to conduct a reevaluation of the student at least once every three years unless the parent and the public agency agree that a reevaluation is unnecessary.

Federal regulations at 34 C.F.R. 300.305 require the IEP Team and other qualified professionals, as appropriate, to conduct a review of existing data with or without a meeting. Based on that review, the public agency must determine what additional data, if any, is required to 1) whether the student continues to have such a disability, and the educational needs of the child; 2) the present levels of academic achievement and related developmental needs of the child; 3) whether the student continues to need special education and related services; and 4) whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of that determination and the reasons for the determination; and the right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs. The public agency is not required to conduct the assessment unless requested to do so by the child's parents.

Analysis: Findings of Fact

Interviews and documentation show the student was initially found eligible for special education and related services on March 24, 2022.

On December 10, 2024, the Special Education Teacher made the parent aware of the upcoming reevaluation and possible options. The email stated:

> *Our school psychologist is asking me about dismissing the student from services because she is doing so well. She is turning 18 soon and graduating in May. I wanted to give you a heads-up for when he contacts you. My thoughts: She is doing very well in school. However, because she is aging out of the system and has and IEP, more services may be available for her. I am trying to research this to get you more information.*

On December 13, 2024, the Special Education Teacher sent an email to the general education staff gathering current information about the student's school performance in preparation for the December 19, 2024 IEP team meeting. However, the triennial reevaluation of the student was not discussed at this IEP team meeting.

As noted previously, the December 19, 2024 IEP meeting was continued at the January 28, 2025 IEP team meeting. The School Psychologist informed the IEP team of the need to conduct the triennial review and asked if they wanted to wait until closer to the student's 18th birthday or proceed at this time. The IEP team did not have a preference but all agreed that the student continued to be eligible for special education services.

On March 12, 2025, the student notified the district that she had given POA to her parent in an email written to the Special Education Teacher. However, the district reported a copy of the POA was not received in USD #322 until March 14, 2025.

The School Psychologist and Special Education Teacher reported they met with the student on March 13, 2025 to discuss the need for a reevaluation and to gather student input. The student refused to sign any documentation at the meeting and stated that she had given power of attorney (POA) to her parent for making educational decisions.

On March 15, 2025, the School Psychologist summarized the situation in an email to school staff as follows:

> *On 03/13/2025, I met with the student and Tracy [the Special Education Teacher] via phone to discuss the student's triennial revaluation due on 03/24/2025. I explained that she is now 18 years old and that she now has educational rights to make decisions for herself. I explained that since she wished to remain on her IEP, we could propose a reevaluation waiver since we did not need additional data to determine her eligibility for special education services and that she wished for her IEP to continue. If the student wanted additional data, I informed her we could send her consent for a reevaluation as well to address her concerns. I also informed her that since she is now her own legal educational decision-maker, we could have her sign a release of information to talk to her mother as the student expressed concerns that she wanted us to talk to her mother as well. I explained that to protect her confidentiality, that is why we proposed the release of information. Tracy [the Special Education Teacher] took notes during this meeting, had the student take a picture at the end, and share it with her mother as the student stated that she did not feel comfortable signing any documents without consulting with her mother first. Tracy and I stressed to the student that we did not want her to sign any documents that she did not feel comfortable signing and that we encouraged her to consult with her mother before she signed anything.*
>
> *On 03/14/2025, Tracy and I again attempted to meet with the student but we were not able to meet. I called the student's foster parent, to talk to the student in the evening as this was the phone number the student provided Tracy and me to contact her on as she does not*

> *have her own phone. The foster parent did not allow me to talk to the student as she said that this was stressing the student and that we should contact the student's mother to discuss the next steps. I then proceeded to call the parent and had an approximately 20-minute phone conversation with her. I explained to the parent that I was calling in reference to the student's reevaluation that I initiated talking to her about during the student's IEP meeting on 01/28/2025 via Google Meet. The mother stated that I did not make any reference to the student's reevaluation at the time of the meeting. . The parent stated that she has a Power of Attorney in place to make all decisions for the student and that was sent to the school. I told her that I apologized as I did not know this was in place as we work under the assumption that students who turn 18 years old are their own legal educational decision-makers unless we have documentation otherwise and I was not aware of this documentation.*

The parent expressed her concerns for not addressing the reevaluation until nine days prior to the due date and questioned if the district had deliberately waited until the student had reached the age of majority in order to take advantage of her "inexperience" in making such decisions. According to the parent:

> *Staff improperly compelled the student to waive the reevaluation on March 13, 2025, even if a POA had not been in place, justification to waive a reevaluation must be based on a review of existing data AND collaboration with the IEP team. Students are also members of the IEP team – not just the school. Staff instructed the student to state that she still needed services when asking for her consent. That is not collaboration.*

On March 24, 2025, the School Psychologist responded to the parent in an email explaining that he was unaware of the power of attorney paperwork and stating:

> *Now that I am aware of the POA and have documentation, I am seeking consent from you to waive the 3-year reevaluation. There is no recommendation to dismiss from special education, and there is no need for formal assessments to determine continued eligibility. The reevaluation waiver will include the information that was used to make the recommendation, and you can add any additional parent information, as it relates to the student's continued eligibility for special education. I have attached a draft copy of the reevaluation waiver for you to review. I have intentionally left the "Parent Input" section per your request to review the form and input your own parent input. Additionally, there was never any purposeful intent to delay the process timeline.*

A Re-Evaluation Not Needed Agreement Form dated March 14, 2024 includes the following parent input, "*I agree that the student continues to qualify for special education services under the ED category. I support the recommendation that a re-evaluation is not needed at this time. Please note this form was received until 3/24/25*". The parent signed consent for this action on March 27, 2025.

Conclusion

In this case, the required reevaluation should have been conducted no later than March 23, 2025. Interview and documentation show that the parent was initially made aware of the required three-year reevaluation on December 10, 2024; however, despite the two IEP Team meetings held on December 19, 2024 and January 28, 2025, a decision for how to proceed with the reevaluation was not made.

The district did not take any action on conducting the triennial review until March 13, 2025 when the Special Education Teacher and School Psychologist met with the student to discuss the reevaluation and attempted to obtain consent from the student to waive the three-year reevaluation. It is noted this meeting was only 10 days prior to the triennial due date.

The parent was not provided the opportunity to provide input in regards to the reevaluation until March 24, 2025. However, the Re-Evaluation Not Needed Agreement Form containing the parent input continued to be dated March 14, 2024 and the parent only provided written consent for this document on March 27, 2025, which is beyond the three-year timeframe.

Based on the foregoing, the district is found to be *OUT of compliance* with the requirements of federal regulations at 34 C.F.R. 300.303(b)(2) which require public agencies to follow appropriate procedures to conduct a reevaluation of the student at least once every three years unless the parent and the public agency agree that a reevaluation is unnecessary.

Issue Six

USD #322, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with the opportunity to participate in the development of the student's IEP and to provide appropriate prior written notice regarding parent requests made during IEP team meetings during the past 12 months.

Applicable Law

Federal regulations at 34 C.F.R. 300.322(a) require each public agency to 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.

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, educational placement, or the provision of FAPE to the student.

Federal regulations at 34 C.F.R. 300.503(b)(1-2) require the prior written notice to include a description of the action and an explanation of why the action is being proposed or refused.

Analysis: Findings of Fact

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

The parent expressed concerns with being provided with appropriate Notifications of Meetings throughout the past 12 months with inaccurate information and the timeliness of the notifications. However, interviews and documentation show that the parent attended every IEP team meeting held during the past 12 months either in person or virtually and thus had the opportunity to participate in the development of the student's IEP.

As noted previously, between December 2024 and March 2025, the district provided the parent with multiple versions of IEPs and accompanying PWNs, all of which were dated December 19, 2024, regardless of when they were actually created. These documents often contained information that was discussed or obtained subsequent to the December 19, 2024 IEP team meeting which was confusing and made these documents an inaccurate record or IEP team decisions. The investigator chose to look at three specific PWNs as representative samples for this issue.

As noted in Issue Three, the IEP team met on December 19, 2024 and the district proposed changing the student's special education services from direct to indirect but the parent disagreed and refused to provide consent for this change. On December 20, 2024, the Special Education Teacher sent the parent an email stating, "*I just made the changes to the IEP back to direct services. I am emailing this back to you*".

The parent was then provided with another PWN proposing "*to move from direct to indirect services for the student*" and this PWN included an explanation of the action stating, "*This action is proposed but rejected because parents want to continue with the current IEP and meet again at the beginning of the 2nd semester after Pre-ETS and Voc-Rehab services are in place*". The Special Education Teacher's email encouraged the parent to review and agree to the updated IEP and indicated, "*There are several places for signatures . . . page 15, the legal part stating what services and placement the student will receive*" which was referring to the signature page of the PWN.

On January 17, 2025, the parent provided the district with a list of specific concerns for the December 19, 2024 IEP along with a list of "*Immediate Actions Requested*" which included requests for transition assessments, independent living services, and compensatory services for lack of transition services over the past year.

The parent concerns were incorporated verbatim into the proposed IEP developed at the January 28, 2025 IEP team meeting. This IEP also included a listing of "*How these concerns will be addressed*" which described the district's actions in regards to each concern. However, despite all of this additional information and proposed changes, the parent was provided with the same PWN that was provided on December 20, 2024, which did not address the decisions regarding the parent's specific requests included in the "*Immediate Action Requested*" list or the "How these concerns will be addressed" list.

It is noted the parent and student requested an IEP team meeting in March and the district scheduled this meeting for April 10, 2025. However, the parent informed the district on April 8, 2025 that she would not participate in that scheduled IEP team meeting because the state complaint had been filed on April 3, 2025 and she requested that the meeting be cancelled. On April 9, 2025, the Director of Special Education emailed the parent stating,

> *The school team has been working on the IEP to consider the concerns you noted in your March 14, 2025 document. We are fully prepared to propose a draft IEP that addresses these concerns. Waiting for the investigation to be completed will push this out to May. We are concerned that further postponement of this meeting will result in the student not receiving the transition services we are proposing, as we need your consent for implementation. Will you reconsider attending the scheduled IEP meeting tomorrow to review our proposed IEP?*

The parent did not attend the April 10, 2025 meeting but the district did provide the parent with a copy of the draft IEP and a summary PWN, still dated December 19, 2024, which included information dated December 2024, January 2025, and April 2025.

Conclusion

The purpose of the PWN is to clearly explain to the parent what action is being proposed or rejected and the rationale for why the district made that determination. In this case, the district provided the parents with multiple PWNs between December 2024 and April 2025; however, all of these PWN are dated December 19, 2024. The various versions of these PWNs did contain information that was discussed and proposed or rejected in an effort to respond to the parent's listing of concerns dated January 17 and March 14, 2025. However, by having every PWN continue to be dated December 19, 2024, the more recent versions of the PWNs contained information that was unavailable and incongruous with the date of the document This has created a very confusing situation and has led to ongoing misunderstandings between the parent and the district.

Summary of Conclusions/Corrective Action

ISSUE ONE: No violations of federal and state regulations were found for the implementation of the student's IEP, specifically the accommodation for use of a stress pass. Therefore, no corrective action is required.

ISSUE TWO: No violations of federal and state regulations were found for the implementation of the student's IEP, specifically the special education services required to address the personal safety goal. Therefore, no corrective action is required.

ISSUE THREE: A violation of federal regulations is found in the following areas:

1) Federal regulations at 34 C.F.R. 300.320(b)(1)(i) which require school districts to review each student'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: 1) any lack of expected progress toward the annual goals and in the general education curriculum; 2) the results of any reevaluation conducted; 3) information about the child provided to, or by, the parents; 4) the child's anticipated needs; or 5) other matters. In this case, the annual review of the student's IEP should have occurred on or before January 16, 2025; however, at this time, it has been almost 16 months since the annual IEP was reviewed and revised, as necessary. Please note that the violations related to 34 C.F.R. 300.503(a) will be addressed under the Correction Actions ordered under Issue Six, which also relates to PWN.

a) Corrective Action Required

i) Within 10 days of this report, both USD #322 and HSEC shall provide an assurance statement that it will comply with federal regulations at 34 C.F.R. 300.320(b)(1)(i) to Special Education and Title Services (SETS) at KSDE

ii) Prior to the beginning of the 2025-26 school year, HSEC shall contact TASN and arrange for training for all special education staff working with USD #322 regarding the procedures for the development of an IEP and then providing the parent with a copy of the IEP in a timely manner following the IEP team meeting. HSEC shall provide SETS with the date of the training, the names/positions of the staff who were trained, and a copy of the presentation handouts or slides within 10 days of the date of the training.

iii) No individual corrective action is required at this point as the student has met the graduation requirements and no longer requires an IEP to access the general education curriculum. Compensatory services resulting in the delay in developing the annual IEP will be addressed through the corrective action required for Issue Four.

ISSUE FOUR: A violation of federal regulations is found in the following area:

2) Federal regulations at 34 C.F.R. 300.320(a)(2) which require that , beginning not later than the first IEP to be in effect when the student turns 16 and updated annually, school districts must develop IEPs that include 1) appropriate measurable post-secondary goals based on age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, and 2) transition services, including a course of study, needed to assist the student in reaching those goals and Kansas statutes at K.S.A. 72-3429(c)(8) which require a statement of needed transition services for the student, including, when appropriate, a statement of the interagency responsibilities or any needed linkages.

a) Corrective Action Required

i) Within 10 days of this report, both USD #322 and HSEC shall provide an assurance statement that it will comply with federal regulations at 34 C.F.R. 300.320(a)(2) and K.S.A. 72-3429(c)(8) to Special Education and Title Services (SETS) at KSDE .

ii) Prior to August 1, 2025, HSEC shall collaborate with representatives of Pre-ETS and Vocational Rehabilitation to review policies, procedures, and practices for the development of post-secondary plans for students with IEPs. A summary of findings and any recommended changes in procedures shall be sent to SETS along with a plan for sharing any necessary changes with staff prior to the first day of the 2025-26 school year.

iii) Prior to the beginning of the 2025-26 school year, HSEC shall contact TASN and arrange for training for all special education staff working with USD #322 regarding the procedures for the development of a post-secondary transition plan. HSEC shall provide SETS with the date of the training, the names/positions of the staff who were trained, and a copy of the presentation handouts or slides within 10 days of the date of the training.

iv) No later than July 31, 2025, the district will convene an interagency team consisting of representatives of Pre-ETS, Vocational Rehabilitation, the Center for Independent Living, and TASN along with the parent, the student, the foster parent, and the Supervisor of Permanency at KVC Kansas to develop a plan to transition the student to agencies and resources who will be providing adult services to the student in the areas of education/training, employment, and independent living. The district will provide the parent, the student, and SETS with a summary of this meeting including a detailed listing of the transition linkages and contact information.

ISSUE FIVE: A violation of federal regulations is found in the following area:

3) Federal regulations at 34 C.F.R. 300.303(b)(2) which require public agencies to follow appropriate procedures to conduct a reevaluation of the student at least once every three years unless the parent and the public agency agree that a reevaluation is unnecessary. In this case, the triennial review should have occurred on or before March 23, 2025. In addition, the review of existing data was conducted over a three month period of time which caused confusion for the parent and student and would not have allowed time to conduct a reevaluation with assessment, if one had been needed for this student.

a) Corrective Action Required

i) Within 10 days of this report, both USD #322 and HSEC shall provide an assurance statement that it will comply with federal regulations at 34 C.F.R. 300.303(b)(2) to SETS at KSDE

ii) Prior to the beginning of the 2025-26 school year, HSEC shall contact TASN and arrange for training for all special education staff working with USD #322 regarding the procedures for conducting a reevaluation, specifically the review of existing data and the timeline to meet the triennial due date. HSEC shall provide SETS with the date of the training, the names/positions of the staff who were trained, and a copy of the presentation handouts or slides within 10 days of the date of the training.

iii) No individual corrective action is required at this point as the parent was in agreement that a reevaluation was not necessary at this time to determine continued eligibility, the need for continued special education services, and the educational needs of the student.

ISSUE SIX: A violation of federal regulations is found in the following area:

4) Federal regulations at 34 C.F.R. 300.503(b)(1-2) which require the prior written notice to include a description of the action and an explanation of why the action is being proposed or refused. In this case, the district provided the parent with multiple PWN over a period of approximately four months but dated each PWN as December 19, 2024. This created confusion and misunderstandings as the various versions of these PWN contained information which was not discussed or was unavailable as of December 19, 2024.

a) Corrective Action Required

i) Within 10 days of this report, both USD #322 and HSEC shall provide an assurance statement that it will comply with federal regulations at 34 C.F.R. 300.503(b)(1-2) to SETS at KSDE.

ii) Prior to the beginning of the 2025-26 school year, HSEC shall contact TASN and arrange for training for all special education staff working with USD #322 regarding the provision of appropriate PWN, specifically the content requirements and when parental consent is required. HSEC shall provide SETS with the date of the training, the names/positions of the staff who were trained, and a copy of the presentation handouts or slides within 10 days of the date of the training.

iii) Within 10 days of this report, the district will provide SETS with a copy of the PWN provided to the parent and the student proposing a material change of services and a substantial change of placement due to the student meeting the requirements to earn her high school diploma. The PWN will include the correct content, be provided in a timely manner, and document that written consent from the parent was obtained prior to graduation from high school on May 17, 2025.

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.gov 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. 322
Onaga Public Schools: 25FC322-001

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on April 3, 2025, by ---------, on behalf of her child, ---------. In the remainder of this decision, --------- will be referred to as "the complainant," and --------- will be referred to as "the student." An investigation of the complaint was undertaken by a complaint investigator on behalf of the Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, a Complaint Report, addressing the allegations, was issued on April 3, 2025. That Complaint Report concluded that there were violations of special education statutes and regulations

Thereafter, both the school district and the parent filed an appeal of the Complaint Report. Upon receipt of the appeals, an Appeal Committee was appointed and it reviewed the original complaint, the Complaint Report, the district's notice of appeal, the parent's notice of appeal, the district's response to the parent's appeal and the parent's response to the district's appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

Preliminary Matters

A copy of the regulation regarding the filing of an appeal [K.A.R. 91-40-51(f)] was attached to the Complaint Report. That regulation states, in part, that: "Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect." Accordingly, the burden for supplying a sufficient basis for appeal is on the party submitting the appeal. When a party submits an appeal and makes statements in the notice of appeal without support, the Committee does not attempt to locate the missing support.

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

Discussion of Issues on Appeal

From Complainant

The district appeals the decision in Issues 3, 4 and 6. The parent appeals the decision in Issues 1 and 4, and additional fact findings.

The Appeal Committee first addresses the district's appeal.

District's Appeal of Issues 3, 4 and 6

Issue Three

> USD #322, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop measurable goals and benchmarks to address the areas of need identified in the present level of performance in the student's IEP during the past 12 months.

The investigator concluded that the district did "include a measurable goal which includes a timeframe, a description of the conditions, a description of the behavior, and the criterion for measuring achievement of the goal (Report, p. 15). In her conclusion on this issue, the investigator added:

However, there is also sufficient evidence to support a finding that the district failed to review the IEP at least annually and to revise the IEP based on information provided by the parent at the IEP team meetings held on December 19, 2024 and January 28, 2025. (Report, p. 16)

It is this additional conclusion that the district appeals.

The district's appeal summarizes the following from pertinent findings in the report:

1. The student's functioning IEP was developed on January 17, 2024 (Report, p. 12)
2. An annual IEP review meeting was held on December 19, 2024 (Report, p. 7)
3. At the December 19, 2024 IEP meeting, the district gave the parent a Prior Written Notice (PWN) proposing to change services from direct to indirect services (Report, p. 13, 17, 27 and 28).
4. The parent refused to give the necessary consent to make the proposed change from direct to indirect services (Report, p. 13, 16, 27 and 28).
5. On January 16, 2025, the Special Education Teacher then provided the parent with another copy of the PWN, still dated December 19, 2024, which now stated, "This action [changing from direct services to indirect services] is proposed but rejected because parents want to continue with the current IEP and meet again at the beginning of the 2nd semester after Pre-Ets (sic) and Voc-Rehab services are in place". (Report, p. 13, 28)
6. In the January 16, 2025 email, the Special Education Teacher stated, "*As I look at the calendar and the IEP, I notice that we will be out of compliance if we cannot meet on or before the 17th. In order to stay in compliance, I need your signature on the IEP I fixed after our last meeting using that date. I can create a new IEP when we meet again*". (Report, p. 14).

7. On January 17, 2025, the parent refused explaining that,
"*In terms of your request for me to sign the IEP, I understand the need for compliance deadlines, however, the proposed plan does not include the required transition plan or services. Signing the IEP is an indication that we agree with it, which does not reflect our position. As we plan to meet to address the concerns, we are choosing to exercise the "stay put" provision of IDEA to maintain the student's previous IEP until a new one is developed by the team that includes a transition plan and services*" (Report, p. 14).
8. On January 28, 2025, the IEP team met again(Report, p. 14). The parent again refused to sign the PWN and, subsequently, the Special Education Teacher and the parent exchanged multiple emails during February and March 2025, trying to come to an agreement on what needed to be changed in the draft version of the IEP and PWN. On March 6, 2025, the Special Education Teacher provided the parent with another copy of an IEP and a PWN, both still dated December 19, 2024. The student turned age 18 on March 6, 2025 and, on March 12, 2025, she requested the IEP team be reconvened to review and revise the IEP, as needed. On March 14, 2025, the parent sent an email to the Special Education Teacher again refusing to sign the PWN as written and sharing another list of concerns for the different draft versions of the IEP provided to the parent between January and March 2025 , all of which are dated December 19, 2024. Another IEP meeting was scheduled for April 10, 2025, but did not take place because the parent canceled the meeting on April 8, 2025. (Report, p. 15).

On page 17 of the report, the investigator says:

> *The Special Education Teacher requested the parent sign the updated IEP and PWN, and on January 17, 2025, the parent refused to sign and then provided the district with a list of all the things that needed to be changed in the draft IEP dated December 19, 2024. This started the ongoing cycle of draft versions of IEPs and PWN, all of which were dated December 19, 2024, which were responding to the multiple lists of concerns from the parent.* ***However, in looking at the IEP and PWN provided to the parent on January 16, 2025, there was no need to obtain written parent consent as the district was proposing nothing that changed from the student's previous IEP*** *(emphasis added).*

The district's appeal asserts that an IEP review that starts within the annual review date is a timely review even when the review continues after the annual review date. The district's appeal goes on to say that the time is extended "UNTIL we obtain consent from the parent."

Neither the statute nor regulation directly addresses this question of whether the annual review requirement means the district must "start" the annual IEP review within one year of the date it completed its last review or whether it must "complete" the annual review within that timeline. Accordingly, we must look to the courts for guidance. The highest court to consider this question is the United States Circuit Court of Appeals in the 9th Circuit. In Doug C. V. State of Hawaii, 61 IDELR 91 (9th Cir. 2013), the court was faced with a situation where the parent became ill and could not attend a scheduled IEP meeting. Faced with a situation where resetting the meeting would mean missing the annual IEP review date, the district elected to meet the required meeting date by conducting the meeting without the parent.

In that case, the court said, "The more difficult question is what a public agency must do when confronted with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, in this case parental participation and timely annual review of the IEP." It answered its own question stating, "When confronted with the situation of complying with one procedural requirement of the IDEA or another, we hold that the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE. In reviewing an agency's action in such a scenario, we will allow the agency reasonable latitude in making that determination." (Emphasis added).

In this circuit court case, the court ruled that the district erred when it chose to meet the annual IEP review date rather than accommodate a parent's request for continued discussion. The court said, "the Supreme Court and this court have both repeatedly stressed the vital importance of parental participation in the IEP creation process...Under the circumstances of this case, the Department's decision to prioritize strict deadline compliance over parental participation was clearly not reasonable (Emphasis added).

With this authoritative guidance, the Appeal Committee will allow the district reasonable latitude in making that same kind of determination, and finds that there was nothing unreasonable about the districts actions. This is particularly the case because this is not a case where the district negligently lost track of time and failed to even schedule a meeting on or before the annual IEP review date. The initial IEP meeting was held on December 19, 2024, almost a full month before the annual review date. Subsequent meetings were scheduled to address parent concerns, and, as noted in Finding of Fact 5 of this decision, on page 3, "On January 16, the Special Education Teacher then provided the parent with another copy of the PWN, still dated December 19, 2024, which now stated, "*This action [changing from direct services to indirect services] is proposed but rejected because parents want to continue with the current IEP and meet again at the beginning of the 2nd semester after Pre-Ets (sic) and Voc-Rehab services are in place*". (Report, p. 13, 28). This PWN issued on January 16, was within the annual review period and effectively ended any further required action by the district in conducting the annual review of this student's IEP because there was no further consent requirement that would prevent implementation of that IEP.

This PWN removed the proposal that required parent consent. Of course, that does not mean the parent agreed with the IEP that was presented, but the law does not require parent agreement with every portion of the IEP. The IEP is developed by the IEP team. The IEP team must give due consideration to the concerns of parents, but is not required to adopt everything that is proposed by parents. The evidence presented supports a finding that this IEP team carefully and fully considered the concerns of the parent, and disagreed with the parent's position that direct services were needed. In the end, the parent exercised her right to refuse to provide the necessary consent to change service delivery from direct to indirect services, and the district provided a PWN withdrawing that proposal.

The Appeal Committee acknowledges that discussions continued after the district provided the January 16, 2025, PWN described in Finding of Fact Nos. 5 & 6. Even so, those additional discussions appear to the Appeal Committee to be an attempt by the district to provide additional participation opportunities to the parent and remains within the "reasonable latitude" we owe districts on this issue.

The Appeal Committee also notes that conducting a timely annual IEP review was not an issue brought by the parent. It was added by the investigator, apparently without notice to the district. When this happens, deference is given to reasonable explanations provided by a district in an appeal, like this one. However, no deference was needed for this decision because the Appeal Committee finds that the district timely began its review of the January 17, 2024 IEP on December 19, 2024, well within the annual review date. The fact that there was disagreement among the parties that led to subsequent meetings to continue the review of the IEP does not negate the fact that this student's IEP review began well within the annual timeline and was extended in order to address continuing concerns of the parent.

For the reasons, cited above, the conclusion in the report on this issue is overturned. There is no violation of law on this issue.

Issue Four

USD #322, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop and implement an IEP with appropriate transition services, specifically by failing to conduct appropriate transition assessments, failing to involve external agencies in transition planning with parent consent, and failing to create an appropriate course of study aligned with the student's post-secondary goals during the past 12 months.

The investigator noted that the current IEP being used, dated January 17, 2024, included an appropriate transition plan, that the district did invite external agencies to the student's IEP meetings, with parent consent, and the student received transition assessments both in the general education and special education setting through the use of Xello and Charting Your Life Course (Report, p. 21) Nevertheless, the investigator found a violation, saying:

> *However, as noted in Issue Three, noncompliance was identified for the district reviewing and revising the student's IEP at least annually. This delay has impacted the development of an appropriate post-secondary transition plan for the student and the district is found to be OUT of compliance with 34 C.F.R. 300.320(a)(2).*

The district appeals this conclusion on the same basis as its appeal of Issue 3: that its review of the IEP was within the annual time period and was extended only because of continuing discussions with the parents and continuing meetings to resolve disagreements.

The Appeal Committee finds that those continuing meetings may, as the investigator noted, have resulted in "a delay in developing an appropriate post-secondary transition plan for the student," but the delay resulted from disagreements between the parent and other members of the IEP team, including disagreements that arise when a parent exercises his/her right to refuse to give consent for proposed IEPs. That refusal, by this parent, to provide consent resulted in subsequent meetings that contributed to the delay in developing this student's IEP. As we noted in the appeal of Issue 3, this is not a situation where the district failed to conduct a timely IEP review, but where an IEP team struggled over time to complete its review because of disagreements about what services were needed by the student. That struggle is consistent with the role each member of an IEP team sometimes faces when trying to develop an IEP designed to meet the unique needs of an individual student.

Unfortunately, these struggles may result in a delay of needed services, but it is part of the legal process in developing an appropriate IEP. In the circumstances presented in this complaint, the Appeal Committee finds that any delay in providing transition services to this student is the result of the IEP team operating in accordance with law (offering multiple meetings and providing multiple PWNs) and the parents exercising the rights provided to them by that same law.

The conclusion of a violation of law on this issue is reversed. There is no violation of law on this issue.

Issue Six

> USD #322, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with the opportunity to participate in the development of the student's IEP and to provide appropriate prior written notice regarding parent requests made during IEP team meetings during the past 12 months.

The Investigator found that: " interviews and documentation show that the parent attended every IEP team meeting held during the past 12 months either in person or virtually and thus had the opportunity to participate in the development of the student's IEP (Emphasis added.)" (Report, p. 27).

However, the investigator concluded that the district's PWNs failed to "clearly explain to the parent what action is being proposed or rejected and the rationale for why the district made that determination (Report, p. 28)."

The reason provided by the investigator for this conclusion is that all of these PWNs were dated December 19, 2024. The investigator said: "The various versions of these PWNs did contain information that was discussed and proposed or rejected in an effort to respond to the parent's listing of concerns dated January 17 and March 14, 2025. However, by having every PWN continue to be dated December 19, 2024, the more recent versions of the PWNs contained information that was unavailable and incongruous with the date of the document This has created a very confusing situation and has led to ongoing misunderstandings between the parent and the district (Report, p. 29)."

The Appeal Committee agrees that using the original date on subsequent PWNs is confusing to the investigator (and to this Appeal Committee), but the report cites no evidence establishing that this process confused the parent. Each PWN in the series of PWNs was in response to specific parent requests and included an explanation of why the district was making each proposal. The Appeal Committee finds no legal requirement on how PWNs are to be dated, except that they must be dated before any proposed action or refusal to act occurs. Apparently, the district wanted to keep track of the original PWN date.

As noted by the investigator, that kind of dating of subsequent documents can result in confusion, at least with regard to those conducting a review of the proceedings, including investigators, Appeal Committees, and, possibly hearing officers and judges. However, keeping the original date on a series of PWNs is not, by itself, a violation of law. The Appeal Committee finds there is insufficient evidence to support the investigator's conclusion that by using this dating method the district, "failed to clearly explain to the parent what action is being proposed or rejected and the rationale for why the district made that determination."

The conclusion that the district failed to provide the parent with "the opportunity to participate in the development of the student's IEP and to provide appropriate prior written notice regarding parent requests made during IEP team meetings during the past 12 months," is factually incorrect, and is overturned.

Clearly these parents were provided the opportunity to participate in the development of the student's IEP, and were provided appropriate prior written notice regarding requests made during IEP team meetings (despite the same date provided on each PWN).

The Parent's Appeal

The first part of the parent's appeal does not identify a particular issue being appealed. Instead, the first part of the parent's appeal contests a finding in issue 1 of the report that: "The report states that the parent and the district identified the last agreed-upon IEP as January 17, 2024." Accordingly, the Appeal Committee will treat this portion of the parent's appeal as an appeal of Issue 1, which is that the district: "failed to implement the student's IEP, specifically the accommodation to allow the use of a stress pass during the past 12 months.

The parent bases the appeal on the following assertions :

- The report states that the parent and the district identified the last agreed-upon IEP as January 17, 2024.
- That statement is incorrect because the parent did not give informed consent for the January 17, 2024 IEP.
- The last IEP for which the parent provided informed consent was developed on March 23, 2023. while the student was in a PRTF.

- The district has never provided the parent with a PWN seeking consent for a material change in services or a substantial change in placement. As such, the student has not received the special education services outlined in the IEP since 2023.

Based on the above, the parent asserts that:

> *"It is not an allegation that falls outside the one-year investigation window when the student has not received the services required by the last consented IEP. The district never issued a PWN informing us that they were reducing services by 77% or that there was a change in placement. Since the district never took those steps, the student should have continued to receive the services under the last consented plan. That is not a past violation. It is a continuing failure that persisted through every school day since. We understand that to consider the appeal, the committee must determine which IEP is in effect and how it applies to each issue in the report and the provision of FAPE.*

The Appeal Committee notes that the investigator correctly determined that a complaint investigation, such as this one has a "one-year window", but did not cite the applicable regulation. The applicable federal regulation is 34 C.F.R. 300.153(c). That federal regulation states that a special education complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by the state department of education. Accordingly, the parent may allege a violation going back to one year from the date this complaint was filed, (April 3, 2025), but no further back regardless of whether the current IEP was developed or implemented in accordance with law.

The issue presented by the parent in this appeal is within the one-year timeline. However, the Appeal Committee may only consider issues submitted in an original complaint and addressed in a complaint report. in this complaint, the allegation in Issue 1 is that the district: "failed to implement the student's IEP, specifically the accommodation to allow the use of a stress pass during the past 12 months." That issue is the limit of what is reviewable by this Committee. Because this portion of the parent's appeal raises a separate allegation (that the parent did not give informed consent for the January 17, 2024 IEP), the Appeal Committee cannot consider this issue.

Next, the parent's appeal asserts that corrective actions were inadequately addressed in the report because: "Graduation does not extinguish the district's obligation to remedy violations that occurred while the student was eligible." The Appeal Committee agrees that graduation does not extinguish the district's obligation to remedy violations that occurred while the student was eligible, but finds this has no application to this complaint for two reasons:

1. No violation of a failure to allow the use of a stress pass was substantiated that would merit a remedy; and
2. The only regulation authorizing an appeal of a complaint decision is K.A.R. 91-40-51(f), and that regulation permits appeal of only the "findings or conclusions" of a complaint report. There is no appeal process with regard to corrective actions. Corrective actions may be

removed only, as in this case, when an Appeal Committee considers an appeal and overturns a complaint report conclusion that there was a violation of law.

Next, the parent's appeal challenges the complaint investigator's conclusion that there was sufficient evidence, "to support a finding that the current IEP dated January 17, 2024 does include an appropriate transition plan as determined by the IEP team, which included the parent."

In this portion of the appeal, the parent asserts that, a claim that a service is

> *"not needed" must be supported by timely, individualized data. The district cannot rely on a blanket statement in the IEP while failing to conduct assessments to determine whether services are necessary. Doing so reverses the required process. A determination of need must be based on data gathered and reviewed by the IEP team, not made in its absence.*
>
> *Although we participated as IEP team members, our repeated concerns about independent living were disregarded, and the district failed to gather or present any data to support its determination. A team cannot make a legally sound decision without data, and parental participation does not imply agreement with an unsupported conclusion from the outset.*
>
> *The investigation findings appear to excuse that failure by citing absence in the IEP. However, services were not excluded because they were unnecessary. They were omitted because the district failed to gather the data required to make that determination.*

The Appeal Committee disagrees with the parent's assertion that the IEP team made its decision on transition services without any supporting data. On page 19 of the report, the investigator makes the following finding regarding the January 17, 2024 IEP:

> *This IEP documents that two transition assessments were administered to the student and the results considered in the development of the transition plan. Charting Your Life Course and Xello are both programs designed to allow students to assess and explore interests and strengths for potential vocational paths. Xello is used district-wide to develop each student's Individual Plan of Study (IPS) and the Charting Your Life Course is used by students in the special education program for obtaining data to assist IEP teams in developing post-secondary transition plans.*

The Appeal Committee was provided with no information with which it could assess the adequacy of the assessments the district used as transition assessments, but the parent's appeal assertion that transition services were not supported by data is contrary to the evidence provided to the investigator by the district and included in the report. The conclusion of the investigator on this issue is sustained.

The parent also appeals, by contesting the investigator's finding that::

"There is also evidence that the district did invite external agencies to the student's IEP meetings held during the 2024 – 2025 school year with parent consent."

In the appeal, the parent asserts that:

> *The investigator's finding that the district obtained parental consent for outside agency participation based on the Notice of Meeting dated November 26, 2024, is inaccurate. The Notice included the statement: "If necessary, and with your consent, staff from other agencies that may be able to provide appropriate transition services/linkages will be invited to our meeting. The agencies they represent are shown below: Voc-Rehab, Pre-ETS." This language does not constitute informed consent. It refers to a possible future action and does not provide a means for the parent to give or withhold actual permission before invitations are made.*
>
> *Consent must be obtained before inviting an outside agency to an IEP meeting. The requirements cited in the Kansas Special Education Handbook, all KSDE secondary transition training courses, the Indicator 13 checklist, the KSDE website, guidance from the Kansas Disability Rights Center, and resources from Families Together. In this case, the district invited Pre-ETS on December 13, 2024, to a December 19, 2024 meeting. The IEP meeting was 9:00 a.m. - 10:00 a.m. The district sent us the Pre-ETS authorization form after the meeting at 10:19 a.m. We did not sign and return the form until 12:02 p.m.*
>
> *A Notice of Meeting—even with a parent's signature—does not constitute consent. The district could have used its agency consent form or the one available from KSDE, but any valid consent must include authorization to disclose education records. The district's Notice of Meeting did not include that condition.*

The Appeal Committee agrees with the analysis provided by the parent. However, even relying entirely on the facts as presented by the parent in this appeal, any potential violation is only a procedural violation with no substantive effect because the parent did give consent for the outside agency participation shortly after the meeting.

Accordingly, the Appeal Committee concludes that it will not disturb the conclusion of the investigator on this issue.

Other:

On page eleven of the report, the investigator wrote, "The parent attached a "fixed" copy of the IEP moving the proposed services back to direct because the parent was concerned with this proposed change in placement."

Please note the clerical error. It should state, "The Special Education Teacher attached a "fixed" copy..." (Evidence #23), which is an important distinction.

The Appeal Committee does note that this statement in the report is a clerical error, as it was the Special Education Teacher that changed the proposed indirect IEP services back to direct services, not the parent. Accordingly, the Appeal Committee concludes that this statement in the report is error, and is removed from the report.

Finally, the parent's appeal states that:

> *The report omitted key details about the April 10, 2025 IEP meeting circumstances. As stated in the report, the district emailed the draft IEP but omitted a PWN. In addition, they never sent an invitation with a meeting link. Without access to the meeting, meaningful participation was not possible. We asked multiple times for documentation that a meeting link had been sent and did not receive a response. On April 14, 2025 the special education director responded, "Since you had canceled your attendance, you were removed from the invitation, and we did not conduct an IEP meeting." To our knowledge, an IEP meeting did not occur that day, so any reference to such in the report should be removed.*

The Appeal Committee declines the parent's request to remove this information from the report. The committee believes this information provides meaningful context to the conclusions of the investigator, and this Committee, regarding the district's on-going attempts to resolve differences and the parents participation concerns.

Conclusion

For the reasons stated herein, the conclusions in Issues 3, 4 and 6 are overruled and the corrective actions ordered in connection with these issues are rescinded. The corrective actions related to Issue 5 in the report, on page 37, remain in force.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 5th day of June, 2025.

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 #231
ON APRIL 24, 2025

DATE OF REPORT: MAY 23, 2025

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 #231, Gardner/Edgerton Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #231.

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 April 24, 2025, and the 30-day timeline ended on May 23, 2025.

Allegations

The following issue will be investigated:

Issue One: Whether USD #231, in accordance with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), implemented the Student's IEP including accommodations "such as 50% modifications" and behavior supports. K.A.R. 91-40-16(b)(3); 34 § C.F.R. 300.323.

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video conference on May 16, 2025. The following District staff were interviewed on May 20, 2025: the Case Manager, Paraprofessionals 1 and 2, the English Teacher, and the Math Teacher.

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:

District Materials:

1. District Response, 05/06/25
2. Notice of Meeting, 08/27/24
3. Student Invitation to IEP Meeting, 08/30/24
4. Individualized Education Plan, 09/13/24
5. Meeting Notes, 09/13/24
6. Prior Written Notice, 09/16/24
7. Email, re: [the Student] W1, 10/10/24
8. Email, re: Progress Report, 10/14/24-10/16/24
9. Email, re: Online School, 12/13/24
10. Email, re: [the Student], 12/15/24-12/16/24
11. Email, re: [the Student], 01/09/25
12. Email, re: [the Student] B1, 01/13/25
13. Email, re: [the Student], 01/13/25-01/14/25
14. Email, re: [the Student] Agenda, 01/17/25
15. Email, re: Today's Assignment, 01/22/25-01/27/25
16. Email, re: [the Student] seminar, 01/22/25
17. Email, re: [the Student] Next Semester, 12/06/24-01/27/25
18. Email, re: Update, 01/28/25
19. Email, re: Please Call, 02/04/25
20. Email, re: [the Student] Assignment, 02/05/25
21. Email, re: Great Job Today!, 02/06/25
22. Email, re: [the Student] Phy Sci, 03/31/25
23. Email, re: [the Student], 03/13/25-03/14/25
24. Email, re: IEP Progress Report, 03/14/25-03/23/25
25. Email, re: Following Up, 03/36/25-03/27/25
26. Email, re: [the Student's] Movie, 04/01-04/02 (no year given)
27. Email, re: IEP, 04/03/25-04/08/25
28. Email, re: [the Student], 04/04/25
29. Email, re: [the Student], 04/16/25-04/24/25
30. Email, re: [the Student], 04/21/25-04/22/25
31. Email, re: Modifications and Accommodations for [the Student], 04/24/25-04/25/25
32. [the Student] - Timeline of Concerns and Events, 01/24/25-04/24/25
33. Email, re: [the Student] Elements Quiz, 01/24/25
34. Accommodations Provided to [the Student], no date
35. Letter, re: [the Student], no date

36. Interaction Description, 04/24/25
37. Documentation of Accommodations Implemented, no date
38. Explanation of Accommodations Included in [the Student's] IEP, no date
39. Observations, 04/07/25-04/21/25
40. [The Student] Snapshot Q1 (Responses), Excel Document, 08/15/24-10/10/24
41. [The Student] Snapshot Q2 (Responses), Excel Document, 10/21/24-12/12/24
42. [The Student] Snapshot Q3 (Responses), Excel Document, 01/09/25-03/12/25
43. [The Student] Snapshot Q4 (Responses), Excel Document, 03/17/25-04/28/25

Parent Materials:

1. Request for Action, 02/04-04/24 (no year given)
2. Lack of Resolution or Accountability, 12/13/23-04/24/25
3. Homework Sheets, no date
4. [The Student]'s Agenda, 01/09/25-04/30/25
5. Dashboard Screenshots with Grades, no date

Background Information

This investigation involved a ninth grade student enrolled at the School in USD #231. The Student qualifies for special education or related services under the exceptionality of Autism per the IDEA.

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 District *Response*, the Student's accommodation of extended time to complete assignments was "1x the regular class period," which typically amounted to at least one additional day to complete their work compared to non-exceptional peers. The District explained the Student had classes on alternating days, so if other students had an assignment due by the end of the day, the Student would have two days to complete it.
2. In the District *Response*, the District indicated they had allowed the Student to turn in and receive credit for assignments past their due date, sometimes giving the Student until the end of the quarter to submit work. The District indicated they sent regular updates to the Parent regarding the Student's outstanding assignments. The District explained they had not penalized the Student for turning in late work that was recovered; however, they noted there had been problems with the Student completing the work and submitting it to the wrong place or not turning it in at all.
3. According to the District *Response*, the Student was given shortened assignments. The District provided an example that if other students had to complete 20 math problems, the Student had to complete 10. The District indicated the Student was

provided with breaks, an alternate setting, and Cloze notes. In their *Response*, the District explained the Student had a Behavioral Intervention Plan (BIP) that mirrored many of the accommodations in the IEP, and that it accounted for periods when adverse behavior escalated, in addition to positive reinforcement strategies to promote desired behavior.

4. The District sent the Parent a Notice of Meeting (NOM) on August 27, 2024 for a meeting to develop the Student's IEP to be held on September 13, 2024. The District sent the Student a "Student Invitation to IEP Meeting" on August 30, 2024.
5. The Student's IEP, dated September 13, 2024, indicated:
    a. The Student required a BIP.
    b. The Student had diagnoses of asthma, Autism Spectrum Disorder, and Attention-Deficity/Hyperactivity Disorder (ADHD).
    c. The Parents were concerned the Student's workload at school was too overwhelming.
    d. The Student's difficulty with text comprehension impacted their ability to gain information and access the general education curriculum. The Student's deficits in math fluency and multi-step problem solving impacted their ability to perform grade level mathematics. The Student's difficulties with written expression impacted their ability to demonstrate understanding.
    e. Due to their Autism diagnosis, the Student could become emotionally dysregulated, which impacted their ability to participate in classroom activities.
    f. Three measurable annual goals (with progress monitored quarterly):
        i. By the end of the IEP, when presented with an unfamiliar 8th grade passage, the Student will answer comprehension with 80% accuracy;
        ii. By the end of of the IEP, when presented with two-step algebraic equations, the Student will answer 20% of all presented problems; and
        iii. By the end of the IEP, when given a directive for a non-preferred activity, the Student will be able to comply with the directive at 100% accuracy after one prompt.
    g. A summary of services:
        i. Special Education Direct Services outside of the Regular Classroom for 42 minutes a day, five days a week, for the duration of the IEP; and
        ii. Special Education Direct Services within the Regular Classroom for 170 minutes a day, five days a week, for the duration of the IEP.
    h. Accommodations/Modifications/Supplementary Aids and Services in the general education classroom for the duration of the IEP:
        i. Extended time (1x the regular class period);
        ii. Shortened assignments (assignments reduced by 50%);
        iii. Frequent breaks (daily as needed);

iv. Alternate setting (daily as needed); and

v. Cloze notes (when note-taking is required).

i. A Functional Behavior Assessment (FBA) was completed on December 6, 2023 and indicated:

i. When the Student was frustrated and/or wanted to avoid a task presented to them, they would display the following behaviors:

1. Use of disrespectful tone when speaking to adults, put their head on their desk and close their eyes, fall asleep at their desk, verbally refuse to work, complain of ailments, ask to go to the bathroom, speak off-topic, and attempt to start a conversation or argue with the adult working with them.

ii. A Reactive Plan:

2. Breaks/calm down room, 10-minute breaks in the special education classroom, staff will start the timer and remain with the Student, staff will not give the Student academic expectations, and the Student will return to the general education classroom after a 10-minute break.

6. Meeting Notes dated September 13, 2024 indicated the Parent had concerns the Student did not know what assignments needed to be submitted. The Case Manager explained that in the Student's red folder, there should be ongoing assignments that were due. Notes indicated the IEP team would collaborate on a new way of organizing materials to help the Student.

7. A Prior Written Notice (PWN) dated September 16, 2024 and signed by the Parent on September 18, 2024, indicated the IEP team met on September 13, 2024 and decided:

a. The Student would receive special education services outside of the general education classroom for 85 minutes, for five days, every two weeks.

b. The Student would receive special education services inside the regular education setting for 340 minutes, for five days, every two weeks, in English, Math, Science, and Social Studies.

c. The Student would have access to a District tablet during instructional time, and their personal tablet during breaks.

d. The Student would be on a shortened day from 8 a.m. to 1:30 p.m.

8. In an email dated October 10, 2024 to the Case Manager, Paraprofessional 1 wrote, "[The teacher] said [the Student] doesn't have to do the slides, but at least answer the questions for [the Student's] population project."

9. On October 14, 2024, the Case Manager emailed the Student's first quarter IEP Progress Report to the Parent.

10. In an email to the Case Manager dated December 15, 2024, the Parent wrote, "However, there seems to be some confusion on [the Student's] part about which

assignments are meant for math and which are for science. To ensure everything is submitted to the correct teacher, could we double-check that all the completed work reaches its intended destination? While I understand this is ultimately [the Student's] responsibility, a little guidance would help clarify things for [the Student]."

11. In an email to the Case Manager dated January 9, 2025, Paraprofessional 1 wrote, "What does [the Student's] IEP stipulate about note taking? … I asked [the Student] which method [they] preferred, and … [the Student] would like to type[,] especially since there are no cloze notes." The Case Manager replied and stated the Student's IEP included an accommodation for cloze notes.
12. In an email to the Attendance Secretary dated January 13, 2025, the Case Manager indicated the Student was in their room because they were having a rough morning. That day, Paraprofessional 2 emailed the Case Manager and indicated the Student was struggling and they gave the Student a ten-minute break.
13. An email exchange between the Parent and the Case Manager between January 13-14, 2025 indicated:
    a. The Parent shared that the Student felt overwhelmed and stressed during science class, had physical symptoms, and the Student indicated they were not allowed to leave the classroom for a break.
    b. The Case Manager said, "We were not aware of the physical symptoms that [the Student] was experiencing until I spoke with you on the phone. We were trying to balance breaks with work/class time … . [The Student] had over an hour break leading up to science, so [the teacher] was encouraging [the Student] to try to get through the note-taking portion at the beginning of class, and then take a break. We were trying to problem solve with [the Student] … but [the Student] … didn't communicate [their] symptoms with us."
14. On January 17, 2025, the Case Manager shared the Student's current agenda and assignments to be completed with the Parent.
15. An email from the Case Manager to the Parent, dated January 22, 2025, stated in part that for a Career and Life Planning Project, "… the class originally brainstormed 20 goals, then selected 4 for their board. [The Student] may list 10 goals, then feature 4 on [their] vision board."
16. In an email to the Case Manager, dated January 22, 2025, Paraprofessional 1 indicated they gave the Student a brief break when the Student became frustrated after answering three questions.
17. During an email exchange on January 24, 2025, the Case Manager asked the Physical Science Teacher for the Student to have multiple choice questions or a word bank on an upcoming quiz. The Physical Science Teacher replied and stated they already had a modified multiple choice quiz ready.
18. The Case Manager emailed the Parent on January 28, 2025 and said in part, "[The Student] started on the day on task … . [The Student] was told that [they] could take a break, and then needed to work on Science. When break was over, [the Student]

refused to work, would ignore us when we asked questions, and then was disrespectful."

19. On February 4, 2025, the Parent emailed the Case Manager and asked for a meeting to discuss the Student's behavior at school.
20. On February 5, 2024, the Case Manager emailed the Parent a Google document of the Student's science assignment so they could complete it on their tablet.
21. The Case Manager emailed the Parent on February 6, 2025 and indicated they gave the Student a break after working for an hour. They explained when the Student returned from their break, they continued working and finished a test.
22. In an email dated March 13, 2025 to the Case Manager, the Parent said in part, "… I realize that [the Student] has completed many of [their] tasks, but … struggles with the final step of uploading and submitting them online. … Could we explore ways to ensure [the Student] is receiving the assistance needed to submit these assignments?"
    a. The Case Manager replied the next day and inquired if there could be a folder designated for completed work.
    b. The Parent replied and explained the Student had a white polka-dotted folder with each section labeled for the Student's classes, indicating whether the work was to be turned in or to be worked on in class or during free time.
23. An email exchange between the Case Manager and the Parent indicated:
    a. March 14, 2025: The Case Manager sent the Student's IEP Progress report for the quarter to the Parent.
    b. March 14, 2025: The Parent expressed concern about the report, and believed it was incomplete and missing data.
    c. March 23, 2025: The Case Manager explained data was not collected on every academic goal every day.
24. During an email exchange between the Parent and the Case Manager on March 26, 2025, a meeting was scheduled for April 1, 2025 to address the Parent's concerns.
25. An email dated March 31, 2025 from Paraprofessional 1 indicated the Student only had to do the "odd" problems on two physical science assignments.
26. In an email dated April 1 [no year], the English Teacher offered an alternate film assignment for the Student to complete and explained how the Student could complete an adjusted form of it to adhere to their IEP accommodations.
27. An email exchange between the Case Manager and the Parent indicated:
    a. April 4, 2025: The Parent indicated an accommodation sheet was not transferred with the Student's current IEP, and that they did not agree to remove the accommodation sheet.
    b. April 7, 2025: The Case Manager explained that when the new IEP went into effect, it replaced the previous IEP, but that they could do an amendment to add or make changes to the current accommodations.

c. April 7, 2025: The Special Services Coordinator indicated the only accommodation that was removed was the contingency map.

28. On April 4, 2025, the Physical Science Teacher emailed the Case Manager and Paraprofessional 1 and said, "[The Student] still did not finish [their] test, so [they'll] need to finish during Tuesday's seminar. I will grade what [the Student has] completed so far … . I cannot give [the Student] time beyond then because that will be going over [their] accommodated time allotment. … to follow [the Student's] accommodations exactly, [the Student] does get 20 more minutes, so I told [the Student] [they] need to finish it in either Monday or Tuesday's seminar."

29. On April 16, 2025, the Parent emailed the IEP team and said in part, "I also have observed that most of [the Student's] school work has not been modified throughout the year, except for the beginning when [the Student] would alternate between odd and even numbers on some assignments. Some classes have adhered to the guidelines for consistent modification, while others have not." The Parent also requested a meeting.

a. The Associate Principal replied the next day and asked the Parent to share more about which teachers or classes were not following the Student's accommodations.

b. The Parent replied on April 22, 2025 and indicated they had photos of the Student's science assignments that had not been modified, per their IEP. The Parent requested an accommodation be added to the Student's IEP.

c. On April 22, 2025, the Special Services Coordinator indicated the Student's IEP had an accommodation for a 50% reduction in assignments, but that they could discuss what they actually looked like during their next meeting.

30. On April 21, 2025, the Parent sent an email to the Case Manager regarding assignments the Student had completed. One was a math assignment with 15 questions, and the Student was assigned eight questions.

31. In an email to the Case Manager, dated April 24, 2025, and a secondary written statement, the Physical Science Teacher indicated they had used the following accommodations for the Student:

a. Cloze notes.

b. Alternate settings for quizzes and tests.

i. The Physical Science Teacher indicated the Student did not utilize this accommodation often.

c. Extended time on assignments, quizzes, tests, and makeup work.

d. Assignments reduced by 50%.

i. The Physical Science Teacher explained that either they or Paraprofessional 1 crossed out half of the questions on any assignment given in class or for homework. They indicated the Student was instructed they could choose to complete the bottom half or top half of any assignment, or only odd- or even-numbered questions.

e. Modified quizzes and tests.

32. An undated document titled "[the Student] – Timeline of Concerns and Events (Jan-March 2025)" indicated:
    a. An IEP meeting was held February 7 (no year).
    b. A red folder was used for assignments that were done and needed to be turned in.
33. An undated written statement from the English Teacher explained they ensured the Student completed 50% of their work, per the IEP. They indicated they also accepted the Student's late assignments. The English Teacher shared they graded the Student's work at 50% less than their peers, and also offered an alternative assignment when the Student did not complete their film. The English Teacher explained they had the Student take tests and exams with fewer multiple choice answers. They indicated they also met with the Case Manager weekly to discuss a plan for the Student.
34. An undated written statement from the Physical Science Teacher described an interaction with the Student. They indicated the Student turned in three missing assignments, for which they received full credit. The Physical Science Teacher explained when they observed the Student becoming agitated, they suggested the Student go outside, take some deep breaths, and walk around the hall in order to calm down. They indicated the Student had a negative response to the suggestion. The Physical Science Teacher indicated Paraprofessional 1 witnessed the incident.
35. An undated written statement from the Math Teacher indicated they implemented the Student's IEP by:
    a. Giving the Student's paraeducator discretion in reducing the Student's assignments by 50%. The Math Teacher observed several of the problems were crossed out.
    b. The Math Teacher modified the Student's assignments by:
        i. Having the Student complete only the first column of problems;
        ii. Instructing the Student to skip the back of the worksheet, which they wrote on the homework assignments; and
        iii. Modifying quizzes and tests.
    c. Maintaining daily contact with the Case Manager.
36. An undated written statement from the Math Teacher said, "When [the Student] becomes frustrated or disengaged, [the Student] frequently resumes use of [their] personal tablet to draw. … I generally allow a few minutes of drawing time to help [them] self-regulate, then prompt [them] to put the tablet away and reengage with the lesson or begin homework. The transition back to task is often slow and requires repeated prompts.

37. An observation of the Student in PowerTeacher Pro, dated April 7, 2025, indicated the Student completed half an activity, stopped, and took a ten-minute break. It was decided that the work completed would suffice to demonstrate understanding.
38. In their materials, the Parent indicated on April 4 (no year), the Student sent them a picture of a science test that they did not perceive as altered. The Parent told the Student it had not been altered, and to complete half of the test. On April 7 (no year), the Student texted the Parent and said, "...asked for a break multiple time[s]... ."
39. The Parent indicated some of the Student's assignments were not reduced by 50%, including two science assignments and an assignment to read and annotate "The Raven."
40. A document titled "Agenda for [the Student]," dated December 12, 2024, indicated:
    a. To "do the odds" for two math assignments.
    b. The Student only had to complete an introduction and a claim for an English assignment.
    c. To "do only the odds" and then "only do the circled ones" on two World Geography assignments.
    d. On three Physical Science assignments, it was noted to either do only the even, odd or circled questions.
41. An Excel document with notes about the Student's first quarter indicated:
    a. August 16, 2024: The Student was given three worksheets and sketched on the first.
    b. August 21, 2024: The Student was given a worksheet with 20 problems and they only had to complete 10 or fewer.
42. An Excel document with notes about the Student's third quarter indicated:
    a. January 28, 2025: The Student started with a break.
    b. Between March 24, 2025 and April 23, 2025, the Student took 14 documented breaks.
43. A screenshot of various homework assignments indicated:
    a. An undated science assignment with:
        i. Two rows crossed out; and
        ii. Half of question #2 crossed out.
    b. An assignment titled "Periodic Table Coloring/Game Activities," with each question answered, and no instructions regarding reduction.
        i. An Excel worksheet of the Student's Agenda showed that on April 1 (no year), there were notes the Student only had to complete the "odds only" on this assignment.
    c. An assignment titled "Groups of the Periodic Table," with all 10 questions answered, in two different types of handwriting, and no reduction instructions.

i. An Excel worksheet of the Student's Agenda showed that on April 1 (no year), there were notes Student only had to complete the "odds only."

d. An assignment titled "Unit 7 Review Sheet," with all questions answered, in two different types of handwriting, and no instructions regarding reduction.

e. An undated science assignment with all 12 questions answered, and no instructions regarding reduction.

f. Two undated, blank science assignments (ionic and covalent bonding tutorials), with no reduction instructions.

44. Screenshots of various homework assignments indicated:

a. A "Valence Electrons" assignment with the second column of questions crossed out.

b. An "Atoms vs. Ions" worksheet with the instructions "every other question" written at the top.

c. An Algebra 1 assignment with half of the questions crossed out.

d. An Algebra 1 assignment with all 10 questions answered and no instructions regarding reduction.

e. An Algebra 1 assignment with all six questions answered and no instructions regarding reduction.

45. An Excel worksheet of the Student's Agenda, from January 2025 through April 2025, indicated:

a. January 13: Two Physical Science assignments with no reduction notes.

b. January 14: Two Algebra 1 assignments with no reduction notes.

c. January 15: A Career Life Planning assignment with no reduction notes.

d. January 22: An Algebra 1 assignment with no reduction notes.

e. February 3: Notes to complete what was highlighted in red for the "My Growth Mindset" project.

f. February: 11 notes that the slides for the Growth Mindset project were in the Student's folder.

g. February 27: In the Student's Career Life Planning class, to only find three photos for one project. Then, to do a modified Career Lapbook Research Guide. There were notes to do only what was in red, and that 50% of the assignment was due on March 3 (no year).

h. April 2: To complete the "Groups of the Periodic Table" assignment, odd numbers only, on the front and back. This was modified from March 27, which did not have reduction notes.

i. April 8: "Groups of the Periodic Table" assignment, odd numbers only, on the front and back;

i. Colorized Periodic Table;

ii. Vocabulary 8; and

iii. Valence electrons (1-10 on front, 1-3 on back).

j. April 9: Algebra 1 assignments for graphing real world functions, and identifying slopes and Y-intercept (numbers 2-4 and 6-10).

k. April 21: An Algebra 1 assignment, with instructions to complete the front and back; and notes that the "Atoms vs. Ions" worksheet was put in the Student's folder.

Interview Summaries

The following findings are based on interviews with the District and the Parents and have been compiled as interview summaries.

The Parent

46. During an interview with the Complaint Investigator, the Parent indicated when the Student shuts down, the School staff has told the Student they were being disrespectful. The Parent shared the Student shutting down was a "major struggle" in the Student's science class, due to the workload. The Parent said, "… [the Student] just tends to shut down a lot because they don't really explain it to [the Student] in a way that [their] brain can comprehend it." The Parent indicated this had been communicated to the School multiple times since September 2024.

47. The Parent shared that the majority of the Student's assignments had not been reduced by 50%. They also stated the Student was supposed to have a tablet, but the Student had only started using it recently. The Parent indicated the Student had a re-evaluation done, but none of the behavioral supports that were recommended were listed in the Student's IEP.

48. The Parent described a time on January 13, 2025 when the Student asked to take a break, and was told to complete some work first. They explained the Student communicated again that they needed a break, and started to have physical symptoms. The Parent indicated the Student then asked to go to the nurse and was not allowed to do so.

49. The Parent indicated they contacted the School in December 2024 asking if the Student was up-to-date on their assignments. The Parent stated there was a list of assignments and only a couple were reduced by 50%. The Parent asked the School why the Student had so much homework if they were receiving support at school, and was told by School staff that the Student preferred to do the work at home. According to the Parent, the Student told them they did the work at home because, at school, it was not explained to them in a way they could understand.

    The Parent described a time when the Student was not understanding an assignment, and the Case Manager stated they needed a break and walked away. The Parent explained that upon returning, the Case Manager told the Student they were not going to change their teaching methods.

50. The Parent explained that when the Student brought work home, it was not indicated anywhere to only do odd or even problems. The Parent indicated they mentioned this in a meeting, and the Math Teacher stated sometimes they forgot to write those instructions for the Student. The Parent indicated that at the start of September 2024, they asked the School to reduce the Student's assignments in such a way so it did not appear overwhelming to the Student. The Parent indicated there was never an agreement with the School that the Student would automatically know they only had to complete 50% of an assignment.
51. When asked what type of work the Student was completing at home, the Parent explained most of it was homework because the Student was exempt from in-class assignments, and not given the chance to complete them. The Parent said, "… because they exempt certain assignments to make it look like [the Student] is actually accessing the curriculum and stuff like that."
52. The Parent indicated the Student's IEP had been amended a couple of times, but could not recall the dates of the amendments.
53. The Parent indicated they had a meeting with the IEP team on September 12, 2024, and were asked to sign a PWN so the Student could start shortened days. The Parent explained they were given a sheet of paper to sign that did not denote it was part of the PWN, and then that document was included with the other PWN paperwork. The Parent indicated this removed the modifications for the Student that had been added the previous school year.
54. The Parent explained that prior to September 2024, the Student had assignments they needed to complete, and the teachers indicated they would give the Student credit if the assignments were completed before the break. The Parent shared that they looked through the Student's binder and found completed assignments, and the Student told the Parent they didn't turn them in because they did not know whether they were notes or assignments.

    The Parent explained the Student had two folders for each class; a "to do" folder and a "done" folder. The Parent indicated the Student knew to take assignments out of the "done" folder and give them to the teacher. The Parent indicated the Math Teacher and the Physical Science Teacher stated the Student could scan and send in their assignments via email if they forgot to submit them.
55. The Parent stated the School provided the Student with a tablet at the beginning of the 2024-25 school year, but the Student refused to use it. The Parent indicated the School never signed the Student into Google or set it up so the Student could access the Google classroom. The Parent said, "So this whole year … [the Student] hasn't been accessing [their] curriculum because [the Student] hasn't had a school tablet to access it on until just two weeks ago when they gave it to [them] to use. The Parent stated the Student was not receiving the curriculum when they were in class.

56. The Parent said, "… when you go into a Google classroom setting … the kids open up their Chromebook and follow in. If they do a PowerPoint and the PowerPoints [sic] on the board, they have the PowerPoint in front of 'em [sic] … . And when [the Student] tells them, 'Hey, I don't know where any of this is,' they're just like, 'it's in your Google. It's on your Google classroom.' And [the Student's] like, '… I don't know how to access it. I don't know how to log in.'"

Case Manager

57. During an interview with the Complaint Investigator, the Case Manager explained they focused on specially designed instruction directed towards the Student's IEP goals, specifically reading comprehension and solving algebraic equations. The Case Manager stated the Student also received support in the general education classroom, from either themself or a paraprofessional, to help the Student with work completion and their behavioral goal of compliance. The Case Manager indicated the Student had Cloze notes to help with note-taking, and was given those in classes when note-taking was required. They indicated the Student did not always use Cloze notes. The Case Manager was unaware of any inconsistencies in implementing the Student's accommodations.

58. The Case Manager explained the Student's accommodations varied between classes. They described the Student would be given 10 math problems instead of 20, modified science assignments, and in English, as an example, to write one paragraph instead of three. The Case Manager observed the Student had several missing and incomplete assignments. The Case Manager stated the Student would often say they left their work at home or didn't know where it was. According to the Case Manager, the Parent tried to get the Student caught up at the end of third quarter, and the teachers sent the Parent the assignments. The Case Manager said, "So the original document might've had what would've been marked, do these problem[s], not that problem. But then when [the Parent] got them, [the Parent] didn't know what the original modifications were."

59. The Case Manager explained they regularly sent the Parent an agenda during the first semester and third quarter with the assignments the Student needed to finish, but often did not hear back from the Parent. They indicated the Parent communicated with them more around spring break. The Case Manager said, "And there's a pattern about every couple of months right before the quarter would hit where [the Student and the Parent] would spend a whole weekend getting everything caught up."

60. The Case Manager indicated the Student used their personal tablet during instructional time to draw or message the Parent. They observed the Student would get angry when redirected to put their personal tablet away. The Case Manager explained the Student could use their personal tablet for breaks in the special education classroom. The Case Manager stated the Student did "very little" work on their personal tablet, and that they could access schoolwork through their school-issued tablet. The Case Manager said, "We purchased the same model tablet for

[the Student] to have a school issued tablet … . We were allowing [the Student] to access Google Classroom, access the internet, access digital work using a school issue[d] tablet." The Case Manager stated the Student refused to use the school-issued tablet.

According to the Case Manager, much of the curriculum was on paper, and only a portion required a tablet or Chromebook to access. The Case Manager said, "Math, they don't use anything … digital … . It's a combination in English. [The Student's] science class is a hundred percent on paper. … [the Student's] career and life planning class is digital. But [the Student] gets paper copies of a lot of things as well. So if [the Student] were to walk into class and say, 'I don't have anything,' then the teachers would provide [them] paper copies of anything that was originally digital." The Case Manager recalled it was difficult to get the Student to use their school-issued tablet at the start of the 2024-25 school year.

61. The Case Manager indicated the Student's BIP was carried over from middle school because it seemed appropriate at the time, but they were now observing the Student exhibiting different behaviors. They described these behaviors as a refusal to work, off task behavior, and not complying with directives. They explained these behaviors were addressed by consistent prompting, restating directions, and documenting staff actions.
62. Regarding the incident on January 13, 2025, the Case Manager explained class had just started and it was time to take notes. The Student had taken a break toward the end of their previous class. The Case Manager explained when the Student mentioned a break, they were asked if they wanted to take it then and miss the notes, or if the Student thought they could wait and take a break later.
63. The Case Manager described their interactions with the Student as basic and sticking to the necessities. They observed the Student being short with them and speaking in a way that could be perceived as rude.
64. The Case Manager explained the Student had a minimum of one additional day class period to finish assignments, per the IEP. Because of the School's block scheduling, that tended to be two additional days. The Case Manager stated the Student's teachers often accepted assignments weeks after they were due. The Case Manager indicated the Student would often shove their work into their binder, and not let the Case Manager look for it.
65. When asked how the Student would know it's too late to turn in an assignment, the Case Manager said, "We would be discussing it with the teacher. … the official thing would be if it was due Monday, then it would be due Wednesday for that class."
66. The Case Manager indicated the Student's IEP had not been amended since the last review of the IEP. They explained the Parent at one point provided a list of accommodations they believed were supposed to be in the IEP. The Case Manager explained two accommodations did not transfer from the Student's previous IEP to the current one, which were a contingency map and a daily agenda sheet.

67. The Case Manager stated the Parent created the Student's folder system, but the Case Manager didn't know how it was laid out because the Student would not allow access to it. The Case Manager believed the Student had one folder for each subject that had a "to be completed" and "completed" section. They observed the Student did not put papers where they belong.

Paraprofessional 1

68. During an interview with the Complaint Investigator, Paraprofessional 1 indicated they worked with the Student during science class. They explained the Student received a lot of paperwork which, even though it was modified, sometimes overwhelmed the Student and resulted in them shutting down. Paraprofessional 1 observed the Student became more argumentative after spring break. Paraprofessional 1 indicated the Student went to an alternate setting for quizzes and tests and had extended time for assignments.

69. Paraprofessional 1 was unaware of any issues implementing the Student's accommodations. They stated the Physical Science Teacher reduced the Student's assignments by 50%. Paraprofessional 1 indicated they offered the Student breaks, but the Student often refused.

70. Paraprofessional 1 explained the Student would put papers in their folders, but when the Student returned, the papers were gone. Paraprofessional 1 indicated they could not find the assignments in the folders and the Student often said they were at home. Paraprofessional 1 explained they kept a copy of every assignment the Student had so they could track if it was complete, missing, or what had to be done. They indicated the Student sometimes believed they submitted an assignment when they had not.

71. Regarding having extended time, Paraprofessional 1 said, "… [the Student] has … one extra day, but … many of the teachers allowed [them] over a week to make up missing work … ."

Paraprofessional 2

72. During an interview with the Complaint Investigator, Paraprofessional 2 explained they tried to get the Student to do their work, but the Student often refused or acted negatively toward them. They explained they worked with the Student in the Learning Center and in English class, but the Student often put their head down or refused to engage. Paraprofessional 2 said, "[The Student] would spend all day drawing on [their] tablet. And then if somebody asked [the Student] to do schoolwork, then [they] would start messaging [the Parent] … ." They indicated there were no issues implementing the accommodations.

73. Paraprofessional 2 indicated the Student had several missing assignments because they chose not to do any schoolwork, but would sometimes submit completed assignments that were either done in the Parent's handwriting or that the Parent had typed. Paraprofessional 2 explained assignments were expected to be submitted through Google Classroom, but the Student did not do that. They

indicated the Parent would sometimes email assignments to the English Teacher. Paraprofessional 2 stated the Student had a school-issued tablet. They explained the Student would not give them finished assignments or allow them to look in their folders to see if something was completed.

74. Paraprofessional 2 explained for extended time, the Student was supposed to have 1x the amount of time as their peers, but it was usually twice that because of how classes were scheduled. Paraprofessional 2 said, "For English, we were trying to get [the Student] to work on just anything so that we could then learn how to make those 50% accommodations for [them]. But [they] would not give us anything. … any way that we could make those accommodations and help [the Student], we are willing to do."

English Teacher

75. During an interview with the Complaint Investigator, the English Teacher indicated the Student appeared to pay attention in class, but sometimes was distracted on their personal tablet or "zoned out." They observed the Student act disrespectful toward Paraprofessional 2 and sometimes refuse to work. The English Teacher described "zoned out" as staring straight ahead and not looking focused. The English Teacher described when the Student appeared upset, their legs bounced or shook, had a scrunched face, harsher breathing, putting their head down, or narrowing their eyes. The English Teacher explained they had positive interactions with the Student about 85% of time, and believed the Student had positive interactions with Paraprofessional 2 about 20% of the time.

76. The English Teacher did not have issues implementing the Student's IEP. They explained the only issue was when the Student took work home and brought it back, it appeared it had been completed by the Parent. The English Teacher explained they modified the Student's assignments. The English Teacher said, "… sometimes [the Student] doesn't even want to follow those accommodations when we give it to [them]. And then there's other things [the Student] … refuses to complete."

77. The English Teacher indicated they gave the Student extended time. They described the Student was often unable to find assignments in their folder, but the English Teacher gave them paper copies of assignments and tests. The English Teacher said, "… my policy is if you did it, I'm going to give you the grade for it, especially for [the Student] with the accommodation. … most work is online as far as turning in. So there's a lot of times [the Student will] just forget to hit submit and when it's marked as missing, I will mark that it's missing. And then as I'm going through grading on Google Classroom, I'll see [the Student] just didn't hit submit, so I'll grade it … ." The English Teacher explained they used Google Classroom to know if assignments were late."

Math Teacher

78. During an interview with the Complaint Investigator, the Math Teacher observed the Student had become less compliant and willing to work as the 2024-25 school year progressed. The Math Teacher observed that around March or April 2024, much of the Student's work had the Parent's handwriting on it. They explained the Student would usually comply with the Math Teacher's directives, but it took 2-3 prompts. They observed the Student use aggressive language with the Case Manager, but stated the Student did not use that language with them.
79. Regarding the Student's accommodations, the Math Teacher stated the Student could take assessments in an alternate setting, and they implemented the Student's accommodations of Cloze notes and extended time. They indicated students were allowed to submit assignments up until the test for a particular unit. The Math Teacher allowed the Student's previous paraprofessional to reduce the Student's work by 50%. The Math Teacher said that during the second semester, "… whatever work didn't get done in class, I'd go over to [the Student], I say, 'do these last four problems out of the eight.' Or I'd then say, 'finish the back page and that's all you have to do.'"
80. The Math Teacher explained they offered the Student breaks, and they took more breaks during the first semester than second semester.
81. The Math Teacher explained that during the first semester, the Student's previous paraprofessional would get late assignments to the Math Teacher. They indicated that during the second semester, the Student had more challenges with submitting work. They stated the Student had 6-7 assignments in their binder that they turned in and the Student received credit for. The Math Teacher indicated there was a day when they received four assignments that appeared to have been done by the Parent and turned in about eight days after the assignments were due. The Math Teacher observed the work was done by the Parent because there was a "distinct difference" in the handwriting.
82. The Math Teacher explained they had two clearly labeled baskets in their classroom where students turned in assignments. They explained there were two occasions where the Student's assignments were in the wrong basket, and the Math Teacher gave them credit for the assignments when they found them. The Math Teacher did not use Google Classroom for submitting assignments.

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #231, in accordance with state and federal regulations implementing the IDEA, implemented the Student's IEP including accommodations "such as 50% modifications" and behavior supports. K.A.R. 91-40-16(b)(3); 34 § C.F.R. 300.323.

According to K.A.R. 91-40-16(b)(3) each agency shall ensure an IEP is in effect for each exceptional child at the beginning of each school year.

The Parent alleged the District failed to implement the Student's IEP despite multiple meetings and documented concerns. According to the Parent, the Student's accommodations were not honored and there were several meetings with no resolution. The Parent alleged that staff behavior "provoked" the Student rather than supporting them.

The District stated that they implemented the Student's IEP, their accommodations, and behavior supports.

In the District Response, and corroborated through staff interviews and additional documents, it was demonstrated the Student's accommodation of extended time typically amounted to at least one additional day to complete their work, and the Student had submitted and received credit for assignments past their due date. The District sent the Parent a Notice of Meeting on August 27, 2024 for an IEP meeting on September 13, 2024. The Student's IEP (of the same date), indicated the Student required a BIP, included a summary of accommodations, and contained behavior strategies created from an FBA done in December 2023.

Meeting Notes from September 13, 2024 indicated the Parent was concerned the Student did not know what assignments to submit. The Parent explained the Student had a folder system for each class and knew how to use it; the existence of the system was corroborated by the Case Manager and Paraprofessional 1. The Case Manager and Paraprofessionals 1 and 2 indicated the Student would not let them look in their folder. A PWN from September 16, 2024, and signed by the Parent, indicated the Student would have access to a District tablet during instructional time, and their personal tablet during breaks. The Parent perceived this paperwork removed previous modifications.

The Parent emailed the Case Manager on December 15, 2024 because the Student was confused about their assignments. On January 13, 2025, Paraprofessional 2 emailed the Case Manager and indicated they gave the Student a break. During an email exchange from January 13-14, 2025, the Parent reported the Student experienced physical symptoms in science class and was denied a break. The Case Manager stated they were unaware of the symptoms, tried to balance break time with class instruction, and the Student hadn't communicated their symptoms.

The Parent emailed the Case Manager on February 4, 2025 and asked for a meeting to discuss the Student's behavior. The next day, the Case Manager emailed the Parent the Student's science assignment so they could complete it on their tablet. On March 13, 2025, the Parent explained to the Case Manager the Student's difficulty with uploading and submitting completed assignments online. The Case Manager suggested using a folder for completed work, which the Parent said already existed.

The Parent indicated on April 4 (no year), the Student sent them a picture of a science test they perceived as unaltered. In an email exchange between the Case Manager and Parent on April 4, 2025, the Parent was concerned the Student's accommodations weren't transferred to the Student's current IEP. The Special Services Coordinator explained only a contingency map and daily agenda were removed, which the Case Manager confirmed. On April 7 (no year), the Student texted the Parent saying they asked for a break multiple times, but observation notes in PowerTeacher Pro from the same day indicated the Student took a ten-minute break.

On April 16, 2025, the Parent emailed the IEP team with concerns the Student's assignments weren't being modified. A document titled "Agenda for [the Student]," dated December 12, 2024, provided instructions for the Student's reduced assignments. Documentation about the Student's first and third quarters described some of their reduced assignments, and that the Student took 14 documented breaks. The Parent believed School staff had told the Student they were being disrespectful; the Case Manager, Paraprofessional 2, and the English and Math Teachers indicated the Student had acted disrespectfully. The Parent shared the Student shut down because they didn't understand the work, which they stated was communicated to the School. The Parent stated the Student had a tablet but only started using it recently, and that none of the Student's behavioral supports were listed in their IEP; however, documentation showed behavior strategies.

The Parent indicated the Math Teacher told them they sometimes forgot to write reduction instructions for the Student, but this contradicted the Math Teacher's statements. The Parent indicated there was not an agreement with the School that the Student would automatically know they had to complete 50% of an assignment. The Parent indicated the Student's IEP had been amended, but there was no documentation of amendments.

The Parent stated the School provided the Student with a tablet at the beginning of the 2024-25 school year, but the Student refused to use it, which the Case Manager corroborated. The Parent indicated the School never gave the Student access to Google or Google Classroom, and that the Student did not have access to the curriculum, but this could not be proven with the provided evidence. The Case Manager and English Teacher stated the Student had access to paper copies in addition to anything digital. Also, evidence from interviews indicated most of the Student's work was not in a digital format.

All of the District staff who were interviewed stated they did not have issues implementing the Student's IEP. Several emails between the Case Manager, Paraprofessional 1, the Parent, and

the Student's teachers demonstrated the Student's accommodations were implemented. Written statements from the Physical Science Teacher, the Math Teacher, and the English Teacher described how the Student's accommodations were implemented. Screenshots of assignments showed five with no reduction instructions, four that did, and two which did not; however, the last two had reduction instructions on the Student's Agenda. The agenda, ranging from January 2025 through April 2025, showed four assignments without reduction instructions, and eight assignments which had been modified.

While some assignments in the Parent's materials did not appear to be modified, this was only a small portion of assignments, and a sufficient determination could not be made based solely on that evidence that there was a pattern of consistent failure to modify assignments. While the evidence showed some inconsistencies in modifying assignments, interview statements demonstrated the Parent may not have had the modified versions when they requested the assignments later.

Through interviews and emails, patterns emerged that the Student had challenges with keeping track of and submitting their work, interacting with staff, engaging in classwork, and utilizing their accommodations, even though they were made available to the Student. There was evidence to show some assignments appeared unmodified during the complaint period; however, these did not amount to a "material failure." Relevant case law from E.C. v. U.S.D. 385 Andover (2020) held that the district's occasional deviations from a BIP did not amount to a material implementation failure. Using the preponderance of evidence standard, and demonstrated through documented assignments, written statements, and interviews, it is more likely than not that the Student's IEP was implemented. 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, including accommodations "such as 50% modifications" and behavior supports, in accordance with 34 § C.F.R. 300.323 and K.A.R. 91-40-16(b)(3).

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.gov 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, AUGUSTA PUBLIC SCHOOLS
ON APRIL 22, 2025

DATE OF REPORT: MAY 22, 2025

This report is in response to a complaint filed with the Kansas State Department of Education against USD #402 (Augusta Public Schools) on behalf of ------- by his mother -------. In the remainder of the report, ------- will be referred to as "the student" and Amanda as "the parent" or "the complainant".

The complaint is against USD #402 (Augusta Public Schools). In the remainder of the report, USD #402 will be referred to as "the district". The student currently attends Garfield Elementary which will be referred to as "the school" in the remainder of the report. The Beloit Special Education Cooperative provides special education support for the district; however, Beloit Public Schools remains the agency responsible for the student's educational services. In the remainder of the report, the Beloit Special Education Cooperative will be referred to as "the coop." School and district staff will be referred to In the remainder of this report as follows:

- April Hilyard, cooperative director
- Denise Walton, cooperative assistant director
- Joe Tallman, school psychologist
- Merek Holtzinger, classroom teacher
- Tiffany Arnold, special education teacher
- Trever Lockamy, school principal
- Janet Doud, assistant superintendent
- Paul Glasier, outside neuropsychologist

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 22, 2025.

Evidence Reviewed

USD #402 made the following staff available for interviews on May 7, 2025 as part of this investigation.

- Director
- Assistant director
- School psychologist

During the investigation, the Complaint Investigator, Nikki Crawford, reviewed all evidence and documentation provided by the district and the parent. Additionally, the complaint investigator contacted the parent, school psychologist , assistant director and director on April 23, 24, 25, 28, 30, May 1, 5, 7 and 8, 2025 by phone and email to clarify evidence and documentation.

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:

1. Notice of IEP meeting, dated August 28, 2024
2. Student's IEP, dated September 17, 2024
3. Speech Language Reevaluation report, dated September 17, 2024
4. Prior Written Notice (PWN) confirming the need for services, dated September 17, 2024
5. Email from classroom teacher to parent noting academic concerns, dated September 20, 2024
6. Progress report for IEP articulation goal, dated October 15, 2024
7. Progress report for IEP articulation goal, dated December 20, 2024
8. Neuropsychological Evaluation report, dated March 11, 2025
9. Progress report for IEP articulation goal, dated March 16, 2025
10. Email from parent to the school psychologist, principal and classroom teacher requesting a reevaluation, dated March 12, 2025
11. Reply from the school psychologist to the parent acknowledging the reevaluation request, dated March 15, 2025
12. Email from parent to the school psychologist, principal and classroom teacher attaching the neuropsychologist's report, dated March 15, 2025
13. The district's spring break was from March 17-21, 2025
14. Email from parent to the school psychologist, principal and classroom teacher asking about the status of her reevaluation request, dated April 7, 2025
15. Email from the school psychologist to the parent with the PWN refusing a reevaluation, dated April 8, 2025 at 11:07 a.m.
16. Email reply from the parent to the school psychologist, principal and classroom teacher stating the PWN sent on April 8, 2025 contains incorrect information, sent on April 8, 2025 at 12:12 p.m.
17. Email from parent to the school psychologist, principal and classroom teacher stating the April 8, 2025 PWN contains additional incorrect information, sent on April 8, 2025 at 12:27 p.m.
18. Email from parent to the school psychologist, principal and classroom teacher disagreeing with the PWN, sent on April 8, 2025, sent on April 8, 2025 at 4:51 p.m.

19. Email from the school psychologist to the parent to schedule a meeting to discuss the parent's concerns, sent April 8, 2025 at 6:52 p.m.
20. Several scheduling emails between the parent, school psychologist, principal and cooperative assistant director, sent April 9 and 10, 2025
21. Email from parent to school psychologist, principal, assistant director and assistant superintendent, suggesting mediation, sent April 10, 2025 at 12:18 p.m.
22. Reply from the assistant director suggesting a team meeting prior to mediation, sent April 10, 2025 at 12:36 p.m.
23. Reply from the parent again suggesting mediation and a meeting to review and amend [student's] IEP to incorporate additional support and services for the new diagnoses of dysgraphia and dyslexia, sent on April 10, 2025 at 3:11 p.m.
24. Reply from the assistant director confirming that the team did look at the evaluation, gathered the parent's input and looked at classroom data. The email also included a present level statement and confirmed that they will hold an IEP meeting. The email also asked the parent to clarify if they wanted to discuss the refusal to test or hold an IEP meeting. Sent April 10, 2025 3:22 p.m.
25. Reply from the parent stating she can not find any data from the neuropsychological evaluation included in the PWN and raised the question about the student being potentially gifted, sent April 10, 2025 at 3:38 p.m.
26. Reply from the assistant superintendent offering to be engaged in addressing the parent's concerns, sent on April 10, 2025 at 4:17 p.m.
27. Reply from the assistant director clarifying the information included in the April 8, 2025 PWN and offering to meet, sent on April 10, 2025 at 4:44 p.m
28. Reply from the parent requesting specific data from the evaluation be included in the April 8, 2025 PWN and stating that it is not clear as to why the reevaluation is being refused, sent on April 10, 2025 at 8:15 p.m
29. Email from assistant director to the assistant superintendent, school psychologist and principal, sent on April 10, 2025 at 10:14 p.m.
30. Email from parent to assistant director, assistant superintendent, principal and school psychologist requesting an independent education evaluation (IEE), sent April 11, 2025 at 2:03 p.m.
31. Email from parent to assistant director, assistant superintendent, principal and school psychologist clarifying her requests and again noting the incorrect information in the April 8, 2025 PWN, her related questions and confirming her availability to meet, sent April 11, 2025 at 7:36 p.m.
32. Email reply from the assistant director confirming the availability of the team to meet with the parent on April 17, 2025, sent April 11, 2025 at 8:13 p.m.
33. Reply from parent confirming that she will attend the April 17, 2025 meeting, sent April 11, 2025 at 8:22 p.m.

34. Email from the parent to the assistant director, assistant superintendent, principal and school psychologist that she is not able to meet on April 17, sent April 14, 2025 at 10:46 a.m.
35. Reply from the assistant director asking for available dates and times to reschedule the meeting, sent April 14, 2025 at 11:00 a.m.
36. PWN refusing to conduct an IEE, dated April 14, 2025
37. Email from the parent to the assistant director, assistant superintendent, principal and school psychologist with attached documentation noting academic concerns raised by the student's teacher on September 20, 2024, sent April 17, 2025 at 9:53 a.m.
38. Reply from the assistant director again requesting available dates and times to meet, sent April 17, 2025 at 10:17 a.m.
39. Reply from the parent sharing that her schedule is difficult due to the student's upcoming surgery and asking what would be accomplished from meeting in person, sent April 17, 2025 at 11:58 a.m.
40. Reply from the assistant director encouraging an in person meeting and if not possible then her willingness to go to mediation, sent April 17, 2025 at 12:14 p.m.
41. Reply from the parent stating that an in person meeting or mediation may not be the next best step. Asking again for the criteria for an IEE and how to get her concerns about the inaccuracies in the April 8, 2025 PWN resolved, sent April 18, 2025 at 6:50 a.m.
42. Reply from the assistant director stating that the IEE question was answered in the PWN issued on April 14, 2025 and asking the parent to clarify what they want amended in the April 8, 2025 PWN, sent April 21, 2025 at 12:03 p.m.
43. Reply from parent stating that she has filed a formal complaint with KSDE, sent April 21 at 4:58 p.m.
44. Phone call between the parent and investigator on April 23, 2025
45. Phone call between the director and investigator on April 24, 2025
46. Email from the school psychologist to the parent confirming that the parent requested to have the April 8, 2025 PWN amended, dated Apr 24, 2025 at 3:34 p.m.
47. PWN issued by the district refusing to change the April 8, 2025 PWN details as requested by the parent, dated April 24, 2025
48. Reply from the parent pointing out that the details in the PWN are still not correct, sent April 24, 2025 at 4:11p.m.
49. Email response from the assistant director disagreeing with statements in the parent's email. Sent April 24, 2025 at 4:43 p.m.
50. Email from parent to the assistant superintendent, director, assistant director, school psychologist, and principal to clarify the information the parent would like amended on the April 8, 20205 PWN, sent April 25, 2025 at 9:31 a.m.
51. Email from the director to the parent confirming that the parent's requested amendments to the April 8, 2025 PWN are saved in the student's record, sent April 25, 2025 at 12:22 p.m.

52. Email reply to the investigator from the school psychologist on April 30, 2025, describing the phone call between him and the parent on April 4, 2025.
53. Investigator interview with the psychologist, assistant director and director on May 7, 2025.
54. Email exchange with the student's teacher clarifying the teacher's participation in the discussions prior to the PWN refusal for reevaluation, May 8, 2025.
55. Table of the student's FastBridge scores for fall, winter and spring for the 2024-2025 school year

Background Information

The subject of this complaint is a 9 year old student enrolled in the 3rd grade during the 2024-2025 school year. The student lives at home with their parents and one sibling. The student was supported at home from the ages of 3 to 5 by a local early intervention program and found eligible for services in kindergarten with a Speech/Language impairment as the primary exceptionality.

The current IEP is dated September 17, 2024 and states that the student has an articulation goal. The student receives speech/language services in the special education room for 15 minutes, one day per week. There are no modifications, accommodations or supplementary supports noted in the IEP. The student's most recent speech/language assessment report is dated September 17, 2024 and shares that the student scored below the average range in articulation, stating, [the student's] "speech is intelligible with careful listening. The errors are atypical for students and peers his age". The report also shares, "[The student] shows strong skills in [their] expressive and receptive language by using appropriate grammar skills and understanding concepts. [The student] follows classroom directions and participates in classroom activities. There are no concerns regarding [the student's] ability to use language appropriately at this time".

A Neuropsychological evaluation was conducted on March 11, 2025 and summarizes the following, "[The student's] developmental history and clinical profile of deficits in fundamental reading/written expression skills such as sight word reading, timed/untimed phonetic decoding, and spelling skills also supports his diagnosis of dyslexia, which is also known as specific learning disorder with impairments in reading and written expression. [The student's] clinical profile of deficits in aspects of fine motor speed/dexterity, graphomotor coordination, visual-motor integration, and parent-rated motor skills also supports [the student's] diagnosis of dysgraphia, which is also known as specific learning disorder with impairment in written expression".

Issues Investigated

Based on the written complaint and an interview with the complainant, two concerns which fall under IDEA regulations were identified and investigated.

Issue One

Did USD #402 consider and respond to the parent's request for a reevaluation on March 12, 2025?

Applicable Law

Federal regulations at 34 C.F.R. 300.503(a)(2) states that prior written notice needs to be provided to the parents of a child with a disability a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

K.A.R. 91-40-8 (c)(1)(A-C). Evaluations. (c) As a part of an initial evaluation, if appropriate, and as a part of any reevaluation, each agency shall ensure that members of an appropriate IEP team for the child and other qualified professionals, as appropriate, comply with the following requirements: (1) The evaluation team shall review existing evaluation data on the child, including the following information: (A) Evaluations and information provided by the parent of the child; (B) current classroom-based, local, and state assessments and classroom-based observations; and (C) observations by teachers and related services providers. (2) On the basis of that review and input from the child's parent, the evaluation team shall identify what additional data, if any, is needed to determine the following matters: (D) whether, in the case of a reevaluation of the child, any additions or modifications to the special education and related services currently being provided to the child 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. (d) The team described in subsection (c) may conduct its review without a meeting.

Parent Position

The parent states that, "On March 12, 2025, I formally requested a reevaluation of my child, [the student] due to concerns about reading and writing difficulties. The school denied this request on April 8, 2025, citing adequate classroom performance with accommodations and FastBridge scores (single data points), without considering the private neuropsychological evaluation diagnosing dyslexia and dysgraphia, and data that shows deficits and weaknesses that hinder his learning and success".

District Position

The district response dated April 24, 2025 states that, "In September 2024, the team conducted a triennial evaluation, completed with new standardized testing and not just a records review. [The student] was determined to still be eligible and in need of speech only services for an articulation error. [The student] currently receives speech services for an articulation delay (15 minutes, once a week). Per the evaluation report and subsequent progress reports, [the student] continues to show progress on their goals. [The student] has

mastered many sounds through direct instruction and practice of placement in speech activities. Per the reevaluation report dated 9/17/24, [the student] shows strong skills in their expressive and receptive language with no concerns regarding [the student's] ability to use language appropriately".

Analysis: Findings of Fact

The following finding of facts is based upon a review of the documentation noted previously and interviews with all parties.

1. According to the district response on April 24, 2025, "Per the current IEP (9/17/24) that was agreed upon by the entire team, including the parent, there are no concerns with [the student's] general intelligence, health, social emotional, motor skills, math skills, reading skills, written language skills or adaptive skills. Additionally, both grades and assessments (both formal and informal) reflect grade level skills and appropriate academic and social progress. Data points include overall grades, Fastbridge scores, Accelerated Reading scores and teacher input."
2. An email from the classroom teacher to the parent on September 20, 2024 notes five academic concerns;
    a. Lack of one to one correspondence while counting using models.
    b. Lack of one to one correspondence counting on fingers or without.
    c. Unable to skip count.
    d. Inability to write sentences/phrases the same way they are spoken.
    e. Repeating phrases back to me audibly is also a struggle, as [the student] will mix the order of words into something nonsensical.
3. A neuropsychological evaluation conducted on March 11, 2025 suggested a number of academic recommendations which include:
    a. "[The student's] diagnosis of dyslexia/specific learning disorder with impairments in reading and written expression will significantly hinder [their] reading fluency/comprehension for connected texts, spelling, and written expression. In fact, [the student] performed at the level of most students in first or second grade on current measures of sight word reading, phonetic decoding, and spelling skills. Therefore, [the student's] parents should share a copy of this report along with a written request for an Individualized Education Program (IEP) evaluation with a designated educator.
    b. Since the IDEA as well as Kansas statute (K.S.A. 2022 Supp. 72-3404) and regulations recognize dyslexia as a disability as stated within the definition of Specific Learning Disability (SLD), [the student] should qualify for future IEP services through the SLD exceptionality.
    c. To guide special education services for [the student], his future IEP evaluation should include a comprehensive assessment of [the student's] reading

fluency/comprehension for connected texts, written expression, and applied math reasoning, which was beyond the scope of the current evaluation.

   d. [The student's] future IEP services should include dyslexia interventions from a reading intervention specialist at school.
   e. Due to [the student's] diagnosis of dysgraphia, which is also known as a specific learning disorder with impairment in written expression, [the student's] future IEP evaluation should include an occupational therapy assessment to determine [the student's] eligibility for therapeutic interventions at school.
   f. Due to previously documented deficits in speech articulation, [the student] should continue to receive school-based speech therapy through the Speech Impairment exceptionality".

4. Additionally, the evaluation report offered suggestions related to:
   a. Working memory and verbal fluency.
   b. Accommodations and modifications to support the evaluation's diagnosis of dyslexia and dysgraphia as well as suspicions of attention-deficit/hyperactivity disorder (ADHD).
   c. There were additional suggestions related to the student's "clinically significant concerns with [the student's] global independent living skills as well as moderate concerns with [the student's] withdrawal.
5. The parent emailed the school psychologist, principal and classroom teacher requesting a reevaluation on March 12, 2025
6. The school psychologist replied to the parent acknowledging the reevaluation request on March 15, 2025
7. The parent emailed the neuropsychologist's report to the school psychologist, principal and classroom teacher on March 15, 2025
8. The parent and school psychologist had a phone call on April 4, 2025 to discuss the parent's reevaluation request where according to the school psychologist in an email to the investigator, "I initiated the phone call in order to share with [the parent] the information I had collected from the school staff regarding [the student's] academic performance and progress, and to see what special education services [the parent] saw as necessary for [the student]. We talked a bit about what special education services are, and what information the school considers when determining if an evaluation is appropriate. We talked about differing views (between the school and [the parent]) of how [the student] is performing in school and in how much support/interventions [the student] needs to progress academically".
9. The parent emailed the school psychologist, principal and classroom teacher asking about the status of the reevaluation request, dated April 7, 2025
10. The school psychologist replied to the parent with the PWN refusing a reevaluation dated April 8, 2025 at 11:07 a.m. stating, "As we discussed in our phone conversation Friday, I visited with [the classroom teacher] and [principal], as well as [the special

education teacher], about [the student's] academic performance and progress. I have attached the school's response to your request for a re-evaluation to this email."

11. The April 8, 2025 PWN refusing the reevaluation included the following justifications:
    a. The [student's] current math grade is 94% (first quarter was 83%, second quarter was 88%);
    b. Current language grade is 91% (first quarter was 94%, second quarter was 88%).
    c. Fall and winter Fastbridge scores (national percentile ranking) for this school year are all within the Average or Above Average range: CBMR-English (fall = 50th, winter = 49th), aReading (fall = 62nd, winter = 84th), AUTO L3 GOM (fall = 67th, winter = 30th), aMath (fall = 59th, winter = 76th).
    d. "In the Accelerated Reading Program, [the student] has read 97 books this school year with an average book reading level of 3.6 with 87% accuracy (class average accuracy is 85%)."
    e. "[The student] has never been referred to the general education Intervention team; [the student] demonstrates grade level achievement skills and adequate progress. According to [the student's] teacher, [the student] receives general education classroom intervention as needed, and [they have] responded to these interventions positively by demonstrating adequate progress."
    f. "The school determined [the student's classroom performance is similar to [their] peers, [they are] making appropriate progress, and [they do] not demonstrate a need for any service that regular education is unable to provide."
12. The parent replied with an email to the school psychologist, principal and classroom teacher disagreeing with the April 8, 2025 PWN, the email was sent on April 8, 2025 at 4:51 p.m.
13. The school psychologist emailed the parent to schedule a meeting to discuss the parent's concerns, sent April 8, 2025 at 6:52 p.m.
14. Scheduling emails between the parent, school psychologist, principal and cooperative assistant director, sent April 9 and 10, 2025
15. The parent sent an email to the school psychologist, principal, assistant director and assistant superintendent, suggesting mediation, sent April 10, 2025 at 12:18 p.m.
16. The assistant director replied suggesting that the team meet prior to initiating mediation, sent April 10, 2025 at 12:36 p.m.
17. Reply from the parent again suggesting mediation and stated, "I would like to meet to review and amend [student's] IEP to incorporate additional support and services for his dysgraphia and dyslexia, as recommended by the [outside neuropsychology] evaluation", sent on April 10, 2025 at 3:11 p.m.
18. Reply from the assistant director confirming that the team did look at the outside evaluation, gathered the parent's input and looked at classroom data. The email also included a present level statement and confirmed that the district is willing to hold an

IEP meeting. The email also asked the parent to clarify if they wanted to discuss the refusal to test, or hold an IEP meeting, sent April 10, 2025 3:22 p.m.

19. Reply from the parent stating she can not find any data from the evaluation included in the PWN and raised a question about the student being gifted, sent April 10, 2025 at 3:38 p.m.
20. Reply from the assistant superintendent offering to be engaged in addressing the parent's concerns, sent on April 10, 2025 at 4:17 p.m.
21. Reply from the assistant director clarifying the information included in the April 8, 2025 PWN and offering to meet, sent on April 10, 2025 at 4:44 p.m
22. Reply from the parent requesting specific data from the evaluation be included in the April 8, 2025 PWN and stating that it is not clear as to why the reevaluation is being refused, sent on April 10, 2025 at 8:15 p.m
23. Email from assistant director to the assistant superintendent, school psychologist and principal stating that the district has now offered a meeting 3 times and does not want to continue to discuss a student over email, sent on April 10, 2025 at 10:14 p.m.
24. The parent sent an email to the assistant director, assistant superintendent, principal and school psychologist requesting an independent education evaluation (IEE), sent April 11, 2025 at 2:03 p.m.
25. Email reply from the assistant director confirming the availability of the team to meet with the parent on April 17, 2025, sent April 11, 2025 at 8:13 p.m.
26. Reply from parent confirming that she will attend the April 17, 2025 meeting, sent April 11, 2025 at 8:22 p.m.
27. The parent sent an email to the assistant director, assistant superintendent, principal and school psychologist that she is not able to meet on April 17, sent April 14, 2025 at 10:46 a.m.
28. Reply from the assistant director asking for available dates and times to reschedule the team meeting, sent April 14, 2025 at 11:00 a.m.
29. PWN refusing to conduct an IEE, dated April 14, 2025
30. The parent sent an email to the assistant director, assistant superintendent, principal and school psychologist with an email attached noting academic concerns from the student's teacher which had been sent to the parent on September 20, 2024, sent April 17, 2025 at 9:53 a.m.
31. Reply from the assistant director again requesting for available dates and times to reschedule the team meeting, sent April 17, 2025 at 10:17 a.m.
32. Reply from the parent, sharing that her schedule is difficult due to the student's upcoming surgery and questioning what would be accomplished from meeting in person, sent April 17, 2025 at 11:58 a.m.
33. Reply from the assistant director stating, "I think in person meetings are much more efficient when discussing data and performance for a student, and it's definitely our recommendation as a first step before attempting mediation. That said, I will reiterate that

if you prefer to refuse a team meeting and go to mediation, I would be willing to complete that form to move forward with that process", sent April 17, 2025 at 12:14 p.m.".

34. Reply from parent stating that she has filed a formal complaint with KSDE, sent April 21 at 4:58 p.m.
35. In the district interview with the investigator on May 7, 2025 when asked about why data from the neuropsychological evaluation was not included in the April 8, 2025 PWN refusing a reevaluation, the school psychologist replied, "Our job was to clarify the school's perspective and include the school data, everyone else had the new evaluation report. I used the PWN to clarify our data and our response."
36. In an email exchange with the classroom teacher on May 8, 2025 when asked if he was consulted in the consideration of a reevaluation in light of the neuropsychological's evaluation report he replied that he was part of team meetings regarding the parent's request for a reevaluation. He had received the outside evaluation report and as a school team they discussed the results in full. He shared, "I was asked for my read on [the student] and gave my answers. [The student] is thriving in a regular ed setting, with minor interventions we would give for any kid showing specific struggles. I'm very data driven when we talk about whether a student is growing, focused on growth rather than benchmarks (but there's a place for both). I've never been one to rest on my laurels and say '[their] doing great, no matter what the data says.' I'll share the spreadsheet I put together for [the parent] showing fall-spring growth in all four of our Fastbridge tests. I'm finishing my 20th year, and I'd like to say I can spy kids who need real services, and kids who can thrive with a little extra attention. [The student] is a kid who just needed a little bit of attention."
37. Additionally, in the May 8, 2025 email exchange with the classroom teacher when asked about the academic concerns shared with the parent on September 20, 2024 he replied, "I feel [student] has moved past those specific concerns. [Student] was showing some error patterns I picked up on, and were a bit concerning. I didn't do anything for [the student] I wouldn't do for any kid when I see a pattern; pointed intervention, extra guidance, share info with parents, and specific practice. [The student] responded quickly to any and all intervention". The teacher also shared a table of the student's Fastbridge scores for fall, winter and spring for the 2024-2025 school year, all of which showed steady increases across the school year.

Conclusion

The outside neuropsychological evaluation diagnosed dyslexia and dysgraphia for the student. The evaluation report also stated, "[the student's] parents should share a copy of this report along with a written request for an Individualized Education Program (IEP) evaluation with a designated educator". The parent shared the outside evaluation report with the district and requested a reevaluation based on the recommendations in the report. According to IDEA a parent may request a reevaluation of their child's eligibility at any time.

When a parent initiates an outside evaluation and shares the results with the district that the results must be considered by the district; it does not require that this consideration take place during an IEP meeting. 34 C.F.R. 300.502 (c)(1), states, "c. Parent-initiated evaluations. 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—(1) 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;."

In this case, the district produced evidence that the results of the parent initiated outside evaluation were considered by the district team. This consideration included the outside evaluation results, the student's current performance in the classroom and the student's district assessment performance. After considering all of the relevant information, a PWN was issued within the timeframe established by IDEA and included the required information.

It is also noted that the district attempted to meet with the parent to discuss the refusal of the reevaluation and consideration of the new diagnoses as reflected in numerous email exchanges.

During the investigation, it was also noted that the parent requested a IEE on April 11, 2025 to which the district replied with a PWN refusing the IEE on April 14, 2025. The district stated in an April 11, 2025 email to the parent, "The independent education evaluation, or IEE, is only triggered by disagreeing with the evaluation itself, not the [district's] decision to refuse an evaluation".

The district's response of a PWN refusing the IEE was not in accordance with IDEA 34 C.F.R. 300.502(b)(2)(i-ii), "(b)(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense,". Additionally, 34 C.F.R. 300.502(b)(4) states that the district may not require the parent to provide an explanation for the request. Therefore the reason for the requested IEE is not relevant to the manner in which the district is required to respond. The district should have responded to the parent's request for an IEE with the filing of a due process complaint to request a hearing to show that its evaluation is appropriate, or conducted the IEE.

Based on the foregoing, The ***district is IN compliance*** for Issue One, however the ***district is out of compliance*** for their response to the IEE and corrective actions are required to address the district's response to the parent's request for an IEE.

Issue Two

Did USD #402 amend the student's record to correct the information in a PWN issued on April 8, 2025 upon parent request or notify the parent of the refusal?

Applicable Law

Federal regulations at 34 C.F.R. 300.618. Amendment of records at parent's request. (a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information. (b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. (c) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under Sec. 300.619.

Federal regulations at 34 C.F.R. 300.619 Opportunity for a hearing. The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

Parent Position

The parent complaint states, "The Prior Written Notice dated April 8, 2025, inaccurately stated that I requested para support and services for potential future needs, which I did not. The Prior Written Notice also mentions that data was used from the neuropsychologist evaluation, but there is no data shown to support that. My input and concerns were not heard or taken into account".

District Position

The district response dated April 24, 2025 states, "On April 8, 2025, the parent stated in an email: 'Your PWN is not accurate. I never said nor do I believe [the student] needs para support; I do believe [the student] needs support now and in the future. You misunderstood our phone conversation.' The team did not see this as a request to amend the record.'" Additionally, in reference to the parent's assertion that there was no specific data from the outside evaluation included in the PWN, the school psychologist shared in an interview with the investigator on May 7, 2025 , "I used the PWN to clarify our data and our response."

Analysis: Findings of Fact

The following finding of facts is based upon a review of the documentation noted previously and interviews with all parties. The findings of Issue One are incorporated herein by reference.

1. April 8, 2025 at 12:12 p.m. the parent emailed the school psychologist, principal and classroom teacher stating the PWN refusing the reevaluation sent on April 8, 2025 was

not an accurate reflection of the April 4, 2025 phone conversation between the parent and school psychologist. The parent states, "Your PWN is not accurate. I never said nor do I believe [the student] needs para support; I do believe [the student] needs support now and in the future. You have misunderstood our phone conversation".

2. April 8, 2025 at 12:27 p.m. the parent followed up with another email pointing out additional inaccuracies related to the student's early development stated in the PWN dated April 8, 2025.
3. The parent sent an email to the assistant director, assistant superintendent, principal and school psychologist again noting the incorrect information in the April 8, 2025 PWN, including, "And just to reiterate, I did not say [the student] needs para support, nor did I say [they need] an IEP to address needs that may arise later". In this email the parent also confirmed their availability to meet to discuss the PWN and clarify their request to see data from the neuropsychological evaluation in the April 8, 2025 refusal PWN, sent April 11, 2025.
4. The parent replied to an email from the district stating that an in person meeting or mediation may not be the next best step. The parent asked for the criteria for an IEE and how to get concerns about the inaccuracies in the April 8, 2025 PWN resolved, sent April 18, 2025.
5. Reply from the assistant director stating that the IEE question was answered in the PWN issued on April 14, 2025 and asking specifically what the parent would like amended in the April 8, 2025 PWN, sent April 21, 2025.
6. The school psychologist sent an email to the parent stating, "Based on your statement in an email on April 18, 2025, 'How do I get my concerns and input accurately reflected in the PWN as the current PWN is a misrepresentation,' we are considering that a request to amend a record. We did request clarification on what you wanted changed on April 21, 2025. You did not respond to that request but did email stating you had filed a formal complaint. Attached is a Prior Written Notice outlining the district's refusal to change the Prior Written Notice dated April 8, 2025", sent April 24, 2025 at 3:24 p.m.
7. Reply from the parent stating, "Unfortunately, this [the details in the PWN] again is inaccurate according to our one short phone conversation, which was so that you could clarify information with [the student's] teacher before getting back to me, which didn't happen, and our previous emails". Sent April 24, 2025 at 4:11p.m.
8. The assistant director responded to the parent's email with the following, "This is false as we attempted several times to schedule in person meetings in order to address your concerns which you have refused. I offered to sign the Mediation form, but you refused. It is clear that email correspondence isn't working, and you refuse to meet with us in person, so at this point we will no longer be replying to these emails and will await the outcome of the investigation", sent April 24, 2025 at 4:43 p.m.
9. The parent sent and email on April 25, 2025, at 9:31a.m., to the school psychologist to clarify what they would like amended in the April 8, 2025 PWN which included:
    a. "I did not request para support.

b. I did not suggest services be added to address needs that 'might arise later.'
c. My concerns are and continue to be based on the comprehensive neuropsychological evaluation provided by [the outside neuropsychologist] which identifies [the student's] diagnosis of dyslexia and dysgraphia and documents current, ongoing needs, not hypothetical or future ones.
d. My concerns are and continue to be the information provided by communication in person and by email from [the student's] teacher, regarding [the student's] struggles in the classroom and the assistance [they are] being provided.
e. My concerns are that [the student] currently has a Speech IEP, and it states that "[the student's] articulation delay makes [the student] difficult to understand at times in the regular education setting. It is also affecting [their] ability to read and write (spelling is a bit difficult)."
f. My concerns are that my [child] is struggling due to [the student's] disabilities, and they are creating daily challenges to keep up with [their] peers.
g. I request that the PWN be amended to:
    i. Remove any statement suggesting I requested para support or future-focused services.
    ii. Accurately states my actual concerns."

10. The director sent an email to the parent confirming that the parent's requested amendments to the April 8, 2025 PWN have "been uploaded as an educational record in WebKIDSS", sent April 25, 2025 at 12:22 p.m. It is noted that the amendments saved as an educational record was the email sent by the parent on April 25, 2025, at 9:31a.m., thus ensuring that the parent's request was honored, word-for-word.

Conclusion

IDEA requires that when a request to amend their child's education record is issued, the district is responsible to respond to that request with an amendment or refusal to amend and offer a hearing, within a reasonable period of time.

IDEA regulations for amending records at a parent's request (34 C.F.R. 300.618(a)(b)(c)) state, "(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information. (b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. (c) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under Sec. 300.619."

In this case, the parent pointed out the misunderstandings reflected in the April 8, 2025 PWN in an email that same day and reiterated her concern about the inaccuracies in the PWN on April 11 and April 18, 2025. The district acknowledged the parent's request to have records

amended in an April 18, 20205 email. The district asked for clarification of the parents requested corrections on April 21, 2025 and the parent replied with an email notifying the district that she had filed a formal complaint. The district responded with a PWN on April 24, 2025 refusing to amend the details of the April 8, 2025 PWN. The parent responded with an email on April 25, 2025 clarifying the requested corrections and on April 25, 2025 the director confirmed with the parent that the requested amendments were uploaded as part of the student's educational record.

In this case, the parent notified the district of their request to have the April 8, 2025 PWN details corrected on April 18, 2025 and the district responded with a PWN refusing to amend on April 24, 2025. The district informed the parent of the refusal but did not advise the parent of the right to a hearing.

It is noted that the records were in fact amended by the district on April 25, 2025, exactly as the parent requested. But nonetheless, the district failed to advise the parent of the right to a hearing along with the PWN refusing to amend records on April 24, 2025.

Based on the foregoing, it is found that the district did not follow the process required by IDEA to address requests for amendments of records. The *district is NOT in compliance* and corrective actions are required.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. 300.503(a)(2) and K.A.R. 91-40-8 (c)(1)(A-C) was not found based on the district's consideration and appropriate PWN response to the parent's request for a reevaluation. Corrective action is not required.
2. A violation of 34 C.F.R. 300.502(b)(2)(i-ii) and (b)(4) was found based on the issuance of a PWN in response to the parent's request for an IEE. Corrective action is required.
    a. The district shall immediately, within 21 school days, by June 20, 2025, submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state statutes and regulations at Federal regulations at 34 C.F.R. 300.502(b)(2)(i-ii) and (b)(4) which dictate how the district is to respond to a parent request for an IEE.
    b. The district shall respond to the parent's request for an IEE in accordance with IDEA 34 C.F.R. 300.502(b)(2)(i-ii) within 21 school days, by June 20, 2025.
    c. The district shall train staff members responsible for responding to parent requests for an IEE to include 34 C.F.R. 300.502(b)(2)(i-ii) and (b)(4) by September 30, 2025.
    d. The district shall submit documentation of staff training to Special Education and Title Services (SETS), by October 15, 2025.
3. ISSUE TWO: A violation of 34 C.F.R. 300.618(a)(b)(c) and 34 C.F.R. 300.619 was found based on the district's failure to inform the parent of the right to a hearing.

a. The district shall immediately, within 21 school days, by June 20, 2025 submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state statutes and regulations at Federal regulations at 34 C.F.R. 300.618(a)(b)(c) and 34 C.F.R. 300.619 which requires the district to advise parents of the right to a hearing when refusing to amend student records.
b. Please note: The district is not required to inform the parent of their right to a hearing based on the fact that the district amended the student records, after issuing a PWN refusing to amend.
c. The district shall train staff members responsible for issuing PWNs to include 34 C.F.R. 300.618(a)(b)(c) and 34 C.F.R. 300.619, by September 30, 2025.
d. The district shall submit documentation of staff training to Special Education and Title Services (SETS), by October 15, 2025.

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.gov 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. 402
Augusta Public Schools: 25FC402-003

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on April 22, 2025, by ------- on behalf of her child, -------. 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 allegations, was issued on May 22, 2025. That Complaint Report concluded that there were violations of special education statutes and regulations

Thereafter, the district filed an appeal of the Complaint Report. Upon receipt of the appeal, an appeal committee was appointed and it reviewed the original complaint filed by the parent, the Complaint Report, the district's notice of appeal, and the parent's response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

Preliminary Matters

A copy of the regulation regarding the filing of an appeal [K.A.R. 91-40-51(f)] was attached to the Complaint Report. That regulation states, in part, that: "Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect." Accordingly, the burden for supplying a sufficient basis for appeal is on the party submitting the appeal. When a party submits an appeal and makes statements in the notice of appeal without support, the Committee does not attempt to locate the missing support.

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

Discussion of Issues on Appeal

From Parents

The report identified two issues, and concluded that the district failed to comply with legal requirements related to each of the two issues.

Issue One

Did USD #402 consider and respond to the parent's request for a reevaluation on March 12, 2025?

The investigator concluded that the district properly responded to the request for a reevaluation, stating that: "After considering all of the relevant information, a PWN was issued within the timeframe established by IDEA and included the required information." However, as the investigator proceeded with the investigation, the evidence presented to her led her to conclude that the district acted contrary to law on a separate matter that was not alleged in the complaint. It is this separate matter that the district appeals.

The Appeal Committee notes that federal regulation 34 C.F.R. 300.600(d) places a "general supervision" responsibility on state departments of education to monitor compliance of their schools with law. Under this general supervision requirement, a state department of education cannot ignore clear indications of a district's failure to comply with law. When an investigator discovers, during an investigation, that the district has failed to comply with law, even when said violation was not alleged in the complaint, the investigator must either address that issue in the report or otherwise notify the state department of education of the violation. When an investigator finds an apparent violation that was not alleged in the complaint, that will be addressed in the investigation, the investigator should notify the school district of the additional issue. That provides the district with the opportunity to respond to the new allegation, as required by 34 C.F.R. 300.152(a)(3).

In this instance, the investigator apparently did not notify the district of the additional issue, which prevented the district from submitting a response to the new allegation during the investigation. The appeal process, however, does provide the district with the opportunity to respond to new allegations discovered, and addressed, in a complaint investigation. With this appeal, the district has exercised that right to respond to the separate allegation and the Appeal Committee will give the district's response a full consideration.

The additional allegation under appeal is whether the district's refusal to conduct an Independent Educational Evaluation (IEE) was a violation of law.

The pertinent facts are presented in the report's findings of fact, as follows:

1. 10. Email from parent to the school psychologist, principal and classroom teacher requesting a reevaluation, dated March 12, 2025 (Report, p. 2)
2. 15. Email from the school psychologist to the parent with the PWN refusing a reevaluation, dated April 8, 2025 at 11:07 a.m. (Report, p. 3).
3. 30. Email from parent to assistant director, assistant superintendent, principal and school psychologist requesting an independent education evaluation at public expense (IEE), sent April 11, 2025 at 2:03 p.m.
4. 36. PWN refusing to conduct an IEE, dated April 14, 2025

In short, the investigator found that the parents requested an IEE and the district responded with a PWN refusing that request. The investigator concluded that this interaction was in violation of federal regulation 34 C.F.R. 300.502(b)(2) that says:

> *If a parent requests an independent educational evaluation* ***at public expense****, the public agency* ***must****, without unnecessary delay,* ***either****—*
> *(i)* ***File a due process complaint*** *to request a hearing to show that its evaluation is appropriate; or*
> *(ii)* ***Ensure that an independent educational evaluation is provided*** *at public expense…*

The investigator correctly noted that the district did not do either. Instead, the district chose a third option, to deny the request for an IEE. That option, the investigator concluded, was not legally available to the district.

In its appeal of this issue, the district first asserts that the district had already considered the IEE the parent had obtained privately. With regard to evaluations obtained at parent expense, however, the pertinent regulation (see above) does not apply. The pertinent regulation applies only to requests for an IEE at "public" expense.

Secondly, the district asserts that a parent has a right to an IEE at public expense only when the parent disagrees with the current evaluation and that this parent had no disagreement with the current evaluation. the pertinent regulation is 34 C.F.R. 300.502(b)(1), which says:

> *A parent has the right to an independent educational evaluation at public expense* ***if the parent disagrees with an evaluation obtained by the public agency*** *(emphasis added),*

The district correctly notes that the parent must disagree with the current evaluation in order to have a right to an IEE. Courts have noted that an IEE is not available when no evaluation has been conducted because then there is nothing to disagree with M.S. v. Hillsborough Township Public School District, 75 IDELR 212 (3rd. Cir. 2019), or, when a district has already provided an IEE and the parent has requested another IEE to contest the same evaluation, because parents are entitled to only one IEE per evaluation Alex W. v. Poudre Sch. Dist., 124 LRP 7692 (10th Cir. 2024).

Neither of these court approved exceptions apply in this situation. Here there is an existing evaluation and the parent is making the first request for an IEE under this evaluation. Moreover,

federal regulations, at 34 C.F.R. 300.502(b)(4), say that a district may ask why the parent disagrees with an evaluation, but may not require an explanation. So the fact that the parent did not explain what part of the existing evaluation she disagrees with does not mean she agrees. The parent is not, under this regulation, obligated to provide an explanation of her disagreement.

This parent obtained her own private independent evaluation which indicated a diagnosis of dyslexia and dysgraphia, neither of which were considered in the most recent school evaluation. On the basis of the conclusions in that private evaluation, the parent requested a reevaluation regarding her child's reading difficulties. It is clear to the Appeal Committee that the parent requested a reevaluation because she disagreed with the most recent district evaluation, which according to district personnel indicated "there were no concerns with" the student's reading skills (see, finding of fact 1 on p. 8 of report).

The Appeal Committee finds that the investigator's conclusion that a violation occurred when the district refused the parent's request for an IEE at public expense without initiating a due process hearing should be, and is, sustained.

Issue Two

Did USD #402 amend the student's record to correct the information in a PWN issued on April 8, 2025 upon parent request or notify the parent of the refusal?

The district's appeal on this issue asserts that: (1) the district attempted to meet with the parent, but the parent refused to meet; (2) on April 18, 2025, the district provided a copy of the Parent's Rights with the PWN notifying the parent of its refusal to amend the record; and (3) the district's refusal to amend the record was due to the parent's failing to give sufficient details about what she wanted amended and upon receiving those details the records were amended as requested.

Even accepting all of these district statements in this appeal as true, the district still did not comply with the law. The complaint investigator did not find that the district failed to respond to the parent's request to amend records in a timely or inadequate manner. The conclusion of the investigator was that, on April 24, 2025, the district gave the parent a PWN refusing to make amendments to the students records, but that PWN did not advise the parent of the right to a hearing.

The district's appeal does not address this conclusion.

The relevant regulation is 34 C.F.R. 300.618. The investigator cited this regulation in her conclusion on this issue, on page 20 of the report. The relevant portion of this regulation is section (c), which says:

> *(c) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under Sec. 300.619."*

It is not enough to simply give parents a copy of the parent's rights document. This regulation clearly requires a district that refuses a parent's request to amend an education record, to also advise the parent of a specific right, the right to a hearing. The district did not provide that information with its April 24, 2025 PWN refusing to make amendments to the students records.

Subsequent events corrected this error, but the investigator was correct to conclude that the error occurred. This was a procedural error, and the corrective actions ordered in connection with this error reflect the concerns of the investigator regarding the non-compliant procedure the district used to process the parent's request to amend the student's records.

Sufficient evidence exists to support the findings and conclusions in the Complaint Report regarding this issue. Therefore, the conclusion in the report that a violation of law occurred with regard to this issue is sustained.

Appeal Committee

Crista Grimwood
Melissa Valenza
Mark Ward

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #500, KANSAS CITY PUBLIC SCHOOLS
ON APRIL 11, 2025

DATE OF REPORT: MAY 21, 2025

This report is in response to a systemic complaint filed with the Kansas State Department of Education against USD #500 Kansas City Public Schools on behalf of 140 eighth grade students with IEPs transitioning to high school, by a special education teacher in the district, -------. In the remainder of this report, these eighth grade students will be referred to as "the students." ------- will be referred to as "the Complainant."

This complaint is made against the USD #500, Kansas City Public Schools and in the remainder of the report, USD #500 will be referred to as "the district." The Wyandotte Comprehensive Special Education Cooperative provides special education support for the district; however, the USD #500, Kansas City Public Schools, remains the agency responsible for the student's educational services. In the remainder of the report, will be referred to as "the coop."

Mr. Wesley Rush is the High School Special Education Coordinator and in the remainder of the report will be referred to as the "High School Special Education Coordinator." Dr. Ja'Kyta Lawrie is the Executive Director of Special Education of the Wyandotte Comprehensive Special Education Cooperative and in the remainder of this report will be referred to as the "Director of Special Education." According to an excel spread sheet provided by the district 140 eighth graders receiving special education services were transitioning to ninth grade from seven middle schools to four high schools. As these special education documents were reviewed for district practices, the student's identities were not recorded nor were the parents notified as part of the investigation.

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 11, 2025 and the 30-day timeline ended on May 11, 2025. The Investigator subsequently requested an extension to gather additional evidence and conduct more interviews, and the end date was revised to May 21.

Evidence Reviewed

During the investigation, the Complaint Investigator Dr. Donna Wickham reviewed all documentation provided by the District and the Complainant. Evidence addressing personnel

matters were not considered in the investigation. The following was used in consideration of the issues.

- Email from Wesley Rush, High School Special Education Coordinator to 39 middle school special education case managers dated March 10, 2025 at 4:54 PM
- Email from . Ja'Kyta Lawrie, Director of Special Education to all special education teachers in the district dated March 25, 2025 at 6:46 p.m.
- Email exchange between Director of Special Education and Amy Perry, Middle School Special Education ELA teacher dated between March 26, 2025 at 9:35 a.m. and April 3, 2025 at 12:39 p.m.
- Screenshots of internal chat exchange among transition teachers and High School Special Education Coordinator, dated between March 31, 2025 at 11:08 a.m. and April 1, 2025 at 4:13 p.m.
- 2024-2025 Middle School Meeting Agenda, April 1, 2025 from 3:00 – 3:30 p.m.
- Email exchange among Complainant, Director of Special Education and Dana Nelson, Director of Special Education Programs dated April 1, 2025 between 3:30 p.m. and 9:31 p.m.
- Email exchange between Director of Special Education and High School Special Education Coordinator dated April 1, 2025 between 3:59 p.m. and 5:21 p.m.
- Email from High School Special Education Coordinator to 39 middle school special education case managers dated April 8, 2025 at 10:47 a.m.
- Email from High School Special Education Coordinator to 39 middle school special education case managers dated April 9, 2025 at 10:58 a.m.
- Email from High School Special Education Coordinator to 39 middle school special education case managers dated April 9, 2025 at 11:15 a.m.
- Email from High School Special Education Coordinator to 39 middle school special education case managers dated April 9, 2025 at 12:38 p.m.
- Email exchange between a Middle School special education teacher and High School Special Education Coordinator dated April 9, 2025 between 1:02 p.m. and 1:05 p.m.
- Email exchange between Complainant and High School Special Education Coordinator dated April 9, 2025 between 4:54 p.m. and 5:31 p.m.
- Email from High School Special Education Coordinator and 39 middle school special education case managers dated April 14, 2025 at 10:15 a.m.
- District response dated April 19, 2025
- Email exchange between the Investigator and Director of Special Education dated May 12, 2025 between 10:06 a.m. and 10:43 a.m.
- 2024-2025 Special Education Case Manager Handbook, Revised July 29, 2024
- Building to Building Transitions IEP Meeting Process from the 2024-2025 Special Education Case Manager Handbook
- District Parent Script for Building to Building Transition IEP Meetings, undated
- Sped Transition Express, undated

- 24-25 Transition Express Checklist
- List of Grade 8 district transition IEPs amendments
- List of Grade 8 students with amended IEPs between January 1, 2025 and May 23, 2025 in the district, printed on April 19, 2025
- Screenshots of services pages from the IEP system for each 8th grade student on the list that had an amendment
- Service pages for 37 students whose IEPs were amended
- 24-25 High School IEP Checklist
- Prior Written Notices for 28 students with collaborative minutes whose IEPs were amended
- Class rosters for the Complainant's school for 2nd and 8th hour collaborative science and 3rd and 4th hour collaborative social studies
- Master schedule for the Complainant's school for the 2024-2025 school year

The Investigator first spoke with the Complainant by phone on April 13, 2025 and later interviewed the Complainant on May 10, 2025. The Investigator interviewed the High School Special Education Coordinator on May 1, 2025 and spoke with the Director of Special Education on May 5, 2025 and May 12, 2025. The Investigator interviewed Karen Dickerson, a retired special educator for the district who is currently serving as a paraeducator on May 10, 2025 and Amy Perry, an 8th grade special education case manager on May 13, 2025. Additional persons were recommended for interview by the Complainant, but did not respond.

Background Information

The district procedures for amending service minutes and settings for the IEPs of 8th grade students transitioning to high school and involving parents in the process was guided by a transition meeting occurring during the spring of 2025. The guidelines provided by the district in writing and verbally during the 2024-2025 school year were perceived to contradict IDEA regulations and differed from those used in past years. Especially of concern was the Complainant's concern that the 8th grade case managers were instructed to discontinue collaborative services in social studies and science by the district rather than through the IEP team.

Issues Investigated

Issue One

Did the district follow IDEA procedures according to 34 C.F.R. §§300.324(a)(4)(i) and 300.324(a)(4)(ii) when directing middle school special education case managers to amend all IEPs for students transitioning to high school in regard to collaborative service minutes?

Applicable Law

Federal regulations at 34 C.F.R. §§300.324(a)(4)(i) and 300.324(a)(4)(ii) allow school districts to amend or modify the child's current IEP if the parents and school district agree to not convene the IEP team when making changes to a child's IEP after the annual IEP Team meeting for a school year. Further, if changes are made to the child's IEP with an agreement to amend or modify the child's IEP without an IEP team meeting the school district must ensure that the child's IEP team is informed of those changes.

Further, Kansas state statute, K.S.A. 72-3404(aa) states that a 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 and K.S.A. 72-3404(bb) states a material change in services means an increase or decrease of 25% or more of the duration or frequency of a special education service, a related service, or a supplementary aid or a service specified on the IEP of an exceptional child. K.S.A. 72-3430(b)(6) then states that the parents of exceptional children shall have the right to consent, or refuse to consent to any substantial change in placement of, or a material change in services.

Complainant Position

The Complainant alleged that the district is "directing Middle School Special Education Case Managers to amend all IEPs for students transitioning to high school by removing collaborate service minutes except in Math and English." A transition meeting was held on March 26, 2025 and included all middle school and high school case managers. A handout was provided to the Middle School Case Managers stating what minutes could be given for High School Students. "At this time the High School SPED Coordinator stood up and stated that there is no support in science, social studies, or anything but math and English at the High School level." On April 9, 2025 the [High School Special Education Coordinator] sent an email to all case managers again stating for Science and History, students receive supports through accommodations and modifications. If high school IEP team determines that these accommodations are not sufficient to support the student, they will review academic and behavioral data to consider any necessary changes in placement."

District Position

The district responded that they were not requesting the case managers to eliminate service minutes in exchange for accommodations or modifications. Instead, they were asking the case managers to specify instructional skills such as reading comprehension or written expression for the Special Education service minutes. They state that this was aligned with KSDE guidance as it appeared in TASN training materials. The district further stated that in all cases when these refinements were made an amendment and prior written notice was written and parents offered an IEP meeting. The district stated they were unable to find any specific

communications where the district directed any middle school special education case manager to amend all IEPs for students transitioning to high school regarding collaborative minutes. They continue that most IEP transition amendments or services were addressed during the annual IEP meeting and most did not require many amendments for high school and the ones that did require amendments had a slight increase in collaborative services due to adjusting to the high school bell schedule. They state that the Complainant left the meeting prior to listening to the full explanation and that led to the complaint. Although they acknowledge that the emails may have appeared misleading they have followed up with case managers who are responsible for amending the IEPs of these 8th graders and the case managers understand what they are being asked to do.

Analysis: Findings of Fact

1. According to an excel spread sheet titled, Transition IEPs Amendments provided by the district 140 eighth graders receiving special education services were transitioning to ninth grade from seven middle schools to four high schools. Of those 140 students, 66 of their IEPs were amended at the time of the investigation. Forty-six of the IEPs were amended in April after the all-district transition meeting and twenty of the IEPs were amended in March prior to the all-district transition meeting. The remaining IEPs indicated the IEP had been unlocked by administration for an amendment, but the amendment had not been made yet. By way of explanation, the allegation was that the amendments were not made correctly, not that the amendments had not been made so only the 66 IEPs with amendments were considered during this investigation.
2. The 2024-2025 Special Education Case Manager Handbook, page 47 states that IEP Amendments between annual IEP's always require a PWN at transition meetings between 8th and 9th grade.
3. The 2024-2025 Special Education Case Manager Handbook, page 64 explains how case managers write IEP services into the district's IEP program. The case manager select a service such as special education (SE) or transportation (T) services. For special education, the case manager and further specifies the skill from a Drop-Down menu for reading fluency, written expression, reading comprehension, math calculation, etc. The case manager then selects the setting as collaborative (C), or direct instruction (G). The Director of Special Education described that the service page for a student enrolled in a general education class (ELA, math, history, science, etc.) that is co-taught by a general education content teacher and special education teacher in a general education classroom with both special and general education students would select special education (SE) for the service, select the skills based on the student's present levels and needs and the setting would be coded as C for Collaborative. Conversely a student enrolled in an ELA or math class with a special education teacher in a special education classroom with only other special education students would be assigned SE for special education and the setting would be coded G for Direct Instruction. The Director of Special Education, Complainant and 8th grade special education case manager agreed

that special education teachers at the middle and high schools do not teach science or history classes only for special education student enrollment.

4. The class schedule for the school where the Complainant is employed showed two co-taught science classes (hours 2 and 8) and two social studies classes (hours 3 and 4).
5. On March 10, 2025, a voice message and subsequent email was sent out to all special education staff regarding the district's internal transition event (held on March 26, 2025) to allow teachers time to discuss students' transitioning to a new building and grade level. On March 25, 2025, the Director of Special Education clarified that the internal transition event did not replace offering to hold an IEP amendment meeting with parents as part of amending the IEP services/placement due to the transition from 8th to 9th grade.
6. The March 25, 2026 email from the Director of Special Education to the attendees of the March 26, 2025 internal transition event stated, "This event does not take place of any IEP amendment transition meeting with parents that may need to take place, however, as always, once you have the information needed for the transition IEP amendment, and you contact the parent to discuss, if they are in agreement with what you plan to propose, you can complete the amendment process and send home PWN for the parents without holding a meeting. If there is not an agreement or if you feel that it is best to hold a formal IEP meeting to discuss transition, you will need to send a notice of meeting home to the parent and schedule an IEP meeting. Rather you as the case manager completes an amendment and send home PWN or hold a formal meeting, all IEP amendments for transitions are [district IEP software] by May 9, 2025"
7. At the district's internal transition event held March 26, 2025 the eighth grade teachers were asked to bring the student transition form and a copy of the current IEP (to review services, goals, accommodations, and placement) to the meeting. The ninth grade teachers were asked to bring the proposed number of special education minutes the student might receive in their new building (according to bell schedules). Ideas about appropriate grade-level accommodations and modifications that are used in some classes for specific needs and appropriate grade-level IEP goals, especially those related to reading, writing, and math, to review to discuss and adjust as needed. The email attached the coop's transition checklist and student transition form. The 8th grade special education case manager stated that this event was a change from past years. In the past these meetings were held via Zoom or Google Meetup and the parents and principals were invited.
8. The coop relied on two written documents to guide the discussion of the student, proposed IEP amendments and procedures of the internal transition event. First, the SPED Transition Express, a transition services checklist is signed by both the sending and receiving case managers. This checklist guides the case managers through a discussion of Fastbridge Assessment, services for skill areas, modifications and accommodations, related services, placement, behavior, goals, transportation, and any other areas, noting if amendments are needed. Also, the district's Parent Script for Building to Building Transition IEP Meetings has an agenda item to discuss "changes to

the IEP that current case manager will need to complete (i.e., goals, accommodations/modifications, service minutes? (2-5 minutes)" The 8th grade special education case manager stated that the transition meetings often generated more information about each student as a learner, behaviors, social skills, and information beyond Fastbridge Assessment scores.

9. At the March 26, 2025 transition event the High School Special Education Coordinator reminded the attendees of some high school structures that may trigger an amendment, such as individual bell schedules, block schedules, etc. The special education ELA case manager had stated during the interview with the Investigation that middle schools had begun to adopt some of the high school structures to smooth transition. The High School Special Education Coordinator also reminded the attendees that the high school offered Direct Instruction classes (G setting) in Math and ELA, but not in Science and Social studies. The High School Special Education Coordinator then shared the bell schedule for high schools to guide the case managers to adjust service minutes for students who are in those classes bell to bell.
10. An April 1, 2025 Middle School Meeting was held to clarify teacher generated questions that arose from the March 26, 2026 transition event. This meeting was held for 30 minutes and attended by middle school special education teachers and facilitated by the High School Special Education Coordinator. One question submitted was, "they were told that collab services were not available for science and social studies, the teacher did not disclose who would have told them that, but [High School Special Education Coordinator] only response was about not adding class names (subjects) on the IEP and [High School Special Education Coordinator] would explain more about that at the meeting."
11. The Complainant emailed the Director of Special Education following the April 1, 2025 Middle School Meeting with the following concerns:

    > *I wanted to follow up on several concerns from today's middle school SPED meeting, as they are causing confusion and inconsistency in our processes. 1. Prior Written Notice (PWN):]High School Special Education Coordinator] stated that we do not need to write a PWN for every IEP, despite this being part of the compliance checklist and past guidance indicating it is necessary. [High School Special Education Coordinator] mentioned KSDE does not require it and that [they] would address it with compliance if needed. Many of us are concerned, as this contradicts what we have always been told. Can you clarify the correct requirement? 2. Science and Social Studies Collaboration Minutes: We were told that we should not add collaboration minutes for science or social studies and should instead use accommodations. However, we have many students who require more individualized support beyond accommodations. How does this align with legal requirements and best practices? Has there been a policy change in [district] regarding this?*

12. On April 1, 2025, the High School Special Education Coordinator clarified to the *Director of Special Education* that his guidance at the April 1, 2025 meeting included: "1. Prior Written Notice (PWN): I explained in detail when a PWN is required and supported the explanation with both a PowerPoint and the KSDE document. In addition, [district colleague] posted the PWN Guidelines in the chat during the meeting for quick

reference. 2. Direct Services for Science and Social Studies: I clarified that at the high school level, we do not provide direct services in science and social studies. Instead, we support students through accommodations and modifications to address their individual needs. I gave an example: if a student struggles with reading, they may use text-to-speech software or receive oral administration of assessments. We have discussed in multiple coordinator meetings that case managers should not enter core content classes (e.g., Algebra or ELA) into the service lines. Instead, they should only list the areas the student qualifies in (e.g., reading comprehension or math problem-solving)." The High School Special Education Coordinator also wrote that the Complainant left the meeting early so may have missed the information.

13. On April 10, 2025, the Director of Special Education responded to the Complainant's concern regarding PWNs and science and social studies collaborative minutes that:

    1)...there is also a page in your case manager handbook that says when you need to have a PWN. 2) it has been discussed and shared that we do not write services minutes for any course/subjects, you must write minutes for there (sic) area the child qualifies for that's connected to a goal: example written expression, reading comprehension. You would not write a student need (sic) 20 minutes of services in any particular subject/class on an IEP. I also believe this is outlined in your case manager handbook as well, around service comments. Also remember, all students can get accommodations, if a student need more to access curriculum, you should also consider adding modifications needed.

14. The Director of Special Education clarified and confirmed in an email to the Investigator that

    Co-taught also known as Collab services can and are provided in science and social studies if needed for a student in any of our secondary buildings, including high school. The Master Schedule is created by the building administrator (or designee) and case managers of students make sure their students have correct schedules and service providers know what services on the IEP they are serving and which classes. This is a part of the expectations of case managers for the start of the school year, as outlined in the case managers handbook Page 21 – "Student verification process." Further, The document, titled, SPED Transition Express was provided to case managers for the March 26, 2025 internal transition event for the current and receiving case manager to discuss and document what specific classes would the services be provided in for any co-taught/collab based on the student and their needs, it was another resource and tool to make sure they address the needs of students and their services and which courses services are provided in. Case Managers at the high school would then be the ones to create their and the para schedule. That is typically done before students return to school, but after the report date for teachers and paras around the first full week of August.

15. An April 9, 2025 email from the High School Special Education Coordinator to the 8th grade special education case managers stated, "I've noticed that several of you are entering 80 minutes of G minutes, followed by additional C minutes for the same disability category. As explained during the transition meeting, service minutes at the high school level are provided within the student's ELA and Math classes through direct instruction. If a student is already receiving G minutes in those classes, there is no need

to add additional C minutes. These extra minutes should be removed, as they will not be delivered once the student transitions to high school. Once the student transitions, if the high school team feels the student requires more intensive services, they will address that through the IEP team at that time. However, at this stage, we must only include minutes that reflect services that will be provided. To answer the most common follow-up in advance: Yes — students will be supported in Science and History through accommodations and modifications, not direct instruction." The 8th grade special education case manager understanding of this statement was that the student who previously was in a co-taught science or history class (general education and special education teacher in a general education) during middle school would not have access to a special education teacher or paraeducator for science or history in high school – only accommodations or modifications.

16. An April 9, 2025 email from the Complainant questioned the High School Special Education Coordinator, "I wanted to clarify whether collaborative services are not available for science and social studies classes at the high school level. If it is correct that, regardless of the level of support the IEP team believes is necessary, student can only receive accommodations and modifications in those subjects?" The High School Special Education Coordinator replied to the email, copying all 8th grade special education case managers stating "We are currently supporting students in all qualifying areas of need, including reading, reading comprehension, math calculation, and math problem solving. These services are provided within the Direct Instruction (DI) ELA and Math classrooms, which are 80-minutes blocks. This extended instructional time allows students the opportunity to receive targeted support not only for those core areas but also indirectly support their success in other classes. Its (sic) important to ensure that all students are receiving accommodations and modifications that support their individual needs. For Science and History, students receive support through accommodations and modifications, such as: Text-to-speech tools, Testing in a small group, Modified assignments, Teacher-provided notes, Tests read aloud. If the high school IEP team determines that these accommodations are not sufficient to support the student, they will review academic and behavioral data to consider any necessary changes in placement. As I previously shared in an email to all middle school case managers, if you feel a student may require Academic Support, I am more than willing to review the student's data to determine need based on objective performance and classroom information. Over the past two years, we have had several students transition to high school with Direct Instruction classes whose academic levels did not warrant that level of support. Many of these students have been successfully placed in collaborative classes and have shown strong academic progress, which raises a concern about the accuracy of middle school placements." The 8th grade special education case manager explained that Direct Instruction classes are 80 minutes blocks designed to work on IEP goals, including behavior, social skills, morphology, missing work, reteaching content, and extra practice.. They do not have a curriculum and are not guided by a lesson plans, but students are assigned a grade.

17. The district response clarified that there was likely a misunderstanding of the High School Special Education Coordinator information that likely contributed to the child complaint.

> *This is where I found that what [High School Special Education Coordinator] was saying and what teacher(s) were doing/saying/asking were really two different things. [High School Special Education Coordinator] was coming from the lens of [their] high school and those direct services, academic support classes that is only offered at all the high schools and typically if those student were in those classes they usually did not have C minutes for the same areas of needs because they are getting it in the sped classroom for English and Math. I believe the teacher(s) were talking about something different so when [they] said to be sure to remove those C minutes and how that's written was to align to high school schedules. That's where I believe [they] could have better explained what [they were] thinking the middle school teachers were saying versus what [they] assumed they were saying. There was a level of confusion on both parts. Based on what [they] later responded to about "Yes students will be supported in Science and Social studies through accommodation and modifications", [they] shared that because there is no direct instruction course offered for Science and Social and students do receive support in those subjects through accommodation and modification, but [they] didn't say anything about a para or teacher could not be pushed in physically be in those classes and when the teachers were asking about science and social studies they were clear with about actually staff going into those classes. In my findings, this was miscommunication, misinterpretation and misunderstanding on both sides for assorted reasons.*

20. Fifteen of the 140 students (approximately 10%) transitioning from 8th to 9th grade from the four middle schools were reviewed for presence of amendment and PWNs. Of those fifteen, four recorded the service changes between 8th and 9th grade as part of the annual IEP meetings. Each provided a PWN, of which three had signed parent consent and one did not have signed consent, but no material or substantial changes were proposed. The remaining 11 included completed amendments and a PWN documenting the transition decisions. Only one included a material change in service and included signed parent consent. Only one was not signed but did not propose a material or substantial change.
21. Seven additional students who were transitioning from 8th to 9th grade from the Complainant's middle school in co-taught science or social studies classes were selected for review from the school's class rosters for collab service minutes and PWNs for the change in services.

Student identifier	C minutes grade 8	Amendment prepared	C minutes grade 9	PWN
1	SE Written Expression 30 min weekly	Yes	SE Written Expression 40 min weekly	Provided, not signed, not material or substantial change proposed
2	SE math operations 30 min weekly	Yes	SE math operations 30 min weekly	Signed not material or substantial change proposed
3	SE math operations 45 min weekly	Yes	SE math operations 30 min weekly	Signed not material or substantial change proposed

Student identifier	C minutes grade 8	Amendment prepared	C minutes grade 9	PWN
4	SE Basic reading skills and written expression 30 min AND Math Operations EACH 2x weekly	Yes	SE Basic reading skills and written expression AND Math Operations EACH 40min weekly	Signed not material or substantial change proposed
5	SE Math Operations 30 min 2x weekly	Yes	SE Math Operations 40 min weekly	Signed not material or substantial change proposed
6	SE Math operations AND reading fluency EACH 30 min 2x weekly	Yes	SE Math operations AND reading fluency EACH 20 min 2x weekly	Signed not material or substantial change proposed
7	SE Math operations AND reading fluency EACH 30 min 2x weekly	Yes	SE Math Operations AND reading fluency EACH 40min weekly	Signed not material or substantial change proposed

Conclusion

It is found that the district's written documents including the case manager procedural manual and training materials used to orient the special education case managers for transitioning the 8th graders to 9th grade are consistent with IDEA and state regulations for amending IEPs. Specifically, The Kansas State Department of Education Kansas Special Education Process Handbook (page 87) states that when the IEP team proposes to update or change the Statement of Special Education and Related Services and/or educational placement "between annual IEP reviews, if the parent and school representative agree, changes can be made without an IEP team meeting, by amending the IEP rather than by rewriting the entire IEP". "In amending a child's IEP, the parent of a child with an exceptionality and the school representative may agree not to convene an IEP team meeting for the purpose of making those changes, and instead may develop a written document to amend or modify the child's current IEP. There are no restrictions on the types of changes that may be made, so long as the parent and the school representative agree to make the changes without an IEP team meeting. If changes are made to the child's IEP without a meeting, the school must ensure that the child's IEP team is informed of those changes (K.S.A. 72 3429(b)(4)(B); 34 C.F.R. 300.324(a)(4))." Further, "Even when using the IEP amendment process, the school must provide Prior Written Notice of any changes in the IEP. If the changes in the IEP constitute a substantial change in placement or a material change in services, the school must request parent consent to implement the change."

Based on the review of evidence, interviews with all parties there were two factors that contributed to misunderstanding and consequently probably led, in part, to this complaint. First, as the Director of Special Education described in the district response, emails sent out to special education case managers on April 9, 2025 provided confusing and seemingly contradictory information about the process that is included in the case manager's procedural manual, transition checklist and training materials. Some of the emails sent to the case

managers included descriptions of traditionally internal decision making that occurs when administrators determine how to meet the IEP needs of all incoming and present students with staff skills and logistics to develop class rosters. Further, the High School Special Education Coordinator stated relying on the aid of artificial intelligence (AI) to develop an email sent out to the special education case managers that proved to be confusing.

Second, it was determined that there was confusion between services, skills within services and setting on behalf of the Complainant as evidenced by the statement written in the systemic complaint dated April 10, 2025, "the district is directing Middle School Special Education Case Managers to amend all IEPs for students transitioning to high school by removing collaborative service minutes except in Math and English." In fact, all of the service minutes were special education (SE) service minutes, further described by a skill area (reading comprehension, etc.) and collaborative/ collaboration is a setting (C). Based on this it is found that the district followed federal and state regulations and their district procedures for amending the 8th grade student's IEP when transitioning to 9th grade in regard to eliminating collaboration minutes.

The next step of the investigation is to then determine if the district followed its practice when amending the 8th grade student IEPs grade in regard to eliminating collaboration minutes when transitioning to 9th grade. This was investigated in two ways. First approximately 10% of the transition amendments/PWNs for 8th graders with collaborative minutes were examined. In all cases the amendments and PWNs were accurately prepared and followed IDEA regulations and district procedures. The district had established a May 5, 2025 deadline for amendments to be completed. As the Investigator established an evidence collection deadline of April 25, 2025 the Investigator examined student documents that were completed after the training occurred, but did not include in the sample all of the records of students transitioning to 9th grade. Several of the schools had not amended any of the 8th grader's IEPs by April 25, 2025 so were not included in the investigation. In all cases it was found that the district had completed an amendment and PWN to record the service/placement changes of the 8th graders transitioning to 9th grade. Further, while changes in service minutes were discovered in the amendments, none showed a discontinuation of service minutes or services in a collab setting.

it is found that the district is ***IN compliance*** with following IDEA procedures when directing middle school special education case managers to amend all IEPs for students transitioning to high school in regard to collaborative service minutes.

Summary of Conclusions/Corrective Action

ISSUE ONE: A violation of 34 C.F.R. §§300.324(a)(4)(i) and 300.324(a)(4)(ii) was not found, based on the 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.gov 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 April 11, 2025
Against Unified School District No. 500
Kansas City Public Schools: 25FC500-007

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on April 11, 2025, by -------, a special education teacher in the district, on behalf of eighth grade students receiving special education services and transitioning from middle school to high school. In the remainder of this decision, ------ will be referred to as "the complainant." An investigation of the complaint was undertaken by a complaint investigator on behalf of the Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, a Complaint Report, addressing the allegations, was issued on May 21, 2025. That Complaint Report concluded that there were no violations of special education statutes and regulations

Thereafter, the complainant filed an appeal of the Complaint Report. Upon receipt of the appeal, an appeal committee was appointed and it reviewed the original complaint filed by the complainant, the Complaint Report, and the complainant's notice of appeal. The district did not send a response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

Preliminary Matters

A copy of the regulation regarding the filing of an appeal [K.A.R. 91-40-51(f)] was attached to the Complaint Report. That regulation states, in part, that: "Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect." Accordingly, the burden for supplying a sufficient basis for appeal is on the party submitting the appeal. When a party submits an appeal and makes statements in the notice of appeal without support, the Committee does not attempt to locate the missing support.

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

Discussion of Issues on Appeal

The report identified one issue, as follows:

Did the district follow IDEA procedures according to 34 C.F.R. §§300.324(a)(4)(i) and 300.324(a)(4)(ii) when directing middle school special education case managers to amend all IEPs for students transitioning to high school in regard to collaborative service minutes?

The investigator concluded that the district did properly follow IDEA procedures.

In her appeal, the complainant summarizes her position as follows:

> *This complaint centers on whether service changes were made based on a **blanket directive**, rather than thoughtful, data-based decisions for each student. The implementation of a district-wide policy that effectively removes services, absent data or IEP team input, is a violation of IDEA's mandate to individualize education based on student needs.*

Taken by itself, this summary statement is an accurate description of how "district-wide" policies to remove services without data or IEP team input are a violation of IDEA's mandate to individualize education based on student needs.

However, like many of the IDEA provisions, there are exceptions in the law. One such exception is federal regulation 34 C.F.R. 300.324(4), which the investigator cited on pages 5, 17 and 18 of the report. As described by the investigator, this regulation provides an alternative to the typical IEP process for changing IEP provisions after the annual IEP review. The text of this regulation is as follows:

> *(4) Agreement. (i) 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**. Emphasis added.*

This provision involves only the "parent" and the "public agency," not the IEP team. There are no limitations on this provision with regard to a need to use data or IEP team input. The only limitation to using this process is agreement. The parents and district officials need only to agree to use this process to "amend or modify the child's current IEP," without IEP team involvement That can mean a parent and a school administrator may unilaterally modify an IEP without the use of any particular data or involvement of the IEP team. Indeed, one of the purposes of this provision is to enable the parties to settle disputes that arise in the IEP process by making it possible for a parent and a district administrator to make a final decision regarding the content of an IEP. Another purpose of this alternative IEP amendment process is to provide a method to change IEPs without going through the inconvenience to all team members of holding a meeting in situations, such as the one involved here, where the need for a change is not based on changing needs of a student, but based on a natural progression such as this one, where a student is graduating to a new school structure from middle school to high school.

To be sure, when using this process, the district must issue a Prior Written Notice (PWN) and must also obtain written parent consent when the agreed upon amendment constitutes a material change in services or a substantial change in placement (as noted on P. 17 of the report).

The investigator took a sample of the approximately 140 special education students transitioning from 8th to 9th grade (about 10% of total) and an additional 7 students that were co-taught in science or social studies classes (Report, p. 15). The investigator summarized her findings as:

> *In all cases it was found that the district had completed an **amendment and PWN** to record the service/placement changes of the 8th graders transitioning to 9th grade. Further, while changes in service minutes were discovered in the amendments, none showed a discontinuation of service minutes or services in a collab setting (emphasis added). (Report, p. 18).*

The Appeal Committee finds that while the district's process may have been confusing (see Report, p. 17), and appeared to the complainant, be a "blanket directive," the investigator documented sufficient evidence to support the findings and conclusions in the Complaint Report that there was no procedural violation. The district did not simply issue a "blanket directive." It communicated with parents, completed an amendment form for the parent's signature that described the proposed changes, and issued a PWN to parents in every one of the samples examined by the investigator.

The district may want to find a better process for adjusting IEPs of students transferring from middle school to high school. One way to do this could start with the drafting of middle school IEPs. When developing middle school IEPs, those IEPs could identify those services that are not appropriate for high school with the provision that those specific services will end with the student's transition to high school. That method would involve up-front conversations, along with explanatory PWNs, with regard to the extent and limitation to which the services are being offered by the middle school IEP team and whether parents are willing to provide consent for any stated limitations in the team's offer. If handled in this manner, these "limited" offers should not be made in a "take it or leave it" manner. Rather, the offer could be used as an invitation to avoid the inevitable difficult discussion later of the differences between the district's middle school structure and the high school structure.

Conclusion

For the reasons stated herein, the Complaint Report is sustained in full.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 10th day of June, 2025.

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 #273, BELOIT PUBLIC SCHOOLS
ON MAY 15, 2025

DATE OF REPORT: MAY 28, 2025

This Findings of Facts report is in response to a complaint filed with the Kansas State Department of Education against USD #273 (Beloit Public Schools) on behalf of ------- by her mother -------. In the remainder of the report, ------- will be referred to as "the student" and ------- as "the parent" or "the complainant".

The complaint is against USD #273 (Beloit Public Schools). In the remainder of the report, USD #273 will be referred to as "the district". The student currently attends St. John's Catholic School which will be referred to as the "private school" in the remainder of the report. The Beloit Special Education Cooperative provides special education support for the district; however, Beloit Public Schools remains the agency responsible for the student's educational services. In the remainder of the report, the Beloit Special Education Cooperative will be referred to as "the coop. " School and district staff will be referred to In the remainder of this report as follows:

- Christie Gerdes, Director of Special Education

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, 2025.

Evidence Reviewed

The following information was considered in this finding.

- The parent's formal complaint documents
- An interview with the director of special education on May 16, 2025
- An interview with the parent on May 20, 2025
- An email exchange with the director of special education on May 28, 2025

During the fact finding, the Complaint Investigator, Nikki Crawford, reviewed all evidence and documentation provided by the district and the parents.

Finding of Facts

The formal complaint submitted by the parent on May 15, 2025 states,

> "The district has failed to ensure [the student's] right to a Free Appropriate Public Education (FAPE) by creating a hostile environment through retaliation and bullying, and by refusing to provide necessary services in a setting that is safe and appropriate for [the student's] unique needs".

In the parent interview on May 20, 2025 the parent shared their concerns over the student's safety for the 2025-2026 school year at the district school. Up until this time, the student has attended a private school with the district providing occupational and physical therapy consultation as well as speech therapy in the private school setting. According to the parent, the latest IEP meeting in May of 2025 plans for the student's full time attendance at the district school for the 2025-2026 school year.

The complaint and interview with the parent confirmed the parent's concern for the student's safety is related to text interactions between a district staff person and the student's father in May of 2024 as well as contentiousness between the mother and an organization engaged by the school board to pass a bond issue to fund the district in the spring of 2024. The director shared in a May 16, 2025 interview that the district staff person who engaged in text interactions with the father is not on the student's IEP team nor works in the building where the student will attend in the fall of 2025.

PLEASE NOTE: In an email from the director to the investigator on May 28, 2025 the director clarified that the school psychologist, "works in the building but would not have direct contact or work directly with the student".

Conclusion

For a complaint to be investigated the allegations must fall within the protections of IDEA. In the May 20, 2025 interview with the parent they agreed that to date, the student has not experienced denial of FAPE, additionally the investigator lacks the jurisdiction to address the perceived hostile environment and the contentiousness between the family and the district given that it has not negatively impacted the student's IEP services. *The parent's concerns do not meet the criteria for a formal investigation of special education laws and regulations and therefore will not be investigated.*

PLEASE NOTE: The clarification provided by the director regarding the school psychologist's presence in the building the student may attend in the fall, does not have bearing on the conclusion of this Findings of Facts. The proximity of the school psychologist to the student is related to the parent's concern that the presence of the school psychologist may potentially create a hostile environment for the student, but not relevant to the parent's assertion that FAPE was denied.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.gov 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 #383
ON APRIL 29, 2025

DATE OF REPORT: MAY 29, 2025

This report is in response to a complaint filed with our office on behalf of a student, ------- by their parents, -------. In the remainder of the report, the student will be referred to as "the Student" and the parent as "the Parents."

The Complaint is against USD # 383, Manhattan Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #383.

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 April 29, 2025, and the 30-day timeline ended on May 29, 2025.

Allegations

The following issues will be investigated:

ISSUE ONE: Whether USD #383, in accordance with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), implemented special education and related services as described in the Student's Individualized Education Program (IEP). Specifically alleged is the lack of: paraprofessional support throughout the school year, elimination of the Student's exposure to latex, and appropriate supervision of the Student for their safety, inclusion and independence. K.A.R. 91-40-16(b)(3); 34 CFR § 300.323.

ISSUE TWO: Whether USD #383, in accordance with state and federal regulations implementing the IDEA, provided the Parents with an opportunity to participate in the IEP and reevaluation process. K.A.R. 91-40-17, K.A.R. 91-40-25; 34 CFR § 300.501.

ISSUE THREE: Whether USD #383, in accordance with state and federal regulations implementing the IDEA, conducted an accurate reevaluation that met the requirements. K.S.A. 72-3428; 34 CFR § 300.303.

Investigation of Complaint

The Complaint Investigator, interviewed the Parents by video conference on May 21, 2025. The following District staff were interviewed on May 20 and May 21, 2025: the Principal and Special Education Teacher 2.

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:

1. Parent Square Team Messages, 01/15-02/20/25
2. Parent Square Team Messages, 09/18/24-02/04/25
3. Parent Square Principal and Parent Messages, 08/05/24-04/14/25
4. Email, re: concern for [the Student], 09/18-11/21/24
5. Parent Square Team Messages, 02/03-02/22/25
6. Parent Square Physical Therapist and Parent Messages, 01/22-01/28/25
7. Parent Square Teacher and Parent Messages, 08/16-11/19/24
8. Parent Square Nurse and Parent Messages, 08/19/24-04/18/25
9. Special Education Paperwork Coversheet/Compliance Checklist, no date
10. Staffing Summary, 02/21/25
11. Passport, 02/21/25
12. Notice of Meeting, 02/20/25
13. Prior Written Notice (PWN), 12/20/24
14. Request for Consent, 01/27/25
15. Reevaluation/Continued Eligibility Report, 02/20/25
16. Individualized Education Program (IEP), 02/21/25
17. PWN, 02/19/25
18. Individual Health Plan, 02/19/25
19. Direct Message, 12/20/24
20. Health Office Visit Report, 08/13/24-05/02/25
21. Paraeducator Schedule, 08/26/25
22. Paraeducator Schedule, 03/01/25
23. Paraeducator Schedule, 12/01/24
24. Email re: [the Student], 04/04/25
25. Classified Staff Evaluation, 04/15/25
26. Progress Report, 02/22/24-02/21/25
27. Attendance Detail, 2023-2024
28. Attendance Detail, 2024-2025
29. Complete Payroll, 08/12/24-05/17/25
30. Daily Schedule, no date

Background Information

This investigation involved a third grade student enrolled at Oliver Brown Elementary in USD #383. The Student is currently receiving special education and related services as a child with a disability per the IDEA. The Student requires an IEP due to physical need and participates full-time in general education classes.

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. The Student's attendance during the complaint period reflected full days of absence on the following dates:
    a. February 26, 2024
    b. April 30, 2024
    c. May 1, 2024
    d. August 29, 2024
    e. September 30, 2024
    f. October 2, 2024
    g. December 18, 2024
    h. January 9 - January 17, 2025
    i. January 31, 2025
    j. March 3, 2025
    k. April 30, 2025
2. Paraprofessional 1's regular schedule was 8:00 a.m. - 3:45 p.m. on school days. Their attendance for the 2024-25 school year reflected the following missed time:
    a. September 6, 2024, no record
    b. October 29, 2024, absent
    c. October 30, 2024, absent
    d. October 31, 2024, absent
    e. November 1, 2024, left at 11:32 a.m.
    f. November 4, 2024, absent
    g. November 5, 2024, absent
    h. December 18, 2024, no record
    i. December 19, 2024, no record
    j. January 7, 2025, no record
    k. January 20, 2025, no record
    l. February 12, 2025, no record

m. February 18, 2025, absent

3. Paraprofessional 2's regular schedule was 8:00 a.m. - 3:45 p.m. on school days. Their attendance for the 2024-25 school year reflected the following missed time:
   a. August 19, 2024, left at 12:10 p.m.
   b. August 20, 2024, arrived at 10:37 a.m.
   c. August 22, 2024, left at 10:06 a.m.
   d. August 26, 2024, absent
   e. August 22, 2024, absent
   f. September 3, 2024, absent
   g. September 17, 2024, absent
   h. September 18, 2024, absent
   i. September 26, 2024, no record
   j. October 23, 2024, no record
   k. November 7, 2024, no record
   l. November 8, 2024, no record
   m. November 11, 2024, no record
   n. January 7, 2025, no record
   o. February 3, 2025, no record
   p. February 18, 2025, no record
   q. February 28, 2025, no record
   r. March 5, 2025, no record
   s. March 6, 2025, no record
   t. April 18, 2025, left at 12:05 p.m.
   u. April 22, 2025, absent
   v. April 28, 2025, absent
   w. April 29, 2025, absent
4. The classroom schedule reflected the following relevant items for the 2024-25 school year:
   a. Recess daily from 10:05 a.m.-10:30 a.m.
   b. Physical Education (PE) on Tuesdays and Thursdays from 11:00 a.m.-11:30 a.m.
   c. Lunch daily from 12:00 p.m.- 12:30 p.m.
   d. Recess daily from 2:20 p.m.-2:50 p.m.
5. On August 16, 2024 at 7:24 a.m., the Parents sent a direct message to the Special Education Teacher 1 introducing themselves and inquiring about paraprofessional coverage stating, "I am concerned that [the Student's] IEP is not being met. So far [they have] only had a para[professional] during recess time."

6. On August 16, 2024 at 7:54 a.m., Special Education Teacher 1 sent a direct message to the Parents that stated, "I am still working on schedules, and [the Student] is at the top of my list of concerns."
7. The August 26, 2024 paraprofessional schedule indicated the following:
    a. Paraprofessional 2 as the Teacher's support from approximately 10:15 a.m. to 10:30 a.m..
    b. Paraprofessional 2 as the Teacher's support from approximately 10:45 a.m. to 11:50 a.m..
    c. Paraprofessional 2 as the Teacher's support from approximately 12:30 p.m. to 2:00 p.m..
    d. Paraprofessional 2 as the Teacher's support from approximately 2:15 p.m. to 3:45 p.m..
    e. Paraprofessional 2 had AC (Attendant Care) listed for the Student first thing in the morning.
    f. Paraprofessional 1 and Paraprofessional 2 had AC recess listed from approximately 10:30 a.m. to 10:45 a.m. and 2:00 p.m. to 2:15 p.m..
    g. AC lunch was listed on 4 different Paraprofessional's schedules ranging from 11:15 a.m. to 12:15 p.m.
8. On August 26, 2024, the Parents sent a direct message to the Principal inquiring when the Student "will begin having all of [their] para[professional] minutes met. It is the third week of school and [the Student] is still not having a para[professional] for the majority of the day including PE and some days [they] lack one at recess as well."
9. On August 27, 2024, the Principal replied to the Parents in a direct message and stated, "Para[professional] schedules and adjustments were put into place starting yesterday, however, we did have two para[professionals] absent. The coverage was a complete oversight on our end, so I do apologize. At this time, [the Student] has para[professional] support and [the] minutes are being covered."
10. On September 18, 2024 at 11:07 a.m., the Parents sent a direct message to the Principal and Special Education Teacher 1 and stated, "[the Student] indicated that [they] didn't have a para[professional] yesterday, Friday, and part of Monday. Yesterday at recess, [the Student] was being encouraged by [their] friends to walk without [their] walker … [the Student] took several steps and then fell to the ground." The message also indicated that the Student was told that the para[professional] that has been assigned to them "is doing MTSS groups now."
11. On September 18, 2024 at 2:49 p.m., Special Education Teacher 1 responded to the Parent's message and stated "[the Student] does have [AC] during recess, and I will continue to communicate with that para[professional] and [the Student's] teacher regarding expectations including ensuring [the Student] is using [their] walker." Special Education Teacher 1 continued, "we have had to make adjustments to the [paraprofessional] schedules. We have also had several illnesses among staff, so we have needed to make adjustments to support all students. There is a para[professional]

beginning next week who will be working in [the Teacher's] room, so [the Student] will have support once again."

12. On September 18, 2024 at 3:27 p.m., the Parents responded to Special Education Teacher 1's message asking if the Student had a paraprofessional for the required minutes that day (Wednesday) and if the Student would have one Thursday and Friday (September 19 and 20, 2024).
13. On September 18, 2024 at 8:51 p.m., Special Education Teacher 1 responded to the Parents message and stated, "Due to the shortage of para[professional] subs, [the Teacher's] classroom is not assigned a para[professional] … The para[professional] that is assigned [AC] at recess has other students that they also oversee during recess. [The Student] does not have any time with one-on-one para[professional] support, so anytime that a para[professional] is in [the Student's] classroom, they are supporting multiple students."
14. On September 18, 2024 at 11:11 p.m., the Parents responded to Special Education Teacher 1 and reported the issue of not having a paraprofessional had been going on for over a month and the "approach of having one para[professional] in charge of assisting multiple kids is not effective. This is evident because [the Student] was engaging in dangerous activity without the para[professional] noticing." In addition, the Parents stated, "Up until this year, [the Student] has had 1:1 para[professional] support during recess and PE. Our understanding was that there were no changes made to [their] IEP from last year. It is essential for [the Student's] safety and inclusion to have close support during those times in particular."
15. On September 19, 2024 at 11:22 a.m., the Parents sent an email to the Superintendent and stated, "While attending Back to School Night, we were told by the School Nurse and the Teacher that [the Student] would not have para[professional] support this year. We spoke to the Principal that evening, [they] looked at [the Student's] IEP and reassured us [the Student[would have a para[professional]. [The Student] did not have a para[professional] the majority of the time for the first 10 days of school."
16. On September 19, 2024 at 8:33 p.m., the Principal sent a direct message to the Parents and Special Education Teacher 1 and shared appreciation for the continued communication regarding paraprofessional support for the Student and that "[AC] has been provided for [the Student] consistently. With all para[professionals], they are covering the needs of more than one student in a classroom or during recess/lunch. [Special Education Teacher 1] has already shared concerns with the para[professionals] that are supporting [the Student] and the need to be in closer proximity." The Principal goes on to explain that more paraprofessionals have been hired to provide support and the Student "will have adequate support starting Monday." The Principal also added a link to information that outlined steps that parents can take when addressing concerns.
17. On September 25, 2024, the School Nurse sent a direct message to the Parents and stated, "Today at 11:45 [a.m.] I was on the look out for [the Student] and [they] didn't come to the office. [They] have a brand new para[professional] so I thought perhaps

they were late. I waited until nearly 12:00 [p.m.] and then I went looking for [the Student]. When I asked [the Student] where [the] Para[professional] was [they] said [they] didn't know, that '[they] just disappeared.'"

18. On October 29, 2024, the Parents sent a direct message to Special Education Teacher 1 requesting a "team meeting to go over [the Student's] needs and [the] current IEP to clear up any misunderstandings." Special Education Teacher 1 and the Parents scheduled a meeting for November 19, 2024.
19. On November 19, 2024, the Parents sent a direct message to Special Education Teacher 1 and the Principal and stated, "we were disheartened to learn that [the Student] didn't have a para[professional] again today" and "the Nurse had to come get [the Student] to do [their] cath [(catheterization)] because there wasn't a para[professional] to take [the Student] when it was time."

    The Principal replied to this message the same day and stated, "We were short on para[professionals] today, as we had several absent. We had to make adjustments to provide coverage."
20. On November 20, 2024 at 9:22 a.m., the School Nurse sent a direct message to the Parents and stated, "I wanted you to know that there is a balloon parade tomorrow being held by the second grade class. I questioned the balloons, wanting to keep my four latex allergy kiddos safe. Yesterday the Principal had the office professional get latex free balloons for this parade. So, my understanding is that this concern was corrected."
21. On November 20, 2024 at 2:20 p.m., the Parents sent an email to the Superintendent and stated, "We are reaching out to you again because our concerns have not been resolved." The Parents describe a meeting they had the day prior that was supposed to be a discussion of issues surrounding paraprofessional support, safety, and inclusion, and the meeting "turned into a discussion on reducing [the Student's] services, rather than making sure the current IEP is followed." The Parents stated that the Principal "called later in the day to apologize for the nature of the meeting, to retract the IEP, and that we will plan to meet to discuss the IEP in February when it is due." The email goes on to share the Parents' concerns about coverage when paraprofessionals are absent and states that, "[the Student] has gone upwards of 19 days without a para[professional] this year."
22. The December 1, 2024 paraprofessional schedule indicated the following:
    a. Paraprofessional 2 as the Teacher's support from approximately 10:15 a.m. to 11:30 a.m.
    b. Paraprofessional 2 as the Teacher's support from approximately 12:30 p.m. to 2:00 p.m.
    c. Paraprofessional 2 as the Teacher's support from approximately 2:45 p.m. to 3:45 p.m.
    d. Paraprofessional 2 had AC listed for the Student first thing in the morning.
    e. Paraprofessional 2 had AC recess listed from approximately 2:00 p.m. to 2:15 p.m.
    f. Paraprofessional 1 had AC lunch assigned to the Student from approximately 12:00 p.m. to 12:30 p.m.

23. On a December 16, 2024 entry to the Health Office Visit Report, the School Nurse logged an incident of the Student falling in the classroom, hitting their buttock on the ground, and then denying hitting their head or any concerns of pain. The School Nurse called the Parents to inform them and they advised to check the brace for tightness. The School Nurse checked the brace and cited no evidence of further injury, then sent the Student back to class.
24. In a December 20, 2024 direct message to the Parents, the School Psychologist stated, "[The Student's] three year reevaluation is due this year. I am going to send home consent forms."
25. On a December 20, 2024 PWN For Evaluation Or Reevaluation And Request For Consent, the Special Education Action Proposed was "The [LEA] proposes to conduct a reevaluation. (Parental consent required)." This was based on new data for health/motor ability and social emotional status/behavioral status, along with existing data on vision, hearing, and academic performance. The explanation of proposed action is "to gain consent to complete a reevaluation. [The Student's] reevaluation is due in March 2025. Additionally, new data is needed." The data used as the basis for the action included staff input, parent input, observations, and three year reevaluation.

    This notice was delivered to the Parents on December 20, 2024 by the School Psychologist by being sent in the Student's bag.

    The notice was signed by one of the Parents on January 27, 2025 and indicated the Parents had "received [their] rights and give consent for the evaluation or reevaluation specified in the notice."
26. On January 15, 2025 at 12:38 p.m., the Parents sent a direct message to the Physical Therapist (PT), the Principal, Special Education Teacher 1, the School Nurse, and the Teacher and stated "we just wanted to make sure that [the Student] will have para[professional] support as indicated in [their] IEP." They continued by noting the Student would need extra support for "transfers" due to a "large incision" and "two ports with healing wounds."
27. On January 15, 2025 at 3:35 p.m., the Principal sent a direct message to "all staff working with [the Student]" and the Parents outlining a detailed coverage plan for the Student when they returned from their surgery.
28. On January 22, 2025, the PT sent a direct message to the Parents about the Student's return to school after surgery and recommending the Student use their wheelchair for school mobility "this week" with guided transfers and ambulation at designated times under supervision and that weekly reevaluations should occur to determine needed adjustments. The PT also stated, "[The Student] is showing poor safety awareness, frequently ignoring cues from staff, sitting on the edge of [their] chair, and refusing to maintain a clutter-free workspace despite frequent prompts. [The Student's] inability to wear twister cables and recent muscle weakness further increase [their] fall risk."

29. On January 23, 2025 at 4:52 p.m., the Parents sent a direct message to the PT and stated "We discussed yesterday that [the Student] would be allowed to walk during PE and across the hall to groups and be able to walk or stand during recess. Do you know why that didn't happen?"
30. On January 23, 2025 at 5:23 p.m., the PT sent a direct message to the Parents that they have reached out to the Teacher for specifics, took time to discuss recommendations with staff after the phone conversation with the Parents, and that they would observe the Student at the School the following day. In addition they stated, "My communication with staff is that we are using the wheelchair as [the Student's] desk chair and [they] should continue to walk as tolerated."
31. On January 24, 2025, the PT sent a direct message to the Parents and stated, "Yesterday appears to be a misunderstanding. Everyone, including [the Student], is on the same page."
32. On February 3, 2025 at 3:18 p.m., Special Education Teacher 1 sent a direct message to the Parents and the Principal and stated, "It is time for [the Student's] annual IEP review" and went on to offer February 19 or February 20, 2025 as possible meeting days. On February 4, 2025 at 8:56 a.m., the Parents responded that February 20, 2025 would work. Special Education Teacher 1 responded the same day at 10:53 a.m. and stated, "I will send the draft as soon as I can and send home the Notice of Meeting this week."
33. On February 3, 2025 at 4:17 p.m., the Parents sent a direct message to Special Education Teacher 1 and the Principal and stated, "[the Student] told me today that [they] did not have a para[professional] today besides the person that pushed [them] out at dismissal." The Parents went on to express that there had been "no fewer than nine different people" who had accompanied the Student to the School Nurse's office during the school year. The Parents requested to "find a way to make sure there is one consistent person available for [the Student's] bathroom time."
34. On February 3, 2025 at 5:54 p.m., the Principal replied to the Parents message and stated, "We had several para[professionals] out today, as well as a couple teachers without subs. We made adjustments to the schedule as needed to provide support throughout the building." The Principal added that they would reach out to the School Nurse to "see what accommodations we can make during that time to offer [the Student] more privacy while still following protocol."
35. On February 4, 2025 at 9:15 a.m., the Parents sent a direct message to the Principal and Special Education Teacher 1 and stated, "[Paraprofessional 1] has demonstrated numerous times that [they are] detrimental to [the Student's] safety, inclusion and independence. For these reasons, we have requested both this year and last year that [Paraprofessional 1] not be involved in [the Student's] care." The Parents added that the PT expressed their concerns with transitions and classroom safety.
36. On February 19, 2025, the Principal sent a direct message to the Parents and stated, "With the additional inclement weather days, we are needing to reschedule [the Student's] IEP and Reevaluation Meeting. Will Friday [February 21, 2025] morning @

8:00 work for you?" The Parents replied to this message and stated, "Yes. That will work for us. Will we still receive the proposed IEP prior to the meeting?" The Principal replied to this message and stated, "Yes. I will ask that [Special Education Teacher 1] have that to you by the end of the day tomorrow."

37. Relevant items from the Student's Individual Health Plan (IHP) dated February 19, 2025 contained the following relevant information:
    a. The Medical Diagnosis section listed a latex allergy;
    b. The Prescribed Treatment/Medication section listed daily cath, mobility assistive devices, monitor shunt placement, avoid latex, and not being upside down for any length of time;
    c. The Nursing Assessment listed risk for fall and injury with the School Nurse assessing for skin breakdown and irritation, ensuring a safe workspace, providing verbal cues for safe transfers, assessing the Student after any fall or injury and informing the Parents, and reminding teachers, paraprofessionals, and staff to ensure the Student did not remain in one position for extended amounts of time;
    d. The Nursing Assessment listed increased risk for UTI with the School Nurse notifying the Parents of symptoms and expected use of "aseptic technique" when performing daily caths;
    e. The Nursing Assessment listed increased risk of injury due to Latex Precaution with the School Nurse expected to "ensure that all products used for caths, assessments, first aid and general care for [the Student] will be Latex free and within expiration date" and "assess [the] Student if there is an accidental latex exposure/contact and notify parents as needed." It was also noted that an "Epi-pen" is in the office for emergency intervention if needed;
    f. The Nursing Assessment listed increased risk for "emergent cares [sic] s/t shunt malfunction" with the School Nurse expected to assess for headaches, increased irritability, lethargy, projectile vomiting, glazed stare, changes in urination" and to inform the Parents of any concerns.
    g. The Nursing Goals and Plans stated, "Teachers will make [the] classroom accessible and safe for [the] student" and "Staff will eliminate latex exposures."
38. On February 20, 2025, the Parents sent a direct message to the PT, the Principal, Special Education Teacher 1, the School Nurse, and the Teacher that indicated the Student would need to "cath more frequently" and offered to come to the School to show the School Nurse the new procedure. Special Education Teacher 1, the School Nurse, and the Teacher replied to the message within one hour in support of "accommodating this in the IEP" and meeting with the Parents and seeing the procedure.
39. A February 20, 2025 Reevaluation/Continued Eligibility Report stated, "[The Student's] reevaluation is due by March 2025. [The] Parents signed consent on January 27, 2025 for the school team to complete the reevaluation."

40. A February 20, 2025 Reevaluation/Continued Eligibility Report stated, "[The Student] is allergic to Latex and has a history of fractures related to low bone density." The report also indicated the Student's need for daily physical assistance with "managing items or gross motor verbal cues to improve safety." The PT reported "a significant delay and continued direct physical therapy interventions in the school setting are recommended to enable [the Student] to access [the] educational environment and improve interactions with peers."
41. A February 20, 2025 Reevaluation/Continued Eligibility Report indicated there were "parent ratings" taken as data regarding the Student's "schoolwork T-score."
42. A February 20, 2025 Reevaluation/Continued Eligibility Report was acknowledged, agreed to and signed by the Parents on February 21, 2025. The Principal, Special Education Teacher 1, the Teacher, the School Psychologist, the Special Education Coordinator, and the PT agreed to and signed the report on February 21, 2025.
43. On an undated Special Education Paperwork Cover Sheet/Compliance Checklist for the Student's IEP and Reevaluation, all items were checked off for "PWN" and "Notice of Meeting." In addition, under the "IEP" checklist, "Documentation that parent questions/input were considered and noted" and "Parent Rights/PWN, PWN for Eval/Reeval given in native language" were checked as complete.
44. On an undated document labeled "Passport," the Student's exceptionality was listed as "OH- Other Health Impairment." The following services and accommodations were listed to begin February 21, 2025 and end February 20, 2026:
    a. Physical Therapy, 25 minutes one day per week as long as school is in session;
    b. School Nurse Services "provided by a qualified nurse," 15 minutes daily as long as school is in session;
    c. AC "a non instructional paraeductor (lunch coverage)," 10 minutes daily as long as school is in session;
    d. Special Education Services "(Adult support for mobility in specials, recess, and classroom)," 245 minutes one day per week as long as school is in session;
    e. Special Education Services "(Adult support for mobility in specials, recess, and classroom)," 270 minutes four day[s] per week as long as school is in session;
    f. Adult check in/check out for organization, daily for the length of the activity not to exceed five minutes check in and five minutes check out;
    g. Alternative seating, activities, etc. may be needed in order for the Student to be most successful at school, daily for the length of the activity;
    h. Visual organizational prompt on student desk, daily for the length of the school day.

    "Important Notes" indicated the Student has "diagnosis of spina bifida (lumbar myelomeningeocele), chiari malformation, hydrocephalus with shunt placement, bilateral hip dysplasia tether spinal cord, and metatarsus adductus. Due to [their] diagnoses, [the Student's] highest needs are to safely access the educational environment." It was also mentioned that the Student only needs safety support and

the "role of the paraprofessional is to ensure [the Student's] safety while navigating the educational environment."

45. On a Staffing Summary form dated February 21, 2025, the "Purpose of Staffing" was checked as "IEP Meeting- Reevaluation," the "Persons Present" were checked as "Parent/Guardian, Administrator, Special Education Teacher, Social Worker, Psychologist, PT, Nurse, and General Education Teacher," and the "Summary of Discussion" was checked that the "Parents Rights were presented and reviewed" and the "Parents accepted."
46. On a Staffing Summary document dated February 21, 2025, the "Discussion Details" stated, "Eligibility was signed and agreed to continue to the draft of the proposed IEP … [The] Parents' concerns were noted that they feel the paraprofessionals are not providing adequate benefit. [The] Parents request a specific paraprofessional not be with [the Student]. They feel if an emergency situation were to occur that Paraprofessional 1 could not help [the Student]. " The discussion details then stated, "[The Special Education Coordinator and the Principal] noted that our goal is to provide [the Student] with adult support within [their] IEP and the team will take into consideration the specific concerns noted to train paraprofessionals on the specific concerns. (No further questions from [the] Parents)."
47. On a Staffing Summary document dated February 21, 2025, the "Discussion Details" stated, "[Special Education Teacher 1] presented proposed services: AC, 10 minutes daily; Special Education services Adult Support, 245 minutes one day a [week]; Special Education services Adult Support, 270 minutes four days a week." The discussion details then read, "[The] Parents have concerns on the supports. The team highlighted when [the Student] will be receiving services throughout the day. The Parents have concerns about morning meeting[s] and the what if scenarios that could occur to get [the Student] out of the school. The team discussed this and noted we have accommodations for a check-in/check-out with an adult that would address this concern."
48. "We also addressed the observation and data that reflect [the Student] has shown the ability to be independent during these parts of the day. Data reflects that [the Student] needs physical assistance for 120 minutes of the school day and is independent the remainder of the day on a regular basis. However, the team considered [the] Parents' concerns of reducing [the Student's] para[professional] support to 120 minutes of [their] school day and concluded that [the proposed minutes presented by Special Education Teacher 1] was adequate … ([the] Parents had no further comments/concerns)."

    A Notice of Meeting dated February 20, 2025 listed a proposed meeting date, time and place as Friday, February 21, 2025 at 8:00 a.m.. On the document it was noted that on February 19, 2025, the Principal reached out to the Parents to reschedule the meeting to February 21, 2025 at 8:00 a.m. due to snow days and late start and the Parents confirmed the meeting change.

The Notice of Meeting indicated a meeting to review the evaluation and determine eligibility and a meeting to develop the IEP. The Notice of Meeting indicated hand delivery by Special Education Teacher 1 to the Parents on February 21, 2025.

The Notice of Meeting was acknowledged by the Parents with signatures on February 21, 2025 and list items checked were: "I have received a copy of my parental rights in my primary language; I plan to attend the meeting as scheduled; and I consent to waive my right to a 10-day PWN of the meeting to develop, review or revise the IEP for my child."

49. The Student's IEP dated February 21, 2025 indicated the date of the meeting as February 21, 2025, the Parents received the Parental Rights on February 5, 2025, the Evaluation consent was obtained on January 27, 2025, and the evaluation date was February 21, 2025. Meeting participants on the IEP listed and included signatures for the Parents, Special Education Teacher 1, the Principal, the Special Education Coordinator, the PT, the School Nurse, the School Psychologist, and the Physical Therapy Assistant.
50. Relevant items from the Student's IEP dated February 21, 2025 indicated the following:
    a. "[The Student] is great at reading" and "loves to read, draw, and build with their friends."
    b. The Student's highest need was described as safely accessing the educational environment. "[School staff] are currently empowering [the Student] to become as safe as possible within the school."
    c. Parental concerns were noted as "lack of para[professional] support, para[professionals] [not] always providing real benefit, [paraprofessionals] doing things [the Student] is able to do and would like to do [themself], para[professionals] being present but not able to physically help [the Student] if there was an emergency or not [being] nearby to offer assistance when needed." The Parents added, "[The Student] needs involved assistance with safety and inclusion. [They] need standby assistance with some transfers and mobility, as well as on the playground and in PE. [They] need someone to help adapt PE to [their] physical abilities. [The Student] also needs someone to help [them] get to safety in times of emergency. [The Student] tires easily because simple tasks require extra effort and exertion compared to a fully abled body individual."
    d. The PT noted that the Student sustained two recent falls from their classroom chair and required multiple cues to sit safely when utilizing a regular classroom chair, along with requiring stand by assistance for opening exterior doors from walker level and moderate assistance from wheelchair level. "[The Student] accesses a regular playground swing with supervision for safety and safely stops the swing with stand by assistance. [The Student] requires supervision to stand by assistance when accessing playground steps … [The Student] descends the roller slide with stand by assistance."

e. "The Student is allergic to Latex and has a history of fractures related to low bone density."

f. The Student's diagnoses of "paraplegia s/t spina bifida lumbar myelomeningocele with Hydrocephalus with shunt, chiari malformation, bilateral hip dysplasia, metatarsus adductus, osteopenia with history of leg fractures, leg length discrepancy, neurogenic bowel and bladder necessitating frequent caths and enemas. (January 2025 had Mace/Mitrofanoff surgical procedures), agenesis of the corpus callosum, and latex allergy" required an Individual Health Plan (IHP).

g. The Student had three goals listed in the IEP:

   i. Goal 1.1- "Within the duration of the IEP, [the Student] will practice safety (including but not limited to clearing [their] desk, clearing floor area around [their] desk, safe sitting, safely using [their] roller walker) across all school settings within 2 staff prompts with 80% accuracy based upon observations by school staff."

   ii. Goal 2.1- "[The Student] will open exterior doors from walker level independently 75% of the time within the duration of [their] IEP based on observations by Physical Therapy Staff."

   iii. Goal 2.2- "[The Student] will catch a small ball thrown overhanded from 10 ft 75% of the time within the duration of [their] IEP based on observations by Physical Therapy Staff."

h. Related services were Physical Therapy provided by the PT from February 21, 2025 to February 20, 2026 for 25 minutes one day per week as long as school is in session.

i. Special Education Services from February 21, 2025 to February 20, 2026 were:

   i. School Nurse Services provided by the School Nurse for 25 minutes daily as long as school is in session;

   ii. A non instructional paraeducator (lunch coverage) for 10 minutes daily as long as school is in session;

   iii. Adult support for mobility in specials, recess, and classroom 245 minutes one day per week and 270 minutes four days per week as long as school is in session.

j. Support for School Personnel service was teacher consultation "(PT and special education teacher will consult classroom teacher, specials teachers, and other staff members regarding [the Student's] needs)" for 5 minutes monthly as long as school is in session.

k. It was noted under Services that "Services may be interrupted for a variety of reasons, including, but not limited to personal illness, professional staff obligations, field trips, school closure due to inclement weather and other issues beyond the control of the school system."

51. A PWN dated February 19, 2025 indicated a February 21, 2025 meeting for Eligibility and Change in Services (that included parent input) was hand delivered by Special Education Teacher 1, to the Parents, on February 21, 2025.
52. On February 21, 2025, the Parents signed a Request for Consent for Special Education Action that provided consent for the special education placement and services action(s) in the PWN.
53. On a February 21, 2025 Student Progress Report, the Student's progress was listed as:
    a. "Making progress toward annual goal" in Goal 1.1 in Period 3 for 2023-24 (February 12, 2024 thru May 5, 2024), Period 1 for 2024-25 (August 13, 2024 thru October 17, 2024), and Period 2 for 2024-25 (October 21, 2024 thru February 6, 2025);
    b. "Making progress toward annual goal" in Goal 2.1 in Period 3 for 2023-24, Period 1 for 2024-25, and Period 2 for 2024-25;
    c. "Making progress toward annual goal" in Benchmark 2.1.1 in Period 3 for 2023-24, Period 1 for 2024-25, and "Goal Met" in Period 2 for 2024-25;
    d. "Making progress toward annual goal" in Benchmark 2.1.2 in Period 3 for 2023-24, Period 1 for 2024-25, and "Goal Met" in Period 2 for 2024-25;
    e. "Making progress toward annual goal" in Benchmark 2.1.3 in Period 3 for 2023-24, Period 1 for 2024-25, and "Goal not addressed in this reporting period" in Period 2 for 2024-25;
        i. Benchmark 2.1.3 was not addressed in the reporting period due to "recent weather constraints and recent surgery."
    f. "Making progress toward annual goal" in Benchmark 2.1.1 in Period 3 for 2023-24, Period 1 for 2024-25, and "Not making progress toward annual goal" in Period 2 for 2024-25.
        i. Benchmark 2.1.1 listed the reason the Student was not making progress as "[The Student] continues to require daily reminders for keeping the floor area around [their] desk clean and has not demonstrated safety maintaining [the] environment for one week."
        ii. The progress report was delivered to the Parents through email.
54. On February 21, 2025, the Parents sent a direct message to Special Education Teacher 1 and the Principal and indicated the Principal reached out to the Parents via phone and said the requested draft of the IEP could not be shared until the evaluation was completed. The evaluation was scheduled as the first part of the meeting. The Parents stated, "not having access to this document in advance made it difficult for us to be fully prepared and actively participate in the process." The Parents questioned if this was standard practice, requested information on laws and policy surrounding sharing an IEP prior to the meeting, asked for clarification of the term "adult" in the IEP, and requested "scheduling meetings earlier so we have adequate time to review [the IEP]."
55. On February 22, 2025 at 7:33 a.m., the Principal sent a direct message to the Parents and Special Education Teacher 1 providing Kansas regulations . explaining evaluations. The Principal stated, "that said, we understand the desire to review information in

advance, and we are happy to discuss ways to ensure you feel fully prepared for future meetings. We recognize that holding the meeting on the same day as the IEP expiration may have caused undue pressure. While it is not standard practice to schedule meetings on the expiration date, various factors impact scheduling." The Principal then clarified the term "adult" in the IEP and acknowledged concerns "about previous instances where [the Student's] IEP was not fully implemented. Please know that we are committed to ensuring that all supports and services outlined in [the Student's] plan are followed."

56. On February 22, 2025 at 9:37 a.m., the Parents sent a direct message to the Principal and Special Education Teacher 1 thanking the Principal for their response and stating, "in this case, the IEP was already drafted before the reevaluation discussion took place, which seems to contradict that intent [of the regulations]. These legal requirements exist to protect the child and to ensure that parents are equal and well-informed participants in the process – not to limit access to critical information." The Parents then requested that in the future the draft IEP be provided in advance.
57. On February 28, 2025 at 11:50 a.m., the School Nurse sent a direct message to the Parents and stated, "[The Student's] Para[professional] was absent today, I was unaware, my apologies for not getting to [the Student] sooner. [The Student] ended cath about five minutes ago." The Parent responded to this message stating, "I'm fine with [the Student] not having a para[professional] with [them] during [their] cath time as long as it is you in the office."
58. The March 1, 2025 paraprofessional schedule indicated the following:
    a. Paraprofessional 2 as the Teacher's support from approximately 8:45 a.m. to 9:15 a.m..
    b. Paraprofessional 2 as the Teacher's support from approximately 10:15 a.m. to 12:00 p.m..
    c. Paraprofessional 1 as the Teacher's support from approximately 1:30 p.m. to 3:45 p.m..
    d. Paraprofessional 2 had AC listed for the Student first thing in the morning.
    e. AC lunch was listed on 5 different Paraprofessional's schedules ranging from 11:15 a.m. to 12:15 p.m.
59. On April 3, 2025, the Parents sent a direct message to the Principal and reported that the Student did not have a paraprofessional that morning during PE and recess. They also claimed the Student was not taken to do the morning routine with the School Nurse. The Parent indicated that the same thing happened on February 28 [2025]. In addition, the Parents reported that the Student "is having to walk the long way outside to the playground to avoid balloons in the 4th/5th pod." The Parents went on to explain how much energy this takes for the Student and inquired why latex balloons had to be used.
60. On April 3, 2025, there were two entries logged for "Catheretization" in the Health Office Visit Report. The first was at 11:00 a.m. and listed the Student completing "self catheterization" then returning to class. The second was at 1:45 p.m. and listed the Student completing "self catheterization" then returning to class.
61. On April 4, 2025 at 9:24 a.m., the Principal sent an email to the PT asking if there is a reason the Student is not able to walk with their class at recess. The Principal also

mentions they were "not tracking that was an accommodation that we had [in] place and fourth and fifth grade decorated for state assessments with balloons."

The PT replied to the Principal at 10:49 a.m. and stated, "[The Student] is able to navigate ramps, though slower than peers. [They] occasionally require cues for safety as [they] begin walking too fast when descending. [They are] slower than peers when ascending ramps. At the beginning of the year, [they were] arriving at the playground a few minutes after peers. [The Teacher] and I discussed options and [discussed] giving the transition time required. So we tried having [the Student] walk indoors and [they were] able to arrive at the playground the same time as peers. Physically, there is no reason [the Student] can't transition with [their] class other than the additional time required to navigate ramps. During winter months the ramps often had slick areas which posed a safety risk. Since Balloons are on the 4/5 pod, [the Student] should be able to transition with [their] class outdoors on the ramps. [The Student] should be either first in line or last in line with [their] para[professional] to allow additional time to navigate the ramps safely."

62. On April 7, 2025 at 2:13 p.m., the Principal sent a direct message to the Parents in response to their inquiry about the Student not being taken to the Nurse (on April 3, 2025) and explained the Student "was seen in the Nurse's office between 11:05 [a.m.] and 11:10 [a.m.], just shortly after [their] scheduled time." The Principal also added a response to the concern about the outdoor transitions due to balloons and stated, "I followed up with the [PT] to better understand the need and utilization of [the Student] using an alternate route. The decision was made after noticing [the Student] was arriving at the playground a few minutes after [their] class. [The Student] is able to navigate ramps, though [they do] so more slowly and may occasionally require verbal cues for safety—especially when descending, as [they] tend to speed up. To support [them] in doing so safely, [they] should either be at the front or end of the line with [their] para[professional], giving [them] the necessary space and time to navigate the ramps comfortably. I will be sure that this is communicated with [the Student's] team."
63. On April 7, 2025 at 8:27 p.m., the Parents sent a direct message to the Principal and inquired which paraprofessional was working with the Student on the morning of February 28 and April 4, 2025. The Parents added that they have "repeatedly asked for [Paraprofessional 1] not to be involved in [the Student's] care" because Paraprofessional 1 "continues to restrict [the Student's] area of play at recess, not to mention the safety concerns [Paraprofessional 1] has presented."
64. On April 8, 2025 at 8:13 p.m., the Parents sent a direct message to the Principal and stated, "last week [the Student] began reporting that [they] often do not have a para[professional] during check-in time in the morning." They also inquired when the balloons would be removed.
65. On April 10, 2025 at 12:06 p.m., the Principal sent a direct message to the Parents and stated, "I wanted to check in on the classroom during [the Student's] morning check-in to see if a para[professional] was present and completing the process. Both yesterday

and today, that was in place. I will be sure to follow up with the team in making sure it is consistent and for [Special Education Teacher 2] to step in if needed due to absences or if someone is running late." The Principal also explained that the balloons would be taken down after state assessments, "which will conclude at the end of next week."

66. On April 10, 2025 at 1:57 p.m., the Parents sent a direct message to the Principal and stated, "[The Student] mentioned yesterday specifically that [they] did not have para[professional] assistance at the drop in time. We also witnessed that [the Student] had no one there during drop in time on March 27, [2025] after the donut event." They added, "By refusing to remove the balloons as soon as you recognized the issue, you are not in compliance with [the Student's] IEP."
67. On April 13, 2025, the Parents sent a direct message to the Principal and stated, "I asked [the Student's] doctor for specific guidance concerning [their] latex allergy in the situation that is present at [the School]. Please see attached. Due to the inhalation risk as described in the attached literature, [and the language in the IEP], the balloons need to be removed immediately without being popped inside of the building. This is not only for [the Student's] safety but also for the safety of others in the school with this allergy."
68. On April 14, 2025, the Principal sent a direct message to the Parents and stated, "Thank you for the documentation. The balloons will be removed and disposed of properly." The Parent replied asking when the balloons would be removed and the Principal responded that they were out of the building that day, but had sent a message to the staff.
69. On an April 15, 2025 Classified Staff Evaluation, the Principal rated Paraprofessional 1 as "meets expectations" in the "Safety" category of "Job Skills, Duties, and Professional Responsibilities" and noted, "employee engages in safe work practices and appropriately addresses safety concerns."

Interviews

70. In an interview with the Complaint Investigator, the Parents stated, "The first few months of school [the Student] lacked para[professional] support pretty frequently. [Paraprofessional support] has gotten better throughout the year as we've complained more and more about it … [The School has] fairly consistently been providing a para[professional]."
71. The Parents indicated Paraprofessional 1 "struggles providing support for [the Student] with inclusion and safety." Examples cited were encouraging the Student to sit because Paraprofessional 1 "doesn't want to be very active and encourages [the Student] to be that way" and limiting where the Student can be on the playground due to Paraprofessional 1 "sitting on a bench right outside the door and telling [the Student] to stay where [they] can see [them]." They also stated, "our big concern this year was not watching at all what was going on at recess and [the Student]."
72. The Parents recalled, "the first two or three weeks [of school] they're still trying to figure out [paraprofessional] schedules … it seemed like [the Student] was the last one on [the School's] list to have [the paraprofessional] role filled … Anytime someone was sick, [the Student's] para[professional] would be pulled and go to help whoever was missing and [the Student] would be left without assistance."

73. The Parents indicated the School had "never communicated to us" when a paraprofessional is absent, "unless I actually reach out to them and ask why [the Student] did not have a para[professional] that day."
74. The Parents recalled that earlier in the school year, the Student's friends had to help so often due to not having adult help that they were telling the Student they were tired of helping and that the Student is a "pain."
75. The Parents recalled a recent time at the School during field day activities where one of the Parents was with the Student helping them with activities in the grass and "at the end of the day, Paraprofessional 1 said, 'I am glad you were here because I wouldn't have done any of that.'"
76. The Parents reported that they saw Paraprofessional 1 leaning on the Student's wheelchair. They also found out from another staff member that Paraprofessional 1 let the Student climb up the playground structure and when the Student was ready to go down the slide, another paraprofessional had to "run over" and help them get down safely.
77. The Parents stated, "When we brought up concerns about [the Student] not having a para[professional] on days, then we've gotten new revised IEP's with a reduction of minutes … when you bring a concern and you're trying to work with somebody and ask for help and you get the opposite. You get a reduction of care and service."
78. The Parents recalled they were told they could see a draft of the IEP prior to the February 21, 2025 meeting, but the Principal called them and said they were not able to share a draft until the meeting because a three year evaluation needed to take place before the IEP meeting.
79. The Parents stated, "[the School] ended up reducing some of the para[professional] support. Not significantly, but … [the Student] doesn't have para[professional] support during morning meetings." They went on to express their concern that reducing minutes would make it easier for the school to "meet [the Student's] IEP to a lesser extent."
80. The Parents indicated the evaluation process did not accurately reflect the Student's current level of physical ability due to a recent surgery that impacted the Student's strength and mobility. "the data that [the School] used for the revised IEP indicated that [the Student] had improved, [which] didn't accurately reflect where [the Student] actually was at the point in time relative to where [they] had been previously … it feels like [the School] were trying to justify reducing [the Student's] para[professional] support."
81. The Parents stated, "what they ultimately decided with the IEP … we weren't really on board with that, but we're in a situation where we need to come to some sort of agreement in order to have an IEP or if we didn't sign anything, it's just going to expire. So we feel like due to the pushing off of all this stuff until late, we didn't really have adequate time to be able to push back or to be able to take it and then look for options on what we might be able to do. We just had to kind of agree and move on even though it wasn't ideal."

82. The Parents stated, "the real concern is they had the reevaluation completed and really that reevaluation has to happen [first], and then they're supposed to use that data to write the IEP, but they'd already written this IEP."
83. The Parents recalled they received two revised IEP's in October/November [2024]. The Parents stated, "[the Student's] minutes were greatly reduced at that point. [The School] was trying to pull way back on [the minutes] and it seemed like it was in retaliation for us complaining about [the Student] not having para[professional] support as was indicated in the IEP." The Parents indicated they showed up to a meeting and got "blindsided by a great reduction in [the Student's] IEP … we went to the meeting and we said this is not right. And it got very contentious. And then the Principal called and said we'll just wait to do anything until [the Student's] IEP is due in February.
84. In reference to the two revised IEP's received in October/November 2024, the Parents indicated "They were drafts … We didn't agree to sign them, so they never went into place … The one in October does not say draft. The one that we went to the meeting for in November does say draft on it. We never signed either of them."
85. The Parents stated, they got a letter from the Student's doctor that "specifically talked about the airborne danger of latex in the building and that is when [the Principal] agreed to take [the latex balloons in the School] down. But we had already told [the Principal] that airborne latex is dangerous for [the Student] … there was definite knowledge of the fact that there was a latex allergy and disregard for that."
86. In an interview with the Complaint Investigator, the Principal stated, " Typically the case managers are responsible for assigning para[professional's schedules] … we were in a position we were very short staffed and we had to do more of a building overview … within the first week or two I took over para[professionals] scheduling."
87. The Principal recalled that at the beginning of the school year, they tried to "maximize coverage as much as we could with the para[professionals] I had in the building … I made the determination to use our at-risk aids to support our special education minutes at that time so that they would at least have coverage." The Principal stated, "it was really about trying to hire people, utilize the supports that we [did have] in place, even if it wasn't directly for special education, but trying to manage it that way. And then also continuing to hire and go about filling our staff and being able to provide services and fill all of the minutes that we were needing to cover."
88. The Principal reported they took over scheduling the paraprofessionals because Special Education Teacher 1 "was needing additional support in being able to work [their] own schedule and provide services and pullout minutes that is required by the IEP's … [scheduling] needed to be taken off [the Special Education Teacher 1's] plate, as well as training and communication of expectations with para[professionals]."
89. The Principal stated, "[the schedule for the paraprofessionals began] within the first couple weeks [of school starting], however, as I continued to hire, adjustments were being made … it was an ever-changing document … I did keep track of the minutes that were short that we were not quite covering. And so then I would make adjustments in making sure those minutes were covered."

90. The Principal indicated, “by the end of the first nine weeks we [were] fully staffed … that means that if all the para[professionals] show up, if no one calls in sick or has an appointment or any other things happen outside the building, then we would be fully covered.”
91. The Principal stated, “When we’ve had two or three para[professionals] call in on a day, we look at what is going to be least disruptive to the environment. Are some classrooms able to accommodate and continue to provide those accommodations that are needed? … [the decision is made to accommodate] those with the most significant needs in regards to function. So unfortunately, students that have academic supports honestly may miss some pull out or may miss some minutes at that time because we have to cover the higher needs.”
92. The Principal reported that the PT is responsible for training the paraprofessionals to support the Student.
93. The Principal stated, “my understanding of the latex was that fact that [the Student] was not to have direct exposure. Therefore, with direct exposure, I understood we didn’t want [the Student] to not be able to participate by seeing that. So that was why we made that adjustment [purchasing Mylar balloons] because [the Student] would’ve been in the same vicinity [as the balloons].”
94. The Principal recalled an event with latex balloons and stated, “kindergarten roundup was at 5:00 at night, it wasn’t set up until 5:00 at night and it was taken down by 7:30 that evening.”
95. In regard to the latex allergy and exposure, the Principal stated, "once [the Parents] shared with me the doctor's note, it was then shared [with staff] that there should not be, the balloons can't be in the building. [The balloons] can't be disposed of in the building. [The Parents] shared that we need to take them outside to dispose of them, that we can't pop them because there could be remnants.”
96. The Principal stated, “we had to complete the reevaluation prior to the IEP date … we were up on a tighter timeline because for the reevaluation, we do need to have parents sign and consent … When we complete the evaluation, it is a team decision to determine if services will continue … so typically that is the first part of the meeting. If everyone believes that the services are required and that it's appropriate and necessary, then we would move forward with the draft IEP.” The Principal continued, “if it's not a reevaluation year, the IEP draft is shared with the parents in order for them to look over that and go through it before the meeting. We’re not able to share a draft IEP when we’re doing a reevaluation as then it’s showing that there’s a predetermination. We also want to make sure that we are prepared for moving forward if the determination is made that services will continue.”
97. When asked about the reevaluation and IEP meeting process for the Student, the Principal stated, “nothing was atypical.”
98. In an interview with the Investigator, Special Education Teacher 2 explained that when a paraprofessional is “missing or absent, it is up to [the] Administrators to figure out the scheduling and they schedule it based [on] student needs.”

99. When asked about typical procedures for completing a reevaluation, Special Education Teacher 2 explained "you would do your IEP form with the School Psychologist. Then when you have your meeting with parents, you go over it and the School Psychologist goes over the new evaluation scores. And then once you go over that, you have parents give their input and then from there you give signatures and they ask questions."

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #383, in accordance with state and federal regulations implementing the IDEA, implemented special education and related services as described in the Student's IEP. Specifically alleged was the lack of: paraprofessional support throughout the school year, elimination of the Student's exposure to latex, and appropriate supervision of the Student for their safety, inclusion and independence. K.A.R. 91-40-16(b)(3); 34 CFR § 300.323.

According to K.A.R. 91-40-16(b)(3) and 34 CFR §300.323(a), an IEP must be in effect for each exceptional child at the beginning of each school year.

The Parents alleged that beginning in August 2024, paraprofessional support was absent on numerous days. Furthermore, they alleged that despite the Student's IEP listing a latex allergy, latex balloons were present in the School on multiple instances during the 2024-25 academic year, including a balloon parade, a balloon arch for Kindergarten Round-Up, and balloons used for state testing. The Parents also claimed inadequate supervision by the School to minimize safety risks, referencing incidents on the playground and in the classroom where the Student was allegedly not monitored or supported. Additionally, the Parents alleged that Paraprofessional 1 was incapable of providing assistance to the Student during emergency situations.

The District contended that they have fully implemented the Student's IEP as written and ensured that all required services and supports were provided. They noted paraprofessional schedules and daily nurse logs as evidence paraprofessional minutes were being met. In addition, the District indicated they took extensive and consistent action to meet obligations regarding the Student's safety through ongoing parent communication and supervision measures. In addition, the District claimed that during paraprofessional absences, the special education teachers would assume coverage responsibilities. The District also noted that the Student continued to make meaningful progress on their IEP goals. Last, the District maintained they took timely and appropriate action to eliminate latex exposure by removing balloons from the school environment, creating a safe path for the Student, and collaborating with the Parents to develop a plan.

The Student's IEP, dated February 21, 2025, included specific minutes for "Adult support for mobility in specials, recess, and classroom." The IEP listed the need for this support as 245 minutes one day per week and 270 minutes four days per week.

The Principal stated they took over paraprofessional scheduling at the beginning of the school year due to being “very short-staffed” and tried to “maximize coverage.” They used at-risk aids to support special education minutes and made ongoing adjustments as they hired more staff. They said that by the end of the first nine weeks of school, they were "fully staffed" assuming all staff were present. The paraprofessional schedules demonstrate full coverage for the Student, assuming all staff were present. Special Education Teacher 2 explained that when a paraprofessional was "missing or absent, it is up to [the] Administrators to figure out the scheduling and they schedule it based [on] student needs." The Principal stated that when paraprofessionals called in sick or missed time, they prioritized coverage for "those with the most significant needs in regards to function."

The Parents stated that in the "first few months of school" in the 2024-25 school year (which began in August 2024), the Student lacked paraprofessional support "pretty frequently," although they noted it had improved as they complained more. Initially, the School was described as "fairly consistently providing a paraprofessional," but issues persisted. The Parents recalled the "first two or three weeks" of school (around mid to late August 2024) involved the School trying to figure out paraprofessional schedules. They felt the Student was "the last one on [the School's] list to have [the paraprofessional] role filled." They also stated that if a paraprofessional was sick, the Student's paraprofessional would be pulled to cover for the absent one, leaving the Student without assistance. The Parents recalled that earlier in the school year (likely September or October 2024), the Student's friends had to help so often due to the lack of adult support that the friends told the Student they were "tired of helping" and that the Student was a "pain."

On August 16, 2024, the Parents sent a message to Special Education Teacher 1 inquiring about paraprofessional coverage, specifically noting the Student had a paraprofessional only during recess. Special Education Teacher 1 responded that schedules were still in process. On August 26, 2024, the Parents contacted the Principal to ask when the Student would receive all their paraprofessional minutes, citing a lack of support for most of the day, including PE. On August 27, 2024, the Principal acknowledged an oversight in paraprofessional coverage and stated that adjustments were being made.

On August 16, September 18, November 20, 2024, January 15, February 4, and February 21, 2025, the Parents expressed significant concerns about the Student's safety, inclusion, and independence, emphasizing the need for close support, particularly during recess and PE. The same day, the Parents reported the Student did not have a paraprofessional, which they indicated led to a fall at recess. Staff attendance shows that Paraprofessional 2 was absent on that day, but Paraprofessional 1 was present and scheduled during both recess times. Special

Education Teacher 1 explained that schedule adjustments were due to staff illness and a new paraprofessional would start the following week. Special Education Teacher 1 also noted a shortage of substitute paraprofessionals and mentioned that existing paraprofessionals were supporting multiple students. The Principal stated that AC had been provided and more paraprofessionals had been hired. The Principal also provided information to the Parents on September 19, 2024, on steps they could take to address concerns. On September 19, 2024, the Parents emailed the Superintendent to express ongoing concerns about the lack of paraprofessional support. On September 25, 2024, the School Nurse reported the Student's paraprofessional had been absent. Staff attendance records show that both Paraprofessional 1 and Paraprofessional 2 were present on September 25, 2025.

On October 29, 2024, the Parents requested a team meeting with Special Education Teacher 1 to discuss the Student's needs and review the IEP. On November 19, 2024, the Parents reported the Student lacked a paraprofessional again, requiring the nurse to assist with catheterization. The Principal cited a shortage of paraprofessionals due to absences. Staff attendance records show that both Paraprofessional 1 and Paraprofessional 2 were present on November 19, 2025. The Parents continued to express their concerns on November 20, 2024, when they emailed the Superintendent expressing these unresolved concerns.

On January 15, 2025, the Parents wrote to the Physical Therapist (PT) and others regarding paraprofessional support and transfers. On January 15, 2025, the Parents noted the Student's need for extra support for "transfers" due to a surgery the Student recently had. On January 22-24, 2025, there were communications regarding the Student using a wheelchair and walking as tolerated. On January 22, 2025, the PT noted the Student's poor safety awareness, risk of falls, and the need for physical assistance. On February 3, 2025, the Parents reported the Student did not have a paraprofessional except for dismissal assistance. Staff attendance records show that Paraprofessional 1 was present and Paraprofessional 2 had no record of attendance on February 3, 2025.

On February 4, 2025, the Parents requested Paraprofessional 1 not be involved in the Student's care. The Parents specifically indicated that Paraprofessional 1 "struggles providing support for [the Student] with inclusion and safety." They cited examples of Paraprofessional 1 encouraging the Student to sit to avoid being active Limiting the Student's playground area by staying on a bench and telling the Student to remain within sight; not closely watching the Student at recess; and concern about not being capable of assisting in an emergency. The parents mentioned an incident at a recent (undated) field day where Paraprofessional 1 said, "I am glad you were here because I wouldn't have done any of that." They also reported seeing Paraprofessional 1 leaning on the Student's wheelchair and learning that Paraprofessional 1 had allowed the Student to climb playground equipment, requiring another paraprofessional to assist the Student in getting down.

The Student's IHP, dated February 19, 2025, includes assessments and goals related to safety, such as ensuring a safe workspace and safe transfers. The IEP, dated February 21, 2025, includes goals related to practicing safety, such as safe sitting and safely using a walker. On February 28, 2025, the School Nurse apologized for the delay in assisting the Student with catheterization, attributing it to the paraprofessional's absence. Staff attendance records show that Paraprofessional 1 was present and Paraprofessional 2 had no record of attendance on February 28, 2025.

On April 3, 2025, the Parents reported the Student did not have a paraprofessional during PE and recess and was not taken to the School Nurse as scheduled. Staff attendance records show that both Paraprofessional 1 and Paraprofessional 2 were present on April 3, 2025. The Parents then asked which paraprofessional was working with the Student on February 28th and April 4th, reiterating their request regarding Paraprofessional 1. On April 8, 2025, the Parents reported the Student often lacked a paraprofessional for check-in time. On April 10, 2025, the Principal checked on the morning check-in and stated they would ensure consistency. Later on April 10, 2025, the Parents stated they had observed the Student without assistance during check-in on March 27, 2025. Paraprofessional 2 was assigned to assist during check-in time on March 27, 2025, and was present during check-in time.

During the 2023-24 school year, the Student was making progress toward annual Goal 1.1, Goal 2.1, and all Benchmarks. This trend of making progress continued during Period 1 in the 2024-25 school year. In Period 2 of the 2024-25 school year, progress continued for Goal 1.1 and Goal 2.1, and Benchmarks 2.1.1 and 2.1.2 were "Met." Benchmark 2.1.3 was "not addressed in this reporting period" due to "recent weather constraints and recent surgery." Benchmark 2.1.1 showed the Student was "Not making progress toward annual goal" because "[The Student] continues to require daily reminders for keeping the floor area around [their] desk clean and has not demonstrated safety maintaining [the] environment for one week."

The Student has a documented latex allergy requiring specific precautions and considerations in their care plan and school environment. The Student's IHP, dated February 19, 2025, lists "latex allergy" under Medical Diagnosis and includes "avoid latex" in the Prescribed Treatment/Medication section, further noting the availability of an Epi-pen for emergency use. The Nursing Assessment within the IHP outlines an increased risk of injury due to the latex precaution and directs the School Nurse to ensure all products used for care are latex-free and within expiration dates, and to assess the Student for accidental latex exposure and notify the Parents as needed. Furthermore, the Nursing Goals and Plans state that "staff will eliminate latex exposure."

On November 20, 2024, the School Nurse communicated to the Parents about a planned balloon parade by the Student's class, mentioning concerns about potential risks to multiple Students with latex allergies. The Nurse reported that the Principal arranged for latex-free balloons to be obtained for the parade. The Principal's understanding was initially that the

student should avoid direct exposure to latex. To allow the Student to participate in events where balloons were present, Mylar balloons were purchased as an adjustment. The Principal also mentioned a kindergarten roundup event where latex balloons were used. This event took place from 5:00 PM to 7:30 PM, during which time the latex balloons were set up and then taken down.

On April 13, 2025, the Parents provided a doctor's note to the Principal, School Nurse, and Special Education Teacher 1, regarding the airborne danger of latex, and requested the immediate removal of all balloons. In response, on April 14, 2025, the Principal informed the Parents that the balloons would be removed and properly disposed of. The Principal communicated to staff that latex balloons were not to be in the building and could not be disposed of inside; the balloons needed to be taken outside for disposal without being popped inside.

The facts in this case indicate the School was aware of the Student's latex allergy, documented it in the IHP, and had procedures in place for managing it. While the balloon parade incident showed awareness, it also highlighted a potential oversight that was addressed by the School Nurse. The Parents' providing the doctor's note emphasized the severity of the allergy and the need for strict avoidance, leading to the requested balloon removal. Overall, the Student's latex allergy was acknowledged, measures were taken by the School to address it, and active communication occurred between the Parents and school staff regarding the Student's safety and well-being in relation to the allergy.

Throughout the complaint period, the School actively communicated with the Parents regarding the Student's safety and inclusion, addressing concerns as they arose and making adjustments to scheduling and staffing as needed. Additionally, the Student demonstrated progress on the majority of their established goals within their IEP. The specific goals that were not met or were not addressed in the reporting period were not directly tied to the Student's immediate safety, inclusion, or the provision of paraprofessional minutes. While there were documented instances where paraprofessional minutes may not have been served as outlined in the IEP, primarily due to staffing shortages and unexpected absences, these instances, viewed within the totality of the situation, did not constitute a material failure to implement the IEP. The School's efforts to secure additional staff, adjust schedules to prioritize the Student’s needs, and directly address the Parents' concerns, as evidenced by the ongoing dialogue and documented actions, demonstrate a commitment to supporting the Student’s needs and implementing the IEP to the best of their ability under the circumstances.

Based on the foregoing, according to IDEA and Kansas special education regulations, the District did implement special education and related services as described in the Student's IEP. Specifically, paraprofessional support throughout the school year, elimination of the Student’s exposure to latex, and appropriate supervision of the Student for their safety, inclusion and independence.

Issue Two

Whether USD #383, in accordance with state and federal regulations implementing the IDEA, provided the Parents with an opportunity to participate in the IEP and reevaluation process. K.A.R. 91-40-17, K.A.R. 91-40-25; 34 CFR § 300.501.

According to K.A.R. 91-40-17, K.A.R. 91-40-25, and 34 CFR § 300.501, 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. These steps shall include 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 and 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. In addition, 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 identification, evaluation, or education placement of the child; and the provision of FAPE to the child.

The notice shall meet the following requirements: 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; and that the parents have the right to invite to the IEP team meeting individuals whom the parents believe to have knowledge or special expertise about their child.

The Parent alleged they were not given the opportunity to adequately review the proposed IEP prior to the meeting due to the triennial review being conducted directly before the IEP meeting and both happening the day before the IEP was scheduled to expire.

The District responded that it provided the Parents with meaningful opportunities to participate in all aspects of the IEP and reevaluation process. In support of their compliance, the District cites Parental Consent for Reevaluation, documented parent involvement in meetings, parent input in eligibility and planning, and proactive communication from the School Psychologist.

On October 29, 2024, the Parents requested a team meeting to review their child's needs and IEP, which was scheduled for November 19, 2024. The Parents shared their concerns about the Student's lack of paraprofessional coverage during the school year. They stated that when concerns about the absence of paraprofessional support were raised, it resulted in new revised IEPs proposing a reduction in minutes, which they perceived as a retaliatory measure. The Parents recalled receiving two revised IEP drafts in October and November 2024, which significantly reduced the Student's support minutes. They described the November meeting where they were "blindsided by a great reduction" to the IEP which became "very contentious." The Parents clarified that the received documents were drafts that they did not sign and

therefore were not implemented. They noted that while the November document was marked as a draft, the October document was not.

On November 20, 2024, the Parents emailed the Superintendent expressing that their concerns remained unresolved. In the email, they described the meeting from the previous day, which they intended to be a discussion about paraprofessional support, safety, and inclusion. However, the meeting reportedly shifted to a discussion about reducing the Student's services rather than ensuring adherence to the current IEP. The Parents noted that the Principal subsequently called to apologize for the nature of the meeting, retract the IEP, and proposed a meeting in February for the regularly scheduled IEP review.

On December 20, 2024, the School Psychologist informed the Parents about the Student's upcoming three-year reevaluation and sent consent forms home, as well as a PWN for Reevaluation. On January 27, 2025, the notice was signed by one of the Parents which indicated the Parents had received their rights and consented to the reevaluation that was specified in the notice. By February 3, 2025, Special Education Teacher 1 requested to schedule the annual IEP meeting. On February 19, 2025, the Principal rescheduled the IEP meeting for February 21, 2025 due to inclement weather on February 19, and confirmed the proposed IEP draft would be shared the next day. The IEP was not shared with the Parents and the Principal explained that when a reevaluation is being conducted, the IEP draft is typically not shared with parents beforehand to avoid showing a predetermination of services. The Principal stated that the team needs to complete the reevaluation first, which includes the parents signing consent and the team deciding if services will continue. Only after this reevaluation process and decision is made, would they then move forward with the IEP draft.

A Reevaluation/Continued Eligibility Report was acknowledged and signed by the Parents on February 21, 2025. On the same day, a Staffing Summary form indicated Parents' rights were reviewed and accepted. The Staffing Summary also noted the Parents' concerns and a request regarding specific support personnel. A Notice of Meeting on February 21, 2025, was signed and indicated the Parents waived their right to the 10-day PWN. The Student's IEP, dated February 21, 2025, was finalized and listed Parent concerns regarding support and emergency assistance. The Parents also signed a Request for Consent for Special Education Action.

The Parents then sent a message on February 21, 2025, expressing concern about not receiving the draft IEP in advance. On February 22, 2025, the Parents thanked the Principal for their response but stated the IEP was drafted prior to the reevaluation, and requested draft IEPs be provided in advance in the future. The Principal acknowledged that holding the meeting on the same day as the IEP expiration might have created pressure and stated they are committed to ensuring all support and services outlined in the Student's plan are followed.

The facts in this case indicate the Parents were provided with a meaningful opportunity to participate and give feedback throughout the IEP process. Records demonstrate numerous instances of communication between the Parents and various school staff members regarding

the Student's needs and IEP. The Parents actively voiced their concerns, requests, and input in direct messages, emails, and meetings, and the school acknowledged and documented these contributions. The District scheduled and held IEP meetings, provided PWNs, and obtained parental consent for evaluations and services. Moreover, the IEP document reflects parental input regarding the Student's needs, supports, and concerns, thereby illustrating the consideration of the Parents' perspectives in the development of the IEP. While there were concerns raised by the Parents regarding the timing of receiving the final IEP draft before the meeting, particularly during reevaluation, the District's actions in holding meetings, obtaining consent, documenting parent input, and providing an opportunity to inspect and review the IEP reflect adherence to procedural requirements.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the district failed to provide the Parents with an opportunity to participate in the IEP and reevaluation process.

Issue Three

Whether USD #383, in accordance with state and federal regulations implementing the IDEA, conducted an accurate reevaluation that met the requirements. K.S.A. 72-3428; 34 CFR § 300.303.

According to K.S.A. 72-3428 and 34 CFR § 300.303, an agency shall provide notice to the parents of a child that describes any evaluation procedures such agency proposes to conduct. This is pertinent to initial evaluation of children prior to provision of services, parental consent, reevaluation, and notice.

The Parents alleged they were not given the opportunity to adequately review the proposed IEP prior to the meeting due to the triennial review being conducted directly before the IEP meeting and both happening the day before the IEP was scheduled to expire.

The District responded that the reevaluation conducted for the Student adhered to the procedural and substantive requirements outlined in IDEA and K.A.R. They maintained that the parental consent, the timely and ongoing communication, the comprehensive review and data collection, the proper composition and documentation of the multidisciplinary team, the alignment with the IEP and continued provision of FAPE, and the procedural timeliness aligns with the best practices and legal requirements outlined in the Kansas Special Education Process Handbook.

On December 20, 2024, the reevaluation process for the Student was initiated. The School Psychologist informed the Parents via direct message that the Student’s three-year reevaluation was due, and that consent forms would be sent home. On the same day, a PWN for Evaluation or Reevaluation and Request for Consent was delivered to the Parents. This PWN outlined the proposal to conduct a reevaluation, specifying that it was based on new data needed for health/motor ability and social-emotional/behavioral status, alongside existing data

on vision, hearing, and academic performance. The notice detailed that the reevaluation was necessary as the Student's three-year review was due in March 2025, and new data was required. The basis for the action included staff input, parent input, observations, and the scheduled three-year reevaluation.

On January 27, 2025, one of the Parents signed the PWN, indicating their receipt of rights and consent for the specified evaluation or reevaluation. On February 20, 2025, a Reevaluation/Continued Eligibility Report was created, which confirmed the reevaluation was due by March 2025 and noted the Parents' consent given on January 27, 2025. This report contained details regarding the Student's health, physical needs, and the Physical Therapist's (PT) recommendations. It also included information based on "parent ratings" as data for the Student's "schoolwork T-score." The following day, on February 21, 2025, the Reevaluation/Continued Eligibility Report was acknowledged, agreed to, and signed by the Parents, the Principal, Special Education Teacher 1, the Teacher, the School Psychologist, the Special Education Coordinator, and the PT. Also on February 21, 2025, the Student's IEP, dated the same day, indicated that evaluation consent was obtained on January 27, 2025, and the evaluation date was February 21, 2025. The IEP meeting participants were listed and included signatures for the Parents, Special Education Teacher 1, the Principal, the Special Education Coordinator, the PT, the School Nurse, the School Psychologist, and the Physical Therapy Assistant.

The timeline and facts in this case show that the District provided notice of the proposed reevaluation, obtained parental consent before conducting the reevaluation, completed the reevaluation, and held an IEP meeting to discuss the results and update the IEP.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the district did not conduct an accurate reevaluation that met the requirements.

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.gov 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. 383
Manhattan-Ogden Public Schools: 25FC383-004

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on April 29, 2025, by ------- on behalf of their daughter, -------. In the remainder of this decision, ------- will be referred to as "the parents," and ------- will be referred to as "the student." An investigation of the complaint was undertaken by a complaint investigator on behalf of the Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, a Complaint Report, addressing the allegations, was issued on May 29, 2025. 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 notice of appeal, and the district's response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

Preliminary Matters

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.

Discussion of Issue on Appeal

The report identified two issues. One issue was appealed:

Issue 1

Whether USD #383, in accordance with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), implemented special education and related services as described in the Student's Individualized Education Program (IEP).

Specifically alleged is the lack of:

- paraprofessional support throughout the school year,
- elimination of the Student's exposure to latex, and
- appropriate supervision of the Student for their safety, inclusion and independence.

I

The investigator found no violation regarding the amount of paraprofessional support provided to the student. That finding was not based on perfect compliance with the student's IEP. The investigator acknowledged that there were documented instances where paraprofessional services were not provided (Report, p. 39).

Mindful that appeal committee's function is to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report, the Committee noted, In the findings of fact (FOF) in the complaint report, that the building principal told the investigator:

- The district faced continuing staff shortages (FOF 86).
- The district used at-risk aids to support special education minutes (FOF 87).
- The Principal took over scheduling the paraprofessionals because Special Education Teacher 1 "was needing additional support in being able to work [their] own schedule…" (FOF 88).
- The principal kept track of the minutes that were short and made adjustments "making sure those minutes were covered" (FOF 89).
- When shortages occurred, some students may have missed minutes of services as staff were moved to accommodate students with the highest needs. (FOF 91).

The investigator summarized these statements on page 34 of the report.

On page 39 of the report, the investigator found that the student demonstrated progress on the majority of her established goals within their IEP, and concluded as follows:

> *While there were documented instances where paraprofessional minutes may not have been served as outlined in the IEP, primarily due to staffing shortages and unexpected absences, these instances, viewed within the totality of the situation, did not constitute a material failure to implement the IEP. The School's efforts to secure additional staff, adjust schedules to prioritize the Student's needs, and directly address the Parents' concerns, as evidenced by the ongoing dialogue and documented actions,*

demonstrate a commitment to supporting the Student's needs and implementing the IEP to the best of their ability under the circumstances.

There was significant evidence supporting the parent's position as well as the district's position. The investigator reached her conclusion after a careful and meticulous review of physical documents such as paraeducator schedules, nurse logs, communications, staffing procedures, and after conducting extensive personal interviews with the parents, school administrators, and teachers. Ultimately, resolution of this kind of issue is often determined by both the quantity and credibility of the evidence presented. In concluding that, "the totality of the situation, did not constitute a material failure to implement the IEP," the investigator found that the evidence supporting the district's position was greater in both quantity and credibility.

The Appeal Committee notes that the highest courts considering the issue of missed special education services have uniformly held that IEP implementation failure must be material to be actionable, See: Abigail P. v. Old Forge School District, 124 LRP 21769 (3d. Cir. 2024), joining the 4th, 5th, 8th, 9th, and 11th Circuits.

The Appeal Committee finds that the investigator included sufficient evidence and analysis to support her conclusion that, though there were missed services, those missed services did not constitute a material failure to implement the student's IEP.

This was a difficult set of facts presented for appeal and could have gone either way. The school district should not interpret this decision as authority to remain understaffed. Proper staffing includes anticipating that there will be some level of staff absences throughout a school year and planning for those absences. In this case, the Appeal Committee recognized that the investigator conducted a thorough investigation. That investigation included an extensive review of documents and personal interviews with those who are most closely involved with this student. In this kind of complaint, that alleges a failure to implement an IEP, the investigator must often exercise judgment when considering the credibility of all of the documents and statements presented. Because the judgement of this investigator is based on a personal review of all of the evidence (documents and interviews), and such personal review is not available to an Appeal Committee, the Appeal Committee must give reasonable deference to the conclusions of the investigator, and has done so in this case. The conclusion of the investigator on this portion of Issue 1 is sustained.

II

With regard to the part of Issue 1 that is related to the presence of latex in the student's environment, the report states: "The Student's IHP, dated February 19, 2025, lists "latex allergy" under Medical Diagnosis and includes "avoid latex" in the Prescribed Treatment/Medication section, further noting the availability of an Epi-pen for emergency use." (Report p. 37). There is no mention anywhere in the report indicating that the student's Individual Health Plan (IHP) was a part of this student's IEP. Without that important information, this Appeal Committee has no

jurisdiction to conduct an appeal. The authority for hearing these appeals applies only to allegations alleging a violation of a "state or federal special education law or regulation (See K.A.R. 91-40-51(a)). Neither law addresses compliance with an IHP that is not part of an IEP.

Even so, the Appeal Committee finds that even if the IHP is in the student's IEP, there is no violation for failing to implement the IEP. The report cites the IHP as follows:

> *The Student's IHP, dated February 19, 2025, lists "latex allergy" under Medical Diagnosis and includes "**avoid latex**" in the Prescribed Treatment/Medication section, further noting the availability of an Epi-pen for emergency use. The Nursing Assessment within the IHP outlines an increased risk of injury due to the latex precaution and **directs the School Nurse to ensure all products used for care are latex-free** and within expiration dates, and to assess the Student for accidental latex exposure and notify the Parents as needed. Furthermore, the Nursing Goals and Plans state that "staff will eliminate latex exposure (emphasis added)."*

In FOF 93, the principal stated: "my understanding of the latex was the fact that [the Student] was not to have direct exposure." The Appeal Committee finds that the principal's understanding is a reasonable interpretation of this part of the student's IHP. The IHP does not indicate a need for a latex free building. The principal added his comments to the investigator that: "once [the Parents] shared with me the doctor's note, it was then shared [with staff] that there should not be, the balloons can't be in the building (FOF 95)," which demonstrates a willingness to comply with a doctor's note, even when not a part of the IHP.

The appeal Committee finds that this portion of Issue 1 does not allege a failure to implement the student's IEP or a failure of any other provision of special education law.

III

With regard to the part of Issue 1, dealing with appropriate supervision of the Student for her safety, inclusion and independence, the investigator correctly included this allegation with the implementation issue, concluding that any shortcomings did not constitute a material failure to implement the IEP (Report, p. 39). For the same reasons that the Appeal Committee affirmed the conclusion herein regarding implementation allegations related to an alleged lack of para support (not a material failure), the Appeal Committee affirms the investigator's conclusion regarding the issue of appropriate supervision of the Student for her safety, inclusion and independence.

The parents also appeal the investigator's finding, on page 39 of the report, that the student:

> *demonstrated progress on the majority of their established goals within their IEP. The specific goals that were not met or were not addressed in the reporting period were not directly tied to the Student's immediate safety, inclusion, or the provision of paraprofessional minutes"*

Specifically, the parent's appeal cites Goal 2.1.4 involving the use of crutches, and Goal 2.1.3 a "playground steps" goal.

The report does not address a benchmark or goal for the use of crutches, and the parents do not identify how this was presented to the investigator as an issue in this complaint. There is no finding or conclusion on this issue, as none was made. Because no new issues may be considered in an appeal, the Appeal Committee will not address this allegation.

The report states that Benchmark 2.1.3 was not addressed in the reporting period due to "recent weather constraints and recent surgery." (Report, p. 22). The parent's appeal states that this goal remains in the student's IEP, but the appeal does not contest the finding that there was a valid reason for this benchmark not being addressed in the reporting period. Essentially, there was nothing to report because the student was apparently not accessing the playground equipment during the relevant time period. The Appeal Committee finds that there is no violation of law with regard to this portion of Issue 1.

Again, with regard to the issue of implementation of the IEP, this was a difficult set of facts presented for appeal and could have gone either way. The school district should not interpret this decision as authority to remain understaffed. Proper staffing includes anticipating that there will be some level of staff absences throughout the school year and planning for those absences. In this case, the Appeal Committee recognized that the investigator conducted a very thorough investigation. That investigation included an extensive review of documents and personal interviews with those who are closely involved with this student. In this kind of complaint, one that alleges a failure to implement an IEP, the investigator must often exercise judgment when considering the impact and credibility of all of the documents and statements presented. Because the judgement of this investigator is based on a personal review of all of the evidence, and such personal review is not available to an Appeal Committee, the Appeal Committee must give reasonable deference to the conclusions of an investigator, and has done so in this case.

Conclusion

For the reasons stated herein, the Complaint Report is sustained in full.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 18th day of June, 2025.

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 #501, TOPEKA PUBLIC SCHOOLS
ON FEBRUARY 5, 2025

DATE OF REPORT: MARCH 5, 2025

This report is in response to a complaint filed with the Kansas State Department of Education against USD #501 Topeka 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 "the mother."

The complaint is against USD #501 Topeka Public Schools. In the remainder of the report, USD #501 Topeka Public Schools will be referred to as "the district." The student attends French Middle 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 February 5, 2025 and the 30-day timeline ended on March 5, 2025.

Evidence Reviewed

During the investigation, the Complaint Investigator Dr. Donna Wickham reviewed all documentation provided by the district and the parent. The following was used in consideration of the issues:

- Individualized Education Program, dated February 5, 2024
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent, dated October 29, 2024, parent signed on November 1, 2024
- Notice of Meeting, dated December 11, 2024
- Individualized Education Program, dated Janaury 22, 2025
- Evaluation Report, dated January 22, 2025
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent, dated January 22, 2025, parent signed consent for a material change in services on January 22, 2025.
- Transportation request dated January 24, 2025 at 12:17 p.m.
- Email from mother to principal dated February 5, 2025 at 11:26 a.m.

- Email exchange among principal, special education director and transportation services dated between January 24, 2025 at 12:17 p.m. and February 5, 2025 at 3:05 p.m.
- Email from assistant principal to principal, district attorney and director of special education dated February 19, 2025 at 12:48 p.m.
- Email from assistant principal to district attorney dated February 19, 2025 at 4:38 p.m.
- Email from General Director, Assessment & Demographic to the District Attorney dated February 20, 2025 at 7:50 a.m.
- Email from assistant principal to district attorney dated February 20, 2025 at 9:59 a.m.
- Email from General Director, Assessment & Demographic to the District Attorney dated February 20, 2025 at 10:18 a.m.
- Email from special education consulting teacher to district attorney dated February 20, 2025 at 11:57 a.m.
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent, dated February 5, 2024 parent signed February 21, 2024
- Email from the principal to the assistant principal dated February 21, 2025 at 7:09 a.m.
- District response dated February 21, 2025
- District Student Transfers and Enrollment Regulations dated April 23, 1991, revised June 15, 2000, February 8, 2002, February 2, 2012, August 14, 2016, and June 25, 2018

The Investigator first spoke with the mother by phone on February 8, 2025 and then emailed with the mother on several occasions to clarify specific points. The Investigator interacted with the district by email to clarify evidence throughout the investigation. The district responded to questions from the investigator by email.

Background Information

The student is a twelve-year-old sixth grader and is eligible for special education and related services under the category of Autism and Other Health Impaired based on the most current re-evaluation dated January 22, 2025. The student has been followed by a Pediatrics, Developmental and Behavior Science clinic since February 2020 and was seen on December 9, 2021 "for concerns about social skills and to rule out the presence of autism spectrum disorder." The findings were recorded as "Based on [Student's history, clinical assessment, and the tests completed today, [Student] meets the Diagnostic Statistical Manual of Mental Disorders-Fifth Edition (DSM-5) criteria for Autism Spectrum Disorder (ASD). [Student] has deficits in social communication and social interaction as well as restricted, repetitive patterns of behavior or interests. These symptoms are causing significant impairment in his daily functioning." The following recommendations were included in the report, "1) Consider Autism as an educational exceptionality during the IEP evaluation and assessment process. The team may also consider Other Health Impairment due to his diagnosis of ADHD. 2) [Student] would benefit from school-based environmental accommodations and modifications that have been

shown to be effective with children with ADHD (e.g., Frequent breaks, opportunities for movement, chunking assignments into smaller sections)." This report also reported co-occurring medical diagnoses of Attention Deficit and Hyperactivity Disorder- Combined Type and Unspecified Anxiety Disorder from December 2021.The student's IEP dated January 22, 2025 lists 42 minutes of direct special education service, five days every week in a special education setting, 90 minutes of direct special education service in the general education setting five days every week and 20 minutes of special work services one day every month. This IEP lists nine accommodations.

Issues Investigated

ISSUE ONE: Did the district discuss and respond to the parent's request for special transportation at the beginning of the school year meeting? (34 C.F.R. 300.503(a)(2))

ISSUE TWO: Did the district consider extracurricular and after school supports regarding safely transitioning from the school building to the Boys and Girls Club program at the student's IEP meeting during the 2024-2025 school year? (34 C.F.R. 300.42; 34 C.F.R. 300.320(a)(4)(ii); and 34 C.F.R. 300.107(a))

Issue One

Did the district discuss and respond to the parent's request for special transportation at the beginning of the school year meeting?

Applicable Law

Federal regulations at 34 C.F.R. 300.503(a)(2) states that prior written notice needs to be provided to the parents of a child with a disability a reasonable time before the public agency proposes 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 prior to the beginning of the school year she stated, "I told them my [student] struggles and needs to be kept safe" She stated in her initial interview with the investigator that she was told that her child did not meet the requirements for special transportation.

The district described in their response dated February 21, 2025 that at the beginning of the 2024-2025 school year the student transitioned from elementary to middle school and the parent subsequently requested and was granted a school transfer from the "home middle school" to another middle school. The district stated that the parent met with the middle school on August 1, 2024 to discuss the transition and parent concerns. According to the district response, "One of the parent's concerns was after school programs and it was discussed that [school] did not have any after school programs for sixth graders except for the

play/musical. The staff suggested the YMCA which was in walking distance from the school. When the parent mentioned concerns about the cost, staff directed her to the Boys and Girl's federal program which provided transportation from [school] at the end of the school day. The parent also requested transportation, and the administration reviewed the student's elementary IEP from February 5, 2024 and after the question of 'does the student require related service of transportation to access and benefit from their special education services?' the box was checked as 'No.' The district offered that since the IEP did not indicate a need for transportation and they were not yet familiar with the student they would follow the IEP as written as they got to know the student and then revisit the discussion

The IEPs dated January 5, 2024 and January 22, 2025 are both marked as "No" for the question, "Does the student require the related service of transportation to access and benefit from their special education services?" For both IEPs, the parent was in attendance.

In a clarification email from the district's attorney to the investigator on February 27, 2025, it was clarified that the meeting in August was not an IEP meeting as teachers were not on duty yet and this was communicated with the parent.

In an email from the assistant principal to the district attorney dated, February 19, 2025 at 4:38 p.m. it is written that the student had been going to the Girls and Boys Club since the beginning of the school year and there had been no concerns received from the mother or identified by the staff about the student needing after school support to safely transport to the Girls and Boys Club program until the student missed the bus in January and then the mother asked at the IEP meeting.

Conclusion

It is found that on August 1, 2024 the parent and middle school staff met to discuss the student's transition to the middle school and parent concerns once the school transfer was granted. It is found that the parent and school staff discussed transportation related to the afterschool program and determined to follow the IEP as written and discuss if the IEP needed to be amended to add specialized transportation at a later, unspecified date. It is found that the IEP did review specialized transportation during the January 22, 2025 IEP. As the meeting on August 1, 2024 was not an IEP meeting and a formal parent request was not made, the district did not need to provide a prior written notice. Therefore, it is found that the district ***is IN compliance*** and did not have an obligation in this instance to provide a prior written notice.

Issue Two

Did the district consider extracurricular and after school supports regarding safely transitioning from the school building to the Boys and Girls Club program at the student's IEP meeting during the 2024-2025 school year?

Applicable Law

Federal regulations at 34 C.F.R. 300.42 defines 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.

Federal regulations at C.F.R. 300.320(a)(4)(ii) describes 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 to participate in extracurricular and other nonacademic activities; and

Federal regulations at 34 C.F.R. 300.107(a)) stipulate that each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to 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 and may include transportation.

Analysis: Findings of Fact

The findings of Issue One are incorporated herein by reference. The parent alleged in the complaint that on January 21, 2025 she received a call from her child who was confused and didn't know if the bus for Girl's and Boy's Club had left so her child called an hour and a half after school let out and was freezing cold. She stated her child struggles and needs to be kept safe to ensure the student boards the bus after school. She stated that since the beginning of the school year the school did not consider whether the student needed specialized transportation replying that since he was not in a wheelchair or blind the student did not meet the requirements for special transportation.

The district responded that the student is able to get to class independently and follow a daily schedule following verbal directions. They report the student may need directions repeated for multi-step tasks on an assignment, but the student knew the afterschool bus routine.

The IEPs dated January 5, 2024 and January 22, 2025 are marked as "No" for the question, "Does the student require the related service of transportation to access and benefit from their special education services?" The district and parent agree that specialized transportation was brought up at the January 22, 2025 IEP meeting following the January 21, 2025 incident.

The student began attending Girl's and Boy's Club at the beginning of the student's sixth grade school year (2024-2025) and no concerns regarding a need for specialized transportation had been identified with the student in the past nor until the incident occurring on January 21, 2025. During the scheduled annual IEP meeting on January 22, 2025 the IEP team discussed

specialized transportation and determined that the student was not in need of specialized transportation.

The mother reported during her interview with the investigator that there were times that the student missed the bus after school, but did not report them to the school until the date of the incident.

The district reported an incident on "January 17th (not the day in question) staff did see [student] outside after school waiting on [student's] ride. [Student] was encouraged to come inside. [Student] said no that [student's] ride was almost there and [student] wanted to sit outside and watch videos on [student's] phone--which is what [student] was doing while eating a snack. [Student] was told if [student] changed [student's] mind [student] could ring the buzzer that was right above [student's] head. By the time office staff left for the day, [student] had been picked up. We do not know why [student] didn't ride the bus. [Student] just said someone else was getting [student] that day. Cameras show parent picked [student] up late at 4:21pm."

The district responded in a clarification email on February 27, 2025 that the staff were not aware of the student missing the bus the day of the incident, nor were they aware that missing the bus had been an issue during the school year. They replied in an email with the investigator that, "On January 21, 2025, at the end of the school day, the student was sitting outside on a bench after school, playing a game on [student's] device. [Principal] saw the student sitting there waiting and asked [student] if [student] wanted to come inside to wait. The student declined. The student had not walked to the bus, and [student] missed the Boys and Girl club van pick up. [Student] did not mention or share that with [principal] and instead called [student's] mother to pick [student] up."

The district described on February 27, 2025 that on January 21, 2025 (day of incident) the school staff were not aware that the student was waiting outside for transportation and that the student did not come into the school to alert anyone, instead using the student's cell phone to contact the mother. The principal reported that she had offered for the student to come inside to wait for a ride, but the student declined. The staff reported that cameras show the student leaving at 3:30 p.m.

The district stated in an email on February 27, 2025 that the procedure for students attending Girl's and Boy's club is that students wait in front of the building for the bus to pull up in front of the school and there is a group of 6-7 students who ride daily and get on together. It is a regular sized bus with "The Girls and Boys Club" written on the side. The number of students varies daily based on who is absent or if a student is doing something different after school. It is reported that two staff supervise in front of the school until 3 p.m. when staff return to the building for afterschool meetings. Student may buzz the front door to return inside to make calls, talk with staff or use the restroom. In this case the student had ridden the bus for several

months prior to the event without incident. The procedure is that administration is present until 5 p.m. and do not leave until all students have departed.

The district responded in an email that a transportation request was considered and approved following the parent contacting the district about the January 21, 2025 incident.

A transportation request dated January 24, 2025 documented, "[Student] is a transfer student at [school]. [Student's] mom is requesting transportation due to a medical documentation stating, 'These symptoms are causing significant impairment in [student] daily functioning.' [Student] has missed the Teen Center bus a few times because [student] gets distracted and does not see it arrive. She is requesting door to door transportation."

Conclusion

The student has been a child with special education services in this district since elementary school and the student has not received specialized transportation services during that time. Further, during the 2024-2025 school year the school and parent discussed specialized transportation prior to the start of the school year and determined to discuss this issue at a later time. Documentation and interview did not reveal that concerns occurred and at the IEP team meeting on January 22, 2025 the IEP team discussed the January 21, 2025 incident and continued with not providing specialized transportation with the parent signing the PWN that resulted from this IEP meeting. As such, it is found that the IEP team did consider Federal regulations at C.F.R. 300.320(a)(4)(ii) and 34 C.F.R. 300.107(a)) to discuss specialized transportation as a supplementary aid and support for the student to attend the Girl's and Boy's Club. It is also important to consider the United States Supreme Court, in Endrew F. v. Douglas County School District, 117 LRP 9767, 137 S.Ct. 988 (2017) case that said a Free Appropriate Public Education means an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. The court added this statement: "The 'reasonably calculated' qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials." This statement means that courts are to continue to refrain from using the benefit of hindsight to judge an IEP; that is, courts are instructed to look at what the IEP team knew at the time it drafted the IEP, and with that knowledge, determine whether the IEP was reasonably calculated at that moment in time to provide an appropriate education. As such, the singular January 21, 2025 incident did not supercede the previous discussions and decisionmaking of IEP teams and result in a decision that specialized transportation should have been deemed necessary. It is acknowledged that since the incident the IEP team received additional outside information from the parent and made a transportation request on behalf of the student based on that information.

Based on the documentation and interviews with the parent and the district is found that the district did consider extracurricular and after school supports regarding safely transitioning

from the school building to the Boys and Girls Club program at the student's IEP meeting on January 22, 2025 and *is IN compliance* with IDEA regulations.

Summary of Conclusions/Corrective Action

ISSUE ONE: A violation of 34 C.F.R. 300.503(a)(2) was not found, based on the facts above. Corrective action is not required.

ISSUE TWO: A violation of 34 C.F.R. 300.42, C.F.R. 300.320(a)(4)(ii), 34 C.F.R. 300.107(a) and Endrew F. v. Douglas County School District was not found, based on the 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.gov 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 APRIL 16, 2025

DATE OF REPORT: MAY 23, 2025

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 #500, Kansas City Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #500.

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 April 16, 2025, and the 30-day timeline ended on May 16, 2025.

Allegations

The following issue will be investigated:

ISSUE ONE: Whether USD #500, in accordance with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), developed an IEP for the Student within 30 days of the Student's initial eligibility for special education. K.A.R. 91-40-8(h); 34 CFR §300.323(c).

Investigation of Complaint

The Complaint Investigator, interviewed the Parent by telephone on May 14, 2025. The following District staff were interviewed on May 9, 2025:

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:

1. Complaint Response, 04/19/25
2. Individualized Education Program (IEP), Draft 03/31/25
3. Assistive Technology Checklist, no date
4. Evaluation/Eligibility Report, 04/02/25

5. Vision Report Initial Evaluation, 04/02/25
6. Early Childhood Evaluation Summary Report, 04/01/25
7. IEP Meeting Notes and Summary, 04/02/25
8. Prior Written Notice (PWN), 04/02/25
9. Kansas Transition Document, 07/2023
10. Infant Toddler Services Report, 03/01-03/31/25
11. Infant Toddler Services Report, 04/01-04/30/25
12. Individualized Family Support Plan, 12/17/24
13. IEP, Spanish, 04/02/25
14. Email, re: [the Student] paperwork signature request-need English copy, 04/21-04/22/25
15. Email, re: meeting to discuss homebound services…, 05/06/25

Background Information

This investigation involved a preschool-aged student awaiting enrollment in the District. The Student was previously identified as eligible for Part C early intervention services for infants and toddlers with disabilities, which the Kansas Department of Health and Environment (KDHE) oversees. Part B of IDEA defines the preschool program for children with disabilities ages three through five, which the Kansas State Department of Education (KSDE) oversees.

The Student was evaluated to prepare for their transition out of Part C services and to determine eligibility for Part B services. On April 2, 2025, a virtual eligibility and

IEP meeting was held, and it was determined that the Student was eligible for Part B services as a student with multiple disabilities and a secondary disability of visual impairment. An IEP was also drafted. The Student's third birthday was on April 3, 2025.

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 Student is eligible for Part B (school-based) special education services as a student with multiple disabilities and visual impairment.
2. According to an Individualized Family Service Plan (IFSP) dated September 9, 2024:
    a. The Student's initial eligibility and IFSP date were October 18, 2022.
    b. The Student was referred to the Kansas Part C (infant and toddlers) program on May 1, 2024 by a doctor and was determined to be automatically eligible for services due to an established risk for developmental delay (physical abuse, traumatic brain injury, cortical visual impairment, seizures, G-tube, and hearing impairments).

c. The Student received early intervention services in the areas of occupational therapy, vision services, physical therapy, social work, and family service coordination.

d. A transition conference to discuss the Student's transition from Part C (infant and toddler) services to Part B (school-based) services occurred on December 17, 2024. It was noted that evaluation would occur to determine eligibility for Part B, and if eligible, an IEP would be developed, and all of this needed to be completed by the Student's third birthday.

3. Between March 31, 2025 and April 22, 2025, Service Log Notes from the Infant/Toddler (Part C) Family Service Coordination (FSC) staff indicated the following:

a. March 31, 2025: "FSC received email invitation today for eligibility meeting scheduled virtually for [the Student] on April 2, 2025."

b. April 1, 2025: "Family acknowledged [the Student's] upcoming exit from Part C services due to 3rd birthday and no further questions at this time."

c. April 3, 2025: FSC completed the exit summary for the Student. FSC corresponded with the Parent regarding the IEP meeting the day before. The Parent reported that many services were recommended, but they did not receive any information about transportation or start date for the Student to receive services.

d. April 10, 2025: FSC checked in with the Parent, who stated the Student still had not started preschool, and they had not heard anything regarding the reason for the delay. FSC explored options with the Parent to access support.

e. April 15, 2025: FSC checked in with the Parent again, who stated they still had not received any information about the Student's ability to start services. The Parent asked for assistance with filing a formal complaint.

f. April 15, 2025: FSC contacted the Visual Impairment Teacher and the School for the Blind Teacher, who attended the IEP meeting. They reported that the IEP meeting was "never concluded and that no IEP was signed due to the team feeling like they needed additional information to make a placement decision." They also reported that language interpretation for the Parent was "poor" during the meeting.

g. April 22, 2025: FSC facilitated a meeting within the Parent's home with the Parent, the home nurse, an interpreter, the District Nurse, and the District Special Education Coordinator. The District Nurse requested the Parent's signature on a release of information to obtain medical records. The Special Education Coordinator read the Parent the PWN with proposed services and asked for the Parent's signature, which the Parent provided. The Special Education Coordinator told the Parent they would send them copies of all documents in Spanish following this meeting, but no explanation was reportedly provided for the delay in obtaining the Parent's signature or

providing them copies of the IEP for three weeks since the meeting.

The Parent asked what the District plan was for providing the Student with compensatory services. The Special Education Coordinator reported that the District did not believe they were responsible for that since they were not provided with adequate medical information necessary for the Student to attend school. When asked about efforts to obtain needed medical information, the District Nurse stated the Parent declined to sign a release of information for a hospital on March 26, 2025. However, the Parent had signed a different release of information for another medical provider on the same date and said they would have signed anything if they understood what was being asked. The District Nurse reportedly acknowledged miscommunication and apologized to the Parent.

Allegedly, the Parent had been given forms in English to take to the doctor to have completed, which the Parent did. However, the doctor had asked what specific information the school needed and what time of day the Student would be attending school, which was information the Parent did not have, and no one from the District reportedly assisted the Parent in getting the information until this home visit on April 22, 2025.

4. An evaluation and eligibility report completed to determine eligibility for Part B services dated April 2, 2025, indicated the following:
    a. This was an initial evaluation.
    b. "[The Student] was referred for a comprehensive evaluation to determine continued eligibility as [the Student] transitions from Infant-Toddler Services (Part C) to school-based services (Part B). [Their] parent reported that their primary concerns include learning and language delays."
    c. The Student had a comprehensive developmental evaluation on March 26, 2025, that assessed the five key areas of development in young children:
        i. Cognitive/pre-academics (thinking skills);
        ii. Communication (speech/language skills);
        iii. Fine and good motor skills;
        iv. Adaptive (self-help skills); and
        v. Social-emotional (self and social relating and self-management skills).
    d. Parent interview: Spanish is the primary language spoken in the home, and the family is currently participating in an Intensive Family Services (IFS) program. This Student has been diagnosed with a developmental delay and has complex medical needs. The Parent expressed concerns about how well the Student will adapt to a school setting, particularly noting their difficulty with self-soothing. Although the Student does not currently use words in any language, they appear to understand both Spanish and English.

e. Historical information/IFSP review: Prior to state custody, this Student had no known birth or medical history. They were taken into Department for Children and Families (DCF) custody in late June 2022 due to physical abuse, initially hospitalized for lethargy, seizures, and feeding difficulties, and found to have signs of prolonged abuse. Following neonatal intensive care, they were placed with their adoptive family in early August 2022. The Student has multiple medical diagnoses, including dysphagia, cortical visual impairment, and hearing difficulties, and traumatic brain injury. Recently, they began experiencing seizures and are on various medications. The Student also receives nutrition through a G-tube, although they have been approved to trial purees.

f. Separate specialist evaluation reports were included for vision and physical therapy.

g. Based on the results of the evaluation, the Student demonstrated educationally significant delays in the following areas:

   i. Receptive and expressive language skills;
   ii. Fine and visual motor skills;
   iii. Social-emotional development; and
   iv. Adaptive behavior.

h. The IEP Team determined that the Student met the eligibility criteria for Multiple Disabilities (coexisting impairments that do not include deaf-blindness) and Visual Impairment.

5. A draft IEP dated April 2, 2025 outlined the following for the Student:

   a. The Student turned three years old on April 3, 3025.

   b. Meeting attendees:

      i. The Parent, in person;
      ii. The Speech-Language Pathologist (SLP), in person;
      iii. The Special Education Teacher, virtual;
      iv. The District Nurse, in person;
      v. The Physical Therapist (PT), in person;
      vi. The Occupational Therapist (OT), in person;
      vii. The Special Education Coordinator, virtual;
      viii. The Vision Teacher, in person;
      ix. The Infant/Toddler Worker, in person; and
      x. The Psychologist, virtual.

   c. The Student's strengths: "[The Student] enjoys being tickled and loves the rumble ball. If it is not too hot outside, [the Student] enjoys swinging and being spun in the swing."

   d. Impact of disability: The Student's delay in their fine motor skills may impede their ability to participate in fine motor and play activities in the classroom.

This Student's delay in their gross motor skills impacts their ability to access their educational environment and participate in movement-based learning with their peers.

e. Goals, accommodations, or modifications were determined to be needed in the areas of motor skills, communication, social-emotional, pre-academics, and adaptive skills.

f. The parental concerns section of the IEP was blank.

g. Special considerations:

   i. The Student requires assistive technology.

   ii. The Student is blind or visually impaired.

   iii. The Student has communication needs.

   iv. The Student requires an Individual Nursing Care Plan.

   v. The Student has limited English proficiency.

h. Goals:

   i. Goal 1.1: "By 3/31/2026, [the Student] will use [their] preferred method of communication to express two functional messages (i.e., go, like, no) with 70% accuracy given prompting (including but not limited to verbal, tactile, hand under hand, partial physical, etc.)."

   ii. Goal 2.1: "By April 1, 2026, to increase [their] ability to participate in fine motor and play activities, [the Student] will grasp and hold up to 5 small objects or toys for up to 5 seconds on 3 out of 4 trials using either hand and with adult support."

   iii. Goal 3.1: "By April 1, 2026, [the Student] will demonstrate an improvement in gross motor skills by prop sitting for 2 minutes while wearing [their] Benik vest and bearing weight through upper extremities (hands and forearms) in [a] prone position for 30 seconds to improve [their] ability to complete transitions independently.

   iv. Goal 4.1: "When in proximity of peers, [the Student] will participate in play by showing interest in toys or activities that they are engaged in using a variety of methods such as holding the toy or object, making eye contact, observing and/or focusing on the peer's play in 3 out of 4 opportunities."

i. Special education services:

   i. Special education services in the early childhood special education program classroom from April 3, 2025 through April 1, 2026 for:

      1. 210 minutes, one day per week;

      2. 180 minutes, one day per week; and

      3. 190 minutes, two days per week.

j. Related services:
   i. Special education services (speech/language) for 30 minutes weekly in the early childhood special education program classroom from April 3, 2025 through April 1, 2026.
   ii. Occupational therapy (fine motor) for 20 minutes, one day per week via special education direct services outside the regular education classroom.
   iii. Physical therapy (gross motor) for 20 minutes, one day per week via special education direct services outside the regular education classroom.

k. Support for school personnel:
   i. Teacher consultation: The PT will train the classroom team on the use of adaptive seating, mobility equipment, and transfers at the beginning of the school year, as new staff arrive, and as requested.

l. Transportation services: "The [S]tudent does not require transportation as a related service."

m. Placements considered:
   i. Early childhood setting;
   ii. Early childhood special education classroom; and
   iii. Integrated special education setting.

n. Placement selected: Integrated special education setting.

o. Program modifications, accommodations, and supplementary aids and services from April 3, 2025 through April 1, 2026:
   i. "Adaptive equipment for seating and mobility (examples could include, but are not limited to, a tomato chair or Rifton Activity chair)" in all areas, daily, for the length of the school day.
   ii. "Adaptive or simplified text or materials to correspond to [the Student's] educational level" in the early childhood classroom, daily, throughout the school day.
   iii. "Close adult proximity -- across to or next to facilitate safety at all times as well as to aid in adaptive skills including dressing, toileting, washing hands, feeding and cleaning up self" in the early childhood classroom, daily, throughout the school day.
   iv. "Recasting/modeling of language productions, aided language support, trialing of AAC devices" in the early childhood classroom and therapy room during targeted language-based activities throughout the activity.
   v. "Switch-activated toys" in the special education and general education setting for whole/small groups, centers, and therapies throughout the activity, as appropriate.
   vi. "Teacher support to hold/interact with items/toys" in the early childhood classroom, daily as needed, throughout the school day.

vii. "Teacher support with turning toward teacher/speaker" in the early childhood classroom, daily as needed, throughout the school day.

viii. "Visual and tactile communication supports (e.g., communication board, visual schedule, objects, etc.) will be provided in the learning environment to increase access to communication" in the early childhood classroom, daily, throughout the school day.

p. A Parent Consent for Release of Information and Medicaid Reimbursement had the Student's name and birthdate, but was unsigned.

q. An assistive technology checklist had the following items checked:

i. Communication board;

ii. Tactile symbols;

iii. A variety of augmentative and alternative communication devices to be trialed with the Student;

iv. Manual wheelchair (Student's personal wheelchair);

v. Tomato chair;

vi. Student's personal wheelchair; and

vii. Adapted/alternate chair (could include tomato chair, Rifton chair, etc.).

6. Meeting notes dated April 2, 2025 documented a discussion of things listed in the evaluation report and the draft IEP. They also noted:

a. The Parent stated they had received a copy of their parental rights, understood them, and had no questions.

b. The District had not been able to review the medical records. The Parent stated that their main concern was the Student's transition to a school setting.

c. The District Nurse stated that the Student would need one-to-one nursing while the Student was in school and when the Student was being transported to and from school. The District Nurse also explained that doctor's orders were required in this situation for the Student to attend school with appropriate care, per state and federal law, as well as the requirements for nursing care at school.

d. The team moved forward with the IEP. The Parent confirmed that they had received the draft IEP that had been translated into Spanish. The Parent stated their concerns were that the Student would be in a new environment and questioned if staff would be able to help the Student when they needed it, and also communicate with the Parent.

e. The Parent was interested in looking at the School for the Blind as a possible placement, and the staff from the Infant/Toddler Program had taken the Parent for a tour of the facility and invited the School for the Blind staff to the IEP meeting without the knowledge of the Early Childhood Program team. Because the School for the Blind would be a more restrictive

environment, the team decided to revisit the discussion at a later date after data had been gathered and an informed decision could be made.

f. The District Nurse would follow up with the Parent on April 14, 2025 regarding the doctor's orders and information.

7. A Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated April 2, 2025 indicated the following:

   a. A meeting was held on April 2, 2025 to determine:

      i. Whether the Student was eligible for special education;

      ii. Special education and related services needed by the Student; and

      iii. The appropriate educational placement to provide special education and related services identified in the Student's IEP.

   b. The Student was found eligible for special education.

   c. The team proposed that the Student receive special education services in the following manner:

      i. 20 minutes weekly of physical therapy services outside the special education classroom;

      ii. ii. 20 minutes weekly of occupational services outside the special education classroom;

      iii. 30 minutes weekly of speech and language therapy inside the special education classroom;

      iv. 30 minutes, 4 days weekly of specialized transportation services;

      v. 30 minutes weekly of indirect vision services;

      vi. 210 minutes, 1 day weekly of special education services inside the special education classroom;

      vii. 180 minutes, 1 day weekly of special education services inside the special education classroom;

      viii. 190 minutes, 2 days weekly of special education services inside the special education classroom; and

      ix. 20 minutes, 1 day weekly of vision services outside the special education classroom.

   d. A placement at the School for the Blind on Wednesday, when the Early Childhood Program was not in session, was rejected because the District had not had time to gather data to determine if that was an appropriate placement.

   e. The Student would require a 5-point harness, a one-to-one nurse to travel with them to and from school, and trunk space to accommodate their wheelchair. The Student would also need one-to-one nursing throughout each school day from the start of travel to school through drop off from transportation at the end of the day.

f. Other factors: "The medical notes for the 1:1 nurse were not able to be provided to the district on the day of eligibility determination and IEP programming development. The parent stated in the meeting that [they] would be seeing the doctor with [the Student] on April 10, 2025, and hoped to have the necessary medical documentation for the 1:1 nurse to the district as soon as possible after that appointment. At this time, we are not able to implement the IEP until medical documentation is provided for the 1:1 nurse. The school nurse has followed up with the parent, and the parent has indicated [they have] not been able to obtain the information from the doctor. The school nurse offered to support the parent in obtaining appropriate documentation, but the parent has not responded to the nurse for that assistance, nor has [the Parent] turned in the necessary medical orders or information from the doctor. As of this 4/18/2025, attempts have been made to contact Parent, but we haven't heard back regarding any status of the orders or any requests for assistance."

g. It was indicated that the PWN was delivered to the Parent via email by the Case Manager on April 18, 2025.

h. A Request for Consent For Special Education Action that was included as part of the PWN asked for consent to carry out the special education action as indicated. It noted that the proposed actions would begin within 10 school days upon receipt of written consent. It did not indicate whether consent was given or not and did not include an actual signature. The Parent's typed name and date of April 18, 2025 were filled in.

i. It should be noted that only section one of the PWN, indicating identification/eligibility, was checked, which indicates parental consent is not required. None of the other sections were checked, including section two for initial services and placement, for which parental consent is required.

8. On April 16, 2025, the Parent filed a formal complaint.

9. In an email on April 22, 2025 to the Special Education Coordinator, the Infant and Toddler Family Services Coordinator/OT stated that as of April 16, 2025, the Parent reported they did not receive any documents following the IEP meeting and were not aware of any contact from the District Nurse for follow-up. The Parent also did not know when the Student would start school and that it was "very hard" to understand what was going on in the last half of the IEP meeting due to poor connection and poor interpretation."

Special Education Coordinator Interview

10. During an interview with the Complaint Investigator, the Special Education Coordinator confirmed they had attended the April 2, 2025 meeting and explained the agreed-upon next steps. They explained that the expectation was for the Parent to supply the District with the necessary medical documentation to allow the Student to enroll in school. They stated that the Parent received a proposed IEP outlining the Student's

program once they could attend. The reason school attendance was contingent on this, they clarified, was the Parent's failure to provide medical authorization for essential health-related tools, equipment, medical devices, and medication for the District. The Special Education Coordinator further noted that the Student had a G-tube, and there was no prescription or doctor's orders available to enable the School to provide feeding, water, or other critical support in an emergency.

11. Regarding the missing medical information, the Special Education Coordinator initially did not know the reason for the delay until later. It was discovered that the Parent initially believed the information was unnecessary and then did not have it available even when convinced of its importance. The Special Education Coordinator later learned that the Infant/Toddler Worker had possessed the records but had allegedly not advised the Parent to share them, nor explained that the School needed them to serve the Student. The Special Education Coordinator also noted that at the IEP meeting, the Parent promised to obtain the information but failed to do so by a subsequent May 10, 2025 meeting. It wasn't until a meeting with the Infant/Toddler Worker that their possession of the medical records was revealed. Following this, with the District Nurse present, the Parent agreed to sign a release, allowing the District to begin obtaining the necessary information and initiate services for the Student.

12. The Special Education Coordinator stated they were unsure how the need for medical records was communicated to the Parent from the Infant/Toddler Worker. However, the Special Education Coordinator explained that they personally communicated to the Parent that services could not be provided without those records. The Special Education Coordinator emphasized the District's readiness to provide services for all students, regardless of medical conditions, as long as it was deemed acceptable by a doctor. However, without essential information for procedures like G-tube feeding and managing seizures (including prescribed medical equipment and medication), the School could not provide those services. The Special Education Coordinator also confirmed that the IEP paperwork and PWN were provided to the Parent in Spanish, and it was explained that their signature was needed to initiate services with an interpreter present. However, the Special Education Coordinator could only verify the copy they gave to the Parent in person on April 18, 2025, following the Parent's signing of the document.

13. Regarding the PWN for the Student's identification and eligibility, which appeared to indicate that parental consent was not required, the Special Education Coordinator expressed uncertainty about why it was written that way. The Coordinator emphasized that this was an initial IEP and that services could not be initiated without parental consent, something they stated they had made very clear to the Parent during their meetings. The Special Education Coordinator also explained the discrepancy between the draft IEP and the PWN regarding transportation as an error and said the PWN "stands as the legal document that the school district has to

follow." They also explained the details of the specialized transportation needed by the Student, which aligned with what was written in the PWN dated April 2, 2025.

14. Regarding the draft IEP, which included a service start date of April 3rd, 2025, the Special Education Coordinator explained that the District had proposed homebound services, and the Parent had signed the agreement for these services on May 7, 2025. The Special Education Coordinator stated that a special education early childhood teacher and an occupational therapist had been assigned to the Student's case to provide services until the end of the school year. The Special Education Coordinator clarified that during the home visit in April, the Parent had signed some paperwork allowing the District to obtain some, but not all, of the necessary medical records. This allowed the District to gain a better understanding of the situation. The Special Education Coordinator added that the District Nurse assigned to the case had been following up on all the required medical records as they were received from the doctor's office.
15. The Special Education Coordinator also thought it was important to note that the Parent "seemed very confused" throughout the process and seemed to have received "mixed information." The Special Education Coordinator reportedly attempted to understand why the Parent believed the medical information was unnecessary, but the Parent became unresponsive. The Parent had been more cooperative in signing releases following direct meetings and follow-ups with the Special Education Coordinator, who stressed that the District never intended to deny services due to the Student's medical needs. They simply required the information to provide appropriate support. A concern was raised regarding the lack of medical equipment or medication verification in the home, which was crucial in case the Student needed immediate assistance.
16. Finally, the Special Education Coordinator expressed confusion about the Infant/Toddler Worker's continued presence at meetings with the Parent, because allegedly, after the Student became eligible for Part B services, the regulatory responsibility shifted to the school setting. The Special Education Coordinator recounted a home visit where, after assuring the Parent that programming wasn't being withheld, the Infant/Toddler Worker revealed that the Parent had provided them with the necessary medical records. The Special Education Coordinator expressed being "floored" that the Infant/Toddler (Part C) team had never indicated they had this information, neither to the Parent about Part B's need for it (especially for feeding and water) nor to the Part B team. The Special Education Coordinator was reportedly further surprised at a later meeting when the Parent expressed disappointment that services had not started immediately after signing the IEP, evaluation, and PWN for eligibility, despite the Special Education Coordinator repeatedly explaining the need for medical documents to provide both sustaining and lifesaving care legally. The Special Education Coordinator also mentioned setting up homebound services quickly, but initially requiring a parent to be present during services due to concerns about the necessary medical equipment and

medication not being available in the home. Occupational Therapist and Family Service Coordinator (OT), Part C Interview

17. During an interview with the Complaint Investigator on May 13, 2025 the OT indicated that the Part C Team conducted their first meeting with the Part B Team on December 17, 2024. The upcoming transition was discussed, and the Part C Team received a copy of the IFSP. The OT stated, "There's a health history section on the IFSP and I would like to note that on that health history, [the Student's] significant medical needs were all noted. It was noted that [the Student] did currently receive 40 hours of home health nursing care." The OT continued, "That was discussed with the Part B Coordinator and a representative, and we did also cover [their] vasovagal nerve stimulator that was also in the health history, and it was noted in the health history that [the Student] does see a neurologist."

18. The OT from the Part C Program shared that after the transition conference was held, it was the Part B Program's responsibility to gather all records and needed information so that the Student can start before their third birthday. It was noted that the transition conference "should be scheduled no later than March 13th." According to the OT, the Parent had not heard from the Part B team as of March 11, 2025, so the Parent reached out to the Part B Team. The OT stated, "So I sent an email to the Part B team to inquire about the scheduling, see if there had been any crossed wires. The team reported that they had received consent for evaluation from [the Parent] and would schedule with [the Parent] that day." The OT shared that the evaluation was scheduled for March 26, 2025, which was only one week before the Student's third birthday.

    The Vision Teacher was unable to attend the evaluation meeting because they "did not receive sufficient notice." The OT thought there was some confusion regarding the Parent understanding of exactly what was needed from the Release of Information (ROI) from the health care provider. At that time, no ROI was requested for the neurologist who oversaw the vagal nerve stimulator. That ROI was not requested until April 8, 2025, "despite the fact that it is clearly stated in the health section of [the Student's] IFSP, which was released in December." The OT shared that the eligibility IEP meeting was not scheduled at the evaluation. According to the OT, an invitation was sent out to the eligibility IEP team on March 31, 2025.

19. According to the OT, the Parent had not received any follow-up information or support from the Part B Team. The Parent was unsure of the next steps and the Student had not started any services on their third birthday which was "required with C to B transitions." When asked if the Part C Team had the records requested by the Part B Team for the outside medical provider, the OT indicated, "We did not have the script for the vagal nerve stimulator. I did share the medical records we did have … Those records were not requested by Part B from us until April 22 at the meeting at the Parent's house."

20. The OT shared that after the Complaint was made, there was a meeting at the Parent's house with the OT, the Head Nurse, Part B, and the Home Health Nurse. At

that meeting, the Parent signed the ROI for the Children's Hospital. "The Nurse reported that was the reason that [the Student] had not received any services yet. Mom reports that [they] thought that the team was going to gather all needed information, and [the Parent] did not understand the earlier request for an ROI on May 6th. … On April 22, the Parent signed a PWN for services."

Parent Interview

21. During an interview with the Complaint Investigator, the Parent shared they believed the Student would start school one to two weeks after the Student turned three years old on April 3, 2025. The Parent indicated the Part B Team didn't give the Parent a specific date that the Student would start school. The date given was a tentative date. The Parent stated, "No, they haven't confirmed the date yet. They told me that in August it will be the date, but they have not given that date yet." The Parent indicated the B Team told the Parent the reason the Student hadn't started school was because of the paperwork. The Parent shared that "there were some papers that the doctor had to sign." The Parent thought they had signed those papers on April 14, 2025. The Parent shared that they did not receive copies of the paper that the Parent signed, either in hard copies or by email.

    The Parent indicated that they had signed an ROI for medical records. The Parent shared they signed via tablet. The Parent shared that the Student had not started school, but the Student was eligible to receive 30 minutes of classes at home. The Parent indicated that the Student should get speech therapy, therapy for the Student's vision, and therapy for mobility. The Parent shared that a teacher had come to their home three times to work with the Student as of May 14, 2025.

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #500, in accordance with state and federal regulations implementing the IDEA, developed an IEP for the Student within 30 days of the Student's initial eligibility for special education. K.A.R. 91-40-8(h); 34 CFR §300.323(c).

According to K.A.R. 91-40-8(h) and 34 CFR §300.323(c), each agency shall ensure that an IEP is developed for each exceptional child within 30 days from the date on which the child is determined to need special education and related services. Additionally, as soon as possible following the development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP.

The Parent alleged that a virtual evaluation and IEP meeting were held on April 2, 2025 and the Student was found eligible for special education services as a student with multiple disabilities and a visual impairment, but the IEP was not completed but was in draft form. The Parent

further claimed that as of April 16, 2025, the Student's IEP was not complete, they had not been placed yet, and were not receiving special education services.

During an interview with the Complaint Investigator, the Parent reported believing the Student would begin services approximately one to two weeks after the Student's third birthday on April 3, 2025. Kansas regulations state that "Each school district must make FAPE available to all eligible children beginning on their third birthday." The Parent indicated the Part B Team did not provide a specific date indicating sometime in August when the Student would receive services. The Parent stated that the delay in services was due to paperwork, specifically papers that the physician needed to sign before the Student could receive services. The Parent indicated the Student was eligible for 30 minutes of at-home class a week until the necessary ROI was received by the B team and the Student had received those services at home three times as of May 14, 2025.

According to the District, the Parent attended the meeting on April 2, 2025, accompanied by outside guests, and did not provide consent to initiate the IEP, which remained in draft form. The Student has significant medical needs, and the Parent had not provided the District with the necessary doctor's orders to address these nursing requirements, despite multiple requests. The District also needed this medical documentation to determine if nursing support was required for special transportation. The District reported having a nurse and placement ready to begin services as soon as the medical documents were provided and the Parent signed the IEP. The District maintained that the delay in services was solely due to the lack of medical records and Parental consent to initiate the IEP.

The District indicated the delay in services was due to not having a prescription from the Student's neurologist in order for the School to properly administer the G-tube, which provided the Student the ability to eat and drink at school. The Special Education Coordinator explained that at the April 2, 2025 evaluation and eligibility meeting, the understanding was for the Parent to provide the District with the required medical documentation for the Student's enrollment. The Special Education Coordinator stated that the Parent received a proposed IEP that would be implemented once the Student could attend school. The Coordinator clarified that the contingency for school attendance was the Parent's lack of ROI for medical authorization for necessary health-related tools, equipment, medical devices, and medication, further noting the Student's G-tube and the absence of a prescription or doctor's orders to allow the School to provide feeding, water, or other essential care. Without essential information for procedures like G-tube feeding and managing seizures (including prescribed medical equipment and medication), the School could not provide those services safely.

The Special Education Coordinator reported that the Infant/Toddler (Part C) team had never indicated they had the medical information, neither to the Parent about Part B's need for it (especially for feeding and water) nor to the Part B team. The Part C team's OT indicated that

the Part B team had the medical information noted on the IFSP that the Part B team had access to but did not have a prescription for the G-Tube.

Regarding the draft IEP, which included a service start date of April 3, 2025, the Special Education Coordinator explained that the District had proposed homebound services, and the Parent had signed the agreement for these services on May 7, 2025. The Parent inquired about the District's plan for compensatory services. The Special Education Coordinator stated that the District did not believe they were responsible for providing these services, citing the lack of necessary medical information for the Student to attend school. Regarding efforts to obtain this information, the District Nurse reported that the Parent had declined to sign an ROI for a hospital on March 26, 2025. However, the Parent had signed a release for a different medical provider on the same date and indicated they would have signed any release if they had understood the request. The District Nurse reportedly acknowledged the miscommunication and apologized to the Parent.

On April 15, 2025, FSC contacted the Visual Impairment Teacher and the School for the Blind Teacher who had attended the IEP meeting. These teachers reported that the IEP meeting "never concluded" and that an IEP was not signed because the team felt they needed more information to determine placement. They also indicated that the language interpretation for the Parent during the meeting was "poor."

Once a child is found eligible for special education in Kansas, there does not need to be a redetermination of that which applies to the Student's transition from the Part C Program to the Part B Program.1 The Student received home services for 30 minutes a week for three weeks while waiting for the ROI to be signed and returned by the medical establishment and the Parent.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it was not substantiated*** that the District did not develop an IEP for the Student within 30 days from the date on which the child was determined to need special education and related services. Additionally, following the development of the draft IEP, special education at home for 30 minutes once a week was made available to the Student in accordance with the child's IEP.

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.gov 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 4, 2025

DATE OF REPORT: JUNE 3, 2025

This report is in response to a complaint ------- filed with the Kansas State Department of Education, on behalf of their child, -------. For the remainder of this report ------- will be referred to as "the student." ------- will be referred to as "the parent."

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 parent via phone on May 7, gathering additional information and verifying the specific allegations to be investigated. The complaint investigator provided the specific allegations to be investigated to the parent via email on May 7. The parent did not dispute how the complaint investigator framed the issues to be investigated. The parent also provided documentation for the complaint investigator to consider as part of the investigation and the parent and investigator exchanged multiple emails. The district assistant special education director and the investigator had two phone calls and exchanged multiple emails. The investigator interviewed the principal of the student's school, the student's special education teacher, a district special services coordinator, and a district school psychologist and exchanged emails with the district special services coordinator. The district provided the investigator with a response to the issues identified, as well as all documentation and data the investigator requested.

In completing this investigation, the complaint investigator reviewed and considered all information both parties provided. The investigator determined the following documentation was most relevant to the identified issues and relied on this information in making findings of fact and conclusions:

- Student's 2024–25 Elementary Progress Report, May 22, 2025.
- Prior Written Notice Proposing Changes to Student's IEP Based on Reevaluation Report IEP Team Discussion, May 20, 2025.
- District Document with Information on Each Reevaluation Instrument, May 20, 2025.
- District Timeline, May 20, 2025.
- District's Response to the Complaint, May 20, 2025.

- IEP Team District Meeting Notes, May 16, 2025.
- Parent's Complaint, May 4, 2025.
- Prior Written Notice of the District's Decision to Grant an Independent Educational Evaluation, Apr. 30, 2025.
- Prior Written Notice and Request for Consent to Extend Evaluation Timeline to Include Additional Testing in Reevaluation and Refusal to Conduct Certain Testing, Apr. 25, 2025.
- Email from Parent to Principal Requesting Records, Apr. 25, 2025.
- Emails Between IEP Team Members Regarding Reevaluation, Apr. and May 2025.
- Draft Reevaluation Report, Apr. 17, 2025.
- Prior Written Notice Refusing Parent Request for Independent Educational Evaluation, Apr. 15, 2025.
- Parent Emails to District Staff with Independent Educational Evaluation Request, Apr. 14, 15, 22, and 29, 2025.
- Parent Emails to IEP Team Regarding Comprehensiveness of Reevaluation, Apr. 14 and 22, 2025.
- Email Exchange Between Parent and School Psychologist on Reevaluation, Jan. 15–16, 2025.
- Prior Written Notice and Request for Consent to Evaluate and Signed Parent Consent, Jan. 15, 2025.
- Email from Parent to District Staff Requesting Reevaluation, Jan. 9, 2025.
- Daily Reports Between Teacher and Parent and Parent Summaries of Daily Reports, Jan.–Apr. 2025.
- Email from Principal to District Staff Regarding Parent's Withdrawal of Oct. 16, 2024, Record Request, Oct. 23, 2024.
- Emails Between District Staff Regarding Parent's October 16, 2024, Record Request, Oct. 17, 2024.
- Email from Parent to Principal Requesting Records, Oct. 16, 2024.
- Prior Written Notice Proposing to Waive the Reevaluation and Signed Parent Consent, Sept. 12, 2024.
- Student IEP Progress Report – Annual Goal, Sept. 11 and Dec. 19, 2024, Mar. 14 and May 22, 2025.
- Student's IEP, Sept. 12, 2024.
- Email from Parent to Special Education Teacher Requesting Records, Aug. 14, 2024.
- District Process and Procedure for Review of Existing Data, Sept. 18, 2008.

Background Information

The student was a second grader in the 2024–25 school year. The student's 2024–25 IEP included one goal focused on social skills and included 30 minutes of special education services five times per week. The parent described the student in the information submitted for the student's reevaluation as "inquisitive, creative, and loves exploring the world around [the student.]" (Draft Reevaluation Report, Apr. 17, 2025.) The student's teacher described what she loves most about the student as "[the student's] smile [and] joking demeanor." (Draft Reevaluation Report, Apr. 17, 2025.)

Issues

In the written complaint, the complaint investigator's discussion with the complainant, and an issue the parent submitted on May 16, 2025, and the district agreed to add, the parent alleges fifteen issues upon which this investigation will focus:

Issue One: Whether the district provided written notice that meets the requirements of 34 C.F.R. § 300.503(b) to the parent in response to the parent's October 2024 request for accommodations to be added to the student's IEP. 34 C.F.R. § 300.503(a).

Issue Two: Whether the district ensured that a reevaluation of the student was conducted in accordance with 34 C.F.R. §§ 300.304 through 300.11 if the district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or if the student's parent or teacher requests a reevaluation and at least once every three years. 34 C.F.R. § 300.303.

Issue Three: Whether the district provided notice to the parent, in accordance with 34 C.F.R. § 300.503, that described the reevaluation procedures the district proposed to conduct prior to conducting the student's 2024–25 school year reevaluation. 34 C.F.R. § 300.304(a).

Issue Four: Whether the district obtained informed parental consent, in accordance with 34 C.F.R. § 300.300(a)(1), prior to conducting the student's 2024–25 school year reevaluation. 34 C.F.R. § 300.300(c).

Issue Five: Whether as part of the student's 2024–25 school year reevaluation, the IEP Team and other qualified professionals, as appropriate, reviewed existing evaluation data on the student including evaluations and information the parents of the student provided; current classroom-based, local, or State assessments, and classroom-based observations; and teachers and related services providers' observations. 34 C.F.R. § 300.305(a)(1), (b); K.S.A. § 72-3428(i)(1).

Issue Six: Whether as part of the student's 2024–25 school year reevaluation, the IEP Team and other qualified professionals, as appropriate, on the basis of the review of

existing evaluation data, and input from the student's parents, identified what additional data, if any, were needed to determine whether the student continues to be an exceptional child, and the student's educational needs; the student's present levels of academic achievement and related developmental needs; whether the student continues to need special education and related services; and whether any additions or modifications to the special education and related services were needed to enable the student to meet the measurable annual goals set out in the student's IEP and to participate, as appropriate, in the general education curriculum. 34 C.F.R. § 300.305(a)(2), (b); K.S.A. § 72-3428(i)(2).

Issue Seven: Whether in conducting the student's 2024–25 school year reevaluation the district used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining whether the student continues to be an exceptional child; and the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum. 34 C.F.R. § 300.304(b)(1); K.S.A. § 72-3428(b)(1).

Issue Eight: Whether in conducting the student's 2024–25 school year reevaluation the district used technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 C.F.R. § 300.304(b)(3).

Issue Nine: Whether in conducting the student's 2024–25 school year reevaluation the district ensured the student is assessed in all areas of suspected exceptionality, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34 C.F.R. § 300.304(c)(4); K.S.A. § 72-3428(c)(2).

Issue Ten: Whether in conducting the student's 2024–25 school year reevaluation the district ensured the evaluation is sufficiently comprehensive to identify all the student's special education and related services needs, whether commonly linked to the disability category in which the student has been classified. 34 C.F.R. § 300.304(c)(6).

Issue Eleven: Whether the district ensured that the IEP Team revised the student's IEP, as appropriate, to address information about the student provided to, or by, the parents, as described under 34 C.F.R. § 300.305(a)(2); the student's anticipated needs; or other matters. 34 C.F.R. § 300.324(b)(1)(C)–(E).

Issue Twelve: Whether the district provided the student with FAPE during the 2024–25 school year. 34 C.F.R. § 300.101(a); K.S.A. § 72-3410(a)(2); K.A.R. § 91-40-2.

Issue Thirteen: Whether the district afforded the parent, in accordance with the procedures of 34 C.F.R. §§ 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 student; and the provision of a free appropriate public education (FAPE) to the student. 34 C.F.R. § 300.501(a).

Issue Fourteen: Whether the district correctly and within a reasonable time responded to the parent's request for an independent educational evaluation. 34 C.F.R. § 300.502.

Issue Fifteen: Whether the district predetermined the student's disability category prior to the May 2025 IEP Team meeting to discuss the student's reevaluation. 34 C.F.R. § 300.306(a); 34 C.F.R. § 300.501b).

Issue One

Prior Written Notice for Accommodations Request

Applicable Law

Written notice that meets the requirements of 34 C.F.R. § 300.503(b) 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. 34 C.F.R. § 300.503(a).

Analysis: Findings of Fact

In the parent's complaint, she indicates that in October 2024 she met with "all required IEP members" and requested "noise-canceling headphones, sensory accommodations, and improved communication" be added to the student's IEP. (Parent's Complaint, May 4, 2025.) When the complaint investigator interviewed the parent, the parent indicated that the special education teacher told the parent at the October 2024 meeting that the requested items would be added to the student's IEP. The parent also voiced concern in the complaint that the district later indicated the October 2024 meeting was not an IEP Team meeting and this characterization denied the parent "formal procedural safeguards, documentation, and follow-up action." (Parent's Complaint, May 4, 2025.) In the interview with the complaint investigator, the parent indicated the procedural safeguards she was denied due to the district's characterization of the meeting was "meaningful participation;" the documentation she was denied was documenting her parent concerns, including her requests for accommodations to be added to the student's IEP; and the follow-up action she was denied was that the requested accommodations were not added to the student's IEP.

In the district's response to the complaint, the district stated that on October 16, 2024, the parent participated in the student's parent-teacher conference and then requested a follow-up

discussion. (District's Response to the Complaint, May 20, 2025.) The special education teacher then set up a meeting with the parent, principal, student's general education teacher, and special education teacher for October 23, 2024. (District's Response to the Complaint, May 20, 2025.) The district's response indicated this meeting was not an IEP Team meeting and the participants discussed, among other things, general education interventions available to all students. (District's Response to the Complaint, May 20, 2025.) In the interview with the complaint investigator, the principal and special education teacher both stated they do not recall the parent requesting accommodations be added to the student's IEP. (District's Response to the Complaint, May 20, 2025.) The principal and special education teacher also both stated that if the parent had requested accommodations, their response would have been to set up an IEP Team meeting to discuss the request. (District's Response to the Complaint, May 20, 2025.) The special education teacher further explained that the district's procedure when a parent requests a change to a student's IEP is to schedule an IEP Team meeting to discuss. (District's Response to the Complaint, May 20, 2025.)

Conclusion

The parent stated several items she believed she was denied because the district did not characterize the October meeting as an IEP Team meeting. Whether the October 2024 meeting was characterized as an IEP Team meeting does not impact the district's obligation to respond to a parent's request regarding the provision of FAPE to the child with a Prior Written Notice. The parent indicates she requested accommodations be added to the student's IEP and district staff indicate the parent did not make this request. Neither party has documentation of this request or a lack of a request. The parent submitted all text messages and emails with school staff from the 2024–25 school year. The investigator reviewed all of it and did not find any reference to an accommodations request at the October 2024 meeting.

As there is no documentation of this request, the complaint investigator must then determine whether the information from the parent or from district staff is more credible. This investigator finds that the district staff testimony regarding the meeting discussion is more credible because the district staff were able to explain the district's procedure for this type of request and how district staff would have followed the procedure had the parent requested accommodations be added to the student's IEP. Additionally, had the parent made this request it is reasonable to think that the parent may have referenced it in her regular text messages to the student's special education teacher, but there is no mention of it.

Therefore, this investigation concludes that the district ***did not violate its obligation*** to ensure that it provided written notice that meets the requirements of 34 C.F.R. § 300.503(b) to the parent in response to the parent's October 2024 request for accommodations to be added to the student's IEP under 34 C.F.R. § 300.503(a). As there is no violation, no corrective action is needed.

Issue Two

Reevaluation Need

Applicable Law

A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with 34 C.F.R. §§ 300.304 through 300.311 if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or if the child's parent or teacher requests a reevaluation. A reevaluation conducted under 34 C.F.R. 300.303(a) may occur not more than once a year, unless the parent and the public agency agree otherwise; and must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary. 34 C.F.R. § 300.303.

Analysis: Findings of Fact

In the parent's complaint she stated that "[a]t the beginning of the 2024–2025 school year, the district discouraged the parent from initiating a triennial evaluation, citing risk of losing services." (Parent's Complaint, May 4, 2025.) In the interview with the complaint investigator, the parent stated that she emailed the school psychologist at the beginning of the 2024–25 school year to discuss the plan for reevaluation. The parent's recollection was that the school psychologist indicated that the student was doing so well the IEP Team would discuss the student "graduating" from special education. The parent stated in the interview with the complaint investigator that she was concerned about the student no longer being eligible for special education as she had new concerns from the summer of 2024. The parent also indicated in the interview with the complaint investigator that the special education teacher "talked her out of" the reevaluation in a phone call because the reevaluation could show the student was no longer eligible for special education.

The parent also forwarded the complaint investigator an email she sent to the student's IEP Team on August 15, 2024, and indicated to the complaint investigator that this email "provides a clear example of something I referenced in my state complaint: that I was discouraged from moving forward with my written request for a reevaluation of" the student. (Email from Parent to Complaint Investigator, May 19, 2024.) The email is not completely clear about why the parent felt she was "discouraged from moving forward" with her request for a reevaluation. The parent may be referencing:

> *Please accept my apology for the misunderstanding on my part. This morning, [the special education teacher] reached out and was able to explain what I believe you ([the school psychologist]) was trying to convey, and I now see where I lost track in the conversation. . . . When I heard that [the student] might graduate from [the] IEP, all that came through (jumbled) within my brain, was that [the student] would lose . . . supports. Sadly, I misunderstood the conversation as I was stuck on this couldn't be beneficial for [the student]*

> *at all. So, I dug my heels in and preemptively demanded that [the student] be evaluated. (my fight response is strong when I come from a place of panic). And often when I'm "hearing" information what's processed through my brain isn't always what the message really was.*
>
> *After further consideration, I've decided that waiving my right to evaluate at this time will allow us more time to work with [the student] and potentially get a more accurate picture at [the] next triennial evaluation. (thank you [to the special education teacher]).*
>
> *(Email from Parent to IEP Team, Aug. 15, 2024.)*

The district's response indicates that that the student's last evaluation was completed in December 2021 and the student's next reevaluation was due to be completed in December 2024. (District's Response to the Complaint, May 20, 2025.) The student's IEP Team met on September 11, 2024, to review the student's IEP and the IEP Team decided that a reevaluation was not needed at that time. (District's Response to the Complaint, May 20, 2025.) The district provided the parent with a Prior Written Notice on September 12, 2024, describing the proposed action as, "[t]he team proposes to waive the 3 year re-evaluation at this time" and the parent signed her consent the same date. (Prior Written Notice Proposing to Waive the Reevaluation and Signed Parent Consent, Sept. 12, 2024.)

In the interview with district staff, the complaint investigator asked the school psychologist for her perspective on her conversation with the parent where the parent indicated the student may "graduate" from an IEP. The school psychologist explained that it is her standard practice to explain that as part of a reevaluation, the IEP Team must determine whether the student continues to have an exceptionality and based on that exceptionality, needs special education and related services. The school psychologist said she always takes care to explain the IEP Team's required discussion on the second prong of eligibility (i.e., need for special education services) to ensure parents understand that is part of a reevaluation. The school psychologist maintained that she had the same conversation with this parent as she does with every parent, explaining the reevaluation process, but did not try to discourage the parent from a reevaluation. The special education teacher reflected that he has heard the school psychologist share this information many times and indicated his conversations with the parent were in the same vein, explaining the process and not trying to persuade the parent in any direction. When the investigator explained that the regulation at focus in this issue requires the district to reevaluate the student if the district determined that the student's improved academic achievement and functional performance warrant a reevaluation and asked why the district did not reevaluate if the student's performance had improved, the school psychologist responded that her comments to the parent were explaining the eligibility process and not necessarily indicating the student had improved to the degree that the student would not be eligible, just that eligibility was part of the discussion.

On January 9, 2025, the parent emailed the special education teacher, general education teacher, and principal and requested a reevaluation. (Email from Parent to District Staff

Requesting Reevaluation, Jan. 9, 2025.) The district provided a Prior Written Notice explaining the reevaluation and requesting consent, which the parent signed on January 15, 2025. (Prior Written Notice and Request for Consent to Evaluate and Signed Parent Consent, Jan. 15, 2025.)

Conclusion

The district documented the IEP Team's decision not to reevaluate the student in September 2024 through a Prior Written Notice and requested the parent's consent, which the parent provided. 34 C.F.R. § 300.303(b)(2) only requires agreement that a reevaluation is unnecessary, not the heightened standard of consent, but nothing prevented the district from documenting the parent and district's agreement not to evaluate as it did. The parent provided an email that indicated she waived her "right to evaluate." (Email from Parent to IEP Team, Aug. 15, 2024.) The parent alleges that district staff tried to talk her out of a reevaluation early in the school year, but there is not clear evidence of that. The email the parent provided in support of this assertion does not clearly establish that the parent is responding to district staff trying to talk her out of a reevaluation. It is equally plausible that the parent was responding to district staff explaining the two prongs of eligibility, as district staff indicated. District staff testimony and written documentation also do not show that the district determined that the student's educational or related services needs, including improved academic achievement and functional performance, warranted a reevaluation.

The documentation provided for this issue shows that the parent consented to not evaluate and does not have any indication district staff talked the parent out of evaluating. There is not documentation to show the district determined the student's needs or improvement warranted a reevaluation, which would have compelled the district to reevaluate the student. Therefore, this investigation concludes that the *district did not violate its obligation* to ensure that a reevaluation of the student was conducted in accordance with 34 C.F.R. §§ 300.304 through 300.11 if the district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or if the student's parent or teacher requests a reevaluation and at least once every three years under 34 C.F.R. § 300.303. As there is no violation, no corrective action is needed.

Issue Three

Prior Written Notice for Reevaluation

Applicable Law

The public agency must provide notice to the parents of a child with a disability, in accordance with 34 C.F.R. § 300.503, that describes any evaluation procedures the agency proposes to conduct. 34 C.F.R. § 300.304(a).

Analysis: Findings of Fact

The parent's complaint does not mention a prior written notice leading to the student's 2024–25 reevaluation. Because the parent's complaint included several concerns and facts regarding a reevaluation, in the initial interview with the parent the complaint investigator asked if the district provided the parent with a Prior Written Notice of the reevaluation procedures the district proposed to conduct. The parent indicated she could not find a Prior Written Notice for the reevaluation. She could only find a January 16, 2025, Notice of Meeting for an April 17, 2025, meeting to discuss the reevaluation results.

The district provided the complaint investigator with a copy of the Prior Written Notice it provided to the parent via email on January 15, 2025, as well as the email where the school psychologist sent the Prior Written Notice to the parent. (Prior Written Notice and Request for Consent to Evaluate and Signed Parent Consent, Jan. 15, 2025.) The district also provided emails from the parent responding to the school psychologist asking questions after reading the Prior Written Notice. (Email from Parent to School Psychologist Asking For Further Information on Reevaluation, Jan. 15, 2025.) The Prior Written Notice proposed a reevaluation, gathering new data and reviewing existing data in the areas of Health/Motor Ability, Social/Emotional Status / Behavioral Status, General Intelligence, Academic Performance, and Communication Status and reviewing existing data in Vision and Hearing. (Prior Written Notice and Request for Consent to Evaluate and Signed Parent Consent, Jan. 15, 2025.)

Conclusion

The district provided evidence that showed it sent the parent a Prior Written Notice outlining the parameters for the student's reevaluation on January 15, 2025. Therefore, this investigation concludes that the *district did not violate its obligation* to provide notice to the parent, in accordance with 34 C.F.R. § 300.503, that describes any evaluation procedures the agency proposes to conduct under 34 C.F.R. § 300.304(a). As there is no violation, no corrective action is needed.

Issue Four

Parent Consent for Reevaluation

Applicable Law

Subject to 34 C.F.R. § 300.300(c)(2), each public agency must obtain informed parental consent, in accordance with 34 C.F.R. § 300.300(a)(1), prior to conducting any reevaluation of a child with a disability. 34 C.F.R. § 300.300(c).

Analysis: Findings of Fact

The parent's complaint does not mention parent consent leading to the student's 2024–25 reevaluation. Because the parent's complaint included several concerns and facts regarding a

reevaluation, in the initial interview with the parent the complaint investigator asked if the district requested the parent's consent for the reevaluation procedures the district proposed to conduct. The parent indicated she could not find a copy of the consent for the reevaluation.

The district provided the complaint investigator with a copy of the parent's consent to the Prior Written Notice it provided to the parent via email on January 15, 2025, as well as the email where the school psychologist sent the Prior Written Notice and Request for Consent to the parent. (Prior Written Notice and Request for Consent to Evaluate and Signed Parent Consent, Jan. 15, 2025.) The district also provided an email where the school psychologist responded to the parent's request to confirm she had signed the consent. (Email from Parent to School Psychologist Asking For Further Information on Reevaluation, Jan. 15, 2025.)

Conclusion

The district provided evidence that showed it sent the parent a Prior Written Notice requesting consent for the student's reevaluation on January 15, 2025, and evidence that the parent signed consent the same day. Therefore, this investigation concludes that the ***district did not violate its obligation*** to obtain informed parental consent, in accordance with 34 C.F.R. § 300.300(a)(1), prior to conducting any reevaluation of a child with a disability under 34 C.F.R. § 300.300(c). As there is no violation, no corrective action is needed.

Issue Five

Review of Existing Data

Applicable Law

As part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must review existing evaluation data on the child, including evaluations and information provided by the parents of the child; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers. 34 C.F.R. § 300.305(a)(1), (b); K.S.A. § 72-3428(i)(1). The IEP Team and other qualified professionals, as appropriate, may conduct its review of existing evaluation data on the child without a meeting. 34 C.F.R. § 300.305(b).

Analysis: Findings of Fact

In in the initial interview with the complaint investigator the parent indicated that the district did not engage her in reviewing existing data, including evaluations and information you provided, current classroom-based, local, or State assessments, and classroom-based observations, and observations by teachers and related services providers prior to the student's reevaluation. In the interview with district staff, the school psychologist indicated that, logistically, the school psychologist is responsible for much of the review of existing data that she then summarizes and brings to the other district IEP team members at regular

professional learning community meetings. The school psychologist indicated that she brought the summary of the review of existing data to the district staff IEP team members at a January professional learning community meeting before the district issued the January 15, 2025, Prior Written Notice and request for consent for reevaluation. When asked how the parent participated in the review of existing data, the school psychologist indicated this occurred via email. Upon further request, the district was unable to provide an email documenting the parent's involvement in the review of existing data and the school psychologist thought that the review of existing data with the parent could have occurred via phone call, but the district also did not have documentation of a phone call with the parent to review existing data.

The complaint investigator requested the district's procedure on the review of existing data. (District Process and Procedure for Review of Existing Data, Sept. 18, 2008.) The district's procedure indicates that a review of existing data will take place at a Student Intervention Team meeting that must be scheduled within 15 school days of receiving the parent's written request for an evaluation and that the parent must be invited. (District Process and Procedure for Review of Existing Data, Sept. 18, 2008.) There is no evidence that that the district followed this procedure with this student.

Conclusion

The parent's asserts that she was not involved in the review of existing data. The district indicated that the school psychologist engaged the parent in a review of existing data, but there is no evidence that this occurred. Further, the district's explanation of how it conducted the review of existing data for this student does not match the district's written procedure, which leads the investigator to be unsure of what the district process is and whether it was followed. The regulations implementing the IDEA require that the IEP Team (which must include the parent) and other qualified professionals, as appropriate, must review existing evaluation data on the child as part of a reevaluation and this review can occur without a meeting. There is not evidence to show that this review occurred with or without a meeting. Therefore, this investigation concludes that the *district violated its obligation* to ensure that as part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must review existing evaluation data on the student, including evaluations and information provided by the parents; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers under 34 C.F.R. § 300.305(a)(1).

Issue Six

Additional Data Needed to Reevaluate

Applicable Law

As part of any reevaluation under Part B, the IEP Team and other qualified professionals, as appropriate, must on the basis of the review of existing evaluation data, and input from the child's parents, identify what additional data, if any, are needed to determine whether the child continues to have such a disability, and the educational needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child continues to need special education and related services; and 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. 34 C.F.R. § 300.305(a)(2), (b); K.S.A. § 72-3428(i)(2).

Analysis: Findings of Fact

In in the initial interview with the complaint investigator the parent indicated that the district did not engage her in identifying what additional data were needed as part of the student's reevaluation prior the district issuing the Prior Written Notice requesting her consent for the student's reevaluation. In the interview with district staff, the school psychologist indicated that, logistically, the school psychologist is responsible for proposing what additional data may be needed as part of a reevaluation and bringing this proposal to the other district IEP team members at regular professional learning community meetings. The school psychologist indicated that she brought a proposal for what additional data would be needed as part of this student's reevaluation to the district staff IEP team members at a January professional learning community meeting before the district issued the January 15, 2025, Prior Written Notice and request for consent for reevaluation.

When asked how the parent participated in identifying what additional data were needed as part of the student's reevaluation, the school psychologist indicated the school psychologist requested the parent's input via email. The district pointed to two emails where it indicated that it gathered the parent's input on identifying what additional data were needed. Both emails were from January 16, the day after the district issued the parent a Prior Written Notice requesting consent to reevaluate the student and the parent provided consent. The first is an email the parent sent to the school psychologist after she signed consent to evaluate asking if the student would "be tested in all areas." (Email Exchange Between Parent and School Psychologist on Reevaluation, Jan. 15–16, 2025.) The school psychologist responded the next day saying, "[The student] will have . . . cognitive testing completed. I will look at the core areas, yes." (Email Exchange Between Parent and School Psychologist on Reevaluation, Jan. 15–16,

2025.) The second email is the parent responding to questions from the school psychologist including:

> *How would you describe your child?, Strengths (Academic and Life-Based), Interests, Concerns You May Have, How Would You Describe Your Child's Feelings About School?, What Do You Think Helps Your Child Be Successful in School?, What Are Your Goals for Your Child?, and What Do You Love Most About Your Child?*
>
> *(Email Exchange Between Parent and School Psychologist on Reevaluation, Jan. 15–16, 2025.) Neither email the district provided includes a discussion based on the review of existing data that identifies what additional data are needed for the reevaluation.*

In the district interview, the school psychologist stated that she also considered the input the parent provided in her January 9 email requesting a reevaluation. The parent stated, "I would like to move forward with a triennial evaluation in all areas of learning. [The student's] pediatrician has placed a referral for speech and language. She too, voiced concerns with auditory and visual processing, sensory input and potential Dysgraphia." (Email from Parent to District Staff Requesting Reevaluation, Jan. 9, 2025.) This email provides parent input that the school psychologist says she considered. The regulation at focus requires the IEP Team to identify what additional data are needed.

KSDE provides guidance in the Kansas Special Education Services Process Handbook on the timing of the IEP Team and other qualified professionals, as appropriate, completing the review of existing data and identifying what additional data, if any, are needed for the revaluation. (Kansas Special Education Services Process Handbook, 135.) The Process Handbook indicates the "first activity the reevaluation team is to conduct is a review of existing data." (Kansas Special Education Services Process Handbook, 135.) If the IEP Team determines that additional data are needed, the "procedures to be used to collect the data should be described on the Prior Written Notice for the reevaluation and provided to the parents for their consent." (Kansas Special Education Services Process Handbook, 136.)

Conclusion

The emails the district points to consistently show parent input into the evaluation itself, but the emails do not show the IEP Team identifying what additional data are needed for the reevaluation. The district appears to have a consistent practice of identifying what additional data are needed with the district IEP Team members at professional learning community meetings, but these meetings do not include the parent, a required participant. KSDE provides clear guidance on the sequence districts must follow to ensure the IEP Team reviews existing data and, on the basis of that review, identifies whether and what additional data are needed for the reevaluation prior to issuing a Prior Written Notice requesting consent to evaluate. There is not evidence that the district followed this sequence, particularly because most of the emails the district points to where it indicates the IEP Team identified the additional data

needed for the reevaluation occurred after the parent requested consent. Therefore, this investigation concludes that the ***district violated its obligation*** to ensure the IEP Team and other qualified professionals, as appropriate, on the basis of the review of existing evaluation data, and input from the parent, identified what additional data, if any, were needed to determine whether the student continues to be an exceptional child, and the student's educational needs; the student's present levels of academic achievement and related developmental needs; whether the student continues to need special education and related services; and whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the student's IEP and to participate, as appropriate, in the general education curriculum under 34 C.F.R. § 300.305(a)(2).

Issue Seven

Variety of Assessment Tools and Strategies in Reevaluation

Applicable Law

In conducting the evaluation, the public agency must 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, that may assist in determining whether the child is a child with a disability under 34 C.F.R. § 300.8; and the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum. 34 C.F.R. § 300.304(b)(1); K.S.A. § 72-3428(b)(1).

Analysis: Findings of Fact

On this issue, in the interview with the complaint investigator stated her concern that as part of the reevaluation the student was only observed once in one type of setting. The parent also shared this concern with the district in an email following the April 17, 2025, IEP Team meeting, requesting "Observations in multiple settings – especially unstructured times where masking may diminish and more authentic needs may surface." In this same email the parent also requested a "structured parent interview." The parent also states that, "[s]tandardized tools such as the BASC-3 (with Discrepancy Index), BRIEF-2, Sensory Profile 2, or SPM are widely used in school evaluations and were not utilized."

In the district's response it points to the Prior Written Notice requesting consent for reevaluation, proposing to gather new data and review existing data in the areas of Health/Motor Ability, Social/Emotional Status / Behavioral Status, General Intelligence, Academic Performance, and Communication Status and review existing data in Vision and Hearing. (Prior Written Notice and Request for Consent to Evaluate and Signed Parent Consent, Jan. 15, 2025.) The district's Prior Written Notice form appears to be adapted from KSDE's sample Prior Written Notice for evaluation,

https://www.ksde.gov/Portals/0/SES/forms/Notice_of_Meeting_English.docx. The KSDE form prepopulates the areas to be evaluated and for this student, the district proposed to include all prepopulated areas except Transition Skills as the student is not yet transition age. Within the reevaluation report the district included existing assessment results (i.e., FastBridge Reading and Math, vision results, and hearing results) and conducted new assessments (i.e., Woodcock-Johnson IV Tests of Achievement, Clinical Evaluation of Language Fundementals-5 (CELF-5), Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V), 2nd grade handwriting screener, Test of Auditory Processing Skills-Fourth Edition (TAPS-4), Beery-Buktenica Developmental Test of Visual-Motor Integration (Beery VMI), Sensory Processing Measure, Second Edition (SPM-2), Behavioral Assessment System for Children, Third Edition (BASC-3), executive functioning screener.)

Conclusion

There is not a requirement that an evaluation include observations of the student in multiple settings or gather parent input in a particular way. This reevaluation included a student observation in the general education classroom. The parent points out assessments that she believes were missing from the reevaluation, but the reevaluation clearly included a variety of assessments to gather functional, developmental, and academic about the student. Therefore, this investigation concludes that the *district did not violate its obligation* in conducting the student's reevaluation, to use the public agency a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information the parent provided, that may assist in determining whether the student is a child with a disability under 34 C.F.R. § 300.8; and the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum under 34 C.F.R. § 300.304(b)(1). As there is no violation, no corrective action is needed.

Issue Eight

Technically Sound Instruments in Reevaluation

Applicable Law

In conducting the evaluation, the public agency must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 C.F.R. § 300.304(b)(3).

Analysis: Findings of Fact

In the complaint the parent alleged that the district "used an informal 2nd grade handwriting screener rather than norm-referenced tools to assess writing skills, sentence organization, spacing, or automaticity." In the interview with the complaint investigator the parent did not provide any additional concerns regarding assessments the district used in the reevaluation.

The district's response on this issue was very thorough, providing a research base for each instrument the district used in the reevaluation. (District Document with Information on Each Reevaluation Instrument, May 20, 2025.) The district indicated that this handwriting screener is "based on the PRINT Tool (from Learning Without Tears), a norm referenced assessment. This screener was created by occupational therapists for occupational therapists in order to determine if further assessment is warranted." (District Document with Information on Each Reevaluation Instrument, May 20, 2025.) The handwriting screener included copying sentences, writing sentences without a model, mazes, drawing a picture and labeling it, speed writing, and shape copying. (Draft Reevaluation Report, Apr. 17, 2025.)

In the 2006 comments to the regulations implementing IDEA, the United States Department of Education indicated that the definition of "technically sound" in 34 C.F.R. § 300.304(b)(3) "generally refers to assessments that have been shown through research to be valid and reliable." (71 Fed. Reg. 46,642 (2006).) A 2018 study found the Print Tool to have "good concurrent validity" and studies with kindergarteners and first graders indicate the tool is reliable. (Donica DK, Holt S. Examining Validity of the Print Tool Compared With Test of Handwriting Skills 2013; Revised. OTJR: Occupational Therapy Journal of Research. 2018; Broussard, M. Reliability of The Print Tool™ in Measuring Handwriting Abilities in Kindergarten Students 2010; Cook W. A Comparison of the Effectiveness of Two Handwriting Programs on Legibility in First Grade Students 2021. Eastern Kentucky University Encompass.)

Conclusion

The parent did not provide any evidence that the handwriting screener the district used in the reevaluation was not technically sound. The district provided information on the research base for each assessment in the reevaluation. There is evidence that the handwriting screener the district used is valid and reliable, meeting the definition of technically sound. Therefore, this investigation concludes that the *district did not violate its obligation* in conducting the student's reevaluation, to use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors under 34 C.F.R. § 300.304(b)(3). As there is no violation, no corrective action is needed.

Issue Nine

Reevaluation Assessment in All Areas Related to the Suspected Disability

Applicable Law

Each public agency must ensure that the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34 C.F.R. § 300.304(c)(4); K.S.A. § 72-3428(c)(2).

Analysis: Findings of Fact

The parent stated in her complaint that the reevaluation did not include any assessments in "written expression, despite longstanding concerns regarding dysgraphia, refusal to write, and graphomotor difficulties." Additionally, the parent alleged that autism-related "traits were not explored at all, despite documentation from September 2024 onward showing the student was on a waitlist for an autism evaluation."

In the district's response it points to the Prior Written Notice requesting consent for reevaluation, proposing to gather new data and review existing data in the areas of Health/Motor Ability, Social/Emotional Status / Behavioral Status, General Intelligence, Academic Performance, and Communication Status and review existing data in Vision and Hearing. (Prior Written Notice and Request for Consent to Evaluate and Signed Parent Consent, Jan. 15, 2025.) The reevaluation report indicates the district assessed the student using the Beery-Buktenica Developmental Test of Visual-Motor Integration (Beery VMI), which showed that the student has a relative weakness in motor coordination with may affect the student's performance in written expression. (Draft Reevaluation Report, Apr. 17, 2025.) The district also assessed the student using the Woodcock-Johnson IV Tests of Achievement, which includes assessment in written expression and fluency. (Draft Reevaluation Report, Apr. 17, 2025.) The reevaluation also includes a statement from the general education teacher regarding the student's writing refusal, often during phonics. (Draft Reevaluation Report, Apr. 17, 2025.) When the general education teacher asks the student to slow down and try the student can successfully write. (Draft Reevaluation Report, Apr. 17, 2025.) The reevaluation report also indicates that to complete parts of the handwriting screeners and the Woodcock-Johnson IV Tests of Achievement the student was required to write. The reevaluation report indicates that either the student completed the required writing or is silent about whether the student completed it and reporting the results, which indicates the student completed the required writing. (Draft Reevaluation Report, Apr. 17, 2025.)

In the interview with the complaint investigator, district staff indicated the suspected disability, going into the reevaluation, was Other Health Impairment. During the interview, district staff explained the district process for all eligibility conversations, which they stated the May 16 IEP Team meeting followed. The district has an internal eligibility document based on KSDE's Eligibility Indicators document, https://www.ksde.gov/Portals/0/SES/misc/iep/EligibilityIndicators.pdf. District staff stated that district practice is to use this document as a guide to discuss categories of suspected exceptionality and whether there is data to support each prompt.

District staff indicated in the interview that the IEP Team first discussed Other Health Impairment, determining that data supported that the student exhibited this exceptionality. District staff also stated that the team discussed the data from the four categories to determine whether the student exhibited the Autism exceptionality category, using

reevaluation data. The district recorded this discussion in the May 16, 2025, IEP Team meeting notes stating, "Autism exceptionality vs. OHI. Reviewed both-OHI better fits [the student's] needs. Autism exceptionality has 4 components to which [the student] does not best fit." (IEP Team District Meeting Notes, May 16, 2025.) The district also recorded this discussion as an option considered and rejected in the May 20, 2025, Prior Written Notice it issued to the parent with the proposed changes to the student's IEP based on the IEP Team's discussion of the reevaluation report stating, "The team considered finding [the student] eligible under the Autism exceptionality category. This option was rejected, as [the student] does not meet eligibility criteria for this exceptionality as outlined by re-evaluation data collected within this re-evaluation period." (Prior Written Notice Proposing Changes to Student's IEP Based on Reevaluation Report IEP Team Discussion, May 20, 2025.)

Conclusion

The district's Prior Written Notice requesting consent for reevaluation is clear that the student would be reevaluated in all areas. The reevaluation report recounts all the assessments in which the student participated and the results of those assessments. The reevaluation report includes multiple assessments for the student in the areas of written expression and references how the general education teacher supports the student through writing refusal and does not include information that the student exhibited writing refusal during the reevaluation process. The parent expressed her concern about dysgraphia in the parent input section of the reevaluation report, but there is not any information about dysgraphia concerns in the documentation the district submitted. The results of the writing portions of the reevaluation did not show a concern with dysgraphia. Additionally, even though the district did not go into the reevaluation considering autism, the reevaluation contained sufficient data for the IEP Team to review autism as a potential exceptionality category and reject it. Therefore, this investigation concludes that the *district did not violate its obligation* to ensure that the student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities under 34 C.F.R. § 300.304(c)(4). As there is no violation, no corrective action is needed.

Issue Ten

Comprehensive Reevaluation

Applicable Law

Each public agency must ensure that in evaluating each child with a disability under 34 C.F.R. §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. 34 C.F.R. § 300.304(c)(6).

Analysis: Findings of Fact

The parent's complaint indicates that the district did not adequately assess the student's executive functioning and sensory regulation until after the parent objected. The parent went on to state that the "SPM-2 was only administered after the parent objected post-eligibility meeting." In the interview with the complaint investigator, the parent stated that she received a draft copy of the evaluation report on April 11 and that her impression was that the reevaluation was not sufficiently comprehensive given the student's needs. The parent indicated that after she emailed her concerns the district sent a new draft on April 14.

The district indicates it designed the reevaluation to be more comprehensive than is typical for a student with an IEP with one goal in social skills to be responsive to the parent's requests. (District's Response to the Complaint, May 20, 2025.) The district's response indicated that on April 11, 2025, the school psychologist emailed the parent a draft copy of the reevaluation report with a reminder that the report is a draft "and may be edited to and through the evaluation meeting." (District Timeline, May 20, 2025.) In a follow-up email with the district special services coordinator he indicated that it is district practice to send the parent a draft reevaluation report even if not all assessments are yet fully interpreted, written up, and included in the draft reevaluation report. The district special services coordinator indicated that is what occurred here, the school psychologist sent the parent a draft reevaluation report stating that it would continue to be edited "to and through the evaluation meeting." (District Timeline, May 20, 2025.) The district special services coordinator stated in an email to the complaint investigator that one such assessment the parent referenced, the parent requested in an April 14, 2025, email to district staff and so the district conducted the assessment, providing the results in the April 17, 2025, draft reevaluation report. The district special services coordinator confirmed that district practice is to include all assessments in a reevaluation report and all conducted assessments were included in the April 17, 2025, draft reevaluation report.

Following the April 17, 2025, IEP Team meeting the parent sent an email with additional requests for assessments to be included in the reevaluation. (Parent Emails to IEP Team Regarding Comprehensiveness of Reevaluation, Apr. 14 and 22, 2025.) The parent requested additional testing in sensory processing, visual/motor skills, executive functioning, working memory, processing speed, phonological processing, decoding, and fluency. (Parent Emails to IEP Team Regarding Comprehensiveness of Reevaluation, Apr. 14 and 22, 2025.) The district responded in an April 25, 2025, Prior Written Notice proposing to extend the evaluation timeline to include testing in the areas of sensory processing and visual/motor skills. (Prior Written Notice and Request for Consent to Extend Evaluation Timeline to Include Additional Testing in Reevaluation and Refusal to Conduct Certain Testing, Apr. 25, 2025.) The district declined to do additional testing in executive functioning, working memory, processing speed, phonological processing, decoding, and fluency and explained where each area was covered

within the existing reevaluation data. (Prior Written Notice and Request for Consent to Extend Evaluation Timeline to Include Additional Testing in Reevaluation and Refusal to Conduct Certain Testing, Apr. 25, 2025.) The parent declined to extend the timeline and so the district completed the additional assessments it proposed in the Prior Written Notice within the existing reevaluation timeline. (District Timeline, May 20, 2025.)

Conclusion

The district's response indicates that when it sent the parent the draft reevaluation report on April 14, 2025, that the school psychologist explained that the draft reevaluation would be added to until and through the April 17, 2025, IEP Team meeting. This explains the additions to the draft reevaluation report after the district sent a first draft to the parent. After the parent voiced concerns on the comprehensiveness of the evaluation, the district completed additional assessments within the reevaluation timeline and issued the parent a Prior Written Notice explaining where her additional requests were already taken care of within the reevaluation. Therefore, this investigation concludes that the *district did not violate its obligation* to ensure that in evaluating the student under 34 C.F.R. §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified under 34 C.F.R. § 300.304(c)(6). As there is no violation, no corrective action is needed.

Issue Eleven

Appropriate IEP Revision

Applicable Law

Each public agency must ensure that, subject to 34 C.F.R. 300.324(b)(2) and (b)(3), the IEP Team revises the IEP, as appropriate, to address information about the child provided to, or by, the parents, as described under 34 C.F.R. § 300.305(a)(2); the child's anticipated needs; or other matters. 34 C.F.R. § 300.324(b)(1)(C)–(E).

Analysis: Findings of Fact

In the parent's complaint she indicated that she "raised concerns about sensory overwhelm, academic regression, masking, and PTSD as early as September 2024." In the initial interview with the complaint investigator, the parent indicated that when she participated in the student's parent-teacher conference in October the classroom seats were arranged in a circle with one desk in the center of the circle, the student's. The parent indicated the general education teacher referred to this as "island seating" and that the student enjoyed sitting in the center. The parent stated that she voiced her concern to the student's teacher that this seating model put the student on display and would likely result in sensory overwhelm to the student and asked that the student not be seated in this arrangement any longer. The parent stated

that at the October meeting, held after the parent teacher conference, that she requested a reading goal, but district staff indicated that was not permitted as the student's identified needs were social emotional. The parent indicated that the student would regularly come home with work not completed, but when the parent asked the general education teacher about the work, the general education teacher was unconcerned. The parent also stated that in February an outside provider identified the student with post-traumatic stress disorder and the parent believed this was due to the student masking at school (e.g., working hard to perform well when actually struggling). The parent reported that most of the school year the student was suffering from extreme exhaustion at home and regular meltdowns, which the parent believed resulted from masking at school and being able to relax at home.

As support for these concerns, the investigator asked the parent for any written requests she made for additions to the student's IEP (e.g., academic goals, etc.), whether she asked for "island seating" to be recorded in the student's IEP as prohibited, and documentation of what the parent believed the district should have understood about [the student's] needs that should have caused the district to revise [the student's] IEP to respond to those needs. The parent indicated she did not made requests for additions to the student's IEP in writing and had not asked for her request for the general education teacher to stop using "island seating" to be added to the student's IEP. In terms of documentation of what the parent believed the district should have understood about the student's needs that should have caused the district to revise the student's IEP to respond to those needs, the parent provided many dates worth of a daily communication log exchanged between the parent and the general education teacher. The parent regularly communicated about challenges at home and, generally speaking, the general education teacher's reflections on the day did not mirror similar challenges at school. (Daily Reports Between Teacher and Parent and Parent Summaries of Daily Reports, Jan.–Apr. 2025.) The daily report provides prompts for the parent to report on the student's night and morning at home, where the parent frequently commented on concerns regarding sensory overwhelm at home. The daily report provides prompts for the teacher to report on the student's morning and afternoon at school, three things the student did today, things the student did not complete, activities the student had, a highlight from the day, a drawback from the day, and something the student can work on at home. The general education teacher often responded to the parent's reports of sensory overwhelm at home, reflecting that the student did not exhibit that at school. The general education teacher sometimes focused on the student's behavior at school, which is consistent with the student's IEP goal focused on the target behaviors of staying focused, putting away distracting items, speaking in the appropriate tone of voice, remaining quiet during direct instruction, and listening and responding appropriately. The general education teacher did not provide any consistent information in the daily reports showing there were concerns with academic regression or sensory overwhelm at school.

In the interview with district staff, the investigator asked district staff whether there are any exceptionality categories where the district does not permit an academic goal. District staff answered there are none, that all goals are based on need and not on exceptionality category. The school psychologist went on to say that she has worked with the special education teacher and principal in countless meetings regarding students and their needs and that neither of them would say that to a parent as it is not true. The special education teacher and principal agreed. The evidence the district provided regarding the student's 2024–25 progress on the IEP goal and in the general education curriculum, which will be explored more fully in Issue Twelve, do not show evidence of student need that should have led the district to revise the student's IEP.

Conclusion

In the initial interview with the complaint investigator the parent raised several concerns that she believed should have led the district to revise the student's IEP during the 2024–25 school year. After further inquiry, the parent did not have documentation that showed the district was aware of the parent's concerns and should have acted (i.e., no documentation of request for academic goal, prohibiting "island seating" in the student's IEP). Regarding the parent's concerns on "sensory overwhelm" and "masking," from review of the daily reports exchanged between the general education teacher and the parent, these items do not appear to be of concern at school, although they are of great concern to the parent at home. As there is not sufficient evidence to show that the district should have been aware of changes in the student's needs that would warrant an IEP revision, therefore, this investigation concludes that the *district did not violate its obligation* to revise the student's IEP, as appropriate, to address information about the student provided to, or by, the parents, as described under 34 C.F.R. § 300.305(a)(2); the student's anticipated needs; or other matters under 34 C.F.R. § 300.324(b)(1)(C)–(E). As there is no violation, no corrective action is needed.

Issue Twelve

FAPE

Applicable Law

A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive. 34 C.F.R. § 300.101(a). Each board shall provide a free appropriate public education for exceptional children enrolled in the school district. K.S.A. § 72-3410(a)(2). Each agency shall provide special education and related services based upon the child's unique needs and not upon the child's area of exceptionality. K.A.R. § 91-40-2(e).

Analysis: Findings of Fact

The parent's complaint alleges that the district denied the student FAPE as the student's IEP did not include an academic goal for writing, a behavior goal, isolating the student in "island

seating" after parent objection, the district did not provide follow up supports after the student wet himself, and the general education classroom provided an inconsistent behavior system that led to the student's emotional dysregulation.

The findings from Issue Eleven that are also relevant here are that the district has no record and district staff do not recall the parent requesting an academic goal for writing for the student, the parent did not request that her objection to the student participating in "island seating" be recorded in the student's IEP, and the district and parent documentation submitted for this investigation showed the student was often emotionally dysregulated at home, but that was not noted at school. On the remaining facts, the parent indicated in the interview with the complaint investigator that the parent has not requested a behavior goal for the student. Also, in the interview with the complaint investigator, the parent described that the student attempted to signal the need to go to the bathroom, but the teacher did not notice, and the student wet themselves in class. The parent voiced concern about this indicating the student has been potty trained from two years old. The parent stated in the interview with the complaint investigator she did not request additions to the student's IEP when she learned of the incident or in subsequent IEP Team meetings. The parent provided an email from the general education teacher to the parent explaining the incident. The general education teacher explained the incident in the same way as the parent and indicated that after the incident, the teacher asked the student to show her how the student signaled to use the restroom. The teacher realized that the student's arm was too low, and she could not have seen it and encouraged the student to make the signal differently in the future and reminded the student they are able to run to the restroom if needed. The daily communication logs the parent submitted as part of the investigation do not show an impact to the student other than the day the incident occurred.

The student's reevaluation report indicates the student is in the 55th percentile for sentence writing fluency. On motor coordination the student scored in the 25th percentile, the low average range, indicating that this could impact the student's written work, particularly in terms of legibility, writing speed, and endurance during written tasks. The handwriting screener showed that the student demonstrated functional handwriting skills appropriate for a second-grade level. The district proposed to meet these needs through accommodations in revisions to the student's IEP. (Prior Written Notice Proposing Changes to Student's IEP Based on Reevaluation Report IEP Team Discussion, May 20, 2025.)

During the reevaluation, the district assessed the student's sensory issues to determine whether those sensory issues may be contributing to the student's behavior. The assessment results suggested several sensory accommodations for the IEP Team to consider and the district proposed including several in the student's revised IEP. (Prior Written Notice Proposing Changes to Student's IEP Based on Reevaluation Report IEP Team Discussion, May 20, 2025.) The district also assessed the student using the Behavioral Assessment System for Children,

Third Edition (BASC-3) which showed that the student "is experiencing difficulties in the areas of Atypicality, Functional Communication, Hyperactivity, Aggression, Anxiety, Depression, Attention Problems, and Study Skills. Of these, Atypicality was the only area that was marked as Clinically Significant. The others were At Risk. These difficulties span across [the student's] school day and at home." The district proposed meeting these needs through accommodations in the student's revised IEP. (Prior Written Notice Proposing Changes to Student's IEP Based on Reevaluation Report IEP Team Discussion, May 20, 2025.)

The investigation does not show, for any of the parents listed concerns, that the district either knew about the concerns or had sufficient data prior to the student's reevaluation that should have led the district to revise the student's IEP to ensure that the student received FAPE. Although there is not a connection to potential impact on the student's right to FAPE, this investigation also reviewed information on the student's progress this school year in the general education curriculum and on the student's IEP goal. The student's 2024–25 IEP included one goal in social skills. (Student's IEP, Sept. 12, 2024.) The goal was designed for the student to work toward improvement on identified social skills throughout the school year evaluated using a social rubric attached to the student's IEP, resulting in a goal of 12/15 demonstrated social skills by the end of the school year. (Student IEP Progress Report – Annual Goal, Sept. 11 and Dec. 19, 2024, Mar. 14 and May 22, 2025.) The student's baseline data was 5/15 demonstrated social skills. (Student IEP Progress Report – Annual Goal, Sept. 11 and Dec. 19, 2024, Mar. 14 and May 22, 2025.) In Quarter 1 the student progressed to 6/15 demonstrated social skills, in Quarter 2 8/15, in Quarter 3 9/15, and in Quarter 4 12/15, completing the student's goal. (Student IEP Progress Report – Annual Goal, Sept. 11 and Dec. 19, 2024, Mar. 14 and May 22, 2025.)

On the student's 2024–25 progress report, the district uses a Grading Scale with four levels with Requires Support as the lowest level, then Developing, followed by Progressing, and finally Proficient. (Student's 2024–25 Elementary Progress Report, May 22, 2025.) The student's Reading and Writing grades for Quarter 4 are Developing, an improvement from Quarter 1 and consistent since Quarter 2. (Student's 2024–25 Elementary Progress Report, May 22, 2025.) The student's Spelling grade in Quarter 4 is Requires Support, down from a Developing grade in Quarters 2 and 3 and the same grade as in Quarter 1. (Student's 2024–25 Elementary Progress Report, May 22, 2025.) The student's Speaking and Listening, Math, Science, and Social Studies grades are Progressing. (Student's 2024–25 Elementary Progress Report, May 22, 2025.)

Conclusion

The reevaluation showed that the student needs additional support in behavior and writing, but there is not documentation submitted as part of this investigation from the parent or the district prior to the April reevaluation that should have led the district to include support for writing or behavior in the student's IEP. On the remaining concerns the parent raises in this

issue, there is no evidence to show that any of those concerns impacted the student's right to FAPE. Despite that, this investigation reviewed the student's 2024–25 progress on the student's IEP goal, which was met, and the student's progress in the general education curriculum. The only area of potential concern in the student's 2024–25 progress is spelling. The student's reevaluation assessed the student in spelling and the IEP Team did not determine the student needed additional support in spelling. A low grade does not automatically mean the student needs additional support from an IEP in that area and there is not data outside of the student's progress report that indicates this is a need that should be addressed in the student's IEP. As there is no evidence to show that the parent's concerns on this issue impacted the student's FAPE, this investigation concludes that the *district did not violate its obligation* to provide a free appropriate public education for exceptional children enrolled in the school district under K.S.A. § 72-3410(a)(2) and provide special education and related services based upon the student's unique needs and not upon the student's area of exceptionality under K.A.R. § 91-40-2(e).). As there is no violation, no corrective action is needed.

Issue Thirteen

Review Education Records

Applicable Law

The parents of a child with a disability must be afforded, in accordance with the procedures of 34 C.F.R. §§ 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. 34 C.F.R. § 300.501(a).

Analysis: Findings of Fact

In the parent's complaint, she indicates a violation of 34 C.F.R. § 300.501. In the initial interview with the parent, the complaint investigator asked the parent, which portion(s) of the regulation she was alleging a violation(s), the right to examine records, participate in meetings, or be involved in placement decisions. The parent stated she was alleging a violation of the right to examine records. She indicated she emailed an August 14, 2024, request for records to the special education teacher, an October 16, 2024, request to the special education teacher and the principal, and an April 25, 2025, request to the special education teacher, principal, and school psychologist. (Email from Parent to Principal Requesting Records, Apr. 25, 2025; Email from Parent to Principal Requesting Records, Oct. 16, 2024; Email from Parent to Special Education Teacher Requesting Records, Aug. 14, 2024.) She indicated the district never responded to any of the three requests.

Regarding the August 14 request, the special education teacher believed the parent subsequently withdrew the request in a text message, email, or phone call. The special education teacher could not locate the parent's withdrawal of this request. The text messages

between the special education teacher and parent did not reference the August 14 records request.

For the October 16 request, the district provided an email from the district assistant special education director to the principal explaining the process to provide the parent with access to the student's education records and that there were district staff working on coordinating this and the principal's response that the special education teacher spoke with the parent and did not "believe [the parent] will still be requesting that information." (Emails Between District Staff Regarding Parent's October 16, 2024, Record Request, Oct. 17, 2024.) On October 23, the principal emailed the district assistant special education teacher and stated, "We just met with [the parent], and she is no longer requesting any of these documents." (Email from Principal to District Staff Regarding Parent's Withdrawal of Oct. 16, 2024, Record Request, Oct. 23, 2024.)

For the April 25, 2025, request the parent emailed the complaint investigator regarding her opportunity to review the student's records on May 30.

Conclusion

There is no evidence that the district responded to the parent's August 14, 2024, request to access the student's records and no evidence the parent withdrew the request. On the October 16, 2024, request, the parent believes the district did not respond and the district provided evidence that the parent withdrew the request. While the clearest approach would have been for the district to document the parent's withdrawal in an email to the parent, the district documented its understanding of the withdrawal, which this investigator finds sufficient as the law does not require a particular method of documenting a parent's withdrawal of a request to access records. On the April 25, 2025, request, the district provided the parent the opportunity to review the student's records within 45 days, as 34 C.F.R. § 300.613(a) requires. Therefore, this investigation concludes that the *district violated its obligation* to afford the parents of a child with a disability, in accordance with the procedures of 34 C.F.R. §§ 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 student; and the provision of FAPE to the child under 34 C.F.R. § 300.501(a) regarding the August 14, 2024, request, but not the October 16, 2024, or April 25, 2025, requests.

Issue Fourteen

Independent Educational Evaluation

Applicable Law

If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate; or ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing

pursuant to 34 C.F.R. §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. 34 C.F.R. § 300.502(b)(2). A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees. 34 C.F.R. § 300.502(b)(5).

Analysis: Findings of Fact

The parent's complaint indicated that the parent requested an independent educational evaluation (IEE) on April 15, 2025, and "the district improperly deferred the request until after the eligibility meeting . . . [and] did not issue a new PWN until April 30, exceeding a reasonable timeframe."

The district's response indicated that on April 11, 2025, the school psychologist emailed the parent a draft copy of the reevaluation report with a reminder that the report is a draft "and may be edited to and through the evaluation meeting." (District Timeline, May 20, 2025.) On April 14, 2025, the parent emailed the special education teacher, school psychologist, and principal and requested "a comprehensive IEE." (Parent Emails to District Staff with Independent Educational Evaluation Request, Apr. 14, 15, and 29, 2025.) On April 15, 2025, the district sent the parent a Prior Written Notice denying the parent's IEE request "because the team has not had the opportunity to hold the reevaluation meeting with parent to review and discuss the Reevaluation Report." (Prior Written Notice Refusing Parent Request for Independent Educational Evaluation, Apr. 15, 2025.) On April 15, 2025, the parent emailed the special education teacher, school psychologist, and principal and requested an IEE and stated the basis for her request as, "[t]he district has now completed and presented its evaluation report, which I received and reviewed. While I understand the reevaluation meeting is scheduled for April 17, 2025, my disagreement is not contingent upon the team's eligibility determination, but rather on the evaluation itself." (Parent Emails to District Staff with Independent Educational Evaluation Request, Apr. 14, 15, 22, and 29, 2025.)

On April 17, 2025, the student's IEP Team meet to discuss the reevaluation report. (District's Response to the Complaint, May 20, 2025.) At this meeting, the parent requested additional testing, which led the district to conclude in its response that "the evaluation was not completed on April 17, 2025." Later that day, the parent emailed district staff, which she characterized in an April 22, 2025, email as a "request that [the student's] evaluation be extended to fully assess all areas of suspected need."

The district provided the parent with a Prior Written Notice on April 25, 2025, agreeing to complete two of the parent's requested assessments, refusing several other assessments and explained how the district's assessments included testing in the areas the parent identified, and proposing to extend the reevaluation timeline by 15 school days for the additional testing. The parent refused to extend the evaluation timeline, and the district proceeded with the two assessments as it believed this was included in the parent's January consent to reevaluation.

(District's Response to the Complaint, May 20, 2025.) On April 29, 2025, the parent again requested an IEE. (District's Response to the Complaint, May 20, 2025.) Although the district still maintained the evaluation was not yet complete as it was finishing the two additional assessments, the district sent the parent a Prior Written Notice on April 30, 2025, granting the parent's request for an IEE. (Prior Written Notice of the District's Decision to Grant an Independent Educational Evaluation, Apr. 30, 2025.)

Longstanding KSDE guidance indicates that "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." (Kansas Special Education Services Process Handbook 6.)

Conclusion

The district maintains that the parent's right to an IEE does not vest until the district has completed its evaluation. This assertion is grounded in the language in 34 C.F.R. § 300.502(b)(5), that a parent is entitled to an IEE "each time the public agency conducts an evaluation with which the parent disagrees." The district's reasoning is that the evaluation is not complete until after the eligibility meeting and the parent's reasoning is that the evaluation was complete once the district sent the parent a draft of the evaluation report.

The district is not required to provide a parent with draft reevaluation reports prior to the IEP Team meeting to discuss the reevaluation but did so to allow the parent to review in advance and was clear that the report was a draft and could be changed during the meeting. Additionally, on April 25 the district agreed to add assessments the parent requested, which were not yet completed and included in the reevaluation report at the time of the parents' IEE requests. A reevaluation report clearly labeled as a draft, especially with an accompanying explanation that the report can change until and during the reevaluation meeting that is scheduled within the reevaluation timeline, is not a completed reevaluation. Particularly when the IEP Team has agreed to conduct and add assessments, the reevaluation certainly is not complete. The district's reasoning for its April 15 denial of the parent's IEE request is supported by the language in 34 C.F.R. § 300.502(b)(5) that the parent is only entitled to an IEE once the district conducts an evaluation with which the parent disagrees. The district changing course and agreeing to the IEE on April 30 is reasonable, even though the district was still working to add assessments and complete the reevaluation, because the ensuing two weeks of discussions with the parent had likely shown the district that the parent was dissatisfied with the reevaluation, even when completed. Even taken from its longest point, the parent's initial IEE request on April 15, to the district's second response on April 30, the district responded to all the parent's IEE requests within the 15-school day KSDE guidance. Therefore, this investigation concludes that the ***district did not violate its obligation*** to provide an IEE under 34 C.F.R. § 300.502(b)(2). As there is no violation, no corrective action is needed.

Issue Fifteen

Predetermination

Applicable Law

Upon completion of the administration of assessments and other evaluation measures—

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (c) of this section and the educational needs of the child; and
(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. 34 C.F.R. § 300.306(a).

The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—

(i) The identification, evaluation, and educational placement of the child; and
(ii) The provision of FAPE to the child.
34 C.F.R. § 300.501(b)(1).

Analysis: Findings of Fact

After the May 16, 2025, IEP Team meeting to discuss the student's reevaluation, the parent emailed the complaint investigator and asked to add this issue. The complaint investigator drafted an issue statement for the parent to consider and the parent did not have any suggested changes. The complaint investigator asked the district if there was sufficient time for the district to respond to the added issue within the current complaint investigation or whether the district would prefer that the parent file a new complaint on this issue. The district agreed to add this issue to the current investigation. The complaint investigator provided the district with the issue statement and the email from the parent to the complaint investigator with the facts on which the parent based her concern. The complaint investigator provided the district with the opportunity to respond to the concern, which it did, as well as propose a resolution to KSDE on this issue and consider mediating this issue with the parent.

The parent's email to the complaint investigator after the May 16, 2025, IEP Team meeting indicated that she had concerns about "predetermination, lack of meaningful parental participation, and the failure to consider key areas of suspected disability." The parent indicated that the school psychologist started the eligibility discussion by stating "her personal opinion that if it were solely up to her, she would not find [the student] eligible for an IEP, because in her view, [the student] does not require specially designed instruction." The parent went on to state that the school psychologist's statement:

> *was never discussed or challenged by the team, and no one offered an explanation of how the team reached eligibility under Other Health Impairment (OHI) despite this open objection from the psychologist. . . . Despite being present, I do not believe I was meaningfully included in the eligibility decision. At no point did the team ask for my input on whether I agreed with*

> *the proposed eligibility category, nor did they seek to address the repeated concerns I raised about sensory processing, writing difficulties, regression, and masking.*

The parent pointed to information she believed showed potential eligibility for Specific Learning Disability and stated the district did not follow up on that information with specific assessments. The parent stated that she additionally raised concerns about autism and district staff indicated that the student did not meet the criteria for autism. The parent was concerned that the evaluation did not include any autism-specific assessments on which this statement could have been based.

The parent emailed the complaint investigator and indicated she reviewed the student's education record on May 30 and believed she came across information that showed the district predetermined the outcome of the student's eligibility conversation. The parent indicated that in the records she reviewed there were several assessments that the district completed and did not include in the initial drafts of the reevaluation report. The parent asserted that this shows the district selected which assessments to include in the reevaluation report to point the team in the direction of a particular decision. The parent's thought is that then once the parent reviewed initial drafts of the reevaluation report and pushed back on the comprehensiveness of the report, the district then added the assessments they had previously completed and not included.

When interviewed, district staff explained the district process for all eligibility conversations, which they stated the May 16 IEP Team meeting followed. The district has an internal eligibility document based on KSDE's Eligibility Indicators document, https://www.ksde.gov/Portals/0/SES/misc/iep/EligibilityIndicators.pdf. District staff stated that district practice is to use this document as a guide to discuss categories of suspected exceptionality and whether there is data to support each prompt. District staff also stated that it is district practice for the exceptionality category on the reevaluation report is not filled in prior to the IEP Team meeting discussing the reevaluation and the district followed this practice with this student.

Prior to this reevaluation, the student was identified under the Developmental Delay exceptionality category. (Student's IEP, Sept. 12, 2024.) District staff stated due to the student's age (eight) and that this was the last scheduled reevaluation before the student turned ten, that the IEP Team first discussed Other Health Impairment, determining that data supported that the student exhibited this exceptionality. District staff also stated that the team discussed the data from the four categories to determine whether the student exhibited the Autism exceptionality category. The district recorded this discussion in the May 16, 2025, IEP Team meeting notes stating, "Autism exceptionality vs. OHI. Reviewed both-OHI better fits [the student's] needs. Autism exceptionality has 4 components to which [the student] does not best fit." (IEP Team District Meeting Notes, May 16, 2025.) The district also recorded this discussion as an option considered and rejected in the May 20, 2025, Prior Written Notice it

issued to the parent with the proposed changes to the student's IEP based on the IEP Team's discussion of the reevaluation report stating, "The team considered finding [the student] eligible under the Autism exceptionality category. This option was rejected, as [the student] does not meet eligibility criteria for this exceptionality as outlined by re-evaluation data collected within this re-evaluation period." (Prior Written Notice Proposing Changes to Student's IEP Based on Reevaluation Report IEP Team Discussion, May 20, 2025.) The school psychologist and special services coordinator indicated in the district interview the parent did not voice any disagreement during the IEP Team's discussion of whether reevaluation data support an Autism identification. The school psychologist stated that it is not district practice to ask whether the parent agrees at each step of reviewing data because identifying a student with a particular exceptionality category does not require parent consent.

District staff stated in the interview that the district's practice is to use the indicators listed in Prong 2 for each exceptionality category the team determined the student exhibits to determine whether the student needs special education and that the district followed this practice during this student's May 16 IEP Team meeting. After the IEP Team discussed the Prong 2 indicators for Other Health Impairment and it was time to make a decision, the school psychologist indicated in the district interview that she started the conversation by stating that there seemed to be no disagreement on the IEP Team that the student has an exceptionality (Prong 1) and that the team then needed to discuss whether the student needed special education (Prong 2). The school psychologist indicated she started this part of the conversation as she does most conversations to determine eligibility, by providing her personal opinion that she did not believe the data indicated the student needed special education, stating she is one member of the team and not the sole decisionmaker, and then inviting others to share their opinion. District staff indicated the conversation continued, with other team members sharing their opinions, and the IEP Team determining the student continued to be eligible for special education.

The special services coordinator recalled in the district interview that the parent briefly mentioned reading concerns. The special services coordinator also stated the district's data showed the student was in the average range in reading and that the district did not have any data to show concerns that would have led the IEP Team to consider the Learning Disability exceptionality category as this is not a category where the district staff saw any need, based on the reevaluation data. The special services coordinator indicated this discussion is not mentioned in the IEP Team meeting notes or the May 20 Prior Written Notice as he recalled the mention being very brief and there really being no discussion on the topic.

The district's response indicated that on April 11, 2025, the school psychologist emailed the parent a draft copy of the reevaluation report with a reminder that the report is a draft "and may be edited to and through the evaluation meeting." (District Timeline, May 20, 2025.) In a follow-up email between the district special services coordinator and complaint investigator he

indicated that it is district practice to send the parent a draft reevaluation report even if not all assessments are yet fully interpreted, written up, and included in the draft reevaluation report. The district special services coordinator indicated that is what occurred here, the school psychologist sent the parent a draft reevaluation report stating that it would continue to be edited "to and through the evaluation meeting." (District Timeline, May 20, 2025.) The district special services coordinator stated that one such assessment the parent referenced, the parent requested in an April 14, 2025, email to district staff and so the district conducted the assessment, providing the results in the April 17, 2025, draft reevaluation report. The district special services coordinator confirmed that district practice is to include all assessments in a reevaluation report and all conducted assessments were included in the April 17, 2025, draft reevaluation report.

District staff provided all communication between IEP Team members between the April 17 and May 16 IEP Team meetings and all communication included the parent. (Emails Between IEP Team Members Regarding Reevaluation, Apr. and May 2025.) Neither party provided evidence that showed that district staff had any discussion about the student's eligibility prior to the May 16 IEP Team meeting where district staff could have made an eligibility determination without the parent. The May 20, 2025, Prior Written Notice details many parent requests from the May 16, 2025, and the district's response to each, accepting some and explaining how the request would be implemented within the student's IEP and rejecting others, providing a basis for the decision, typically that data did not support implementing the request. (Prior Written Notice Proposing Changes to Student's IEP Based on Reevaluation Report IEP Team Discussion, May 20, 2025.)

Conclusion

District staff clearly articulated the district's process for the IEP Team discussion of a student's eligibility and explained how the district followed its process with this student. The district documented the IEP Team's discussions in the May 16, 2025, IEP Team meeting notes and May 20, 2025, Prior Written Notice. The clearest evidence that the district did not engage in predetermination is that the IEP Team disagreed with the school psychologist's opinion on Prong 2, finding that the student needed special education. Additionally, there is no evidence to show that district team members had any discussion about the student's eligibility without the parent or made a decision without the parent. All district staff interviewed provided information regarding the parent's participation in the IEP Team's discussion and documented the parent's participation in the IEP Team meeting notes and Prior Written Notice. Therefore, this investigation concludes that the *district did not violate its obligation* to ensure a group of qualified professionals, and the parent determined whether the student continued to be an exceptional child and the student's educational needs under 34 C.F.R. § 300.306(a) and afforded the parent an opportunity to participate in the May 16, 2025, IEP Team meeting under 34 C.F.R. § 300.501(b)(1). As there is no violation, no corrective action is needed.

Summary of Conclusions and Corrective Action

Issues One, Two, Three, Four, Seven, Eight, Nine, Ten, Eleven, Twelve, Fourteen, and Fifteen

This investigation found no violations and there is no corrective action.

Issue Five

The district violated 34 C.F.R. § 300.305(a)(1), 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, the district must submit a written statement to KSDE Special Education and Title Services (SETS) that it will comply with federal legal requirements at 34 C.F.R. § 300.305(a)(1) which require that as party of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must review existing evaluation data on the child, including evaluations and information provided by the parents of the child; current classroom-based, local, or State assessments, and classroom-based observations and observations by teachers and related services providers.
2. The district must revise its procedure on reviewing existing evaluation data to ensure that the review of existing data is completed by the IEP Team, including the parent, and other qualified professionals, as appropriate. The procedure must also include how the district will document the review of existing evaluation data and those that participated in the review. The district must submit a draft of this procedure revision to KSDE for approval before implementing.
3. The district must identify the staff roles that must receive communication of the district's revised procedure and communicate the revised procedure to those staff roles. The district must provide KSDE with the communication to staff of the revised procedure and the roles of staff communicated with.
4.
    a. The district must provide KSDE with a list of students that received a reevaluation between August 14 and September 14, 2025.
    b. From that list, KSDE will pick five students.
    c. The district must then submit to KSDE the documentation indicated in its procedure on the review of existing data for those five students.
5. Due Dates:
    a. June 13, 2025: 1;
    b. June 20, 2025: 2;
    c. August 14, 2025: 3;
    d. September 15, 2025: 4.a.;
    e. September 18, 2025: 4.b.;
    f. October 3, 2025: 4.c.

Issue Six

The district violated 34 C.F.R. § 300.305(a)(2), 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, the district must submit a written statement to KSDE Special Education and Title Services (SETS) that it will comply with federal legal requirements at 34 C.F.R. § 300.305(a)(2) which require that as part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must on the basis of the review of existing evaluation data, and input from the child's parents, identify what additional data, if any, are needed to determine whether the child is a child with a disability, as defined in 34 C.F.R. § 300.8, and the educational needs of the child; or in case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related services; or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and 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.
2. The district must revise its procedure on identifying what additional data, if any, are needed to make the determinations 34 C.F.R. § 300.305(a)(2) requires to ensure the identification of additional data, if any, is completed by the IEP Team, including the parent, and other qualified professionals, as appropriate. The procedure must also include how the district will document this requirement and those that participated. The district must submit a draft of this procedure revision to KSDE for approval before implementing.
3. The district must identify the staff roles that must receive communication of the district's revised procedure and communicate the revised procedure to those staff roles. The district must provide KSDE with the communication to staff of the revised procedure and the roles of staff communicated with.
4.
    a. The district must provide KSDE with a list of students that received a reevaluation between August 14 and September 14, 2025.
    b. From that list, KSDE will pick five students.
    c. The district must then submit to KSDE the documentation indicated in its procedure for those five students.
5. Due Dates:
    a. June 13, 2025: 1;
    b. June 20, 2025: 2;
    c. August 14, 2025: 3;
    d. September 15, 2025: 4.a.;

e. September 18, 2025: 4.b.;
f. October 3, 2025: 4.c.

Issue Thirteen

The district violated 34 C.F.R. § 300.501(a), 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, the district must submit a written statement to KSDE Special Education and Title Services (SETS) that it will comply with federal legal requirements at 34 C.F.R. § 300.501(a) which require the district to afford the parents of a child with a disability, in accordance with the procedures of 34 C.F.R. §§ 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.
2. If the district does not have a procedure explaining to staff what they must do when they receive a request from a parent to examine their child's records, then the district must create a procedure on this. The procedure must also include how the district will document when a staff member receives a request from a parent to examine their child's records if it does not already. If the district needs to create a procedure, then it must submit a draft of this procedure to KSDE for approval before implementing. If the district already has a procedure, then it must submit to KSDE for review.
3. The district must communicate this procedure to all staff in the student's elementary school and the student's special education teacher that is transferring to a new school in the district. The district must provide KSDE with the communication to staff.
4.
    a. The district must provide KSDE with a list of requests it received from parents whose child attends this student's school between August 14 and September 14, 2025.
    b. From that list, KSDE will pick five students.
    c. The district must then submit to KSDE the documentation indicated in its procedure for those five students.
5. Due Dates:
    a. June 13, 2025: 1;
    b. June 20, 2025: 2;
    c. August 14, 2025: 3;
    d. September 15, 2025: 4.a.;
    e. September 18, 2025: 4.b.;
    f. October 3, 2025: 4.c.

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.gov 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 MAY 7, 2025

DATE OF REPORT: JUNE 6, 2025

This report is in response to a complaint filed with our office on behalf of a student, ----------, by their parents, ----------. In the remainder of the report, the student will be referred to as "the Student" and the parents as "the Parents."

The Complaint is against USD # 402, Augusta Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #402.

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 May 7, 2025, and the 30-day timeline ended on June 6, 2025.

Allegations

The following issue will be investigated:

ISSUE ONE: Whether USD #402, in accordance with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), implemented the Student's IEP. Specifically in the Student's Social Studies class, "[The Student] was not regularly offered extended time or separate testing environments. [The Student] was not given class notes or modified assignments when needed, and [they were] frequently penalized for missed or late work without any effort made to determine whether those issues were tied to [their] learning needs." K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parents by telephone on May 26, 2025. The following District staff were interviewed on May 23, 2025.

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:

1. Complaint, 05/08/25
2. Email, re: [the Student], 02/03-02/04/25

3. Meeting Notes, 02/03/25
4. Email, re: agenda, 02/26/25
5. Email, re: argumentative paper, 03/23/25
6. Email, re: chivalry paper, 05/02/25
7. Email, re: [the Student], 05/07/25
8. Individualized Education Program, 11/07/24
9. Psycho-Educational Evaluation, 09/08-09/24/21
10. Report Cards, 09/16/24-04/21/25
11. Student Work Samples, No date
12. Complaint Response, no date
13. Individualized Education Program, 10/28/24
14. Email, re: [the Student], 09/03-09/04/24
15. Email, re: face review, 10/16/24
16. Email, re: [the Student] and, 12/15/24-05/13/25
17. Assignments, 08/21-12/18/24
18. Email, re: grade is below 70%..., 11/04/24
19. Meeting Invitation, 02/04/25
20. Progress Report, 01/06-02/24/25
21. Email, re: communication and update to test schedule, 02/21/25
22. Email, re: [the Student] travel, 03/28-04/29/25
23. Email, re: [the Student], 04/29/25
24. Email, re: [the Student] travel, 04/29/25
25. Email, re: [the Student], 05/07/25
26. Email, re: [the Student], 04/29/25, duplicate
27. Email, re: agenda, 02/26/25
28. Email, re: [the Student], 02/03-02/04/25
29. Test Schedule, various dates
30. Examples of Modifications, no date
31. Examples of Modifications/Student Work, no date

Background Information

This investigation involved a 6th-grade student enrolled at Augusta Middle School in USD #402. The Student is currently receiving special education or related services as a child with a disability per IDEA. The Student, who attended 6th-grade classes at the Middle School, was reportedly achieving A's in all subjects except Social Studies. The Complaint alleged that the Student's IEP accommodations, including extended time and separate testing environments, were not consistently provided. Additionally, the Student purportedly did not receive modified

assignments when necessary and was often reported to have submitted work that was either missed or late. The Student was to receive test accommodations in an alternate setting in the resource room.

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. The Student is eleven years old and attends 6th grade at a Middle School.
2. The Student qualifies for special education services under the exceptionality category of Other Health Impaired.
3. The Student's semester 1 grade report, which included assignments from August 21, 2024, through December 18, 2024, indicated that the Student had earned a 69% in 6th-grade Social Studies.
4. On September 3, 2025, the Parent and the Teacher exchanged emails regarding homework, notes from a PowerPoint, and the Student's Google Classroom login code. The Teacher offered to help the Student the next morning before first period.
5. Relevant items from the IEP dated October 28, 2024, indicated the following:
    a. Student strengths: "[The Student] is very polite to [their] peers and teacher [at] any given time. [The Student] is shy and quiet when meeting new people but does come out of [their] shell once [the Student] gets to know them."
    b. Student needs: "Teacher observation and report indicate [the Student] has difficulty attending for age-appropriate lengths of time, difficulty with listening, following oral and written directions, working independently, and with self-direction. [The Student] does not disrupt others, talk out of turn, appear restless, or demonstrate attention-seeking behavior."
    c. The following Accommodations/Modifications/Supplementary Support were listed:

i. Read aloud in ELA, math, and for tests, in the general education and special education classrooms for the length of the test or assignment from October 28, 2024, through October 27, 2025.

1. ii. Modified tests/assignments in all core classes, in the general education and special education classrooms for the length of the test or assignment from October 28, 2024, through October 27, 2025.
2. iii. Quiet, separate location whenever tests were given in the MTSS room or the special education classroom for the length of the test from October 28, 2024, through October 27, 2025.
3. iv. Notes provided in all core classes, general education classroom, and special education classroom for the length of note taking from October 28, 2024, through October 27, 2025.

4. v. Extended time for assignments was not an IEP accommodation.
5. vi. According to the meeting notes, "[The Parent] was ok with the wording, accommodations and goals set for [the Student]. No other changes at this time." This was documented with a checked box on the meeting notes.
6. According to an Appendix: Documentation Document, the Parent shared on October 28, 2025, during the IEP meeting, the Student's strong academic performance was highlighted along with teachers universally commending the Student and reporting A's in all subjects except Social Studies. The primary concern identified was the high volume of assignments in Social Studies; a proposed solution involved an assignment sheet to be managed with the assistance of [the Student's] Skills class teacher. However, this support did not materialize as the Skills teacher went on leave shortly after the meeting.
7. Between August 30, 2024, and May 1, 2025, the Teacher documented that the Student took 22 quizzes and tests in a separate testing environment.
8. Between September 16, 2024, through April 21, 2025, Progress Reports documented that the Student received the following grades in Social Studies:
    a. September: A-
    b. October: C+
    c. November: D+
    d. December: D+
    e. February: F
    f. March: C
    g. April: C+
9. On November 4, 2024, the Teacher alerted the Student and the Parent that the Student had missing assignments and needed to study for a quiz.
10. In a table listing the test date, topics, and location, the notation for the November 11, 2024, "WMQ 2.3" indicated that the Student was absent and exempted from the assignment.
11. On December 15, 2025, the Teacher alerted the Resource Teacher that the Student needed to retake a test with them.
12. On February 3, 2025, the Parent emailed the Resource Teacher with concerns, "I am pretty frustrated with [the Student's] social studies class. It was an issue in the first semester, and I just let it go and moved on. It's pretty obvious that there are issues with only this class - [the Student] has straight A's in all other classes. [The Student] hasn't been given the accommodations in this class - notes, going to [the Resource Teacher's] room for tests, etc. [The Student] took a test at the end of the year in [their] class, which shouldn't have happened, and then got to retake it in [the Resource Teacher's] room and got a better grade. [Their] grade in PowerSchool never changed from the initial grade. I emailed the teacher with no response. This year is off to the same start. Some Ed puzzle that was on Google [C]lassroom that

it's due by Feb 7 [sic]. I have followed up with [the Student] a multitude of times on this about getting it done by then. Apparently, that date was incorrect on [G]oogle [C]lassroom, and it was due today. So [the Student] got a card mark for it. At this point, I want [the Student] moved out of this class to the other social studies teacher. We have had a great experience at [the Middle School] besides this issue. But this is not a positive learning environment for [the Student]. I don't feel like this class makes [the Student] motivated, resilient, curious … . [The Student] coming home upset from school every day shouldn't be happening." The Principal responded with possible resolutions to consider prior to changing the Student's schedule. The Parent agreed to a meeting with the Teacher, and the Principal confirmed that the goal was to make sure "…[the Student] receives the support outlined in [their] IEP and has a learning environment that allows [the Student] to perform at [their] best."

13. On February 5, 2025, the Parent attended a meeting during which a prepared document outlining their concerns was shared. The proposed solution from this meeting was for the Social Studies Teacher to daily record assignments in the Student's agenda for parental review. However, according to the Parent, it proved ineffective due to the Student's documented ADHD, which contributed to disorganization, inconsistent agenda use, and the Student's discomfort in engaging directly with the Social Studies Teacher.
14. On February 21, 2025, the Teacher emailed the Parent describing that they moved Monday's test to Wednesday due to school closings, and that the Student was overheard expressing concern about their Parent's reaction to the original test date. The Teacher also requested help reminding the Student to turn in their agenda daily for signatures.
15. On February 26, 2025, the Parent and the Resource Teacher exchanged emails regarding the Student's struggle with getting the agenda signed daily by the Teacher.
16. According to the Parent on March 23, 2025, the Student's argumentative paper was marked as late and missing on Powerschool, despite having been submitted a week prior to the revised due date. It was discovered that the Social Studies Teacher had altered the submission method, requiring the students to email the paper directly rather than submitting through Google Classroom, where parents access assignment information. This necessitated an additional email to rectify the situation, after which the paper was marked, turned in, and subsequently graded.
17. On May 7, 2025, the Resource Teacher emailed the Parent, "[The Student] was asked for [their] notebook yesterday and did not turn it in. The manner and notebook were given to [the Teacher] today, and the manner assignment is due this week, and it will be updated in the grade book soon. We are close to the end of the year and [the Student] has a test tomorrow in Social Studies [sic]."

    According to the Parent, on May 7, 2025, the Student received a zero on a Social

Studies assignment, despite it being completed and present in the Student's notebook upon the Student's return from vacation. The Social Studies Teacher had previously indicated that they had reviewed the Student's work together; however, when questioned via email, the Resource Teacher stated the Student was supposed to submit their binder, even though the assignment was found in the Student's notebook on May 1, 2025, the date the Social Studies Teacher claimed to have gone through all of the Student's work.

18. On May 8, 2025 according to a Formal Complaint regarding the Social Studies Teacher, the Parent indicated, "Our most serious concern is that [the Student's] Individual Education Program (IEP), which is in place to ensure [they receive] the accommodations legally entitled to [the Student] as a student with disabilities, has not been followed consistently in [the Social Studies Teacher's] classroom. The accommodations in [the Student's] IEP stem from [their] diagnosis of ADHD (inattentive type), Dyslexia, and Dyscaluculia [sic], which were formally identified by a licensed psychologist in 2021. [The Student's] educational evaluations clearly outline the need for modified assignments, extended time on tests, opportunities to take assessments in distraction-free environments, and the breaking down of large tasks into manageable parts with appropriate support. However, these supports have been inconsistently provided in this class, and, at times, entirely ignored. … not regularly offered extended time or separate testing environments."

19. According to a District Response Formal Complaint Document with no date, "Upon interview, the Inter Special Education Teacher stated, '[The Student] has always been given a separate testing environment and most often [the Student] comes to my room for [their] test. The only time [they] did not come to my room was for this last test and [the Social Studies Teacher] created a separate space in [their] room to administer the test because [the Student] had been gone on a vacation and [the Social Studies Teacher] wanted to help [them] with the test to make sure [they] understood the material and the questions. [The Social Studies Teacher] had come to talk to me about this prior to the test, and we agreed it was a good thing." Between August 30, 2024, and May 19, 2025, the Student took tests with the Special Education Teacher thirty-one times.

    During interviews with the District, "Both [Ms. the Social Studies Teacher and the Inter Special Education Teacher] refuted allegations that [the Student] was not offered or given class notes. [The Social Studies Teacher] stated that [the Student] consistently received PowerPoints in print or via Google Classroom, and for each unit, [the Social Studies Teacher] provided students with a packet of necessary papers, a practice implemented during COVID-19 to keep students on track. [The Social Studies Teacher] specifically recalled giving [the Student] a prepared packet for an upcoming unit the week before [their] vacation, walking [them] through it, and gluing it into [their] notebook page by page to match [their] own. [The Social Studies Teacher] explained that later materials would be available on Google Classroom and that the packet included modified Clozed notes for accessibility, with

only the final Crusades page withheld for in-class completion after the Student's return. [The Inter Special Education Teacher] corroborated this, stating that [the Social Studies Teacher] consistently provided [the Student] with modified notes, either printed or available on Google Classroom, and [the Inter Special Education Teacher] had no concerns about the provision of support in [the Student's] class.

20. According to non-dated assignment work samples from the Parent, the Student had to handwrite notes on several Essential Question Handouts. The Student also answered comprehension questions and character analysis descriptions regarding Gilgamesh, which were all handwritten responses. There was one worksheet on the Byzantine Civilization, which had a subject web with handwritten responses that were not written by the Student. Copies of the Student's notebook showed several cut-out and pasted pictures with handwritten notes by the Student. Several of the handwritten assignments had "late" noted at the top with numerical scores. One work sample titled Early Greek had prewritten sentence starters with fill-in-the-blank questions and pasted character depictions on it.

District Interview:

21. On May 23, 2025, during an interview with the Complaint Investigator, the Social Studies Teacher shared, "Any time [the Student] has assignments that [the Student] needed to work on, [the Student] was allowed to leave with our para and to work on those assignments. And then when [the Student] was done, [the Student] came back into the classroom." The Social Studies Teacher indicated that the amount of time the Student left the classroom to work on assignments depended on how many assignments were in each unit of study. The Social Studies Teacher indicated that if the Student owed work, the Student went out with the Para to work on whatever was missing, and when the work was completed, the Student came back into the classroom. The Student had the Para's notebook to look off of for any dates or on Google Classroom, or their own agenda. According to the Social Studies Teacher, the Student was never denied access to come back into the classroom. The Social Studies Teacher shared that it took the Student a few minutes to complete the dates on the Table of Contents.

When asked about changing the way to submit the Student's argumentative paper without posting a new way of submitting it on Google Classroom, the Social Studies Teacher responded, "It was sent through [a Classroom Teacher's account]. Google Classroom only allowed that one teacher to access it. So, because it was a duo assignment, I had requested they send it to me by email. ... I was locked out of it." The Social Studies Teacher indicated the Student's assignment was sent through Google Classroom around March 4, 2024, according to the Parent. The Social Studies Teacher felt that was "probably around that time."

The Social Studies Teacher shared that there was a verbal agreement after a Parent meeting with the Principal, the Social Studies Teacher, and the Parent to have the

Student's agenda signed each day to show that there was constant communication between the Social Studies Teacher and the Parent if there was any homework. When asked if that worked, the Social Studies Teacher stated, "I didn't know. I would ask [the Student] for it. [The Student] would forget to give it to me on multiple occasions."

The Social Studies Teacher indicated the Parent only signed the agenda "once or twice that I can recall." The Social Studies Teacher stated the agenda was passed on to the Resource Teacher, who would then send notices home. The Social Studies Teacher said that the Parent and the Social Studies Teacher were the only two people who were supposed to sign the agenda.

The Assistant Director of Special Education shared, "I'm just looking back through the issue that in accordance with State and Federal Guidelines, specifically in Social Studies class, the [S]tudent was not regularly offered extended time, which was not even an accommodation … ."

The Assistant Director of Special Education shared regarding the Complaint, "One of the things that was listed was extended time. That's not even on the IEP, and all of the other accommodations, [the Social Studies Teacher] was able to show that [the Social Studies Teacher] absolutely provided those."

Parents Interview:

During a Parent Interview with the Complaint Investigator on May 26, 2025, the Parents shared that at the October IEP meeting each core teacher reported that the Student was succeeding and had all A's, except for a D or F in social studies. The Social Studies Teacher didn't acknowledge the possibility of their own teaching methods contributing to the Student's issues, according to the Parents. Consequently, no changes were deemed necessary for the IEP itself, and it was suggested that the Social Studies Teacher adhere more closely to the existing IEP to aid the Student's success according to the Parents.

The Parents shared that the Student's D/F in social studies stemmed from a high volume of assignments compared to other classes. The Student's two social studies notebooks, totaling 215 pages of handwritten notes, indicated the extensive workload. Despite an IEP provision for notes to accommodate the Student's dyslexia, the Student was still required to handwrite everything, which was challenging given their condition and ADHD. This led to the Student feeling overwhelmed, and messages about assignments often failed to translate clearly from school to home.

The Parents' shared attempts to seek clarification from the Social Studies Teacher were met with dismissiveness, with the Social Studies Teacher directing inquiries to Google Classroom and stating the Student, "should know what's going on." This lack of support from the Social Studies Teacher contributed to assignments not being turned in according to the Parents..

Additionally, the Student often lacked paraprofessional support in class, leading the Student to set aside tasks that they didn't understand. Tests were also not administered in a separate environment with questions read aloud, as mandated by the Student's IEP, due to alleged para shortages or the perceived brevity of the tests. The Parents indicated that tests were typically posted on Google Classroom as a Google form. The Parents were not sure "how that was a modified test."

The Parents indicated the Student's social studies notebook was filled with handwritten notes, despite the expectation that on the IEP, the Student would be provided with pre-written notes. Although the Social Studies Teacher claimed to provide notes via Google Classroom, this still required the Student to copy them, which was particularly challenging for a student with dyslexia and ADHD. A significant concern was that the Student was not consistently given the opportunity to take tests in a separate room, a crucial accommodation in their IEP. The Student grew increasingly hesitant to advocate for themselves with the Social Studies Teacher, who was perceived as loud, outspoken, and blunt, leading the Student to take tests in the regular classroom to avoid conflict. A critical concern for the Parents was the inconsistent provision of a separate testing environment, which was an IEP accommodation. The Student was reluctant to self-advocate to utilize a separate testing environment, according to the Parents.

The Parents stated that following a Complaint from the Student's Parents to the Principal about the Student's struggles in social studies class, a meeting was arranged, during which the Social Studies Teacher became defensive when confronted about the Student's intimidation regarding the Social Studies Teacher. Shortly after this meeting, the Social Studies Teacher reportedly singled out the Student in class, loudly offering help in a manner that the Student perceived as bullying and humiliating. Despite the Student's actual need for assistance, the Student refused it to avoid further attention.

When asked about the schedule change for the Student, which flipped math and social studies to resolve the para support issue, the Parents said that by doing the switch, it would allow the Student to have more para support. The Parents indicated that they didn't notice a big change in how things were going. The Special Education Teacher, who was also the coordinator of the paras, was expected to ensure IEPs were followed and facilitate testing in a separate room. Yet, the Special Education Teacher rarely communicated with the Student's Parents. It was later discovered through the Social Studies Teacher Complaint response that, following a February meeting, the Principal instructed the Social Studies Teacher to cease direct communication with the Student's Parents. Consequently, the Special Education Teacher or the Principal became the intermediaries for all communication regarding assignments, leaving the Student's Parents feeling "ghosted" by the Social Studies Teacher, as this change in communication protocol was never directly conveyed to them.

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #402, in accordance with state and federal regulations implementing the IDEA, implemented the Student's IEP. Specifically in the Student's Social Studies class, "[The Student] was not regularly offered extended time or separate testing environments. [The Student] was not given class notes or modified assignments when needed, and [they were] frequently penalized for missed or late work without any effort made to determine whether those issues were tied to [their] learning needs." K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

According to K.A.R. 91-40-16(b)(3), an IEP must be in effect for each exceptional child at the beginning of each school year.

The Parent alleged that the accommodations of extended time and separate testing sessions were not consistently followed in the Student's social studies class.

The District acknowledged that the Parents' Complaint focused on concerns regarding the Student's Social Studies class with the Social Studies Teacher, specifically alleging that accommodations for extended time, a separate testing environment, access to class notes, and modified assignments were not implemented. However, the investigation narrowed the scope to issues relevant to IDEA. It was noted that the Student's IEP, dated October 28, 2024, listed accommodations for read-aloud support, modified tests/assignments, a quiet testing location, and provided notes. Crucially, "extended time" was not an accommodation on the Student's current IEP or previous IEPs, and the Parent had previously agreed to the IEP's wording. Despite "extended time" not being a listed accommodation, the Social Studies Teacher stated that all students were permitted to submit late or missing assignments until the unit test, a policy outlined in their syllabus, and to which the Parent had seemingly agreed.

The Social Studies Teacher detailed several modifications they consistently implemented for assignments and tests. These included the use of cloze notes and graphic organizers, incorporating diverse learning styles (hands-on, auditory, visual), and frequently repeating directions while also providing access to Google Classroom materials. Furthermore, [the Student] was permitted to use notes on certain tests, such as the Middle Ages and End of the Year notebook tests. Tests were often modified to have fewer answer choices, and assignments like GRAPES were shortened. Vocabulary and other notes were presented as fill-in-the-blank rather than open response. For complex maps, the Social Studies Teacher led the class through labeling locations together, and the Student frequently utilized the online textbook with headphones, which provided a read-aloud function.

The IEP dated October 28, 2024, highlighted the Student's politeness and initial shyness that dissipated once comfortable with others. However, the Student demonstrated needs in areas

such as sustained attention, following directions (both oral and written), and independent work, though these difficulties did not manifest as disruptive behaviors. To address these needs, the IEP prescribed accommodations including read-aloud support for ELA, math, and tests in the general education and special education classrooms; modified tests and assignments across all core classes; a quiet, separate testing location; and provided notes in all core subject classes. These supports were implemented from October 28, 2024, through October 27, 2025.

Between August 30, 2024, and May 1, 2025, the Student completed 22 quizzes and tests in a separate testing environment. During this period, the Student's Social Studies grades fluctuated, starting with an A in September 2024, dropping to an F by February 2025, and then improving to a C+ by April 2025. The Social Studies Teacher noted on November 4, 2024, that the Student had missing assignments and needed to prepare for an upcoming quiz. Additionally, the Student was absent and exempted from the "WMQ 2.3" on November 11, 2024. On December 15, 2024, the Social Studies Teacher requested that the Student retake a test with the Resource Teacher as indicated on the IEP accommodations section. Extended time for assignments was not an accommodation listed on the IEP.

On February 25, 2025, the Parent attended a meeting where concerns were raised and a solution was proposed: the Social Studies Teacher would daily record assignments in the Student's agenda for parental review. However, this proved ineffective, due to the Student's disorganization, inconsistent agenda use, and discomfort in directly engaging with the Social Studies Teacher. On February 21, 2025, the Social Studies Teacher emailed the Parent, explaining that a test had been moved due to school closings and noting the Student's expressed concern about the Parent's reaction to the original test date. The Social Studies Teacher also sought assistance in reminding the Student to submit their agenda daily for signatures. By February 26, 2025, the Parent and Resource Teacher were exchanging emails regarding the Student's difficulties in getting the agenda signed daily. This was not a listed accommodation on the current IEP.

Work samples provided by the Parent showed eight pages of handwritten notes along with pasted cutouts of historic pictures on the note pages. The work samples also showed three fill-in-the-blank questions and note pages, as well as notes copied by another person, not the Student. The IEP accommodation involving note taking states, "Notes provided in all core classes, general education classroom, and special education classroom for the length of note taking from October 28, 2024, through October 27, 2025." Because of the high volume of the Student handwritten notes in their Social Studies notebook, the indication is that notes were not provided on all assignments in social studies, just a few.

Based on the foregoing, according to IDEA and Kansas special education regulations, it is substantiated that the district *failed to implement* the Student's IEP, specifically, providing notes to the Student in their social studies class.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. A violation occurred in the following area:

A. Federal regulations at K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323. specifies that an IEP must be in effect for each exceptional child at the beginning of each school year.

   In this case, the evidence supports the finding that USD #402 to implement the Student's IEP, specifically, providing notes to the Student in their social studies class.

   Documentation, Interviews, and the Parties Responses document this.

   Based on the foregoing, USD # 402 is directed to take the following actions:

   1. Within 15 calendar days of the date of this report, USD # 402 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 K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323. specifies that an IEP must be in effect for each exceptional child at the beginning of each school year.
   2. Implement the IEP accommodation of "notes provided in all core classes."
   3. Further, by September 6, 2025 USD #402 will complete the following:
      a. Submit a written statement of assurance to Special Education and Title Services (SETS) that the district's practices and procedures for IEP implementation have been reviewed and revised as appropriate to be responsive and compliant with IEP implementation procedures of the IDEA and the Kansas Special Education for Exceptional Children Act.
      b. Provide verification that all staff who implement and supervise the implementation of IEPs have been trained in IEP implementation.

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.gov 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. 402
Augusta Public Schools: 25FC402-004

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on May 7, 2025, by ------- on behalf of their daughter, -------. In the remainder of this decision, ------- will be referred to as "the parents," and ------ will be referred to as "the student." An investigation of the complaint was undertaken by a complaint investigator on behalf of the Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, a Complaint Report, addressing the allegations, was issued on June 6, 2025. That Complaint Report concluded that there was a violation of special education statutes and regulations

Thereafter, the district filed an appeal of the Complaint Report. Upon receipt of the appeal, an appeal committee was appointed and it reviewed the original complaint filed by the parent, the Complaint Report, the district's notice of appeal, and the parent's response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

Preliminary Matters

A copy of the regulation regarding the filing of an appeal [K.A.R. 91-40-51(f)] was attached to the Complaint Report. That regulation states, in part, that: "Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect." Accordingly, the burden for supplying a sufficient basis for appeal is on the party submitting the appeal. When a party submits an appeal and makes statements in the notice of appeal without support, the Committee does not attempt to locate the missing support.

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

Discussion of Issues on Appeal

The report identified one issue:

Issue One

> Whether USD #402, in accordance with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), implemented the Student's IEP. Specifically in the Student's Social Studies class, "[The Student] was not regularly offered extended time or separate testing environments. [The Student] was not given class notes or modified assignments when needed, and [they were] frequently penalized for missed or late work without any effort made to determine whether those issues were tied to [their] learning needs." K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

The investigator concluded that a "separate testing location" was implemented, at least from October 28, 2024 until October 27, 2025 and that "extended time" for completion of assignments was not an accommodation in the student's IEP (Report, p. 15). These conclusions were not contested upon appeal.

The investigator also concluded that: "it is substantiated that the district failed to implement the Student's IEP, specifically, providing notes to the Student in their social studies class." The investigator described the reason for this conclusion as:

Work samples provided by the Parent showed eight pages of handwritten notes along with pasted cutouts of historic pictures on the note pages. The work samples also showed three fill-in-the-blank questions and note pages, as well as notes copied by another person, not the Student. The IEP accommodation involving note taking states, "Notes provided in all core classes, general education classroom, and special education classrooms for the length of note taking from October 28, 2024, through October 27, 2025." Because of the high volume of the Student handwritten notes in their Social Studies notebook, the indication is that notes were not provided on all assignments in social studies, just a few (emphasis added).

The applicable provision in this student's IEP is: "Notes provided in all core classes, general education classroom, and special education classroom for the length of note taking…(emphasis added)"

The district appeals this decision, noting that the investigator based her decision entirely on the following reasoning: "Because of the high volume of the Student handwritten notes in their Social Studies notebook…"

The district's appeal based on the following assertions:

- The IEP does not define what constitutes "notes" nor does it restrict the method of delivery. The district gives many examples of "notes" in various modalities and/or formats (i.e. Cloze Notes, Graphic Organizers, PowerPoint slides, fill in the blank notes, etc.) and how they were provided (i.e. via Google Classroom and printed and given to the student in person). Evidence that supports includes that notes are found, printed, and in the student's Social Studies notebook which was verified by both the district and the parent. Additionally, the digital notes can be seen in the Google Classroom folder.

- The IEP does not state the student will have a scribe or be excused from handwriting answers to questions or fill in the blank options in the notes provided.
- The IEP does not restrict whether the student may take her own notes in addition to receiving them.
- The student choosing to take her own notes in class should not be interpreted as evidence of the absence of the required accommodation.

The appeal Committee agrees with the district's assertion. The investigator does state that her conclusion is based solely on "the high volume of the Student handwritten notes in their Social Studies notebook…" and cites no other basis.

The district's appeal challenges the definitions of terms commonly used in an IEP, specifically the meaning of the word "notes" and whether the word "provide" has flexibility in how a service or accommodation is provided.

IEPs uniformly do not come with a "definition of terms" section. Thus, we turn to the Kansas rules for statutory construction in K.S.A. 77-201. That statute says: "Words and phrases shall be construed according to the context and the approved usage of the language." The usual method for ascertaining the "approved usage" of a word is to find a dictionary description of the word.

The primary definition of the word "note" is: "a brief written record of something to assist the memory for future reference." (See, Wester's College Dictionary, 1999). Likewise, we turn to the same dictionary to provide us with an understanding of the term "provide." The primary definition for the word "provide" is: "to make available." (Wester's College Dictionary, 1999).

With regard to this dictionary definition of the word "provide," in the context of a special education complaint to a state department of education like this one, the Minnesota Court of Appeals considered this very question in In re: Special Education Complaint 22-027C, 82 IDELR 11 (Minn. Ct. of Appeals 2022). In that case, the facts were very different from the facts in this complaint. in the Minnesota complaint, the parents refused services offered in the IEP and then filed a state complaint alleging the district failed to deliver the services. The Minnesota State Department of Education's complaint investigator concluded that the school district was in violation of law because it had not "provided" the services in the IEP. This decision was appealed to a state district court, according to Minnesota law. The Minnesota Court of Appeals overturned the Department of Education's complaint investigator, saying:

> *the meaning of the term "are provided" is unambiguous, and because the pertinent regulations did not define the term "are provided," the court may look to dictionary definition to find its common meaning. In doing so, the court said:*
>
> *"One dictionary defines "provide" as: "[t]o make available (something needed or desired)," "[t]o supply something needed or desired," and "[t]o make ready ahead of time; prepare." The American Heritage Dictionary of the English Language 1418 (5th ed. 2018)). Another dictionary defines "provide" as: "to supply or make available (something wanted or needed)"*

and "to make preparation to meet a need." Merriam-Webster's Collegiate Dictionary 1001 (11th ed. 2014)."

The court added that to interpret the regulation "to require that a district not only offer or make available special-educational services, but also ensure that those services are received--even when refused--would result in liability and corrective action for school districts based on circumstances completely beyond their control."

We are not bound by decisions of Minnesota courts, but we may look at them for guidance. In addition we note that while the facts are completely different in this complaint than the Minnesota complaint, the meaning of the term "provide" does not change. Using both the Minnesota Court of Appeals decision as a guide and the cited provision in the Kansas statute on statutory construction, the Appeal Committee finds that to successfully "provide" services specified in an IEP does not require that those services be received, unless so specified in the IEP. Otherwise, it is sufficient to "provide" services by making them available. The facts presented in this complaint verify that notes were available to this student in various forms, including through written teacher notes, Cloze Notes, Graphic Organizers, PowerPoint Slides, and fill in the blank notes. Of course, there are situations where such formats for notes may be of little or no help to the student. When that occurs, the IEP team has a duty to identify the specific format of notes the student needs to be successful and to specify that format in the IEP.

In its appeal, as previously acknowledged above, the district adds: : "The student choosing to take her own notes in class is not evidence of a denial of services... (and) The student's use of personal note-taking should not be interpreted as a substitute for or indication of the absence of the required accommodation." The Appeal Committee agrees. Under the circumstances of this case, where the IEP did not require a specified delivery method for notes, the evidence presented verifies that notes were provided to the student (as the word "provide" is commonly defined) in all core classes, general education classroom, and special education classroom, as specified in this student's IEP.

The Appeal Committee is not unsympathetic to this student's experience, and recommends that this student's IEP team meet to discuss whether the student needs notes delivered in a specific format, and if so, to specify that format in the student's IEP.

Conclusion

For the reasons stated herein, the Complaint Report is reversed, and corrective action deleted.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 23rd day of June, 2025.

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 #287, WEST FRANKLIN PUBLIC SCHOOLS
ON MARCH 31, 2025

DATE OF REPORT: JUNE 20, 2025

This report is in response to a complaint filed with the Kansas State Department of Education against USD #287 West Franklin Public Schools on behalf of -------, by her 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," or "the mother.

The complaint is against USD #287 West Franklin Public Schools. In the remainder of the report, USD #287 will be referred to as "the district." The District utilizes Three Lakes Educational Cooperative (TLEC) for some special education services. In the remainder of this report TLEC will be referred to as "the coop." It is recognized that while TLEC provides special education services to the West Franklin Public Schools the district is ultimately responsible for the special education services for the student.

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 31, 2025. On April 10, 2025, the district and complainant signed an agreement to engage in mediation. On May 14, 2025 mediation occurred and was unsuccessful for any of the ten issues, so the investigation was resumed. The revised timeline for completion of this investigation is revised to end on June 12, 2025. Subsequently the investigator requested and was provided an extension to June 20, 2025.

Evidence Reviewed

During the investigation, the Complaint Investigator Dr. Donna Wickham reviewed all documentation provided by the district and the Mother. The following was used in consideration of the issues. It is noted that some documentation provided was older than 12 months and while reviewed for context, it was not used in determining the findings.

- Happy Numbers Overall Progress August 27, 2024 through December 5, 2024
- Email from School Psychologist, (Amy Redmon) to principal (Chris Robertson), two general education teachers (Lacie Brandt, Rebecca Cruce), and Mother dated November 13, 2024 at 3:36 p.m.
- Email exchange between principal, mother, two general education teachers and school psychologist dated between November 13, 2024 at 9:22 a.m. and December 3, 2024 at 3:08 p.m.

- [School] SIT Team Request dated November 14, 2024
- Email from MIS Data Clerk to Gifted Facilitator (Kelly Deweese), Special Education Facilitator (Alissa Smith) and School Psychologist dated November 26, 2024 at 9:12 a.m.
- Letter from Director of Special Education (Caroline Green) to Parents dated November 26, 2024
- Email exchange between Director of Special Education and Mother dated between December 1, 2024 at 9:15 a.m. and December 3, 2024 at 4:28 p.m.
- Audio recording of the December 6, 2024 meeting provided by the Mother, 49.29 in length
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated December 6, 2024, parent signed consent on December 6, 2024 at 9:11 a.m.
- General Education Intervention Background Information/Referral Form and Social/Emotional Information Checklist documents signed by Mother, General Education Teacher 2, Gifted Facilitator, Principal and School Psychologist including handwritten notes on December 6, 2024 and approved on December 18, 2024
- Parent phone contact logs dated between December 6, 2024 and May 15, 2025
- Email from Gifted Facilitator to School Psychologist dated December 12, 2024 at 11:06 a.m.
- Email exchange between Mother and School Psychologist dated between February 3, 2025 at 8:03 a.m. and 8:53 a.m.
- Email exchange between Mother and School Psychologist dated February 24, 2025 between 9:12 a.m. and 10:08 p.m.
- Notice of Meeting dated February 26, 2025
- Printout of team members who viewed the February 26, 2025 NOM.
- Draft Evaluation Team Report – Initial Evaluation Parent Given/Mailed Copy February 26, 2025
- Audio recording of the February 26, 2025 meeting, 1:43.07 in length
- Prior Written Notice for Identification dated February 28, 2025
- Email from Director of Special Education to Mother dated March 3, 2025 at 3:24 p.m.
- Letter from MIS Data Clerk, TLEC (Tabatha Llamas) to whom it may concern documenting parent letter and parent rights dated March 3, 2025
- Email from Director of Special Education to Mother dated March 3, 2025 at 3:35 p.m.
- Email exchange among Mother, MIS Data Clerk and Director of Special Education dated between March 5, 2025 at 2:06 p.m. and 3:01 p.m.
- Email from Director of Special Education to Mother dated March 6, 2025 at 5:40 p.m.
- Notice of Meeting dated March 11, 2025
- Email from Special Education Director to Mother dated March 24, 2025 at 4:43 p.m.
- Draft 2 Evaluation Team Report – Initial Evaluation Parent Given/Mailed Copy March 26, 2025
- Notice of Meeting dated March 26, 2025
- Printout of team members who viewed the March 26, 2025 NOM. Yes - Mother, general education teacher 1
- Email from School Psychologist to Mother dated March 27, 2025 at 12:56 p.m.
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated May 14, 2025 with signed parent consent on May 15, 2025

- District Response dated May 28, 2025
- Individual Benchmark Report: aReading, AUTO LG GOM and aMath Fall 2023-Spring 2025
- FastBridge Fall 2023-Spring 2025 Reading and Math
- Attendance and grades from PowerSchool dated Quarter 2, 2024-2025 school year
- Coop Special Education Policies, Practices & Procedures 2024-2025
- [District] calendar 2024-2025 school year

The Investigator first spoke with the Mother by phone on April 2, 2025 and again on June 15, 2025. The Investigator spoke with the Special Education Director by phone on April 2, 2025 to clarify the issues and discuss requested evidence. The Investigator interviewed Caroline Green, the Coop Special Education Director, Amy Redmon, the School Psychologist, and Matt Brenzikofer, the District Superintendent, on June 11, 2025 by phone conference.

Background Information

The student is a nine-year-old third grader who is not currently eligible for special education and related services. The student has a medical diagnosis of ADHD and anxiety, and documentation was provided on February 26, 2025. The Mother requested a gifted evaluation for the student on November 13, 2024. The district responded with a Prior Written Notice on November 26, 2024 consenting to the gifted evaluation and discussed GEI. On December 6, 2024, the student's learning discussed at a SIT meeting with the mother present. At this time, the Mother described the ADHD and anxiety diagnosis and evaluation implications. The mother consented to the evaluation and a meeting was held on February 26, 2025 to discuss the evaluation findings. The findings from the February 26, 2025 evaluation was that additional testing and consideration would be given to the student's medical diagnoses of anxiety and ADHD. Consent for this additional evaluation was not provided by the mother. A second Prior Written Notice was provided to the Mother on March 6, 2025 to gain consent to conduct the parent-requested evaluation but was not signed. A planned March 26, 2025 evaluation meeting was held but the mother did not attend. This Child complaint was filed during this time and paused for Mediation. The Mediation was unsuccessful so the investigation continued following May 15, 2025.

A new initial evaluation to consider eligibility for gifted services is currently underway after the Mother signed consent on May 15, 2025. The actions on behalf the student regarding the May 14, 2025 Prior Written Notice will not be investigated as they constitute a new evaluation and timeline.

Issues Investigated

It is noted that the IDEA has no application to children who are being evaluated only for gifted eligibility and therefore Kansas statutes and regulations will be used throughout when referring to only evaluation issues.

ISSUE ONE: Did the district follow IDEA (Kansas) regulations when providing procedural safeguards in response to a parent's written request for a gifted evaluation?

ISSUE TWO: Did the district follow IDEA (Kansas) regulations when responding to a parent request for a gifted evaluation? (It is recognized that Issue One is considered part of following IDEA regulations and for the sake of understanding these two issues are reported together.)

ISSUE THREE: Did the district follow IDEA regulations when responding to a parent request to correct student records?

ISSUE FOUR: Did the student's gifted evaluation report include all of the evaluation collected as part of the comprehensive evaluation according to IDEA (Kansas) regulations? (Issues Four and Nine were investigated individually, but reported together since they both address the completeness of the evaluation report)

ISSUE FIVE: Did the district follow IDEA (Kansas) regulations when providing notice for the February 26, 2025 meeting on February 23, 2025 and for the March 26, 2025 meeting sent on February 26, 2025?

ISSUE SIX: Did the district follow IDEA (Kansas) regulations to conduct a comprehensive gifted evaluation for the student?

ISSUE SEVEN: Did the district conduct the comprehensive gifted evaluation for the student within timeline?

ISSUE EIGHT: Did the March 3, 2025 (corrected to March 6, 2025) Prior Written Notice follow IDEA (Kansas) regulations?

ISSUE NINE: Did the second draft of the Student's evaluation report (sent and dated March 24, 2025) contain agree-upon additional information discussed during the February 26, 2025 team meeting according to the IDEA (Kansas) regulations? (The findings of Issue Nine are included within Issue Four since they both address the Evaluation report).

ISSUE TEN: Did the district follow IDEA (Kansas) regulations in maintaining and providing adequate meeting records?

Issues One and Two

Did the district follow IDEA (Kansas) regulations when providing procedural safeguards in response to a parent's written request for a gifted evaluation? (Issue 1)

Did the district follow IDEA (Kansas) regulations when responding to a parent request for a gifted evaluation? (Issue 2)

Applicable Law

Kansas state statute at K.S.A. 72-3430(e) require that a copy of the procedural safeguards/rights 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.

Kansas State Statute at 72-3428(a)(2) states that an initial evaluation may be initiated either by the parent of a child or by an agency. In Kansas, when a parent requests an initial special education evaluation, the school district is required to respond without unnecessary delay—typically within 15 school days—by either obtaining written parental consent to begin the evaluation or providing a written notice explaining why it is refusing the request (p 56, Kansas State Department of Education Kansas Special Education Process Handbook)

Parent Position

The Mother alleged that after submitting a written referral for a gifted evaluation on November 13, 2024 the Mother and School Psychologist engaged in a back and forth conversation and during this time the Mother was not provided with a copy of the Procedural Safeguards. The Mother further alleged that instead of following the IDEA procedures for responding to a written parent request for an initial evaluation with a Prior Written Notice, the School Psychologist instead responded, "I have reviewed [Student's] latest FastBridge scores done in September of this year. [Student] scores need to be at least at the 95th percentile and above in one subject area to be considered for gifted services. [Student] did not score at that percentile in the Fall."

District Position

The district responded that on November 13, 2024, the Mother submitted a written request via email for a gifted evaluation on November 13, 2024. On November 26, 2024 the Special Education Director, sent a letter to the Mother acknowledging the request for evaluation and included a copy of the Parent Rights (procedural safeguards) for Special Education. On December 1, 2024, the Mother confirmed receipt of these documents in an email to the Director of Special Education. On December 6, 2024, the district convened a Student Intervention Team (SIT) meeting with the Mother present. During this meeting, the GEI process was initiated, collecting input from Mother. On the same day, the district provided the Mother a Prior Written Notice indicating its intent to conduct an initial evaluation and obtain informed consent, which was electronically signed by the mother on December 6, 2024.

Analysis: Findings of Fact

The district acknowledged in their response that it received the parent's written request for a gifted evaluation on November 13, 2024.

The [Coop] Special Education Policies, Practices & Procedures 2024-2025 states on page 4, "A copy of the Parent Rights in Special Education Notice must be provided to both parents and in

the native language of the parents/adult student or other mode of communication used by the parents/adult student: a referral or parent request for initial evaluation". Further, on page 17, listed in the Steps to follow for an Initial Evaluation following Step 1, Referral, Step 2 states, "Parent Rights-provided at time of referral in the parent's native language."

The school psychologist reported during the June 12, 2025 interview with the investigator that the school psychologist had not worked with the student previously so reviewed existing current classroom-based, local, or state assessments, talked with the student's classroom teacher and did not find anything to indicate a gifted evaluation. Following this, the school psychologist called the Mother sharing her initial findings and requesting information from the Mother about the gifted evaluation. The school psychologist further stated that her describing that the student test scores was not an attempt to thwart the evaluation process, but an attempt to describe to the Mother the existing data in regard to a gifted evaluation and the call was to gather parent input for consideration of the evaluation.

A letter addressed to the student's parents from the Director of Special education dated November 26, 2024 acknowledged the parent request for an initial evaluation. The letter further acknowledged the district's responsibilities as "Provide parents with a copy of the Parent Rights document" The letter further stated, "I have enclosed a copy of the Parent Rights document in your native language. Staff are available to further explain your parental rights should you request additional information. " Finally, the letter documents, "Enclosure: Parental Rights Document"

The SIT meeting on December 6, 2024 discussed the role of GEI and the District provided a Prior Written Notice to evaluate the student for gifted services.

The elementary school calendar documents that November 27-29 were school holidays.

Conclusion

Written document and both parties acknowledge that the request was made on November 13, 2024 and the district provided the procedural safeguards on November 26, 2024. November 13, 2024 – November 26, 2024 is within the fifteen school day timeline in which to respond to a parent's request for an evaluation. The Notice of Procedural Safeguards is part of that response. The requirement that the Notice of Procedural Safeguards be provided "upon request" means only that the "request" triggers the response requirement but does not require that the response be immediate. Whenever the special education law requires the district to do something, but does not specify a specific time in which to do it, it should be done within a reasonable time (which Special Education and Titel Services (SETS) has described in the Kansas Special Education Process Handbook, to be within 15 school days, unless there are unusual circumstances justifying a longer time. In this instance, the district provided the Notice of Procedural Safeguards well within the "reasonable time" period described by SETS.

Further, it is found that the District acted properly in reviewing existing data and reaching out to the Mother to discuss the evaluation request. Finally, the District responded to the Mother requested gifted evaluation within a reasonable timeframe – 14 days.

No violation of law has occurred with regard to this issue.

Issue Three

Did the district follow IDEA regulations when responding to a parent request to correct student records?

Applicable Law

Federal regulations at 34 C.F.R. §300.618 states that a parent who believes that information in education records collected, maintained, or used is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information. The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under Sec. 300.619.

If the school does not agree that the education records should be changed, staff must provide an opportunity for a hearing, following FERPA requirements. The hearing officer would be the school's hearing officer, not a special education due process hearing officer (34 C.F.R. 300.618).

NOTE: Federal Regulation 300.618 is incorporated by reference into Kansas regulations pursuant to K.A.R. 91-40-50(b).

Parent Position

The Mother alleged that on March 4, 2025, she requested the Prior Written Notice dated December 6, 2024 be amended to reflect that the document was emailed, not hand-delivered. She further requested that if the correction was not made that the Mother's request be added to the student records. The Mother stated that the correction was not made and the letter requesting the change was added to the student record.

District Position

The District responded that on March 4, 2025, the Mother requested the December 6, 2024 Prior Written Notice, signed by the Mother on the same day be corrected to reflect that the document was emailed, not hand-delivered, and that the email delivery date of March 4, 2025 be updated. The District also stated that the Mother requested, that if the PWN is not correct, that the Mother's statement regarding the discrepancy be included in the record. The Special Education Director, sent an email acknowledging the Mother's correction request and explained that the Prior Written Notice was reviewed and electronically signed in person using

an electronic device on December 6, 2024 so would not change the delivery date to March 4, 2025. The Director of Special Education also stated that the Mother's request for correction and the district's response would be uploaded to the student's record, thereby documenting the concern and the clarification.

Analysis: Findings of Fact

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

Email and in person conversations following the December 6, 2024 SIT meeting through March 3, 2025 document that the Mother disputed the December 6, 2024 Prior Written Notice that stated that the Prior Written Notice was hand-delivered as she did not receive a paper or electronic copy until March 3, 2025.

On February 27, 2025 at 7:45 p.m. the Mother emailed the Director of Special Education, " formally requesting access to all of the records that [the Coop] has for the evaluation of [Student] at [School], including but not limited to Notice of Meetings and Prior Written Notices." Upon receiving the December 6, 2024 Prior Written Notice, the Mother emailed the Special Education Director, "I am writing in reference to the Prior Written Notice dated 12/6/24, which states that the document was "hand delivered" to me on that date. I would like to formally request that the record be amended to accurately reflect the circumstances and date under which I received this document."

On March 5, 2025 at 1:34 p.m. the Special Education Director replied in an email to the Mother, "We have included your correspondence regarding the Prior Written Notice dated December 6, 2024 in [Student's] special education records. The Prior Written Notice was reviewed with you December 6, 2024 and you signed the Prior Written Notice electronically at the SIT meeting. An electronic copy of the Prior Written Notice for consent to complete an initial gifted evaluation was provided to you via email Monday, March 3, 2025. The Prior Written Notice dated December 6, 2024 will not be amended."

On March 5, 2025 at 2:00 p.m. the Mother replied, "I would like to clarify. Will the delivery statement on the Prior Written Notice that reads "I, [School Psychologist], hand delivered...on December 6th" be removed from the previous copy of the Prior Written Notice? If so, will it be replaced with a corrected statement about how it was emailed and the date? If not, can you please explain why? Lastly, I would like an updated copy of the fixed Prior Written Notice as well as the attachments for my records." To this request, the Special Education Director replied, "We have included your correspondence regarding the Prior Written Notice dated December 6, 2024 in [student's] special education records. The Prior Written Notice was reviewed with you December 6, 2024 and you signed the Prior Written Notice electronically at the SIT meeting. An electronic copy of the Prior Written Notice for consent to complete an initial gifted evaluation was provided to you via email Monday, March 3, 2025. The Prior Written Notice dated December 6, 2024 will not be amended."

The District stated during their June 12, 2025 interview that their general practice is to provide the Prior Written Notice at the meeting after the report is finalized, in this case it was planned at February 26, 2025. They further stated that since this eligibility meeting did not result in a finalized report the Prior Written Notice was not provided.

Conclusion

It is found that the Mother requested that the December 6, 2024 Prior Written Notice be revised on March 4, 2025.The Prior Written Notice is an educational document and as such when the District refused the Mother's request, which is their prerogative, the district should have advised the Mother of her right to a hearing under Sec. 300.619.

Therefore, *it is found that the District committed a procedural error. A substantive error is not found*.

Issues Four and Nine

Did the student's gifted evaluation report include all of the evaluation collected as part of the comprehensive evaluation according to IDEA (Kansas) regulations? (Issue 4)

Did the second draft of the Student's evaluation report (sent and dated March 24, 2025) contain agreed-upon additional information discussed during the February 26, 2025 team meeting according to the IDEA (Kansas) regulations? (Issue 9)

Applicable Law

Kansas state statute at K.S.A. 72-3428(a) states that as part of an initial evaluation, the IEP team and other qualified professionals, as appropriate, shall: (1) Review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers' observations; and (2) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

Kansas State Statute at 72-3428(e)(2) requires the evaluation/eligibility team provide the parents with the Evaluation/Eligibility Report within a reasonable period of time.

Parent Position

The Mother alleged that observation data was not included in the February 26, 2025 draft of the gifted evaluation report undermining the integrity of the evaluation process and further, that the March 26, 2025 draft of the evaluation report omitted information that was explicitly discussed and agreed upon during the February 26, 2025 evaluation meeting. The information that was omitted included interviews with and observations from the general education teachers, as well as the PE and music teachers and parental input.

District Position

The district responded that the February 26, 2025 Evaluation Report addressed the data collected for the student's cognitive abilities (Wechsler Intelligence Scale for Children: 5th Edition), academic achievement (Woodcock-Johnson Tests of Achievement: 4th Edition and FastBridge District assessment scores). Further, the report included the status of relevant areas (including health, vision, hearing, social and emotional status, communicative status, and motor abilities) and General Education Intervention (GEI) Documentation Dated 12/6/2025 which provided data on the student's response to interventions, which is essential for determining the need for gifted services.

The district further responded that during the February 26, 2025 initial evaluation meeting, the Mother requested the evaluation report be revised to include the historical FastBridge assessment data, additional interviews with parents and teachers and for the evaluation finding account for how the student's anxiety and ADHD may have impacted test performance. The school team stated they updated the evaluation report to include those areas, but the Mother's concern is that the report is not updated to include the additional evaluation which they state were not conducted because the Mother did not consent to it being conducted..

Analysis: Findings of Fact

The findings of Issues One through Three are incorporated herein by reference.

The SIT Team Request dated November 14, 2024 and minutes collected during the December 6, 2024 meeting document that the team considered FastBridge Scores, Happy Numbers, input from teachers, mother, medical information describe by the mother, behavioral information described by teachers. It is noted that an observation by a gifted facilitator was completed later the same day and discussed during the February 26, 2025 eligibility meeting.

The Prior Written Notice dated December 6, 2024, with signed consent by the Mother on December 6, 2024 shows new evaluation data will be collected in the areas of intelligence and academics. Existing data will be used to examine the student's health and motor ability, vision, hearing, social/emotional and behavioral status, intelligence, academic, communicative and transition skills.

The February 26, 2025 Draft Evaluation report documented that all areas identified in the December 6, 2024 evaluation plan were completed. The draft evaluation report did not include observation data, nor input from the parent or general education teachers although the Prior Written Notice dated February 26, 2025 documents that the evaluation data from the evaluation plan were reviewed along with observation and general education intervention data.

The district stated during the June 12, 2025 interview that the February 26, 2025 evaluation report was a draft and not considered a final document, as demonstrated by writing in the Prior Written Notice changes the Mother requested and the revisions made to the March 26,

2025 version. They stated that while the observation and general education information was not in the report it was discussed and used in the eligibility decision.

The February 26, 2025 meeting notes and Prior Written Notice document the following changes be made to the existing draft evaluation report: 1) add general education information (GEI), 2) FastBridge history, 3) classroom observation occurring on December 6, 2024, and 4) input from the Mother dated December 6, 2024.

The March 26, 2026 draft of the Evaluation Report shows that the 1) GEI information was added on page 5; 2) the FastBridge history was added on pages 8-9, 3) the December 6, 2024 observation was added on page 5, and 4) input from Mother from December 6, 2024 was added on page 1.

Conclusion

Kansas State Statutes do not provide guidance as to what a report must contain, only that the report must be provided within a reasonable timeframe. A review of the December 6, 2024 Prior Written Notice and the February 26, 2025 Evaluation Report show that the plan was followed, and all of the areas outlined in the Kansas Statutes were followed. Although the report was not finalized it was provided to the parent in a reasonable timeframe. As a result, it is found that *the District is in Compliance*.

Issue Five

Did the district follow IDEA (Kansas) regulations when providing notice for the February 26, 2025 meeting on February 23, 2025 and for the March 26, 2025 meeting sent on February 26, 2025?

Applicable Law

Kansas regulations at K.A.R. 91-40-17(a)(2) state that schools must take steps to ensure that one or both parents are present at each IEP meeting or otherwise afforded the opportunity to participate in the IEP meeting. The school must provide notice of an IEP meeting to the parents for the initial IEP meeting and any subsequent IEP meetings. The notice must be provided in writing at least 10 days prior to the meeting (and inform the parents that their child is invited to attend the meeting.

Parent Position

The Mother alleged that the NOM dated February 23, 2025 proposed a meeting to take place on February 26, 2025 and the Mother did not waive their right to the 10-day notification. Additionally, 10-days were not provided in regard to who would attend the March 26, 2025 meeting when a revised Prior Written Notice was issued on March 11, 2025.

District Position

The district responded that proper notice was provided for both meetings. In regard to the February 26, 2025 Meeting, they state that on February 3, 2025 at 8:03 a.m., the school psychologist proposed the meeting date and time to the mother via email who responded on the same day at 8:14 a.m., stating, "Yes, I am currently available at that day and time." Subsequently, the formal Notice of Meeting was sent via SpedTrack on February 23, 2025 at 8:28 p.m.

In regard to the March 26, 2025 Meeting, a Notice of Meeting was emailed and mailed to the mother on February 26, 2025. On March 11, 2025, a corrected NOM was issued to include the Special Education Director, as an invited participant. This corrected NOM was also emailed and mailed to the student's mother.

Analysis: Findings of Fact

The findings of Issues One through Four are incorporated herein by reference.

February 26, 2025 Proposed Meeting

An email from the school psychologist to the Mother on February 3, 2025 at 8:03 a.m. documents that February 26, 2025 was proposed as a time and the Mother responded with availability on that day and time. Documentation shows that the Notice of Meeting was sent via SpedTrack on February 23, 2025 at 8:28 p.m.

The meeting notes show that the Mother attended and participated in the February 26, 2025 meeting.

March 26, 2025 Proposed Meeting

The Notice of Meeting dated February 26, 2025 proposed a meeting for March 26, 2025 at 3:30 p.m. and the names and roles of participants from the district were listed. The list did not include the Director of Special Education. The revised NOM dated March 24, 2025 included the Director of Special Education and was distributed to the Mother on March 11, 2025 (according to the District Response dated May 28, 2025.

Interview with the District staff on June 12, 2025 with the Investigator describe that the Special Education Director was inadvertently left off the February 25, 2025 and. concerns that the father's contact information may not have been current. As a result, a new Notice of Meeting was distributed on March 11, 2025 with current father contact and inclusion of the Special Education Director as an attendee.

The District and Mother agree that the Mother did not attend the March 26, 2025 meeting.

Conclusion

In regard to the February 26, 2025 meeting the email shows that the Mother was notified and attended the meeting, but the notice was not provided with a 10 day notice and the Mother

did not waive consent during the meeting. In regard to the March 26, 2025 meeting, The Kansas State Department of Education Kansas Special Education Process Handbook (page14) directs that the Notice of Meeting must include the titles or positions of the persons who will attend on behalf of the schools but does not have to identify the participants by name. In this case the District realized it had neglected to include the Director of Special Education who is routinely included on the Notice of Meeting and the NOM was updated on March 24, 2025.

It is found that *the District committed a procedural error* by not providing the two NOMs following the regulations with 10-day notice or securing a waiver of the 10-day requirement from the parent. The 10-day notice requirement starts over when adding or removing an invited meeting participant. *There is no substantive error in either case* as the Mother was aware of the meeting and attended and in the case of the second meeting know that an additional member was invited and did not attend.

Issue Six

Did the district follow IDEA (Kansas) regulations to conduct a comprehensive gifted evaluation for the student?

Applicable Law

State Statute at K.S.A. 72-3428(b)(1-3) require that when conducting the evaluation, the agency shall: (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining whether the child is an exceptional child and the content of the child's individualized education program, including information related to enabling the child to be involved, and progress, in the general education curriculum or, for preschool children, to participate in appropriate activities; (2) not use any single measure or assessment as the sole criterion for determining whether a child is an exceptional child or determining an appropriate educational program for the child; (3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

Parent Position

The Mother alleged that the evaluation was not comprehensive because the report did not include "substantive general education teacher information" only reported the student is "kind-hearted and helps those that need it. "

District Position

The district responded that on February 26, 2025, an initial evaluation meeting was held to review the draft evaluation report. During the meeting, the student's mother expressed concerns that the evaluation was not comprehensive, citing factors such as: 1) addressing the

impact of the student's anxiety and ADHD diagnoses on performance; 2) a desire to include historical FastBridge assessment data in the report; 3) requests for additional parent and teacher interviews; and 4) a need for further assessment to fully understand the student's abilities. During this meeting, a follow-up meeting was scheduled for March 26, 2025, to collect additional parent-requested data and revisit the evaluation.

Analysis: Findings of Fact

The findings of Issues One through Five are incorporated herein by reference.

As previously investigated it is found that the evaluation plan was developed and consented to by Mother on December 6, 2024. The plan includes multiple measures and ways to collect the information.

The February 26, 2025 and March 26, 2025 evaluation reports draft reports show that the planned evaluation from December 6, 2024 were completed and reported.

The Prior Written Notices dated February 26, 2025 and March 6, 2025 document that the District agreed to conducting the evaluation that the Mother requested, but did not sign consent for the District to conduct.

Conclusion

The agreed upon evaluation plan from December 6, 2024 was the last plan agreed and consented to and was completed in the February 26, 2025 evaluation report.

In this case, the Mother's complaint is that not including data and a summary of such data in the report constitutes not conducting a comprehensive evaluation. The Prior Written Notice from the February 26, 2025 meeting demonstrates that the data were collected and considered when discussing the evaluation findings. Further, the District agreed to update the report to summarize the information. As such it is found that *the District is in Compliance* with conducting a comprehensive gifted evaluation.

Issue Seven

Did the district conduct the comprehensive gifted evaluation for the student within timeline?

Applicable Law

Kansas regulations at 91-40-8(f) state that the 60-school-day timeline begins when the agency receives written parent consent to conduct the initial evaluation.

Parent Position

The Mother alleged that due to the mishandling of the evaluation process the Mother did not understand that additional consent was necessary to conduct the additional evaluation discussed at the February 26, 2025 meeting. Had the coop not failed to conduct a complete

initial evaluation and attempted to predetermine the outcome the additional evaluation would not be needed.

District Position

The District responded that the Mother's signed consent for initial evaluation was received on December 6, 2024 with an initial evaluation meeting occurring on February 26, 2024 (38 school days). At the February 26, 2025 meeting the district presented a draft evaluation report prepared by the School Psychologist and a determination was made that the student did not meet eligibility criteria for gifted services, based on Kansas Gifted Eligibility Indicators and the coop guidelines (Policies Handbook, pp. 26–28). During the meeting, the Mother raised concerns regarding the comprehensiveness of the evaluation and requested additional testing and inclusion of data not previously reviewed, such as: Historical FastBridge data, additional teacher/parent input and consideration of anxiety and ADHD diagnose. Subsequently, a follow-up meeting was scheduled for March 26, 2025 to address those concerns, however the student's mother canceled the meeting. A third meeting was scheduled for April 22, 2025; however, the parents filed a formal complaint and mediation request, postponing this meeting.

Analysis: Findings of Fact

The findings of Issues One through Seven are incorporated herein by reference.

The December 6, 2024 Prior Written Notice agreeing to conduct an initial gifted evaluation for the student was signed by the Mother on December 6, 2024.

The Kansas State Department of Education Kansas Special Education Process Handbook pages 41 and 42 proposes the following guidelines for timelines:

1. The 60-school-day timeline begins when the agency receives written parent consent to conduct the initial evaluation (K.A.R. 91-40-8(f)).
2. The initial evaluation is started within a reasonable time.
3. The initial evaluation is completed, and, on the basis of the evaluation data, the team determines eligibility for special education and related services.
4. The evaluation/eligibility team provides the parents with the Evaluation/Eligibility Report within a reasonable period of time (K.S.A. 72-3428(e)(2); 34 C.F.R. 300.306(a)(2); 34 C.F.R. 99.10(b)).
5. The school provides the parents with Prior Written Notice for proposed identification (can be combined with notice for initial services).
6. The school provides the parents with the Notice of the IEP meeting at least 10 calendar days before the meeting (K.A.R. 91-40-17(a)(2)). (NOTE: If the team believes that eligibility and IEP development may be discussed at the same meeting, the IEP Meeting Notice must describe all proposed special education decisions to be addressed at the meeting.)

7. The IEP Team meets and develops an IEP within 30 calendar days of determination of eligibility but not later than 60 school days from the receipt of written parent consent to conduct the initial evaluation (K.A.R. 91-40-8(h) and 34 C.F.R. 300.323(c)(1)).
8. The school provides the parents with Prior Written Notice and request for consent for the initial provision of special education and related services to the child.
9. Services on the IEP are implemented not later than 10 school days after written parent consent for provision of special education services is granted unless reasonable justification for a delay can be shown (K.A.R. 91-40-16(b)(2)).
10. The 60-school-day timeline ends when the IEP is implemented.

The Draft Evaluation Report dated February 26, 2025 provided the following summary and conclusions: The student has high average cognitive abilities and academic skills are similar to cognitive abilities. Further, the student has very good mathematics problem solving skills and reading and writing skills are in the average range. The Prior Written Notice dated February 26, 2025 documented that the eligibility meeting needed to be adjourned and continued on March 26, 2025.

The District reported during their June 12, 2025 interview that the evaluation data did not support finding the student eligible for gifted services. They further stated that they did not observe any concerns with the student's ADHD or anxiety impacting the evaluation results.

The February 26, 2025 and March 6, 2026 Prior Written Notices show that the Parent did not provide consent to complete the additional evaluation for the March 26, 2025 Eligibility meeting.

An email was sent from the Director of Special Education to the Mother on March 27, 2025 at 12:56 p.m. updating the Mother on the status and next steps for completing the initial evaluation, "*The initial gifted evaluation was completed and feedback provided February 26th which meets procedural guidelines. The additional assessments discussed February 26th are above and beyond what was originally planned with the consent Prior Written Notice was signed December 6th which is the reason for requesting a new consent Prior Written Notice …The initial gifted evaluation can be updated with existing information. The intent of the meeting that was scheduled yesterday [March 26, 2025] was for the team to continue discussion from February 26th which includes reviewing and updating the evaluation report if needed.*"

The Notice of Meeting dated March 26, 2025 proposed a meeting on April 22, 2025 was to review the evaluation and determine eligibility.

The Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated May 14, 2025 proposed a new evaluation plan and was signed by the Parent on May 15, 2025. The explanation was that an initial evaluation is warranted to determine the student's current educational needs due to general education information to reflect current academic strengths.

Conclusion

A final decision on the student's eligibility was not made within the 60 day timeframe, in spite of the District stating that they determined the student did not meet eligibility criteria at the February 26, 2025 eligibility meeting. Instead, they agreed to pause the decision meeting and conduct additional evaluation requested by the Mother. However, the parent never signed consent for the district to complete the evaluation on February 26, 2026 nor March 6, 2025. At that point, the District did not have consent to complete any of the additional evaluation requested by the Mother and should have documented the eligibility decision based on the data that had been collected. It is noted that the District attempted to collect the parent-requested evaluation, but the Parent did not consent for it to be collected. Therefore, the district is found out of compliance for a committing a procedural error by not providing a final Prior Written Notice documenting the eligibility decision with the data that was collected with consent. *The district did not commit a substantive error* affecting the child since the evaluation requested to further evaluate the student was not consented to by the Mother.

Issue Eight

Did the March 3, 2025 (corrected to March 6, 2025) Prior Written Notice follow IDEA (Kansas) regulations?

Applicable Law

Kansas State Statute at 72-3432(A) and 72-3432(B) require written notice must be given to the parent of a child with a disability whenever an agency: (A) Proposes to initiate or change; or (B) refuses to initiate or change evaluation, of the child.

Parent Position

The Mother alleged that the District failed to provide a clear and adequate explanation for issuing a new Prior Written Notice dated March 6, 2025 and attempting to impose a new 60-day evaluation timeline. At the February 26, 2025 meeting no district staff indicated that a new Prior Written Notice would be required to finalize the report. The conversation centered on improving the draft to ensure sufficient information for an eligibility decision. The Mother alleged that the Director disclosed that the March 6, 2025 Prior Written Notice would initiate a new 60 day evaluation timeline.

District Position

The district responded that on February 26, 2025, the district held an initial evaluation meeting during which the School Psychologist, verbally shared that the student did not meet the eligibility criteria for gifted exceptionality. At that same meeting, the team agreed to pursue additional evaluation, as requested by the Mother and a Consent for Additional Evaluation was prepared. Additionally, a Prior Written Notice was generated and dated March 6, 2025. (Please

note March 6th is the date of the Prior Written Notice not March 3rd.) The Prior Written Notice was created to document the district's proposal to conduct additional evaluation based on new areas of concern, in accordance with IDEA procedural requirements. A copy of the Prior Written Notice was provided to the Mother, and the content included a description of the proposed action (further evaluation), the rationale for doing so, and the parent's procedural safeguards.

Analysis: Findings of Fact

The findings of Issues One through Seven are incorporated herein by reference.

The February 26, 2025 Prior Written Notice recorded that, "The eligibility team determined after discussion that the eligibility meeting needed to be adjourned and continued on March 26, 2025 at 3:30 pm...[Mother] requested additional testing be completed. The multidisciplinary team determined that another achievement test and cognitive test would be completed due to [student] now having an understanding of who the evaluators are and what is expected." The Mother did not sign consent with this Prior Written Notice.

The Director of Special Education sent an email to the Mother on March 6, 2025 at 5:40 p.m. stating, "The eligibility team considered your input regarding what you consider an incomplete initial evaluation and agreed to obtain additional information and meet again on March 25th at 3:30 pm. A Prior Written Notice for consent to complete the additional assessments, observations, and interviews that you requested was emailed to you today, mailed, and is attached to this email for your review."

The March 6, 2025 Prior Written Notice for Evaluation or Reevaluation and Request for Consent proposed to conduct new evaluation in the areas of social/emotional status, general intelligence, academic performance, and observations completed by gifted facilitator, teacher and parent interviews completed by gifted facilitator with the explanation of "the Mother requested that additional data be collected to determine gifted eligibility. The team agreed to complete additional interviews, observations, and testing to include cognitive and achievement. Given mom's concerns of anxiety and ADHD potentially impacting [student's] performance on assessments and within the classroom more data is needed in the area of social emotional." The parent did not sign consent in response to this Prior Written Notice. Interview with the Parent on June 15, 2025 the Parent stated she received the request, but did not sign it as her understanding of this Prior Written Notice was to extend the 60 day evaluation window.

Conclusion

At the February 26, 2025 Evaluation meeting the evaluation team determined to pause the evaluation meeting until March 26, 2025 and conduct additional academic and cognitive testing along with Mother requested evaluation, however the Mother did not sign this Prior Written Notice, and the additional evaluation could not be conducted. The March 6, 2025 email and attached Prior Written Notice indicated that the Mother needed to sign consent for the

additional evaluation, but the Mother did not sign the consent to conduct the additional testing. It is noted that the March 6, 2025 Prior Written Notice included the Mother-requested evaluation which would necessitate a new Prior Written Notice to obtain consent. It is found previously in the investigation that the Mother had received procedural safeguards/rights prior to this date. Therefore, It is found that the district is in compliance with following IDEA/Kansas guidelines by issuing the March 6, 2026 Prior Written Notice.

Issue Nine (Reported with Issue Four)

Issue Ten

Did the district follow IDEA (Kansas) regulations in maintaining and providing adequate meeting records?

Applicable Law

Federal regulations at 72-3429 requires that parents and the school receive a copy of the student's IEP at no cost.

Parent Position

The Mother alleged that the District failed to maintain complete and accurate meeting notes from the March 26, 2025 meeting. For example, the Mother alleged that the Director of Special education was not initially included as a participant in the March 26, 2025 meeting but later was included. Further, the meeting's purpose was described on the document as to review evaluation and determine eligibility" while neglecting to mention that a discussion of the parental concerns would also be included.

District Position

The district responded that the coop uses the Prior Written Notice as the official record of meeting proceedings and team decisions. A Prior Written Notice dated February 28, 2025 documented the outcomes of the February 26, 2025 evaluation meeting. The February 28, 2025 Prior Written Notice included the proposal to conduct further evaluation; a description of the reasons for additional assessment; consideration of parent concerns regarding the student's performance and diagnoses; a summary of the data discussed, and decisions made during the meeting; and a record of the planned follow-up actions and the requirement for parental consent for further testing. This documentation was shared with the Mother, fulfilling the requirement that parents be informed of proposed actions and their procedural safeguards.

Analysis: Findings of Fact

The findings of Issues One through Nine are incorporated herein by reference.

The district provided Prior Written Notices following meetings occurring during the 2024-2025 school year describing the meeting and decisions.

The District described during the June 12, 2025 interview that they use the Prior Written Notice to summarize each meeting and record the decisions.

The District Policy Manual does not mention the use of meeting minutes during an IEP meeting.

Conclusion

Kansas regulations do not require school districts to collect and maintain meeting notes. As there is no state obligation to maintain meeting notes from an IEP or team meeting the Investigator interviewed the district to determine their district practices. The district reported it is their practice to memorialize the meeting decisions on the Prior Written Notice and the District manual does not mention that IEP meeting minutes should be recorded. The Investigator reviewed the Prior Written Notice s and found that the district followed its practice. Therefore, it is found that *the District is in compliance* in maintaining and providing adequate meeting records

Summary of Conclusions/Corrective Action

ISSUES ONE and TWO: A procedural violation K.S.A 12-3428(a)(2) and 72-3430(e) was not found, based on the facts above. Corrective action is not required.

ISSUE THREE: A procedural and substantive violation of 34 C.F.R. §300.618 was found, based on the facts above. Corrective action is required.

1. Within 15 calendar days of the date of this report, USD # 287 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. §300.618; 34 C.F.R. §300.619; and Kansas Regulations at K.A.R. 91-40-50(b).
2. The District shall notify the Mother within two weeks of closure of this investigation the procedures for requesting an appeal to correct a student record.
3. The District and Coop staff that are responsible for responding to parent requests for corrections to special education records or anyone responding to parent requests will receive training on the steps for responding to parent requests for correcting educational records. This training should be completed prior to the start of the 2025-2026 school year. The training materials and attendance sheet should be provided to SETS within one week of completing the training.

ISSUE FOUR and NINE: A violation of 72-3428(a) and 72-3428(e)(2) was not found, based on the facts above. Corrective action is not required.

ISSUE FIVE: A procedural violation of K.A.R. 91-40-17(a)(2) was found, based on the facts above. Corrective action is required.

4. All District and Coop staff responsible for writing Notices of Meetings will receive training on the timelines, waiving 10-day notification, and information contained on the Notice of Meeting. This training should be completed prior to the start of the 2025-2026 school year. The training materials and attendance sheet should be provided to SETS within one week of completing the training.

ISSUE SIX: A violation of K.S.A. 72-3428(b)(1-3) was not found, based on the facts above. Corrective action is not required.

ISSUE SEVEN: A procedural violation of 91-40-8(f) was found, based on the facts above. Corrective action is required.

5. All District and Coop staff responsible for conducting initial evaluations shall receive training on the timeline and components of conducting an initial evaluation. This training should be completed prior to the start of the 2025-2026 school year. The training materials and attendance sheet should be provided to SETS within one week of completing the training.

ISSUE EIGHT: A violation of 72-3432(A) and 72-3432(B) was not found, based on the facts above. Corrective action is not required.

ISSUE TEN: A violation of 72-3429 was not found, based on the 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.gov 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 #489
ON MAY 21, 2025

DATE OF REPORT: JUNE 20, 2025

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 #489, Hays Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #489.

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 May 21, 2025, and the 30-day timeline ended on June 20, 2025.

Allegations

The following issues will be investigated:

ISSUE ONE: Whether USD #489, in accordance with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), implemented special education and related services as described in the Student's IEP. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

ISSUE TWO: Whether USD #489, in accordance with state and federal regulations implementing the IDEA, offered an IEP that met the needs of the Student and considered Parent information, including from the Student's physician, when developing the Student's IEP. K.S.A. 72-3429; 34 C.F.R. § 300.320.

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video conference on June 6, 2025. The following District staff member was interviewed on June 9, 2025: the Director of Special Education.

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:

District Materials

1. Prior Written Notice (PWN), 10/25/24
2. Notice of Meeting, 02/21/25
3. Team Meeting Record, 02/07/25
4. Evaluation/Eligibility Team Report, 03/06/25
5. PWN, 02/21/25
6. Progress Report, 02/06/25
7. IEP, 03/05/25
8. Doctor's Note, 01/02/25
9. Notice of Meeting, Spanish 09/16/24
10. PWN, Spanish 09/30/24
11. Progress Report, Spanish 09/30/24
12. IEP Draft, Spanish 09/30/24
13. Letter to Parents, Spanish no date
14. Medicaid Information Release, Spanish no date
15. IEP Submission Checklist, 09/30/24 (duplicate)
16. Notice of Meeting, 09/16/24
17. Team Meeting Record, 09/30/24
18. PWN, 09/30/24
19. Progress Report, 09/30/24
20. IEP Draft, 09/30/24
21. Letter to Parents, no date
22. Checklist for Annual IEP Review, 10/03/23
23. IEP, 10/02/23
24. Medicaid Information Release, 10/03/23 (duplicate)
25. Therapy Data, 04/01/24-05/16/25
26. Report Card, 2024-2025
27. Email, re: counseling services summary report, 05/29/25
28. Email, re: formal complaint…, 05/29/25
29. Timeline of Communication, 04/26/24-05/07/25
30. Progress Report, 05/29/25

Parent Materials

1. Notes, no date
2. Doctor's Assessment Notes, 04/25/23
3. Doctor's Note, 01/31/23

Background Information

This investigation involved an eight-year-old student who attends second grade at an elementary 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. According to a letter from a Pediatric Clinic dated January 31, 2023, the Student was thoroughly evaluated at the University Medical Center Child Development Clinic. At that time, the Student's working diagnosis included Autism Spectrum Disorder, Level 2, and Chromosome 2q.13 Deletion Syndrome.
2. A Pediatric Specialist Report dated April 25, 2023, indicated the following assessments:
    a. Encounter for therapeutic drug level monitoring.
    b. Other long-term (current) drug therapy.
    c. Attention deficit hyperactivity disorder (ADHD), combined type.
    d. Chromosomal abnormality-Q99.9, 2q13 deletion.
    e. Mixed receptive-expressive language disorder.
    f. Behavior problems in childhood.
    g. Autism Spectrum Disorder requiring substantial support.
    h. Anxious mood.
3. According to a Checklist for an IEP Annual Review, with a meeting date of October 3, 2023, the "Documents given to [the] Parent [were] in Spanish."
4. Relevant items from the IEP dated October 3, 2023, indicated:
    a. The Parent and an Interpreter/Translator attended the meeting.
    b. The Student's motor goal was, "By the end of the IEP year, the Student will demonstrate the ability to print 4 self-generated sentences about a picture or drawing using [a] three-finger grip with 80% accuracy for sizing and letter placement within 1/8" of the bottom line on three lined paper in 7/9 tasks."
    c. Based on the most recent evaluations and ongoing data collection, the Student had needs in the area of reading that included the following:
        i. The Student's reading goal was, "By October 2023, given guided reading text to read at guided reading level G (or higher), the Student will use taught strategies to read with 75% comprehension and 94% accuracy or better. The Student will also use taught strategies to retell narrative stories independently, specifying 4/5 story details (characters, setting, problem, solution, theme).
    d. In the area of written language, based upon the most recent evaluations and ongoing data collection, the Student did not have a need in this area that requires special education or related services.
    e. In the area of communication, based upon the most recent evaluations and ongoing data collection, the Student did have needs that required special education or related services that include:

i. The Student's first goal in communication was, "In one instructional year, October 2024, [the Student] will respond to/answer who, what, when, where questions following a narrative story and/or picture description task with 80% accuracy, when provided with visuals as needed during structured speech/language therapy sessions as judged by the clinician."

ii. The Student's second goal in communication was, "In one instructional year, October 2024, the Student will follow a 1-2 step direction with embedded spatial/linguistic concepts independently scoring 80% accuracy during speech/language therapy sessions as judged by the clinician."

f. Special Education and Related Services starting October 3, 2023, and ending October 2, 2024, included:

i. Special education services in the general education/inclusion setting for ELA 50 (guided reading), reading 20, writing 20, morning packet). Math 20's all-inclusive time to facilitate on-task behavior and independence for 70 minutes, 5 days a week, every week.

ii. Special education services for pull-out instruction for 20 minutes for reading comprehension for 4 days a week, every week.

iii. Speech services for pull-out for speech-language therapy for 15 minutes, 3 days a week, every week.

iv. OT services for occupational therapy for 20 minutes, one day a week, every week.

v. The Student continues to require support in the general education classroom to support attention to task and independence.

vi. The Student continues to require specially designed instruction in the special education setting to improve reading comprehension skills.

g. The Least Restrictive Environment section indicated the Student continued to require specially designed instruction for reading comprehension in a resource setting due to deficits with the Student's oral expression and listening comprehension. The Student continued to qualify for pull-out services in Speech-Language and Occupational Therapy.

i. The potential harmful effects, which could potentially include social stigma and/or absence of the general education classroom activities during implementation of the proposed services, have been considered and outweighed by the benefits of the proposed actions.

h. Accommodations included:

i. Record 1: Access to visuals, when presented with a topic above the Student's listening comprehension instructional level across all settings, through completion of the assignment, with a start date of October 3, 2023, and an end date of October 2, 2024.

ii. The rationale included, "Due to [the Student's] deficits in receptive and expressive communication, the accommodation of visuals will assist in [the Student's] comprehension and understanding of the lecture."

iii. The Student does not need any modifications or any supplementary aids and services.

i. Supports for School Personnel included:

i. Record 1: The review of the current IEP will be conducted with all staff involved with the Student's education, at the beginning of each school year, after all IEP updates & amendments when staff begin working with the Student. It will occur across all settings through completion of the IEP review with a start date of October 3, 2023, and an end date of October 2, 2024.

ii. The rationale was "Due to the potential of amendments throughout [the Student's] IEP year, regular communication is necessary on those potential changes to ensure success of [the Student] through [their] IEP."

5. According to a Therapy Data Document with a date range of April 1, 2024, through May 16, 2025, using Speech to Text & Read and Write technology, the Student was able to score 80% accuracy or above during 15 therapy sessions out of 43 therapy sessions attended. The Student did not attend 22 sessions due to Student absences, Therapist absences, field trips, school closures, school parties, school assemblies, and assessment sessions. The Student's IEP goal for the therapy sessions were, "In one instructional year (February 2026), [the Student] will show increasing independence of vocabulary supports via assistive technology (e.g. Read & Write; Snap and Read) in the classroom setting requiring minimal supports (25% or less) as judged by speech/language pathologist. [min.25%, mod.50%, max. 75%]."
6. According to a Timeline of Communication regarding the Student with a date range of April 26, 2024, through May 27, 2025, there were 45 different communication contacts. Some contacts included:
    i. Six in-person contacts.
    ii. Four texts from the Special Education Teacher.
    iii. One IEP meeting.
    iv. Thirteen texts with the Translator.
    v. Six phone calls.
    vi. Six emails.
    vii. Three seesaw messages from the Classroom Teacher.
    viii. One letter delivered in person.
    ix. Two Staff and Student contacts.
7. Communication records in English and Spanish to the Parent from the Special Education Teacher with a date range of August 30, 2024, through February 11, 2025, indicated information regarding the Parent being informed about situations with the Student that took place at school, such as the Student not following directions in the cafeteria at lunch, which was caught on camera.
8. On September 16, 2024, the Parent was sent a Notice of Meeting for reevaluation in Spanish. The Notice of Meeting indicated the need to conduct an annual review of the Student's IEP.

9. A Progress Report dated September 30, 2024, was sent to the Parent in Spanish. The Progress Report indicated:
    i. The motor goal of "By the end of the IEP year, [the Student] will demonstrate the ability to print 4 self-generated sentences about a picture or drawing using 3 finger grip with 80% accuracy for sizing and letter placement within 1/8" of the bottom line on three-lined paper in 7/9 trials." Progress status indicated a score of 7, indicating moderate improvement.
    j. The communication goal was "In one instructional year, October 2024, [the Student] will respond to/answer who, what, when, and where questions following a narrative story and/or picture description task with 80% accuracy, on average, when provided with visuals as needed during structured speech/language therapy sessions as judged by the clinician." Progress status recorded a score of 5, indicating maintained performance.
    k. The communication goal of "In one instructional year, October 2024, [the Student] will follow a 1-2 step direction with embedded spatial/linguistic concepts independently, scoring 80% accuracy during speech/language therapy sessions as judged by the clinician." Progress status recorded a score of 5, indicating maintained performance.
    l. The reading goal was "By October 2023 [sic], given guided reading text to read at guided reading level G (or higher), [the Student] will use taught strategies to read with 75% comprehension and 94% or better. [The Student] will also use taught strategies to retell narrative stories independently, specifying 4/5 story details (characters, setting, problem solution, theme)." Progress status recorded a score of 5, indicating maintained performance.
10. According to a Team Meeting Record dated September 30, 2024, the purpose of the meeting was to conduct an annual IEP. The Parent noted that the Student's therapist recommended a break throughout the school day to help with focus. The Parent requested more support for the Student because the Parent was not seeing the Student progress. The Parent stated the Student doesn't show interest in things, and the Student shuts down when the Parent tries to help the Student with homework. The Parent requested push-in support during the school day to help with the Student's focus and attention.

    In the area of occupational therapy, the Student met their IEP goal. The Classroom Teacher shared that the Student's spelling was a strength. School staff indicated the Student was very distractible, even in a 1:1 setting. The Special Education Teacher shared that there was support referenced and proposed in the Student's IEP for check-ins to ensure the Student was remaining on task, 80 minutes in and 60 minutes out of class. The Special Education Teacher stated, "An increase push-in support would be to support the Student's focus and attention versus an academic skill deficit."
11. A draft IEP dated September 30, 2024, was given to the Parent in Spanish. Relevant items from the draft IEP indicated the following:
    a. The Parent and an Interpreter/Translator attended the meeting.

b. According to recent evaluations and ongoing data, the Student required special education services in the area of Motor Skills.
    i. The previous goal of "By the end of the IEP year, [the Student] will demonstrate the ability to print 4 self-generated sentences about a picture or drawing using 3 finger grip with 80% accuracy for sizing and letter placement within 1/8" of the bottom line on three lined paper in 7/9 trials." Goals 1.1, 1.2, and 1.3 were met. Goal 1.4 was partially met due to "distractibility and hyperfixation of topics."
c. According to recent evaluations and ongoing data, the Student required special education services in the area of Social Emotional Skills, which include:
    i. The Student did not have a social/emotional goal on their previous IEP. It was recommended that the Student continue to receive individualized instruction in the special education classroom for reading and attention to tasks.
d. According to recent evaluations and ongoing data, the Student required special education services in the area of Reading.
    i. The Student continued to require specially designed instruction in a resource setting due "to deficits with [their] oral expression and listening comprehension, which are impacting [the Student's] ability to comprehend information [they are] reading. A lack of vocabulary knowledge also affects [their] ability to understand and draw meaning from words."
    ii. The Student was able to meet the goal in reading fluency, but the Student was not able to meet the goal of reading comprehension.
    iii. The Student's goal in reading was, "By the end of the IEP year, when given a FastBridge CompEfficiency Screener, [the Student] will be able to score a 70 in the overall comprehension efficiency."
e. According to recent evaluations and ongoing data, the Student had needs that required special education in the area of written language that include:
    i. The Student did not previously have written language as a service on their IEP. The Student was showing a need for written language services, and a written language goal was written.
    ii. The written language goal was, "By the end of the IEP year, when given a four-minute writing CBM (Curriculum Based Measure), in which [the Student] will have one minute to think and three minutes to write, [the Student] will increase [their] total words written to 16."
f. According to recent evaluations and ongoing data, the Student had needs that required special education services in the area of communication that include:
    i. Needs and Parent concerns indicated that for the Student to become an independent learner, it was proposed that the Student learn to use assistive technology in the form of Read & Write, along with Snap & Read apps. These apps helped the Student to determine unfamiliar word meanings, read text out loud, research assignments, translate English into other languages, and proofread written work.
    ii. The goal for communication was, "In one instructional year (October 2025), [the Student] will show increasing independence of vocabulary supports via assistive

technology (i.e. Read & Write; Snap and Read) in the classroom setting requiring minimal supports (25% or less) as judged by speech/language pathologist, (min. 25%, mod. 50%, max 75%)."

g. Special Education and Related Services included:
    i. Occupational therapy indirect services, 10 minutes, one day every 9th week starting September 30, 2024, and ending on September 29, 2025.
    ii. Speech therapy pull-out services, assistive technology for 15 minutes, 2 days a week, starting September 30, 2024, and ending May 23, 2024.
    iii. Special education pull-out services for written language, 30 minutes, 5 days a week, starting September 29, 2024, and ending on September 28, 2025.
    iv. Special education pull-out services for supplemental reading (comprehension/vocabulary), 30 minutes, 5 days a week, every week, starting September 29, 2024, and ending September 28, 2025.
    v. Special education in the general education setting/inclusion, for attention to task/following directions, (Reading/Mathematics) for 80 minutes, five days a week, starting September 29, 2024, and ending September 28, 2025.
    vi. Speech services for speech/language therapy, 15 minutes, one day a week, starting August 20, 2025, through September 29, 2025.
    vii. Speech services for general education/inclusion for speech/language therapy (assistive technology), 15 minutes 1 day a week, starting August 20, 2024, and ending September 29, 2025.
h. The IEP team reviewed the educational placement and services and considered it reasonably designed to deliver FAPE in the Student's least restrictive environment.
i. The Least Restrictive Environment section included the Student would:
    i. Continue to receive individualized instruction in the resource room for reading and written language for 60 minutes a day, five days a week.
    ii. Continue to receive supplemental, inclusive instruction to increase their awareness of the activity at hand for support as needed, for 80 minutes a day, 5 days a week.
    iii. Continue to receive speech/language therapy in the form of technology for 15 minutes, 2 days each week, pulled out of the general education setting.
    iv. Participate in extracurricular activities. The Student would be out of the classroom and away from their general education peers while receiving specially designed instruction in reading and written language, along with communication skills. The IEP team determined the Student needed specially designed instruction.
j. Accommodations with a start date of September 30, 2024, and an end date of September 29, 2025, included:
    i. Record 1: Access visuals, given when the Student was redirected or given a direction to ensure comprehension, in all core classes, lasting through the completion of the task. The rationale was that the Student had deficits in receptive and expressive communication, and the accommodation of visuals would assist the Student's comprehension and understanding of the lesson.

ii. Record 2: Close monitoring for directions, frequent prompts, frequent reminders of tasks to clarify tasks to complete, and directions may be repeated or paraphrased. Accommodations, as well as monitoring by classroom teachers, should take place whenever classroom assessments and assignments are given in all core classrooms. Clarifications of accommodations, as well as monitoring by the classroom teacher, should continue throughout the length of classroom assessments and assignments. The rationale was due to the Student's distractibility, and the Student missing instructions and directions that are given. The Student needed clarification on accommodations to continue with their tasks and follow through with what was being asked of them.

iii. Record 3: Provided with several illustrations/prompts during instruction, and teacher modeling for new tasks, by prompts and teacher modeling should take place during all new classroom instruction in all core classes. Prompts and teacher modeling should last the entire length of the new instruction. The rationale for the accommodation for illustrations, prompts, and modeling was due to the Student's deficits in receptive language, and would assist in the Student's comprehension and understanding of the lesson.

k. Supplementary Aids and Services included:

i. Record 1: Para support in the general education classroom for Tasks at Hands activities. The Para would be available 80 minutes a day, 5 days a week, during mathematics and reading instruction in the general education classroom. The rationale was that the Student needs support from a Para to ensure the Student was actively listening to instruction because of the Student's current ability to attend to task.

l. Supports for School Personnel included:

i. Record 1: The review of the current IEP would be conducted with all staff involved with the Student's education. A review of the Student's IEP would happen at the beginning of each school year, after all IEP updates and amendments, and when new staff begin working with the Student. The rationale for the support was due to the potential of amendments throughout the Student's IEP year. Regular communication was necessary on those potential changes to ensure success for the Student through their IEP.

m. Assistive Technology included:

i. Record 1: Read & Write and Snap & Read as needed for vocabulary meaning throughout the day in the classroom and speech and language therapy sessions. The rationale was due to the Student's great need for support regarding [their] language comprehension. The use of assistive technology was proposed to allow the Student to become more independent in determining word meanings throughout the Student's academic day.

12. On September 30, 2024, the Parent was sent a Prior Written Notice (PWN) in Spanish. The PWN indicated the meeting to review special education and related services, the appropriate education placement identified in the IEP, and any additional changes or modifications needed. A Material Change in Services indicated a proposed change in

placement that resulted in the movement of more than 25% of the Student's school day. A Description of the Action Proposed or Refused indicated:

a. The Student was continuing to demonstrate a need for specifically designed instruction in the areas of reading, written language, and attention to tasks.
b. The Student will receive direct, pull-out reading and written language instruction for 60 minutes a day, 5 days a week in the special education classroom.
c. The Student will receive inclusive services in the general education classroom for 80 minutes a day, 5 days a week, to assist the Student with attention to task.
d. OT services were recommended to receive 10 minutes of consult/indirect occupational services once every nine weeks. The Student currently receives direct OT services for 20 minutes once a week.
e. Speech/Language services proposed to have the Student pulled out of their classroom for 15 minutes, two days each week, in a small group or individualized setting from the beginning of their IEP until May 23, 2025. Beginning in the fall of 2025, the Student would receive pull-out for one day for 15 minutes, instruction and inclusion for one day for 15 minutes a week.
f. The actions were proposed due to:
    i. The Student demonstrated increased fine and visual motor skills and no longer required direct instruction.
    ii. The Student had low language comprehension. The use of assistive technology would allow the Student to become more independent.
    iii. In order to meet the Student's needs more effectively and as quickly as possible, the above proposed services are highly recommended. The benefits of this plan should outweigh any potential harmful effects."

13. On October 21, 2024, a PWN For Evaluation or Reevaluation and Request For Consent indicated the LEA proposed to conduct a reevaluation. The IEP team considered the following relevant information to assist the Team in determining:
    a. "Whether your child continues to be a child with an exceptionality and the educational needs of your child."
    b. "The present levels of academic achievement and related developmental needs of your child."
    c. "Whether your child continues to need special education and related services."
    d. "Whether any additions or modifications to the special education and related services are needed to enable your child to meet measurable annual goals set out in the IEP of your child and to participate as appropriate, in the general education curriculum."
    e. The team considered maintaining the current level of support without conducting a reevaluation, but the option was rejected due to the Parent concerns regarding the Student's overall performance.
    f. The data used for the proposed action included:
        i. Existing data.
        ii. Classroom observations.

iii. Assessments, records, and reports.

g. The Parent signed consent for the reevaluation. Documents presented were in both English and Spanish.

14. According to a Physician Letter dated January 2, 2025, a history of Autism Spectrum Disorder, hyperactivity disorder, mixed receptive-expressive language disorder, Chromosome 2 q13 deletion with developmental delays was noted. The following actions were recommended:
    a. The Student needs accommodations to help with developmental delays.
    b. The Student's IQ should be assessed.
    c. A Functional Behavioral Analysis through school counseling to make sure the Student's needs were being met emotionally, physically, and academically.
    d. Because the Parent speaks only Spanish, there is a need for an advocate to help with communication.
    e. Recommended further an IEP or 504 plan to make sure the Student's needs were being met.
15. On January 24, 2025, the Parent was interviewed as part of the Functional Behavioral Assessment (FBA) process, which included the following areas of the Student's behaviors that the Parent explained:
    a. The Student had been diagnosed with Autism, hyperactivity, and a chromosome defect. The Parent noticed the Student's behaviors were more pronounced when the Student became overwhelmed by busy environments.
    b. Mornings for the Student were particularly difficult. The Student struggled with routine changes. The Parent ate lunch with the Student at school to encourage the Student to eat. The Student felt too embarrassed to use headphones in the lunchroom.
    c. To help the Student regulate their emotions, the Parent typically spoke to the Student and calmed them by rubbing their back. Fatigue and hunger could trigger the Student.
    d. The Parent was seeking assistance with creating a structured routine for mornings at home and at school to help the Student with transitions. The Parent would like someone to monitor the Student's eating at lunch so they do not need go to school to eat with the Student.
16. A Team Meeting Record dated February 7, 2025, indicated the Parent felt that the Student didn't have the correct structure or support to help them be successful at school. The Parent reported that the Student didn't feel safe at school, and every day, the Parent had to fight with the Student to go to school. The team considered anxiety to be the driving force of the Student's inattention. The therapist suggested the same. Because of this, the team suggested changing the exceptionality from developmental delay, and "proceed with the exceptionality of autism for the current IEP."

    The Parent wanted to take home the Evaluation and Eligibility Report to add parental concerns and then would sign at a later date. The Parent was given the opportunity to choose between a progress report or spend more time on the proposed plan. The

Parent chose to move towards the proposed plan. The team offered an opportunity to meet the next week after the Parent had a chance to review the documents. The Parent preferred to read through the amended documents and schedule a meeting for the following week.

17. According to Team Meeting Notes, the Parent provided the team with a letter listing their disagreements on February 13, 2025. "The School then took [their] letter and added [their] input to the evaluation/eligibility report." Additional accommodations and supplementary aids were added to the draft IEP. A new draft of the evaluation/eligibility report, along with a new draft of the IEP, was sent home with the Student.
18. A Notice of Meeting with an initial contact date of February 21, 2025, indicated a proposed meeting dated March 6, 2025, to discuss possible changes in the Student's IEP. The notice was sent to the Parent in Spanish.
19. A PWN dated February 21, 2025, indicated the Student was eligible for special education, and special education is needed to enable the Student to receive educational benefits in accordance with their abilities. A change in services was proposed as follows: "Beginning March 6, 2025, … the District proposed to change the primary exceptionality from Developmental Delay (DD) to Autism (AM), as supported by the evaluation results and aligned with the Parent's request." The action revised the FBA wording based on the Parent's concerns, and confirmed the Student's behavior was a manifestation of their disability, rather than a conduct issue.

    The Student would receive direct pull-out reading and written language instruction for 60 minutes a day, 5 days a week in the special education classroom. The Student would receive inclusive services in the general education classroom for 80 minutes a day, 5 days a week. The Student would receive 20 minutes a week of special education supports in the general education classroom for social skills. The OT proposed that the Student would be dismissed from all school-based occupational therapy services. It was proposed that the Student would receive speech/language therapy pulled out of their classroom for 15 minutes, 2 days a week, in a small group or an individual setting from the beginning of their IEP until May 23, 2025. Beginning in the fall of 2025, it was proposed that the Student would receive pull-out one day for fifteen minutes, and inclusion one day for 15 minutes each week.

    The team considered eligibility under Other Health Impairment (OHI) due to concerns with focus and attention. However, the team determined AM, which encompassed the Student's profile. The team considered alternative accommodations but determined that the selected strategies best supported the Student in "minimizing distractions, managing routine changes, and addressing emotional regulation." The team considered keeping the original FBA wording but determined that revisions were necessary to ensure accuracy and alignment with the team's perspective. The team decided to remove the Student's academic, specialized services, which would not meet the Student's needs. Continued OT services were rejected by the team since the Student was on track with fine and visual motor skills.

    Other factors considered were:

- The District agreed with the Parent to update the exceptionality from DD to AM.
- The IEP included preferential seating, access to noise-cancelling headphones, and visual supports to help reduce distractions in response to the Parent's request for specific strategies to reduce distraction in the classroom.
- The IEP included frontloading for schedule changes, use of visual schedules, and check-ins with a trusted staff member to support transitions in response to the Parent requesting strategies to help the Student adjust to changes in routine.
- The IEP included regular check-ins, additional processing time, and checks for understanding to support emotional regulation in response to the Parent's request for additional emotional support strategies.
- The District reviewed the FBA and revised sections to better reflect the Student's needs and behaviors in a way that aligned with the Parent and team input.
- Behavior as a Manifestation of a Disability was reviewed by the team. The Parent emphasized that the Student's behaviors were related to their disability rather than a conduct issue. The team agreed and acknowledged the Student's behavior was a direct result of their disability.
- The Parent signed the consent on March 6, 2025.

20. The Student averaged 84.1% for overall school attendance according to meeting notes dated March 4, 2025.
21. Team Meeting Notes for an Evaluation/Eligibility Team Report dated March 6, 2025, indicated that another copy of parental rights was given to the Parent. The team went through the Parent's concerns in the Parent's response "bullet by bullet," showing where the team addressed the concerns in the IEP. The team shared that the counseling services were not included in the IEP under services because it is not considered special education. The team showed the Parent where the Parent could find those services within the IEP. The Parent asked about occupational therapy and why the Student wasn't receiving those services anymore.

    The Parent completed a Parental Input Form as part of the Student's comprehensive reevaluation. The Parent expressed concerns about the Student's ability to follow rules, understand instructions, concentrate, and memorize information. The Parent noted "… [the Student] frequently repeats phrases and benefits from structured support to navigate challenges related to [their] disability." Socially, the Student generally got along well with peers and adults but could be fearful of some individuals. The Student's hobbies included drawing, coloring, and playing with trains. The Student disliked rules, sharing belongings, and attending school. The Parent noted the Student had a diagnosis of 2q13 chromosome deletion syndrome, Level 2 Autism Spectrum Disorder, and ADHD, which should be considered in the IEP development.

    The Team Meeting Notes indicated the Parent stated, "I am writing to express my disagreement regarding [the Student's] reevaluation. I disagree with the disability listed in [their] record as developmental delay. Please correct this to reflect the disability that [the Student] actually has. Additionally, I would like to address the proper structure that [the Student] requires due to [their] disability."

The Total Score on the CARS-2 HF was 28, which placed the Student in the Severity Group, Mid to Moderate Symptoms of Autism Spectrum Disorder. According to the Vineland Adaptive Behavior Scales, the Parent's ratings on the Student's communication skills were within the Low range. In the area of Socialization, the Parent rated the Student's overall socialization skills within the Low range. The Parent rated the Student's overall Daily Living Skills as within the Adequate range.

Regarding Health and Motor, the School Nurse completed hearing and vision screenings, which the Student passed. The Parent shared that the Student hadn't had any major illnesses. The Student was evaluated at a Pediatric Clinic on January 2, 2025, indicating "a diagnosis-Autism Spectrum Disorder, Attention Deficit Hyperactivity Disorder, Mixed Receptive-Expressive Language Disorder, and deletion of chromosome 2 q. With developmental delays." The Parent completed the Behavior Assessment System for Children, Third Edition (BASC-3). The Parent's ratings were considered acceptable for appropriate response patterns and consistency. The F-index scale indicated some responses were in the Extreme Caution range. The Parent rated the Student's overall level of the following subtests:

- Externalizing Problems: Clinically Significant range.
- Hyperactivity: Clinically Significant range.
- Aggression: Clinically Significant range.
- Conduct Problems: Significant range.
- Behavioral Symptoms: Clinically Significant range.
- Atypically scale: Clinically Significant range.

The Evaluation Report had been updated to include additional input from the Parent. The Parent wished to provide further thoughts and concerns regarding additional information. The Parent indicated, "I disagree with parts of the Student's reevaluation, particularly on page 15 where it is stated that [the Special Education Teacher] believes that [the Student's] behaviors are caused or motivated by [their] family teaching [the Student] not to do things on [their] own. … I do not agree with [the Special Education Teacher's] assessment. … I also disagree with [the Special Education Teacher's] statement that there are no observable events indicating behaviors of concern regarding [the Student]. I disagree because [the Student] comes home from school frustrated, sad, embarrassed, and stressed. … Lastly, the reevaluation states that the teachers believe [the Student's] actions are due to [their] behavior (conduct). … It is not due to behavior; it is due to [the Students'] autism, not [their] conduct."

The Student was found eligible for special education services under the exceptionality of Autism. The entire reevaluation team agreed, except the Parent. The Parent signed the participation form, and it was not noted if the Parent agreed or disagreed.

22. Relevant items from the IEP dated March 6, 2025, indicated the following:
    a. The Parent and an Interpreter/Translator attended the meeting.

b. The Student's Social-Emotional Behavior goal was, "By the end of the IEP year, when given a structured work system, movement breaks, and self-regulation strategies. [The Student] will improve [their] ability to remain engaged in academic tasks by demonstrating on-task behavior (e.g., staying seated, attending to the task, and completing work) for at least 75% of observed opportunities, as measured by teacher observations."
c. The Student's goal for reading was, "By the end of the IEP year, when given a comprehensive efficiency assessment, such as the FastBridge CompEfficiency screener, [the Student] will be able to score 70% accuracy in the overall comprehension efficiency."
d. The Student's goal for written language was, "By the end of the IEP year, when given a four-minute writing CBM (Curriculum Based Measure), in which [the Student] will have one minute to think and three minutes to write, [the Student] will increase [their] total words written to 24."
e. In the area of communication, the Student has limited English proficiency. The Student's goal for communication was, "In one instructional year (February 2026), [the Student] will show increasing independence of vocabulary supports via assistive technology (e.g. Read & Write, Snap and Read) in the classroom setting requiring minimal supports (25% or less) as judged by speech/language pathologist. (min. 25%, mod 50%, max. 75%)."
f. Special Education and Related Services included:
    i. Speech pull-out services, speech/language therapy (assistive technology),15 minutes for 2 days a week, every week, starting March 6, 2025, and ending May 23, 2025.
    ii. Speech pull-out services, 15 minutes one day every week, starting August 20, 2025, and ending March 5, 2026.
    iii. Speech, general education/inclusion services, speech/language therapy (assistive technology), 15 minutes one day a week, starting August 20, 2025, and ending March 5, 2026.
    iv. Special education services, supplemental reading (comprehension/vocabulary), 30 minutes, 5 days a week, every week, starting March 6, 2025, and ending March 5, 2026.
    v. Special education services, in the general education setting/inclusion, for attention to task/following directions, reading/math, 80 minutes, 5 days every week, starting on March 6, 2025, and ending on March 5, 2026.
    vi. Special education pull-out, for written language, 30 minutes, 5 days every week, starting March 6, 2025, and ending March 5, 2026.
    vii. The IEP team reviewed the educational placement and/or services and considered it reasonably designed to deliver FAPE in the Student's least restrictive environment. The School was unable to provide regularly scheduled special education and/or related services when the following occurs:
        1. Inclement weather closures.
        2. Scheduled school closures.

3. Early release days.
4. Unforeseen emergencies.
5. Student absences.
6. School field trips.
7. Emergency drills.
8. Summer breaks.

g. Least Restrictive Environment/Justification for non-participation in, and/or removal from, the general education class with students without exceptionalities, (both academic and nonacademic): "[The Student] requires removal from the general education settings for specific academic and nonacademic activities due to challenges related to focus and attention, anxiety, difficulties with transitions, and deficits in receptive and expressive communication. These factors, in addition to [the Student's] 2q13 chromosomal microdeletion, autism spectrum disorder, and ADHD, impact [their] ability to fully engage with peers and access the general education curriculum in an inclusive setting. [The Student's] communication difficulties and developmental delays require targeted support through speech and language therapy to address deficits and facilitate participation in both academic and social settings. Supportive environments provide the structure and individualized support needed to address these challenges, allowing [the Student] to participate at [their] level of ability, while reducing anxiety and increasing focus."

h. Accommodations with a start date of March 6, 2025, and an end date of March 5, 2026, included:
   i. Record 1: Access visuals to be given when the Student was redirected or given a direction to ensure comprehension in all core classes, lasting through the completion of the task. The rationale was to give the Student access to visual supports, including manipulatives such as number lines and a 100's chart. Visuals to help the Student stay on task, follow directions more effectively, and reduce cognitive load, enhancing overall engagement and task completion.
   ii. Record 2: Implement a daily check-in system, throughout the day, specifically each morning and right before lunch, in the general education setting, through completion of the check-in, not to exceed 5 minutes. Implementation of a daily check-in system with a trusted staff member (e.g., special education teacher, general education teacher, paraprofessional, counselor, or student support specialist) to provide predictable structure, reassurance, and schedule reassurance opportunities as needed, before transitions or challenging tasks, to support emotional regulation.
   iii. Record 3: Provide frequent checks for understanding of directions and expectations when assigned independent work, across all settings, through completion of the assignment. Due to weak short-term working memory and a diagnosis of ADHD and Autism, the Student struggled with sustaining attention, processing verbal information, and following multi-step directions. "The accommodation will help reduce cognitive overload, increase engagement, and improve task completion."

iv. Record 4: Provide extra processing time for verbal and written responses when asked to provide a verbal or written response, across all settings, through completion of the assignment. The Student experienced difficulties with processing verbal and written information quickly. "Extra processing time will allow [the Student] to better organize thoughts, reduce cognitive overload, and to fully engage in tasks without feeling rushed, thereby improving [the Student's] ability to demonstrate [their] understanding and complete work to the best of [their] ability."

v. Record 5: Preferential seating, throughout the day, across all settings, specifically at lunch, through the duration of instruction, and work completion. The Student had a clinical diagnosis of autism and presents with anxiety, which can lead to struggles with unstructured environments like the cafeteria due to sensory sensitivities, social demands, and unpredictability. Allowing preferential seating near a preferred peer reduces anxiety, supports social engagement, and fosters emotional regulation by providing a familiar and predictable social setting.

vi. Record 6: Frontload for changes in routine, when presented a change to the Student's structured day, across all settings, through completion of the task. "Unexpected changes in routine can lead to increased anxiety, difficulty transitioning, and problem behaviors due to challenges with flexibility and processing new information."

vii. Record 7: Access to noise-cancelling headphones, available daily as needed, during tests in the classroom or a designated testing environment, during lunch, in the cafeteria or an alternate quiet space, as appropriate, for the full duration of tests and lunch. "Providing access to headphones minimizes distractions during testing and helps regulate sensory input in the cafeteria, promoting a more successful and comfortable experience."

i. Supplementary Aids and Services with a start date of March 6, 2025, through March 5, 2026, included:

i. Record 1: Para support in the general education classroom for task-at-hand activities. The Para to be available 80 minutes a day, 5 days a week, during mathematics and reading instruction in the general education classroom. "While the reason for attending the classroom is to learn the instruction and to keep [the Student] engaged, the [P]araprofessional should appear to be helping everybody and to be actively involved in the lesson."

ii. Record 2: A check-in with a designated staff member to provide emotional support, review expectations, and assist with problem-solving during lunch, daily, in the cafeteria or when eating lunch, for 5 minutes. "A brief check-in provides predictability, reassurance, and regulation strategies, allowing [the Student] to manage anxiety, receive social support, and successfully engage with peers."

j. Supports for School Personnel starting March 6, 2025, and ending March 5, 2026, indicated:

i. Record 1: Review of the current IEP will be conducted with all staff involved with the Student's education. Review of the Student's IEP would occur at the

beginning of each school year, after all IEP updates & amendments, and when new staff begin working with the Student during all core classes. A review of the current IEP would be done long enough to ensure adequate understanding of the core components of the IEP. "Due to the potential of amendments throughout the Student's IEP year, regular communication is necessary on those potential changes to ensure success for [the Student] through [their] IEP."

k. Assistive Technology starting March 6, 2025, and ending March 5, 2026, indicated:
    i. Record 1: Access to applications such as Read & Write and/or Snap & Read, as needed for vocabulary meaning throughout the day, in the classroom, and during Speech & Language Therapy sessions. "Due to [the Student's] great need of support regarding [their] language comprehension, the use of assistive technology is proposed to allow [the Student] to become more independent with determining word meanings throughout [their] academic day."

23. A Counseling Services Summary Report dated May 29, 2025, stated that the Student began weekly counseling services on January 10, 2025, as part of the Student's support plan. The service delivery and schedule section indicated the Student had regular sessions taking place on Friday afternoons. Recognizing the Student's ongoing needs and responding to the Parent's request for additional support, Tuesday sessions were also incorporated into the Student's schedule on a tentative basis. Intervention Focus areas included:
    a. Social skills development.
    b. Frustration management and coping strategies.
    c. Cognitive flexibility training.
24. According to a Progress Report dated May 29, 2025, the following progress occurred:
    a. Communication: "[The Student] continues to implement the application Read & Write well in speech/language therapy sessions with near 75% independence. … If given opportunities in the classroom setting, [the Student] has shown to be successful with operating technology to determine word meaning."
        i. Status-6, Slight Improvement.
    b. Written Language: "On May 6, 2025, when given a four-minute writing CBM, in which [the Student] will have one minute to think and three minutes to write, [the Student] was able to write 20 words. [The Student] met this goal!"
        i. Status-6, Slight Improvement.
    c. Reading: "For the spring assessment window, when given a comprehensive efficiency assessment, such as FastBridge CompEfficency screener, [the Student] was able to score a 65% accuracy. [The Student] met this goal."
        i. Status-7, Moderate Improvement.
    d. Social Emotional: "[The Student] was observed for 15 minutes, at 30-second intervals. … was on task 22 out of 31 times observed. [The Student] was on task 71% of the time."
        i. Status-7, Moderate Improvement.

25. According to a Second Grade Progress Report for 2024-2025, the Student received the following scores for the 4th quarter:
    a. Go Math Average-90%.
    b. FastBridge aMath-16%.
    c. FastBridge CBM Automaticity-42%.
    d. Fact Fluency-100%.
    e. Go Math Chapter Tests ranged from 70% to 100% accuracy.
    f. FastBridge aReading-10%.
    g. FastBridge CBM Fluency-20%.
    h. Lexia Level-7.
    i. Spelling-98%.
    j. End of the Year Goals:
        i. Fact Fluency-100%.
        ii. CBM Fluency-131 words per minute.
26. The Parent filed the Complaint on April 21, 2025.

Interview Summaries

The Director of Special Education

27. During an interview with the Complaint Investigator, the Director of Special Education explained the support the Student was offered during lunch was documented in the IEP as a supplementary agent support, which meant the School provided guidance to staff that would be working with the Student. They explained it was decided that assigning a specific paraeducator to sit with the Student at lunch was not in the Student's best interest because the Student was "more independent." The Director of Special Education shared there were always staff in the lunchroom providing supervision. They said, "… we use the supplementary agent support to educate all of the staff that may be in that scenario … . We do have increased monitoring where they're keeping an eye on [the Student] a little bit more frequently than the rest of the students. … They interact [with] [the Student] a little bit more, provide a little more positive interactions, and then they will provide the prompts … ."
28. The Director of Special Education indicated the IEP and evaluation teams received a note from the Student's doctor, which had been provided to the Parent on January 2, 2025. The note documented formal diagnoses and that the Student should be provided with accommodations. The Director of Special Education indicated the note also mentioned school counseling for the Student, which the School added. The Director of Special Education explained the counseling services were not documented as an IEP service because all students have access to it, but it was being documented that the Student was meeting with the school counselor. The Director of Special Education explained that around the time the reevaluation was near completion, the Parent expressed confusion if the Student's eligibility category would change from Developmental Delay to Autism. The Director of Special Education indicated they

clarified to the Parent about changing the Student's eligibility category, and that the doctor's note from January 2, 2025 was the only documentation the School received.

29. The Director of Special Education said, "We have an experienced translator. [The Parent] is Spanish speaking. [The Parent] does understand English a little bit, but we always use [sic] translator … to make sure that documentation's [sic] happening or that communication is happening."
30. The Director of Special Education explained the IEP team was initially considering keeping the Student's eligibility category at Developmental Delay because of the Student's age, but decided because they were in the process of a reevaluation, to change it. The Director of Special Education explained there was a discussion of different options, and they perceived the Parent believed the team was not going to change the Student's eligibility category to Autism, even though they were. The Director of Special Education indicated this was clarified through additional communication with the Parent.
31. The Director of Special Education stated the Parent did not share the specific documentation they felt was not utilized during the reevaluation process or considered for the IEP. They indicated the only documentation they were aware of was the doctor's note from January 2, 2025.
32. The Director of Special Education, when shown a document which referenced a visit to a children's clinic in 2020 and the Student being diagnosed with autism, said, "That doesn't say that a report was provided to the [S]chool specifically, doesn't mean it wasn't, and I don't see anything attached to the IEP that would've indicated it was given at that time. … I'm not seeing it in the files that have been uploaded for [the Student] … but it does at least get referenced in the IEP that the team considered the input from [sic] parent, but I don't know if this specifically was given."
33. The Director of Special Education indicated the Student's attendance had been a concern in the past, and the Parent believed it stemmed from anxiety. The Director of Special Education indicated the counselor had been working with the Student on helping change their perception of attending school, to help with their anxiety. The Director of Special Education indicated the Student had a pattern of being chronically absent, but did not know if it all related to anxiety.
34. The Director of Special Education explained the IEP team had addressed the issue of the Student's attendance, but there were not IEP meetings held to address it because the Student was making progress and the team felt it was not impeding the Student's performance on their IEP goals in the classroom.
35. The Director of Special Education confirmed from the Student's IEP, dated March 20, 2025, that the Student received speech services. They indicated this was implemented through pull-out service from the speech language pathologist, and also push-in services. They said, "We use a blended model of speech language pathology where we pull out for some services, and then when they're ready to start to generalize some of those skills, then our speech pathologist will push into the classroom … ."
36. The Director of Special Education explained the Student received supplemental reading support, pulled out of the general education classroom, three to five times per week for 30-minute sessions in a special education classroom. The focus of this support was

comprehension and vocabulary, aligning with the Student's English Language Learner (ELL) goals. The Student also received 30 minutes of writing support five days a week in a special education classroom, and had push-in support during direct reading instruction in the general education classroom. For math, the Student received support to address attention concerns and help with following directions. This support included prompting, and restating directions or instruction.

37. The Director of Special Education explained the Student had access to visuals, the type of which depended on the class. They explained the visuals ranged from graphic organizers to charts and number lines. They stated these would have been made available to the Student.
38. When asked about implementing daily check-ins, the Director of Special Education explained a staff member would check in with the Student periodically. They believed the counselor was the main person implementing the accommodation, but it was designated that it could be other staff. The Director of Special Education indicated this would also be implemented before lunch, with the goal of checking in about the Student's anxiety before they transitioned to places which the Parent had been concerned about. The Director of Special Education explained that when staff gave the Student directions, they would give the Student time to process it before the Student had to respond.
39. The Director of Special Education acknowledged one of the Parent's concerns was having a peer sit with the Student during lunch. They indicated sitting beside a preferred peer was to help the Student's anxiety. They explained it had been explained to the Parent that a paraprofessional was not with the Student during lunch because the Student performed better when "… there wasn't somebody hovering over [the Student]." The Director of Special Education said, "… we've provide[d] the IEP services and we have addressed the concern at lunch. It may not be exactly how [the Parent] thought we would, but there's support there. [The Parent] may not always recognize it because somebody's not standing right beside [the Student] [sic] whole time."
40. The Director of Special Education indicated the Student had access to noise cancelling headphones but was unsure if the Student used them. The Director of Special Education indicated the Student received support from a paraprofessional in the general education classroom to help the Student with focusing, giving them prompts, and responding to their needs. They explained providing brief check-ins with the Student provided predictability and reassurance, and staff gave the Student prompts to eat their lunch if they were not doing so. The Director of Special Education indicated the Student received assistive technology, and indicated that the staff ensured this was available on the Student's devices and the staff knew how to prompt and encourage the Student to use it.
41. The Director of Special Education explained the Student's occupational therapy services were provided as a check-in with the occupational therapist, and that the indirect services were consultation services.
42. The Director of Special Education was asked about letter designations on the Student's progress report, specifically the letters "K" and "L." They explained it was a system where

"… 'L' is a little bit more complex than 'K.' 'K' is a little bit more complex than 'J.'" They confirmed it meant the Student was progressing.

43. When asked about a goal that was denoted as had been "met," but also noted the Student had made "slight improvement," the Director of Special Education explained the staff member was trying to indicate the Student had met their objectives goal, even though the Student had not yet met the full goal.

The Parent

44. During an interview with the Complaint Investigator, the Parent was asked which medical documentation was not considered during the reevaluation process. The Parent indicated they gave the School the Student's diagnosis of their disability and a note from the doctor that the Student needed help. The Parent believed that information was not used because the Student's autism diagnosis was not included in the IEP.
45. The Parent indicated they believed the Student needed psychological support. The Parent indicated the Student had been struggling at lunch because they were sitting with a peer who did not want to sit with the Student. The Parent also perceived the Student was struggling with reading comprehension and believed the Student had not received enough support. The Parent perceived the staff did not address the Student properly when giving instructions. The Parent believed this negatively impacted the Student and their desire to attend school.
46. The Parent explained they participated in the reevaluation process by being interviewed about the Student's behavior and completing questionnaires.
47. The Parent explained it was difficult to get the Student to attend school during the 2024-25 school year. The Parent indicated the Student told them they did not want to attend school because a teacher was angry with them and there were quarrels with peers. The Parent shared the Student started attending therapy three or four months prior, provided outside of the School, which helped the Student's attendance.
48. The Parent perceived they were ignored when they brought their concerns to the District, and told they had to get an evaluation done. The Parent indicated the Director of Special Education told them they would help the Student, but then the Parent perceived the District would not do anything, so the Parent went to an outside agency to ask for a reevaluation.
49. The Parent stated they sent a doctor's note about the Student's autism diagnosis to the School in 2022, and then in 2023, sent a doctor's note stating the Student required "extensive help." When asked about a letter dated January 31, 2023, the Parent said, "That was the first letter I sent to [the School] from the doctor with the diagnosis." They indicated they sent it to the School in 2023.

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #489, in accordance with state and federal regulations implementing the IDEA, implemented special education and related services as described in the Student's IEP. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

According to K.A.R. 91-40-16(b)(3), an IEP must be in effect for each exceptional child at the beginning of each school year.

The Parent alleged the School did not provide the Student with the appropriate support outlined in the Student's IEP, which contributed to the Student's poor performance. The Parent requested a reevaluation on September 16, 2024, and has not observed improvement in the support the Student received. For example, a peer was assigned to help the Student at lunch instead of a staff member to assist the Student when they get upset.

The District stated the School provided appropriate support for the Student and the IEP was followed consistently. According to the District, the Student had an improvement on all IEP goals and in their academics, as demonstrated by their progress reports and grades.

The Parent was sent a Notice of Meeting for reevaluation on September 16, 2024 to conduct an annual review of the Student's IEP. On September 30, 2024, the Parent was sent a PWN which indicated the meeting was to review special education and related services, placement, and any additional changes. A description of the action proposed or refused described the services the Student would receive. The PWN indicated the proposed services were highly recommended to help meet the Student's needs effectively and efficiently. A Progress Report dated September 30, 2024 was sent to the Parent and indicated the Student made moderate improvement on their motor goal, and maintained performance on their two communication goals and their reading goal. On October 25, 2024, a PWN For Evaluation or Reevaluation and Request For Consent indicated the LEA proposed to conduct a reevaluation. The Parent signed consent for the reevaluation.

A Counseling Services Summary Report, dated May 29, 2025, stated the Student began weekly counseling services on January 10, 2025 as part of their support plan. The Student had regular sessions, and additional sessions were incorporated in response to the Parent's request for more support. According to a Progress Report dated May 29, 2025, the Student made slight improvement on their communication and written language goals, and moderate improvement on their reading and social-emotional goals. A Second Grade Progress Report for 2024-2025 detailed the Student's scores for the fourth quarter.

The Director of Special Education stated the Student's IEP outlined a "supplementary agent support" for lunch, which involved guiding staff who would interact with the Student rather

than assigning a dedicated paraeducator. The Director of Special Education acknowledged the Parent's concern about having a peer sit with the Student during lunch, but said their reasoning was explained to the Parent. The Parent perceived the peer did not want to sit with the Student.

Through their interview, the Director of Special Education addressed the Student's services and accommodations, and detailed their implementation. The Parent perceived the Student was not receiving the proper support from the School and that their concerns were ignored by the District. The Director of Special Education indicated the Student's attendance had been a concern in the past, but explained the counselor had been working on the issue with the Student. They explained the IEP team addressed the Student's attendance, but there were not IEP meetings held about it specifically because the Student was progressing. The Parent explained it was difficult to get the Student to attend school during the 2024-25 school year, but that once the Student started attending therapy outside of the School, the Student's attendance improved. The Student averaged 84.1% for overall school attendance, according to meeting notes dated March 4, 2025.

The District had an IEP in place for the Student, and also conducted a reevaluation of the Student. Progress reports indicated the Student progressed on their goals. Documentation showed the Student received services, such as counseling. The type of support the Student received during lunch was a point of contention, but documentation and the interview with the Director of Special Education indicated there was adult supervision in the lunchroom. After reviewing documentation and interviews, there was not sufficient evidence to prove the Student's IEP was implemented incorrectly or the Student was denied proper support and services. Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the District failed to implement special education and related services as described in the Student's IEP.

Issue Two

> Whether USD #489, in accordance with state and federal regulations implementing the IDEA, offered an IEP that met the needs of the Student and considered Parent information, including from the Student's physician, when developing the Student's IEP. K.S.A. 72-3429; 34 C.F.R. § 300.320.

According to K.S.A. 72-3429, when developing each child's IEP, the IEP team shall consider several factors: the child's strengths and parental concerns for enhancing education, the results of the initial or most recent evaluation, the child's academic, developmental, and functional needs, and for a child whose behavior impedes learning, the use of positive behavioral interventions and supports. Additionally, the following factors should be considered: for a child with limited English proficiency, their language needs related to the IEP; and whether the child requires assistive technology devices and services.

Additionally, Districts must ensure the IEP team reviews the child's IEP at least annually to determine if annual goals are being achieved and revise the IEP as appropriate to address any lack of expected progress, results of reevaluations, information provided by parents, the child's anticipated needs, or other matters.

The Parent alleged that despite receiving documentation from the Student's physician and discussing the physician's advice, the School did not incorporate these recommendations into the Student's IEP.

The District stated the recommendations from the Student's doctor were considered during the most recent reevaluation, and the recommendations were being provided before and were documented in the IEP following the reevaluation. The District stated the IEP team considered the Parent's concerns by adjusting plans, changing how details of the plan were documented, and by sharing data that supported their recommendations that were different than what the Parent had requested.

A letter from a Pediatric Clinic, dated January 31, 2023, indicated the Student was evaluated and had a working diagnosis of Autism Spectrum Disorder, Level 2, and Chromosome 2q.13 Deletion Syndrome. A Pediatric Specialist Report, dated April 25, 2023, detailed several disorders, including ADHD, combined type, chromosomal abnormality-Q99.9, 2q13 deletion, mixed receptive-expressive language disorder, and Autism Spectrum Disorder requiring substantial support.

The Student's IEP, dated October 3, 2023, indicated the Student had a motor goal, a reading goal, and two communication goals, but no written language goal. The IEP included special education services in the general education setting for ELA, reading, writing, and math, and pull-out instruction for reading comprehension. It also included speech services, speech-language therapy, and OT services. The IEP indicated the Student continued to require support in the general education classroom to support attention to task and independence, and specially designed instruction in the special education setting to improve reading comprehension skills. Accommodations included access to visuals.

A Therapy Data document from April 1, 2024 through May 16, 2025, indicated that using Speech to Text & Read and Write technology, the Student scored 80% accuracy or above during their therapy sessions. According to a Timeline of Communication, with a date range of April 26, 2024 through May 27, 2025, there were 45 communication contacts regarding the Student. There were Communication records between the Special Education Teacher to the Parent, ranging from August 30, 2024 to February 11, 2025.

An annual IEP meeting was held on September 30, 2024. The Parent noted the Student's therapist recommended a break during the day to help with focus, and the Parent requested more support for the Student. A draft IEP, dated September 30, 2024, was given to the Parent in Spanish, and indicated the Student required special education services in the area of motor

skills, social emotional skills, reading, written language, and communication, and it was proposed the Student would learn to use assistive technology. The Student did not have a social/emotional goal on their previous IEP, and it was recommended they continue to receive individualized instruction in the special education classroom for reading and attention to tasks. It was decided the Student would begin a written language goal. The draft IEP also detailed special education and related services the Student would continue to receive. Supplementary Aids and Services included paraprofessional support in the general education classroom. Assistive Technology included Read & Write and Snap & Read as needed.

A Physician Letter, dated January 2, 2025, noted the Student's history of Autism Spectrum Disorder and other medical information, and stated the Student needed accommodations and recommended a Functional Behavioral Analysis. On January 24, 2025, the Parent was interviewed as part of the FBA process.

A Team Meeting Record, dated February 7, 2025, indicated the Parent believed the Student did not have the correct structure or support. The team suggested changing the Student's exceptionality from Developmental Delay to Autism. According to Team Meeting Notes, the Parent provided the team with a letter listing their disagreements on February 13, 2025, and the School added that input to the evaluation/eligibility report. Additional accommodations and supplementary aids were added to the draft IEP. A new draft of the evaluation/eligibility report and the IEP were sent home with the Student. A Notice of Meeting, with a contact date of February 21, 2025, indicated a proposed meeting for March 6, 2025 to discuss possible changes to the IEP.

A PWN from February 21, 2025 indicated that beginning on March 6, 2025, the District would change the Student's primary exceptionality from Developmental Delay to Autism. The PWN reaffirmed and detailed the services the Student would receive. The team determined that the selected strategies best supported the Student in "minimizing distractions, managing routine changes, and addressing emotional regulation." It was decided the IEP would include strategies in response to the Parent's request to help the Student. The District reviewed and revised the FBA to reflect input from the Parent and team. The Parent signed the consent form on March 6, 2025.

Team Meeting Notes for an Evaluation/Eligibility Team Report, dated March 6, 2025, indicated the team reviewed the Parent's concerns. The Parent completed a Parental Input Form as part of the Student's reevaluation, which they confirmed in their interview, and expressed concerns about the Student. The Parent noted the Student's diagnosis should be considered in the IEP development. Team Meeting Notes indicated the Parent disagreed with the Student's disability being listed as Developmental Delay, and the doctor's note from January 2, 2025 was reviewed. The Evaluation Report was updated to include Parent input, and the Student was found eligible for special education services under the exceptionality of autism. The entire reevaluation team

agreed, except the Parent. The Parent signed the participation form, and it was not noted if the Parent agreed or disagreed.

The Director of Special Education indicated the doctor's note from January 2, 2025 was the only documentation the School received. They explained the Parent expressed confusion about the Student's eligibility category, but they clarified to the Parent it would be changed to reflect the Student's autism diagnosis. The Parent stated they sent a doctor's note about the Student's autism diagnosis to the School in 2022 and 2023, but the Director of Special Education explained they did not have any record of the Student's autism diagnosis from that time.

The Student's updated IEP, dated March 6, 2025, had a new social-emotional behavior goal, and continued to have goals in reading, written language, and communication. The IEP also detailed the special education services the Student would receive. The IEP addressed the Student's autism diagnosis and that the Student required targeted support through speech and language therapy to address deficits and facilitate participation. The IEP included five new accommodations which reflected the Student's needs, specifically in regards to their autism diagnosis, and a new Supplementary Service was added.

While the Parent indicated they provided the District with the Student's autism diagnosis in 2023, there was not sufficient evidence to confirm or refute the Parent's claim. When the District received medical documentation about the Student's autism diagnosis in January 2025, they documented the information and changed the Student's eligibility category and services accordingly. Documentation demonstrated the District responded to the Parent's concerns and made changes to the Student's IEP. Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the District failed to offer an IEP that met the needs of the Student and considered Parent information, including from the Student's physician, when developing the Student's IEP.

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.gov 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 MAY 26, 2025

DATE OF REPORT: JUNE 25, 2025

This report is in response to a complaint filed with our office on behalf of a student, ----------, by a teacher, ----------. In the remainder of the report, the student will be referred to as "the Student" and the teacher as "the Complainant."

The Complaint is against USD #500, Kansas City Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #500.

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 May 26, 2025 and the 30-day timeline ended on June 25, 2025.

Allegations

The following issues will be investigated:

ISSUE ONE: Whether USD #500, in accordance with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), implemented the Student's IEP from their previous District or provided comparable services pending the development of a new IEP. K.S.A. 72-3429(g)(1), K.A.R 91-40-16(a)(b)(1)(2); 34 C.F.R. § 300.323(e)

ISSUE TWO: Whether USD #500, in accordance with state and federal regulations, convened an IEP team meeting, including the Parent, to make decisions regarding the Student's appropriate educational placement in the least restrictive environment prior to implementing such placement. Additionally, whether the District obtained Parental consent prior to changing the Student's placement to the behavior support classroom. K.S.A 72-3420 (a), K.A.R. 91-40-21(a-c)(d)(1-5); CFR 34 C.F.R. §§ 300.114, 300.116, 300.327, 300.501(c)

ISSUE THREE: Whether USD #500, in accordance with state and federal regulations, appropriately informed the Parent of changes to the Student's IEP in a Prior Written Notice. K.S.A. 72-3430(2), K.S.A 72-3432, K.A.R. 91-40-26; C.F.R § 300.503

Investigation of Complaint

The Complaint Investigator, interviewed the Complainant by video conference on June 20, 2025. The following District staff were interviewed on June 23, 2025: the Special Education Coordinator and the Executive Director of Special Education.

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

District Materials:

1. District Response, 06/06/25
2. Email, re: new transfer..., 05/06-05/07/25
3. Email, re: [students] - programming, 05/14/25
4. PWN, 05/14/25
5. Process and Procedures Handbook, 2024-2025
6. Evaluation Report, 10/21/24
7. IEP, 11/04/24
8. Positive Behavior Support Plan, 01/12-10/18/24

Complainant Materials:

1. Formal Complaint 1, 05/19/25
2. Email, re: signed PWN?, 05/16/25
3. Email, re: new students, 05/13/25
4. Email, re: urgent, [the Student] start date, 05/13/25
5. Email, re: triplets - programming, 05/14/25
6. Email, re: [the Student] family, 05/14-05/23/25
7. Individualized Education Program (IEP), 11/04/24
8. Positive Behavior Support Plan, 01/12-10/18/24
9. Formal Complaint 2, 05/23/25
10. Email, re: special education social work minutes, 05/24-11/12/24
11. Prior Written Notice (PWN), 11/04/24
12. Transfer IEP, 05/14/25
13. PWN, 05/14/25
14. Evaluation Report, 10/21/24
15. Wechsler Intelligence Scale for Children Report, 09/25/24
16. Academic Assessment, 10/09/24
17. Vineland Adaptive Behavior Scales Report, 10/07/24
18. Speech-Language Evaluation Report, 10/21/24

19. Occupational Therapy, 10/16/24
20. Meeting Notes, 05/02/25

Background Information

This investigation involved a fourth grade student who previously attended a school in another district. The Student is eligible for special education under the exceptionality of Other Health Impairment. The Student is polite and enjoys talking to their peers and adults.

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Complainant and staff in the District.

1. The Student is nine years old and attends 4th grade in a Behavior Support Classroom (BSC) at an elementary school.
2. According to a Positive Behavior Support Plan dated January 12, 2024, the targeted behaviors included refusals and elopements. Prevention procedures included:
    a. Universal positive behavior supports include:
        i. Posted rules.
        ii. Posted daily schedules.
        iii. Posted behavior expectations.
        iv. Use of transition signals.
        v. Warning prior to transitions.
        vi. Pre-correction (priming).
        vii. Acknowledgement system.
        viii. Four to one ratio of positive attention to negative attention (praise to correction).
        ix. Use of specific praise.
    b. Individualized behavior supports.
        i. Reinforcement and prompting include:
            1. Specific and descriptive praise.
            2. Choice of reinforcers.
            3. Enthusiastic adult interactions.
            4. Reinforcement, token economy.
            5. Prompting for schedule changes and reminders of expectations.
        ii. Transitions included verbal printing prior to transitions. Reinforcers are given at the end of transitions when appropriate, and going over daily schedules.

iii. Sensory modifications included the Student being allowed to handle objects such as fidgets.

iv. Environmental modifications included areas with fewer distractions and helping tasks.

v. Instructional support included motivating activities, mixing target areas with one teaching session, quick-paced instruction, and pre-teaching.

3. According to an Evaluation Report dated October 21, 2024, the Student's attendance indicated the following:
    a. The 2024 School Year-1 absence.
    b. The 2024 Summer-Supplemental School-0 absences.
    c. "… the IEP team determined that [the Student] required intensive programming within a center-based program setting to address [their] specific learning needs, communication, behavior, social, and self-help needs. … [the Student] continues to require individualized instruction in order to make progress and address [their] needs. [The Student] requires direct and intensive services to make adequate progress toward [their] individualized goals and objectives. Given [their] progress, a hybrid approach is currently being used between the intensive resource classroom setting and the pullout service of the interrelated resource program, which is the most appropriate place to address these needs at this time … ."
    d. Specific concerns identified included academics, communication, and behavior.
    e. The Student had a Positive Behavior Support Plan.
    f. The Student was diagnosed with ADHD in April of 2023.
    g. In November 2021, an Evaluation Report indicated a diagnosis of Unspecified Intellectual Disability.
    h. The Student is a twin and was exposed to drugs in utero.
    i. The Student qualified for special education under the category of Other Health Impairment.
    j. "[The Student] is currently enrolled in a center-based classroom designed for students who require more intensive individualized instruction in all academic and/or adaptive functioning areas. [The Student] also receives instruction in a less restrictive special education setting for portions of [their] day."
    k. The Student's learner characteristics impact their educational performance in the following ways:
        i. Cognitive challenges impact areas such as storing and retrieving information and following directions.
        ii. Distractibility affects progress due to verbal reasoning, visual perceptions, and attention.

l. The Student's overall Full Scale I Q score fell into the Very Low range when compared to other children their age, according to the Wechsler Intelligence Scale for Children-V (WISC-V).

m. The Student's results from the Wechsler Individual Achievement Test- 4th edition (WIAT-IV) dated October 9, 2024, indicated the following:

i. Reading Comprehension-2nd percentile, extremely low.

ii. Word Reading-.8 percentile, extremely low.

iii. Written Expression- couldn't score this subtest.

iv. Spelling-3 percentile, very low.

v. Mathematics-7 percentile, very low.

n. The Vineland-3 indicated the Student's Adaptive Behavior Composite score in the home environment was 72, which is in the Moderately Low range. In the school environment, their Adaptive Behavior Composite score is 88, which is in the Adequate range.

o. The Speech-Language Evaluation Report dated October 21, 2024, indicated the following:

i. The Peabody Picture Vocabulary Test-89 Standard Score, 23rd percentile, in the expected range.

ii. The Oral and Written Language Scales, second edition, Oral Language Composite-85 SS, 16th percentile, below average.

iii. The Expressive Vocabulary Test, Third Edition, 90 SS, 25th percentile, in the expected range.

iv. The Sounds-In-Words Test, initial substitution w/r,f,d/th with an r distortion.

4. Relevant items from the IEP dated November 4, 2024, indicated the following:

a. The re-evaluation for the Student was due on October 20, 2027.

b. The Summary of Present Levels of Academic Achievement and Functional Performance included:

i. The Maze Adjusted Reading Score-21st percentile.

ii. The Reading Composite Score-<1st percentile.

iii. I-Ready Diagnostic Assessment-Overall score-17th percentile.

c. Current Academic Achievement and Functional Performance included:

i. The Student was enrolled in a center-based classroom designed for students who require more intensive individualized instruction in all academic and/or adaptive functioning areas.

ii. The Student also received instruction in a less restrictive special education setting for portions of their day.

iii. Behaviors: The Student was easily distracted and needed moderate prompts to help them focus on their academic tasks.

iv. Math: The Student could identify whole, half, and fourths in fractions with 80% accuracy, two-digit numbers plus two-digit numbers with regrouping with 85% accuracy, and two-digit numbers minus two-digit numbers with regrouping with 25% accuracy.

v. Speech-Language: The Student had difficulty using age-appropriate grammar, including the use of irregular past-tense verbs (33% accuracy). The Student exhibited weaknesses in supralinguistic language skills, understanding non-literal language, and word relationships. The Student's conversational speech was characterized by r/w substitutions, f and d/th substitutions, and vocalic /r/ in single words.

vi. Occupational Therapy (OT): The Student was receiving indirect OT services to monitor and support the Student's visual motor skills, visual memory skills, typing skills, pre-vocational skills, and self-care skills.

d. The Impact of Exceptionality in General Education indicated that the Student's learning characteristics impact their educational performance, which included:

i. Cognitive challenges: Impact areas such as storing and retrieving information and following directions. The Student's distractibility affected progress due to verbal reasoning, visual perceptions, and attention.

ii. Language: The Student's language delays impacted their comprehension during reading and oral language tasks in the classroom. The Student's speech/sound disorder impacted their comprehension during reading.

iii. Occupational Therapy: The Student's difficulty with performing tasks that required visual memory skills impacted their ability to participate in assignments and activities.

e. Student Strengths: "[The Student] is a kind, caring, and thoughtful student. [The Student] is a great friend to everyone and consistently follows behavior expectations. During social studies and science lessons, [the Student] enjoys working collaboratively in groups."

f. Behavioral Needs: The Student's behavior impeded their learning and the learning of others. "A FBA is not warranted. Behavior can be addressed through [a] Positive Behavioral Intervention & Support Plan."

g. The Student's goal for math was, "By the end of the IEP year, October 2025, when given direct instruction in the area of math, when given math calculations and number recognition problems, [the Student] will correctly identify place value, demonstrate knowledge of greater than/less than, and compute math calculation problems (addition, subtraction, and multiplication), with 90% accuracy across 3 out of 5 consecutive data days."

h. The Student's goal for language was, "By the end of the IEP year, October 2025, when given a grade-level curriculum vocabulary target in context (i.e., a sentence or short paragraph), [the Student] will define the word and identify at least one related synonym or antonym with an average of 80% accuracy.

i. The Student's goal for occupational therapy was, "By the end of the IEP year, October 2025, [the Student] will compose 2-4 sentences on notebook paper with 80% accuracy for line use (alignment to baseline and letter size) and spacing between words on 2 out of 3 data collection days."

j. The Student's first goal for reading was, "By the end of the IEP year, October 2025, given direct instruction in a research-based reading approach, [the Student] will be able to decode and encode a list of real and/or nonsense words following a known word pattern at [their] instructional level, with 85% accuracy across 4 out of 5 consecutive data days."

k. The Student's second goal for reading was, "By the end of the IEP year, October 2025, given direct instruction in a research-based reading approach, [the Student] will be able to decode and encode a list of real and/or nonsense words following a known word pattern at [their] instructional level, with 85% accuracy across 4 out of 5 consecutive data days."

l. The Student's goal for writing was, "By the end of the IEP year, October 2025, when given direct instruction in the area of encoding with a research-based and systemic approach to reading and encoding, [the Student] will be able to write a dictated sentence on known word pattern, previously taught skills, and use the CHOPS (capitals, handwriting, organization, punctuation, and spelling) checklist to check and proof-read [their] sentences, with 95% accuracy across 3 out of 5 consecutive data days."

m. The Statement of Special Education/Related Services beginning on November 4, 2024, and ending on November 3, 2025, indicated:

    i. Special Education Services, provided by the Special Education Teacher:

        1. In the General Ed Classroom, for 90 minutes, 3 times every week.
        2. In the General Ed Classroom, for 120 minutes, 2 times every week.
        3. In the Special Ed Classroom, for 155 minutes, 5 times every week.

    ii. Speech and Language as a related service, provided by the Speech-Language Pathologist, in the Special Ed Classroom, for 60 minutes, one time a week.

    iii. Occupational Therapy provided by an Occupational Therapist, direct service in the Special Ed Classroom.

    iv. Occupational Therapy Services, provided by an Occupational Therapist, indirect service, 15 minutes every month.

n. The Description of Specially Designed Instruction and Related Services included: "[The Student] will participate with [their] general education peers in a combination of direct special education services in the general education classroom and in specials [sic] classes such as Art, Computers, Music, Spanish, and PE. … some limited Math and ELA instruction, some iLit lessons, and phonics. … Special Education: [The Student] will receive direct special education instruction within the special education classroom for a maximum total of 775

minutes per instructional week. [The Student] is participating in a hybrid design between the intensive resource program and the interrelated resource program. [The Student] is receiving 60 minutes of instruction per day within a small group as a pull-out in the interrelated resource room. Support will be provided as needed; however, if [the Student] does not need direct special education support, [they] can remain in the general education setting."

o. Supplemental Aids and Services (Accommodations and Modifications) with a start date of November 4, 2024, (no end date noted) included:
    i. Organizational supports (i.e., near-point alphabet visuals for handwriting activities and near-point copy of written work, and CHOPS writing checklist, in the general and special education settings, until a written assignment is completed, when the Student needs support to remember how to write certain letters and when the Student needs to write out sentences for an assignment.
    ii. Text-to-Speech on classroom assignments, in the general and special education settings, until the reading of an assigned text is completed, when given material above a second-grade reading level.
    iii. Extended time for assignments, without extended time on assignments, the Student will not be able to finish the assignments, in all core classes (social studies, science, math, and language arts). The Student will receive a time extension of up to 2 times the required assignment time to complete the assignment, whenever written assignments are given.
    iv. Oral instruction administration for assignments, in the general education setting, for the length of the assignment, when the Student needs support reading material above a second-grade reading level.
    v. Read Write Word prediction in the general and special education settings until a written assignment is completed, whenever classroom writing assignments are given.
    vi. Scribe in the general and special education settings, for the duration of the writing assignment, whenever classroom writing assignments are given.
    vii. Reduce the number of questions in the general education setting. The Student will be required to complete ½ of the questions assigned whenever classroom assignments are given.
    viii. A Word Bank, used in the general education and special education setting, for the duration of instruction, practice, and assignments that are given.
p. Extended School Year (ESY) included:
    i. Special education services for the extended school year setting, 225 minutes, 4 times, every week, starting June 2, 2025, and ending June 26, 2025.
q. The Least Restrictive Environment (LRE) included:

i. "[The Student] will participate in all general education program activities with the exception of when [they are] receiving direct special education services in a hybrid-designed program, including center-based and interrelated resource programs at a neighborhood school in the School District in the special education setting. [The Student] will participate with [their] general education class to the fullest extent appropriate, including recess, lunch, morning routines, morning meeting, limited reading and/or math small group time, phonics, and specials. During assemblies, field trips, counselor lessons, and other special times within the school building, [the Student] will not be pulled out of the general education setting. Time in the general education setting will focus on continued academic learning, observational learning, and appropriate social interactions with same-age peers."

ii. Areas of Non-participation included: "[The Student] will participate in all areas of the general education program with the exception of when [the Student] is receiving direct special education services in the resource setting and related services."

iii. Full participation is not possible due to the following: "Full participation in a general education classroom is difficult due to [the Student's] needs in the areas of communication, attention/focus, academics, and social skills. [The Student] requires individualized and/or small instruction in order to make progress and address [their] needs to make adequate progress toward [their] individualized goals and objectives. The hybrid approach being used between the intensive resource classroom setting and the pullout service of the interrelated resource program is the most appropriate place to address these needs."

iv. Potential harmful effects included: "[The Student] will miss time with [their] same-aged peers to receive individualized instruction in the center-based classroom. The team has determined that the benefits of the current placement outweigh any potential harmful effects."

5. A Prior Written Notice (PWN) dated November 4, 2024, indicated the identification/ eligibility determined the Student had an exceptionality and needed specially designed instruction and was eligible for special education with a change in services. It was proposed that the Student's special education services in the general education setting increase from 450 minutes per week to 510 minutes per week. It was proposed that the Student's special education services within the special education setting decrease from 1060 minutes per week to 775 minutes per week. The Student's speech language services would increase from 40 minutes to 60 minutes per week. Direct OT services would be added for 30 minutes per week. The Parent signed the PWN.
6. Meeting Notes regarding the move-in Student from the Previous School, dated May 2, 2025, indicated the Student attended a center-based program at the Previous School, which was an intensive resource classroom. The Student received a hybrid model of instruction with intensive resources for pullout for 60 minutes. The Student spent the

majority of their time in class. The Student needed more support in a self-contained hybrid classroom. The Student has ADHD and takes medication, but not at school. It was indicated that the Student will need a self-contained placement in middle school. The Student steals at times, is not always truthful, and was academically low.

7. On May 13, 2025, the Principal emailed Special Education Coordinator 2 requesting a meeting to review the Student's IEP from the previous district. "The previous school principal shared additional information today regarding their placements based on their evaluation and current services that were in place at their prior school. Please let us know when you can meet so next steps can take place to get them in the appropriate placement."

   The Principal again reached out to Special Education Coordinator 2 a second time, indicating, "After the principal from the previous school provided information about the Student [which included the Student's sibling] in combination with the current IEP and services, it doesn't appear that any Student should be attending our BSC program. Neither were in a behavior program before. They have significant trauma. … [The Student] is a (lower)-current life skills student. [The Student] is in a hybrid model-Life Skills and [the Structured Learning Classroom] SLC."

   On May 14, 2025, the Principal emailed the Executive Director of Special Education, reiterating the fact that the Student was not previously placed in a BSC Program and that the Current School is the farthest from the Student's home school. The Principal stated, "Most importantly, placing a student with trauma in a BSC setting–when that's not indicated–could be harmful and inappropriate."
8. Relevant items from the transfer IEP dated May 14, 2025, indicated:
   a. The Placement selected was outside the regular class more than 60% of the time.
   b. Related Services from May 14, 2025, to September 17, 2025 included:
      i. Occupational Therapy for 30 minutes, one day a week, outside the regular ed classroom.
      ii. Speech and Language Services, 60 minutes weekly, outside the regular ed classroom.
      iii. Occupational Therapy 15 minutes, one day, 1 out of 4 weeks, outside the regular ed classroom.
   c. Special Education Services May 14, 2025, to September 17, 2025, included:
      i. Special Education Services, 155 minutes, 5 days weekly, special education direct services outside the regular classrooms, programs, and other locations.
      ii. Special Education Services, 90 minutes, 3 days weekly, special education direct services outside the regular classrooms, in an elementary or secondary building.

iii. Special Education Services, 120 minutes, 2 days weekly, special education direct services outside the regular classrooms, in an elementary or secondary building.

9. On May 14, 2025, the Assistant Principal emailed the previous school administrator to ask if the Student was in an "IR setting", which was equivalent to the Current School's Life Skills Program. In a forwarded email to the Complainant from an Additional School Administrator, the Complainant was told that the Student was in Life Skills class.
10. A PWN dated May 14, 2025, indicated the team met to review the evaluation/assessment of the Student. The action proposed indicated:
    a. "The Student will receive the following comparable services until the move-in IEP meeting is held."
    b. "Special Education Services, 155 minutes X 5 days a week in the Special Education Setting."
    c. "Special Education Services, 120 minutes X 2 days a week in the General Education Setting."
    d. "Special Education Services 90 minutes X 3 days a week in the General Education Setting."
    e. "Related Service-Speech and Language 60 minutes weekly in the Special Education Setting."
    f. "Related Service-Occupational Therapy 30 minutes 1 day weekly in the Special Education Setting."
    g. "Related Service-Occupational Therapy of indirect services 15 minutes X 1 day every 4 weeks."
    h. "Related Service-Transportation 30 minutes X 5 days a week."
    i. The PWN was emailed to the Parent.
11. In an email exchange between the Complainant and the Special Education Coordinator dated May 16, 2025, the Complainant asked if there was a signed PWN from the Student's Parent for the current placement. Special Education Coordinator 2 stated, "There won't be one. When we do a transfer IEP, we write a PWN for comparable services and send it to the Parent. No signature is needed. There is a PWN in there, though."
12. On May 19, 2025, the Complainant filed a Complaint regarding their concerns, which included, "[The Student] has been placed in a BSC as an incoming student from out of district without an IEP meeting, parental consent, or adherence to [the] existing IEP (LRE violation)." The Complainant indicated that questions were raised to the Director of Special Education and Special Education Coordinator 2. Changes were then made, but only the Student, not the Student's sibling, was placed in the BSC. The Student's IEP showed no Functional Behavioral Assessment (FBA) or a Behavior Intervention Plan (BIP). The IEP indicated that an FBA "was not warranted." According to the IEP, the Student "consistently following behavior expectations."

According to the Complainant, the BSC was not the correct placement because the sending District did not have the equivalent placement for the Student. The Complainant indicated that Parental consent was not given to the current District.

13. According to the District Response, the Student transferred to the School on May 14, 2025. It was reported that a PWN was written and provided to the Parent about accepting the move-in evaluation, and the rejection of the IEP because it could not be fully implemented as written. The District indicated the same PWN contained a provision of comparable services until a move-in IEP meeting was to be held.
14. In their Response, the District indicated the Student was supposed to receive 775 minutes a week of services in the special education setting, and had access to the special education setting in the behavior support classroom for those minutes.
15. In an email from Special Education Coordinator 1 to the Executive Director of Special Education, dated May 6, 2025, Special Education Coordinator 1 shared information about the Student, who was transferring to the District. They indicated the Student and their sibling received specialized programming. Special Education Coordinator 1 wrote, "[The Student] was enrolled in a center-based classroom designed for students who require more intensive instruction in all academic/adaptive functioning areas. [The Student] did have access to a less restrictive special education environment setting for portions of [their] day. … [The Student] was participating in a hybrid design between an intensive special education program and the interrelated resource program. … My recommendation is a BSC program with access to the general education classroom … . Where would you like to place this student?" The email also contained the following information about the Student:
    a. An eligibility category of OHI.
    b. Medical diagnoses of ADHD and fetal alcohol syndrome.
    c. Minutes from their current IEP:
        i. Special education services in the general education setting, 90 minutes for three days a week;
        ii. Special education services in the general education setting, 120 minutes for two days a week;
        iii. Special education services in the special education classroom, 155 minutes for five days a week;
        iv. Speech and Language Therapy in the special education classroom, 60 minutes for one day a week;
        v. Occupational Therapy in the special education classroom, 30 minutes for one day; and
        vi. Occupational Therapy in direct services, 15 minutes every once per month.
    d. Types of goals: reading, written expression, math, speech and language, and occupational therapy.
    e. BIP: Targeted Behaviors

i. Refusals;
ii. Elopement; and
iii. Property Destruction.

f. Behavior Supports:
i. Reinforcing and Prompting;
ii. Support during transitions;
iii. Sensory breaks;
iv. Environmental Modifications; and
v. Instructional Support.

g. Full Scale: 77.

h. Adaptive Scores within the school setting
i. Overall: 88;
ii. Communication: 86;
iii. Daily living skills: 87; and
iv. Socialization: 100.

16. The Executive Director of Special Education replied to Special Education Coordinator 1 on May 6, 2025 and said the Student was placed in BSC at the Current School.
17. According to The Cooperative's Special Education Coordinator Process and Procedures Handbook, for the process of a student transfer, when the coordinator was notified a new student was in the building, they were to request records from the previous school. Then when the student's evaluation was received, the school psychologist had five days or less to accept or reject the evaluation. The handbook indicated a special education coordinator would then review the IEP and determine whether to accept or reject it. If the transfer IEP was rejected, the special education coordinator would consult with the parent and discuss what the comparable services would be until the IEP meeting could be held, complete the Parent Consultation/Interview Form, and write a Prior Written Notice to the parent.

    According to the handbook, if a student needed a placement in a Specialized Program (SAILS, BSC, STEPS or Bridges), an email would be sent to the Executive Director of Special Education, who would respond with the final place and location decision. The handbook also indicated, "[The Cooperative] provides special education services in the least restrictive environment (LRE). The process for determining the least restrictive environment (LRE) must be individualized for each student with a disability … ." The handbook indicated that supports, resources, and interventions were provided before the team began consideration of a District program classroom or outside placement. It indicated the main reason for increasing support, resources, and interventions was to allow the student to be successful in their neighborhood school in order to maintain the least restrictive environment. "However, for a few students, more intensive services

and programming may be required to progress on IEP goals. District programs are considered for these students."

Interview Summaries

The Complainant

18. During an interview with the Complaint Investigator, the Complainant explained the Student was placed in their behavior support classroom at the end of May 2025.
19. According to the Complainant, when they reviewed the Student's IEP, it indicated the Student followed behavior expectations and that a FBA was not warranted, which indicated to the Complainant that it was possible their classroom was not an appropriate placement for the Student. The Complainant explained the Principal from the previous school indicated the Student did not come from a behavior support classroom, and that that placement was not available at the previous school. After further review, the Complainant perceived the Student had come from a life skills setting with a structured learning classroom or resource room.
20. The Complainant stated they were not provided a reason as to why the Student was placed in their classroom. They indicated the only communication they received was from Special Education Coordinator 2, who stated there would not be a signed PWN. The Complainant explained they spoke with Special Education Coordinator 2 virtually asking if the Student's placement was correct. They stated Special Education Coordinator 2 told them the Executive Director of Special Education had determined the Student's placement. The Complainant explained it was not standard practice to hold IEP meetings for move-in students, and that the Executive Director of Special Education was the one who determined placement.
21. The Complainant explained there were between 6-11 students with them in their classroom, in addition to 1-4 paraprofessionals. They indicated their students often had an FBA or a Behavior Intervention Plan before they came to their classroom. The Complainant indicated the School had a resource program. The Complainant explained the Student performed well in their classroom, interacted well with peers, and did not exhibit any negative behaviors.
22. When asked what they perceived would have been the better placement for the Student, the Complainant explained they believed it would have been better for the Student to be in a structured learning classroom with more collaborative minutes in the general education environment. The Complainant indicated they did not ask the Parent if they agreed with the Student's placement. The Complainant believed the Parent had been notified through the PWN that the Student had been placed in their behavior support classroom.
23. When asked about the comparable services they provided, the Complainant explained the Student was able to go to a general education environment and was provided materials at grade or ability level. When asked about any services they provided which were not comparable, the Complainant explained there were not enough personnel available to maintain safety, and that the Student had limited access to peers because

they were removed from the general education classroom to be in the behavior support classroom. The Complainant also indicated the Student might not have gone to the general education classroom as much as they could have, because there was not enough support staff to accompany the Student, but they did assign a staff member to do so when someone was available.

24. The Complainant expressed concern the PWN was not signed by the Parent.
25. The Complainant indicated the Student's Positive Behavior Support Plan was implemented when they came to the Complainant's program.
26. The Complainant explained that in the building where they had worked at the School, there was a structured learning center and a life skills program, but not an intensive resource program. They recalled the previous school called their life skills program an intensive resource program, which helped students with lower cognition.

Special Education Administrators

27. During an interview with the Complaint Investigator, the Executive Director of Special Education explained the transfer IEP process was when a student transferred into the District from any school outside of the District or in a different state. A student's IEP and evaluation information was requested and reviewed by the special education coordinator, who emailed the Executive Director of Special Education asking about proper placement. The Executive Director of Special Education would review the information, look at which programs could best serve a student's needs, send a response with their recommendation, and then write a PWN. If an IEP was rejected because it could not be fully implemented, that information was shared with the parent and comparable services were then outlined. An email was sent to the new school regarding the comparable services so the new school was prepared to receive the student and what services to provide.
28. The Executive Director of Special Education indicated the Parent wanted all three siblings, including the Student, to be at the same location. Thus, a location where all three students could be together and get their individual needs met was selected. A PWN was written aligning to the Student's minutes that they had from their previous district, and the Student was able to go to the School with their siblings.
29. According to Special Education Coordinator 2, the Student was enrolled in the School with structured learning classroom and behavior support classroom access because their IEP from the previous district had very high minutes. They indicated the Student was to receive their structured learning classroom minutes working with a general resource teacher, and their resource minutes in the behavior support classroom because of the low number of students in that classroom. The Student had some behavior supports at their previous school, so those minutes were going to be provided in the behavior support classroom. Special Education Coordinator 2 did not have any concerns with the Student being placed in the behavior support classroom because of the model that was used.

30. According to the Executive Director of Special Education, the behavior support program typically supported students with behavior needs who had a behavior intervention plan. There was also the SAILS program, also known as a life skills program, which was for students who had lower cognitive abilities and had a high number of minutes. Students in the behavior support classroom did not typically have low cognitive abilities, but had access to the general education classroom, whereas students in the SAILS program did not have as much access to general education.
31. The Executive Director of Special Education explained they learned from Special Education Coordinator 2 that the Principal was concerned about the Student receiving services in the behavior support classroom. The Executive Director of Special Education stated they explained their reasoning, that because the Student had a behavior support plan, the Student might need access to some of the behavior supports in that classroom, and they needed a staff member with a low caseload to support the service minutes the Student required when they were removed from general education. The Student was still in the structured learning classroom, but with access to the behavior support classroom to get their behavior needs met.
32. The Executive Director of Special Education indicated the Student's IEP was not accepted "as is," but the evaluation report was accepted. They explained the PWN included an offering of comparable services aligned to the IEP. Because the Student transferred to the School shortly before the school year ended, an IEP meeting was not held, but they were provided with comparable services which aligned with the transfer IEP. They indicated if the Student returned to the School in the fall of 2025, the School would hold an IEP meeting to develop the new IEP.
33. Special Education Coordinator 2 indicated the Parent was notified about the process through the PWN, and they also spoke with the Parent over the phone about what the programming looked like. They indicated the Parent's major concern was keeping the three siblings together in the same building, which was met.
34. The Executive Director of Special Education said, "Parents typically would not need to sign the PWN. We are required that we give them the notice, but there was no significant change. And with us it's 25% or more. There was no changes. It was just communicated that this is what the comparable service would be. And we were able to show that these are exactly the same services that was [sic] they were receiving. … So there was no change. So there was no required consent from [the Parent] for the PWN to be signed."
35. Special Education Coordinator 2 indicated their only communication with the Complainant was to explain the PWN did not require a signature because it was a transfer IEP.

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #500, in accordance with state and federal regulations implementing the IDEA, implemented the Student's IEP from their previous District or provided comparable services pending the development of a new IEP. K.S.A. 72-3429(g)(1), K.A.R 91-40-16(a)(b)(1)(2); 34 C.F.R. § 300.323(e)

According to K.A.R 91-40-16(a)(b)(1)(2), each agency shall be responsible for initiating and conducting meetings to develop, review, and revise the IEP of each exceptional child served by the agency. Except as otherwise provided in subsection (c), each agency shall ensure that the following conditions are met: an IEP is in effect before special education and related services are provided to an exceptional child; and 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. K.S.A. 72-3429(g)(1) indicates that if an exceptional child with a current IEP transfers from one Kansas school district to another during the academic year, the new school district, in consultation with the child's parent, shall provide the child a FAPE, including services comparable to those described in the transferred IEP, until the new school district either adopts the transferred IEP, or develops and implements a new IEP for the child.

The Complainant alleged the Student was placed in a Behavior Support Classroom, as an incoming student from another district, without an IEP meeting, parental consent, or adherence to an existing IEP.

The District stated they provided comparable services for the Student during the remainder of the 2024-25 school year.

The documentation demonstrated that the transfer IEP, created by the District on May 14, 2025, had comparable services which aligned with the supports and service minutes outlined in the Student's IEP and a PWN from November 4, 2024. Important items to note from the original IEP included that the Student would participate with their general education peers in a combination of direct special education services in the general education classroom and in specials classes, and the Student was participating in a hybrid design between the intensive resource program and the interrelated resource program.

The services from the transfer IEP were also reflected in the PWN, which the Executive Director of Special Education confirmed. The PWN was emailed to the Parent on May 14, 2025. It should be noted the services listed as taking place in the "general education setting" in the PWN, were described in the transfer IEP as being held "in an elementary or secondary building."

The Complainant learned from the previous school that the Student had been in a life skills class. The Complainant explained the School had a structured learning center and a life skills program, but not an intensive resource program. They recalled the previous school called their life skills program an intensive resource program. In regards to comparable services provided, the Complainant explained the Student accessed the general education environment and provided materials at grade or ability level. However, the Complainant noted there were not enough personnel available to maintain safety, and the Student had limited access to peers when they were in the behavior support classroom. The Complainant indicated they implemented the Student's Positive Behavior Support Plan.

The District indicated the Student had access to the special education setting in the behavior support classroom for the minutes they were supposed to receive in the special education setting. The Cooperative's Special Education Coordinator Process and Procedures Handbook outlined the process of a student transfer, which the Executive Director of Special Education reiterated during their interview. It was determined through email documentation and interviews this process was followed for the Student. The Executive Director of Special Education indicated the Parent wanted all three siblings, including the Student, to be at the same location, which the District was able to do. Special Education Coordinator 2 corroborated this.

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 from their previous District or provide comparable services pending the development of a new IEP.

Issue Two

Whether USD #500, in accordance with state and federal regulations, convened an IEP team meeting, including the Parent, to make decisions regarding the Student's appropriate educational placement in the least restrictive environment prior to implementing such placement. Additionally, whether the District obtained Parental consent prior to changing the Student's placement to the behavior support classroom. K.S.A 72-3420 (a), K.A.R. 91-40-21(a-c)(d)(1-5); 34 C.F.R. §§ 300.114, 300.116, 300.327, 300.501(c)

According to K.A.R. 91-40-21(a-c)(d)(1-5), each agency shall ensure that the children with disabilities served by the agency are educated in the LRE. Each agency shall ensure that a continuum of alternative educational placements is available to meet the needs of children with disabilities. These alternative educational placements shall meet the following criteria: include instruction in regular classes, special classes, and special schools; instruction in a child's home; and instruction in hospitals and other institutions; and make provision for supplementary services, including resource room and itinerant services, to be provided in conjunction with regular class placement. In determining the educational placement of a child

with a disability, including a preschool child with a disability, each agency shall ensure that the placement decision meets the following requirements: the decision shall be made by a group of persons, including the child's parent or parents and other persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options; and the decision shall be made in conformity with the requirement of providing services in the LRE.

Each agency shall give notice to the parents of any meeting to discuss the educational placement of their child. The notice shall meet the requirements of K.A.R. 91-40-17. If a parent cannot participate in person at a meeting relating to the educational placement of the child, the agency shall offer to use other methods to allow the parent to participate, including conference calls and video conferencing. An agency may conduct a meeting to determine the appropriate educational placement of a child with a disability without participation of a parent if the agency, despite repeated attempts, has been unable to contact the parent or to convince the parent to participate. If an agency conducts a meeting to determine the appropriate educational placement of a child without the participation of a parent, the agency shall have a record, as prescribed in K.A.R. 91-40-17(e)(2), of the attempts that the agency made to contact the parent. An agency shall take action to ensure that parents understand, and are able to participate in, any discussions concerning the educational placement of their children, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

According to K.S.A 72-3420 (a), each school district shall be required, 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.

The Complainant alleged the Behavior Support Classroom was not the correct placement for the Student, and that the decision was made without parental consent.

The District responded that the Student having access to the special education setting in a behavior support classroom did not mean the Student was assigned to receive all services in that program, but the Student had to have access to the special education teacher to provide the necessary amount of weekly services. The District indicated that once the Student returned for the 2025-26 school year, the School team would hold an IEP meeting, and the Student would continue to receive comparable services until the IEP meeting was held with all required participants, including the Parent.

A Positive Behavior Support Plan, dated January 12, 2024, indicated the Student's targeted behaviors included refusals and elopements, and also described prevention procedures. According to an Evaluation Report dated October 21, 2024, it was determined the Student needed intensive, individualized instruction within a center-based program to address their

needs. A hybrid approach combining an intensive resource classroom and a pull-out interrelated resource program was being used at the time. The Student's IEP from November 4, 2024 indicated the Student was enrolled in a center-based classroom designed for students who required more intensive individualized instruction, and the Student received instruction in a less restrictive special education setting for portions of their day. The IEP also detailed the type and amount of services the Student received.

Meeting Notes regarding the Student's transfer, dated May 2, 2025, indicated the Student attended a center-based program at the previous school, which was an intensive resource classroom, and received a hybrid model of instruction. In an email from Special Education Coordinator 1 to the Executive Director of Special Education, dated May 6, 2025, Special Education Coordinator 1 shared information about the Student, their current placement, IEP minutes, their recommendation for placement, and asked where the Student should be placed. The Executive Director of Special Education replied that day and stated the Student would be placed in the behavior support classroom.

On May 13, 2025, the Principal emailed Special Education Coordinator 2 and requested a meeting to review the Student's IEP. The Principal contacted Special Education Coordinator 2 again, with concerns about the Student being in the behavior support classroom. The Principal emailed the Executive Director of Special Education the next day, reiterating their concerns.

After reviewing the Student's IEP, the Complainant perceived the behavior support classroom was not the appropriate placement, and stated they were not provided a reason as to why the Student was placed in their classroom. The Complainant indicated they asked Special Education Coordinator 2 if the Student's placement was correct, and were told the Executive Director of Special Education had determined the Student's placement. The Complainant explained it was not standard practice to hold IEP meetings for move-in students, and that the Executive Director of Special Education determined placement.

The Complainant indicated the Student performed well in the behavior support classroom, but perceived it would have been better for the Student to be in a structured learning classroom with more minutes in the general education environment. The Complainant did not ask the Parent if they agreed with the Student's placement.

An IEP meeting was not held when the Student transferred to the School. However, statements from the Complainant indicated it was not standard procedure to do so. Additionally, the District indicated the lack of a meeting was because the Student was only in school for six days before the 2024-25 school year ended, and the Student's educational placement was not changed.

A letter from the United States Department of Education stated in part, "Historically, we have referred to 'placement' as points along the continuum of placement options available for a

child with a disability and 'location' as the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services."

As seen in Issue #1, the District provided comparable services to the Student. According to Special Education Coordinator 2, the Student had access to the structured learning and behavior support classrooms. The Executive Director of Special Education indicated the behavior support program typically supported students with behavior needs who had a behavior intervention plan. They explained the Student was still in the structured learning classroom, but with access to the behavior support classroom to get their behavior needs met. In this instance, the District utilized different classrooms as a way to provide services, but an educational placement, as defined above, was not made.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the District failed to convene an IEP team meeting, including the Parent, to make decisions regarding the Student's appropriate educational placement in the least restrictive environment prior to implementing such placement, or that the District failed to obtain Parental consent prior to changing the Student's placement to the behavior support classroom.

Issue Three

Whether USD #500, in accordance with state and federal regulations, appropriately informed the Parent of changes to the Student's IEP in a Prior Written Notice. K.S.A. 72-3430(2), K.S.A 72-3432, K.A.R. 91-40-26; C.F.R § 300.503

According to K.A.R. 91-40-26, K.S.A. 72-3430(2), and K.S.A 72-3432, in providing any notice to the parent or parents of an exceptional child in accordance with K.S.A. 72-990 and amendments thereto regarding any action proposed or refused by an agency, each agency shall ensure that the notice includes the following information: a description of other options that the agency considered and the reasons why those options were rejected; and a description of other factors that are relevant to the agency's proposal or refusal. The notice shall 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 a parent is not a written language, the agency shall take steps to ensure all of the following: the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication; the parent understands the content of the notice; and there is written evidence that the requirements of paragraphs (1) and (2) of this subsection have been met. The agency shall be required to provide a parent with a copy of the procedural safeguards available to parents only one time during each school year, except that a copy shall also be provided to the parent in the following circumstances: upon initial referral of the child for an evaluation or upon parental request for an evaluation; upon receipt by the state

department of education of the first complaint filed with it by the parent; upon receipt by an agency of the first due process complaint filed against it by the parent; upon the parent's child being subjected to disciplinary removal from the child's current placement; and at any time, upon request of the parent. The agency shall inform the parent of any free or low-cost legal or other relevant services available in the agency's area if the parent requests the information or the parent or agency initiates a due process complaint involving the parent's child.

The Complainant alleged the Parent was not involved in, or gave consent to, the Student being placed in a Behavior Support Classroom.

The District stated that by reviewing the Student's transfer IEP and evaluation reports, and providing the Parent a PWN about comparable services that aligned with the services the Student was receiving in the previous district, was in accordance with state and federal regulations, and the District appropriately informed the Parent of any changes.

In an email exchange between the Complainant and Special Education Coordinator 2 on May 16, 2025, the Complainant asked if there was a signed PWN from the Parent, and was told no signature was required for a transfer IEP. The Executive Director of Special Education explained a PWN was written to align the Student's service minutes to their new school. Special Education Coordinator 2 indicated the Parent was notified about the process through the PWN, which was emailed to the Parent, and they also spoke with the Parent over the phone about the Student's programming. The Executive Director of Special Education indicated the Parent did not need to sign the PWN because a significant change was not made. While the Parent was not interviewed for this investigation, there was no documentation or testimony to demonstrate the Parent was not informed of, or concerned about, the services the Student was receiving at the School.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the District failed to appropriately inform the Parent of changes to the Student's IEP in a Prior Written Notice.

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.gov 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 27, 2025

DATE OF REPORT: JUNE 30, 2025

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ---------- by ----------, Educational Advocate. In the remainder of the report ---------- will be referred to as the "student" and ---------- will be referred to as the "complainant" or the "advocate". It is noted that the complainant provided written consent from the student's parent, ----------, to share personally identifiable information regarding the student in regards to this investigation. In the remainder of the report, ---------- will be referred to as the "parent" or the "mother".

The complaint is against USD #512 (Shawnee Mission Public Schools). In the remainder of the report, this responsible 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 process 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 27, 2025 and assigned the case for investigation on May 28, 2025.

Evidence Reviewed

Both parties were contacted via telephone during the investigation to gather and clarify information. The Chief of Special Education for USD #512, Sherry Dumolien, was interviewed on June 16, 2025. The advocate and the mother were interviewed on June 17, 2025.

The LEA and the complainant provided the following written documentation which was used in consideration of the issue:

1. Individualized Education Program (IEP) dated April 19, 2024 and amended on May 14, 2024
2. Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent dated May 14, 2024
3. Shawanoe Elementary Attendance Detail Report dated August 20, 2024 through May 16, 2025
4. School Attendance Records from District Office dated August 20, 2024 through May 16, 2025

5. Discipline records for the student dated August 16, 2024 through May 14, 2025
6. Out-of-School Suspension (OSS) Letter dated August 30, 2024 written to the parent by Tasha Howard, Shawanoe Elementary School Principal, assigning one day of OSS on September 3, 2024
7. Screenshot of text dated September 26, 2024 of parent phone indicating she picked up the student after school due to bus issues at district request
8. OSS Letter dated October 7, 2024 written to the parent by the principal assigning two days of OSS on October 7 and 8, 2024
9. OSS Letter dated October 24, 2024 written to the parent by the principal assigning one day of OSS on October 29, 2024
10. OSS Letter dated November 20, 2024 written to the parent by the principal assigning OSS on November 20, 2024
11. OSS Letter dated November 20, 2024 written to the parent by the principal assigning OSS on November 21, 2024
12. Johnson County Mental Health (JCMH) Call Report dated December 3, 2024 showing parent picked up student after school after police were called
13. OSS Letter dated December 5, 2024 written to the parent by the Principal assigning two days of OSS on December 5 and 6, 2024
14. Screenshot of text dated March 28, 2025 of parent phone indicating she picked up the student after school due to bus issues at district request
15. Screenshot of text dated April 8, 2025 of parent phone indicating she picked up the student after school due to bus issues at district request
16. JCMH Call Intake / Call Detail dated April 8, 2025
17. IEP dated April 10, 2025 and amended on May 19, 2025
18. Screenshot text dated April 11, 2025 at 1:43 PM from "Allison, the school secretary" requesting the parent pick up the student from school
19. Screenshot of text dated April 11, 2025 at 1:51 PM from Shawnee Police officer requesting the parent pick up the student from school
20. Screenshot of text dated April 11, 2025 at 2:28 PM from Shawnee Mission School District Police officer requesting the parent pick up the student from school
21. Screenshot of text dated April 15, 2025 of parent phone indicating she picked up the student after school due to bus issues at district request
22. OSS Letter dated May 2, 2025 written to the parent by the principal assigning one day of OSS on May 2, 2024
23. Shawnee Police Incident Report dated May 13, 2025 at 3:41PM
24. OSS Letter dated May 15, 2025 written to the parent by the principal assigning one day of OSS on May 16, 2024
25. Email dated May 20, 2025 written by John McKinney, Director of Student and Family Services for USD #512, to the advocate explaining the attendance codes

26. Formal Complaint Request Form dated May 27, 2025
27. Release of Information dated June 1, 2025 signed by the parent
28. District response to the allegations dated June 10, 2025 written by Sherry Dumolien, Chief of Special Education for USD #512
29. District response for clarification dated June 23, 2025 written by Ms. Dumolien

Background Information

The student is a six-year-old boy who lives at home with his mother and sibling in USD #512. During the 2024-25 school year, the student was enrolled at Shawanoe Elementary School where he repeated kindergarten. The parent reported the student attended Benninghoven Elementary School for extended school year services during June 2025 and will be attending Rosehill Elementary School for first grade during the 2025-26 school year.

The student was initially evaluated and determined eligible for early childhood special education (ECSE) services at age three while enrolled in preschool in USD #231. The student transferred into USD #512 and attended pre-kindergarten with ECSE services at Apache Elementary School during the 2022-23 school year. The next school year he attended kindergarten and received special education and related services at Shawanoe Elementary until March 1, 2024 when he transferred to USD #367. He transferred back to USD #512 on May 10, 2024 and finished the rest of his kindergarten year at Shawanoe Elementary School. For the 2024-2025 school year, the student continued to be enrolled at Shawanoe Elementary School for a repeat of kindergarten and to receive his special education and related services.

According to the January 21, 2025 evaluation report from Children's Mercy Hospital, the student has medical diagnoses of Autism and Attention Deficit Hyperactivity Disorder. His most recent special education reevaluation was conducted on April 10, 2025. At that time, the IEP team determined the student was a child with an exceptionality under the category of Other Health Impairment and continued to be in need of special education and related services.

Issues Investigated

Based on the written complaint, one issue was 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 disciplinary procedures during the 2024-25 school year when the student was suspended for greater than ten days.

Applicable Law

Federal regulations at 34 C.F.R. 300.530 require specific procedures to be followed when a student with a disability or suspected of having a disability are subject to a disciplinary removal because of a violation of the student code of conduct.

Disciplinary removals are considered to be "short-term" when a student is removed from their educational placement for no more than 10 consecutive school days or no more than 10 cumulative school days during a school year. In these situations, federal regulations at 34 C.F.R. 300.530(b)(1) allow for a public agency to remove a student with a disability who violates a code of student conduct from the student's educational placement to another setting, including suspension, without providing any services.

However, when a student with a disability who has violated a code of student conduct has been removed from the student's educational placement for more than 10 cumulative days during a school year, federal regulations at 34 C.F.R. 300.536(a) require the public agency to determine if a pattern of suspensions exists. The public agency must consider the length of each removal, the total amount of time removed, the proximity of removals to one another, and the similarity of the behaviors resulting in the removals when determining if a pattern exists. If the public agency determines that a pattern does not exist, a manifestation determination meeting is not required to be held but the public agency must provide services to enable the student to participate in the general education curriculum (although in another setting) and to progress toward meeting the goals in the IEP according to 34 C.F.R. 300.530(d)(4).

Disciplinary removals are considered to be "long-term" when a disciplinary change of placement occurs. Federal regulations at 34 C.F.R. 300.536(a) define a disciplinary change of placement as occurring when a student's educational placement has been changed because of disciplinary action resulting from a violation of the student code of conduct for more than 10 consecutive school days or for more than 10 cumulative school days when a pattern exists. When a long-term suspension occurs, the public agency is required to conduct a manifestation determination meeting to determine if the behavior resulting in the disciplinary action is related to the student's disability as described in federal regulations at 34 C.F.R. 300.530(c,d,e,f). In this situation, the public agency is also required to provide services to enable the student to participate in the general education curriculum (although in another setting) and to progress toward meeting the goals in the IEP.

Analysis: Findings of Fact

The following findings of fact are based upon interviews and record review.

During the 2024-25 school year, the student had two IEPs in effect. The first IEP is dated April 19, 2024 and requires special education and related services be provided in the school setting. This IEP was amended on May 14, 2024 to include transportation as a related service. The Prior Written Notice provided to and signed by the parent on May 14, 2024 states, "*The team*

proposes to add special transportation to the student's IEP because he needs transportation services in order to access his special education services and general education instruction".

The second IEP is dated April 10, 2025 and amended on May 19, 2025. This IEP also requires special education and related service be provided to the student in the school setting and includes transportation as a related service. The IEP states, "*Transportation will be provided from the time the student gets on/off the bus from home to school, school to home, and/or school to school in a special education vehicle*".

Based on a review of documentation provided by both parties, the following chart summarizes the dates the student did not receive the services required by the IEPs as a result of behaviors which resulted in disciplinary action by the district.

It is noted that the investigator considered any instance where the district denied the student the special education and related services required by the IEP as a disciplinary action resulting in a disciplinary removal of the student as the provided documentation did not always "match" across all of the documentation sources. Discrepancies are described in the notes following the chart.

Date of Behavioral Incident	Result of Behavioral Incident	Discipline Log	Attendance Record	OSS Letter	Parent Documentation
8/30/24	Sent home at 11:45 AM due to physical aggression towards adults	X	X	8/30/24 OSS Letter	
9/26/24	Mom picked up from school at district request due to unspecified behavior				Screenshot at 3:09 PM[1]
10/7/24	Sent home at 1:45 PM due to physical aggression towards adults and property destruction	X	X	10/7/24 OSS Letter	
10/8/24	OSS		X	10/7/24 OSS Letter	
10/29/24	Sent home at 10:00 AM due to physical aggression towards adults and property destruction	X	X	10/29/24 OSS Letter	
11/20/24	Mom picked up from school at district request due to physical aggression towards adults on bus	X		11/20/24 OSS Letter[2]	
11/21/24	OSS		X	11/20/24 OSS Letter[2]	
12/3/24	Mom picked up after school at district request due to physical aggression towards adults and peers and the student eloping from the school building	X			JCMH Call Report[3]
12/4/24	Mom picked up from school at district request due to self-harm, physical aggression towards adults and peers	X			
12/5/24	OSS	X		12/5/24 OSS Letter	

Date of Behavioral Incident	Result of Behavioral Incident	Discipline Log	Attendance Record	OSS Letter	Parent Documentation
12/6/24	OSS			12/5/24 OSS Letter	
2/28/25	Sent home at 10:30 AM due to physical aggression towards adults and peers along with property damage	X	X		
3/28/25	Mom picked up after school at district request due to physical aggression towards adults	X			Screenshot at 3:05 PM
4/8/25	Mom picked up after school at district request due to physical aggression towards adults	X			Screenshot at 3:35 PM and JCMH Call Report
4/11/25	Mom picked up from school at district request due to physical aggression towards adults				Screen shot at 1:43 PM (school secretary); at 1:51 PM (Shawnee Mission Police); at 2:28 PM (Resource Officer) and JCMH Call Report[4]
4/15/25	Mom picked up after school at district request for unspecified bus issue				Screenshot at 3:16 PM[5]
4/22/25	Mom picked up after school at district request for unspecified bus issue				Screenshot at 3:18 PM[6]
5/2/25	Sent home at 8:15 AM due to physical aggression towards staff and eloping from building	X		5/2/25 OSS Letter	
5/13/25	Mom picked up after school at district request due to physical aggression towards adults on bus[8]				Shawnee Mission Police Report[7]
5/14/25	Mom picked up from school at district request due to physical aggression towards adults on bus[8]	X			
5/16/25	OSS[9]		X	5/15/25 OSS Letter	

Note[1]: The Screenshot shows a text message stating, "*I am leaving work now the school called me to get the student*"

Note2: There are two versions of the OSS Letter dated 11/20/24. The first version assigns one day of OSS and shows the student can return to school on 11/21/24. The second version also assigns one day of OSS and shows the student can return to school on 11/22/24. The district reports 11/21/24 was the correct date of the OSS assigned to the student since the incident resulting in the OSS happened after school hours on the bus.

Note[3]: The JCMH Call Report states the student eloped from the school building at dismissal time and that police and JCMH staff were called to assist. The parent provided transportation after the student was located and returned back to school.

Note[4]: Screenshots show a phone message left by the school secretary at 1:43 PM requesting the parent "*come for the student*" and stating that both the Shawnee Mission Police and the

District Resource Office had been called. Subsequent screenshots of phone messages from the Shawnee Police at 1:51 PM and the District Resource Office at 2:28 PM requested that parent come to the school. The JCMH Call Report documents the behavioral issue was physical aggression towards adults.

Note[5]: The Screenshot shows a text message stating, "*Another bus issue i have to leave and get the student . . .*"

Note[6]: The Screenshot shows a text message stating, *"Leaving again to get the student . . .*"

Note[7]: The Shawnee Mission Police Report states, "*I spoke to staff and they reported the student was being driven by assisted transport to day care.* The student unbuckled his 5 point harness and grabbed the driver's face and broke her glasses. The student was taken back to school and his mother. The mother was contacted and was in route to the location from Olathe, KS.".

Note[8]: This appears to be the same incident based on the description in both the police report which was completed after school hours in the law enforcement system and the discipline report which was entered into the school system the next morning.

Note[9]: No description of the incident resulting in the disciplinary action was provided by the district

The chart shows the student did not receive the special education and related services required to be provided in the school setting for a total of 11 cumulative school days during the 2024-25 school year as follows: August 30, October 7 and 8, October 29, November 21, December 5 and 6, February 28, April 11, May 2 and May 16.

The district acknowledged the student was suspended for the following 10 school days: August 30, October 7 and 8, October 29, November 21, December 5 and 6, February 28, May 2 and May 16 based on an internal review. The investigator notes that the discrepancy is from district not including the incident on April 11 as no building level documentation was made in the school system despite the documentation provided by the parent indicating district staff and police involvement on that date.

The chart shows the student did not receive the transportation as a related service as required by the student's IEP for a total of nine cumulative school days during the 2024-25 school year as follows: September 26, November 20, December 3 and 4, March 28, April 8, April 15, April 22, and May 13.

The chart shows physical aggression towards others as the behavior resulting in 15 of the 20 days of missed services during the 2024-25 school year.

Conclusion

Based upon the information summarized in the chart, the student was never removed from his educational placement for greater than 10 consecutive school days during the 2024-25 school year. However, the documentation shows the student was removed from his educational placement for greater than 10 cumulative school days during the 2024-25 school year due to disciplinary removals.

A disciplinary removal occurs when the district refuses to provide the special education and related services required by a student's IEP due to behavior that violates the student code of conduct. The student's IEP in effect during the 2024-25 school year requires special education and related services in the school setting as well as transportation as a related service. Transportation as a related service is required to be provided for the student both to and from school.

In this case, the documentation in the chart shows the student did not receive the required special education and related services, including transportation as a related service, for a total of 20 cumulative school days during the 2024-25 school year due to behavior which resulted in a disciplinary action taken by the district. This situation required USD #512 to follow specific procedures.

Beginning on December 6, 2024, which was the eleventh cumulative school day the student did not receive his required special education and related services, including transportation as a related service, the district was required to determine if a pattern existed with the disciplinary removals. And following each subsequent disciplinary removal, the district was also required to determine if a pattern existed. The district acknowledged that no special procedures were followed because the district believed the student was only suspended for 10 cumulative school days during the 2024-25 school year.

In addition, IDEA required that the district to provide services to the student beginning on the eleventh day of the cumulative suspension during the school year regardless if a pattern was determined to have existed. Again, the district acknowledged this did not occur because the district believed the student was only suspended for 10 cumulative school days during the 2024-25 school year.

Based on the foregoing, the district *is found to be out of compliance* with the requirements of federal regulations at 34 C.F.R. 300.530 which require specific procedures to be followed when a student with a disability or suspected of having a disability is subject to a disciplinary removal because of a violation of the student code of conduct. In this case, USD #512 failed to determine if a pattern of suspensions existed and failed to provide the student with services to enable the student to participate in the general education curriculum (although in another setting) and to progress toward meeting the goals in the IEP.

Summary of Conclusions/Corrective Action

ISSUE ONE: Interviews and documentation support a finding that the district did not follow the specific procedures required by the IDEA when the student was removed from his educational placement due to disciplinary action taken by the district for greater than 10 cumulative school days during the 2024-25 school year. Specifically, USD #512 failed to determine if a pattern of suspensions existed beginning on day 11 of the suspensions and did not provide services to enable the student to participate in the general education curriculum

and progress toward meeting the goals in the IEP for a total of nine days during the 2024-25 school year. Based on the foregoing, the district is determined to be OUT of compliance with the requirements of the IDEA and corrective action is required.

Corrective Action:

1. The LEA will review all of the documentation included in the chart and will make a determination if a pattern of suspensions occurred during the 2024-25 school year. If a pattern does not exist, no further action will be taken. However, if a pattern is determined to exist, the LEA will follow the specific procedures required by conducting a manifestation determination meeting. The LEA will provide KSDE with a summary of the factors considered when determining if a pattern exists with the disciplinary removals during the 2024-25 school year along with documentation from the manifestation determination meeting (if one is required) no later than August 20, 2025.
2. Beginning on the eleventh day of the cumulative removals from the student's educational placement, services in the school setting were not provided on four dates (February 28, April 11, May 2, and May 16). The LEA will develop a plan to provide four days of compensatory services to the student and offer these services to the parent. The parent may accept all, some, or none of these services. The LEA will provide KSDE with a copy of the PWN offering these services to the parent no later August 30, 2025. If the parent accepts all or some of the services, the LEA will provide KSDE with documentation showing the services were provided within one week from the date of the final service.
3. Beginning on the eleventh day of the cumulative removals from the student's educational placement, transportation as a related service was not provided on eight dates (February 28, March 28, April 8, April 11, April 15, April 22, May 2, and May 13). The LEA will determine the round trip mileage between the parent's home during the 2024-25 school year and the Shawanoe Elementary School and provide the parent with mileage reimbursement based on the district's rates in effect for the eight dates that the parent provided the required transportation for the student. The LEA will provide KSDE with a copy of the cashed check no later than 30 days from the date the check was cashed but not later than September 30, 2025.
4. The LEA will review procedures and practices for recording and monitoring when students with disabilities are subject to disciplinary action in the school information systems at Shawanoe Elementary School. These procedures and practices should be designed to ensure more accurate records are kept at the building level so that monitoring can be triggered when a student's discipline history approaches either the 10 consecutive school days or the 10 cumulative school days in a school year. In addition, these procedures should ensure more accurate communication with parents regarding disciplinary actions. A copy of the procedures will be provided to KSDE no later than the first day of the 2025-26 school year along with documentation showing that all relevant building level staff including, but not limited to, the administrators and secretaries, have been trained in these procedural expectations.

5. USD #512 shall develop and maintain a central tracking system beginning with the 2025-26 school year to which all qualifying suspensions of special education students are reported so that district level special education staff are aware of the suspension status of these children and know when a child has reached the 11th day of suspension and so is entitled to services during any subsequent suspension. USD #512 shall provide KSDE of documentation showing administrators in all school buildings have been informed of the updated procedures related to the implementation of this central tracking system beginning with the 2025-26 school year.
6. No later than November 15, 2025, USD #512 shall provide KSDE with a list of all students from the central tracking system receiving any discipline/suspensions in excess of 10 days between the dates of September 1 and November 1, 2025. From that list, KSDE will randomly chose up to five students for USD #512 to provide KSDE with documentation indicating the appropriate IDEA requirements related to discipline have been met for these identified students.

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.gov 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 #232
ON JUNE 5, 2025

DATE OF REPORT: JULY 5, 2025

This report is in response to a complaint filed with our office on behalf of a student, --------, by their advocate, --------. In the remainder of the report, the student will be referred to as "the Student" and the advocate as "the Complainant." The Complaint is against USD #232, DeSoto Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #232.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint. 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 5, 2025, and the 30-day timeline ended on July 5, 2025.

Allegations

The following issue will be investigated:

Issue One

Whether USD #232, in accordance with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), obtained parental consent when making material changes to the Student's IEP and special education placement. K.A.R. 91-40-21(c)(1)(A)(B), K.A.R. 91-40-27(3); 34 C.F.R. § 300.116.

Investigation of Complaint

The Complaint Investigator interviewed the Complainant and the Parent by video conference on June 26, 2025. The following District staff were interviewed on June 27, 2025: the Principal and the Director of Special Education.

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

District Materials:

1. Complaint Response, no date

2. Individualized Education Plan (IEP), 03/25/25
3. Release of Information and Medicaid Reimbursement, 03/25/25
4. Parents Rights, 03/25/25
5. Prior Written Notice (PWN), 03/25/25
6. Notice of Meeting, 03/14/25
7. IEP Amendment … , 06/02/25
8. IEP, 05/09/25
9. PWN, 05/09/25
10. PWN, 05/09/25
11. Notice of Meeting, 04/24/25
12. Progress Report, 05/19/25
13. Email, re: advocate meeting notes, 04/23-04/27/25
14. IEP Meeting Questions, 04/24/25
15. Email, re: follow up, 05/21/25
16. Email, re: May have found chart … 06/09/25
17. Email, re: Fw: May have found chart … 06/30/25 Complainant Materials:
    1. Email, re: [the Student], 05/20/25

Background Information

This investigation involved a third grade student enrolled at a school in USD #232. The Student enjoys recess, riding bikes, and working outside with their parent. The Student is currently receiving special education or related services as a child with a disability per the Individuals with Disabilities Education Act (IDEA).

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Complainant, the Parent, and staff in the District.

1. The Student's IEP was initiated on March 25, 2025 and amended on May 9, 2025, which was also the most recent evaluation/reevaluation date.
2. On April 11, 2025, there was a "Level 1 [Placement Review Process] PRP" meeting held, as documented on the "IEP Considerations-Level 1" form. In attendance were the School Improvement Specialist, the School Psychologist, the Teacher, the Case Manager, the Behavior Specialist, and the Special Services Coordinator.
3. On an undated chart (part of the Level 1 meeting), the details regarding the Student's "current programming and placement" were as follows: there were seven "academic," five "behavior," one "behavior/academics," three "program," and two "social" areas of concern. Out of the 18 areas of concern identified, 12 were rated as "Severe Impact and/or Concern," one was rated as "Moderate Impact and/or

Concern," one was rated as "Mild Impact and/or Concern," and four were rated as "Minimal Impact and/or Concern."

4. April 23, 2025 meeting notes reflected the following:
    a. The Teacher noted a change in the Student's behavior after winter break, where cussing and threatening had escalated, sexual talk was observed, and there were issues "in all areas with multiple students." They also noted that until the week of the meeting, the Student had been escalating more quickly and this was happening more frequently. They also added that the "triggers aren't consistent" and "[The Student] doesn't want to take part in supports such as breaks."
    b. The Case Manager updated the team on the Student's behavior the week of the meeting and noted changes in the support person, the Student was working better and participating more with the Case Manager when they worked with them one-on-one, a change of location for reading pull out, and the goal to get the Student back into a reading group.
    c. The Complainant questioned if the Student needed more one-on-one support, citing difficulty bonding to adults in the building.
    d. In regard to the behavior chart, the Complainant recommended removing recess as a choice for the Student and sending a picture of the chart home with the Student.
    e. It was noted that "going forward" the Student would continue one-on-one with the Case Manager, the team would "update music on looking for triggers," and the team needs "a month of good data."
5. On April 24, 2025, the Case Manager received an email from the Complainant with questions regarding the March 25, 2025 IEP. They specifically asked to add the following information to parent concerns: "retention of sight words and phonics; constant fight or flight; anxiety from academic delay in reading and writing; concern with executive functioning, hides, delays time, screams, throws items when overstimulated; mental shutdowns during unpreferred tasks; and inappropriate language during lunch."
6. An April 24, 2025 Notice of Meeting listed a proposed meeting on May 9, 2025 to "Discuss possible changes to your child's IEP." On April 24, 2025, one of the Parents signed the acknowledgement and marked "I plan to attend the meeting as scheduled."
7. In an April 27, 2025 email to the Special Services Coordinator, the School Improvement Specialist, the Teacher, the Case Manager, the Principal, the Occupational Therapist (OT), the Social Worker, and the Behavior Specialist, the School Psychologist stated that they were able to "connect with" one of the Parents and "touch base in the PRP … that we opened [during a meeting on Wednesday]. I know that [the Parent] is hesitant about the process so here is how I explained it to [them] … [The Parent] shared [their] concerns with [the Student] being a part of

[the] Connections [B] program. [The Parent] used to be a paraprofessional at Connections C, so we talked about the differences between the two programs, some of the demographic differences, etc."

8. In an IEP Amendment dated May 9, 2025, the proposed changes were:
   a. Goal changes to the "sight word goal to adjust to [the Student's] progress."
   b. Goal changes to the "behavioral social work goal" to add benchmarks.
   c. Clarifications and examples added to modifications and accommodations including flexible seating, frequent academic breaks, preferential seating with proximity to teacher, cloze notes, sentence stems, quiet/separate setting with familiar staff for testing, close monitoring of assessment completion, and communication log/behavior chart sent home daily.
   d. Exceptionality changed from "Developmental Delay" to "Emotional Disability."
   e. Behavior Intervention Plan (BIP) edited to reflect new information from the Functional Behavior Assessment (FBA).
   f. "The IEP team recommended that [the Student] transition to the Connections B program in August 2025. The Connections B classroom is designed to meet student needs by creating a supportive and flexible learning environment where students receive explicit instruction in the area of social-emotional skills and behavioral regulation in order to build independence for success in school and throughout life."

      Under the proposed changes was the following statement, "At this time, [the Student's] parents have declined the IEP team's above recommendation." The date the proposed changes would take effect was May 9, 2025. The box was checked to "agree" to the IEP amendments proposed and the box was checked that they "do not" wish to convene an IEP meeting. The form was electronically signed by the Parent on June 2, 2025 and by an authorized district representative on June 21, 2025.
9. On the May 9, 2025 IEP, two parents were listed under "IEP Participants," with one listed as "did not attend" and both showing electronic signatures on May 9, 2025. Additionally, the Complainant was listed as an "IEP Participant" and also electronically signed the document on May 9, 2025.
10. On the May 9, 2025 IEP, under "Parent/Guardian Concerns," the amendment IEP meeting concerns noted one of the Parents wanted the Student to complete reading goals at a quicker pace and for writing to be added. It was also noted that they hoped for the Student to have "less accommodations and shortened assignments to be able to complete tasks within a reasonable time." They went on to share concern that the Student is not at grade-level for reading and that "Self-confidence among peers [is] lacking due to lack of skill set or knowledge."

    It was noted on the IEP that the Parent/Guardian concerns were addressed by

sharing the Student's increase in "Fastbridge" scores since small group reading instruction was changed to one-on-one; the Student had been participating more since a change in paraprofessional and "more flexible teaching style"; and the Student's parent "reported that [they] will be working with [the Student] on writing over the summer to help [them] gain some confidence."

11. On the May 9, 2025 IEP, the Social Work Updates between March and May 2025 outlined the Student's social work session attendance and participation. "[The Student] has responded positively to the opportunities of increased physical activity, and has been providing thought-out responses to social scenario questions." The update went on to describe the Student exhibiting refusal behaviors and their struggle to reflect on behavioral choices, along with increased agitation and shutting down when the Student was asked to discuss incidents. "[The Student] has been given the opportunity for morning breaks with another student on three opportunities and each time this has occurred the break has not served its purpose of being regulating for [the Student] or the peer … The Student is less responsive to behavior reminders from the social worker than when [they are] not with the peer." Staff members reported the Student consistently performed better during morning meetings and the Student expressed enjoying morning meetings and wanting to stay there. "[The Social Worker] has scaled back on offering sensory breaks with that peer in the morning so as to keep [the Student] in a regulated state."
12. On the May 9, 2025 IEP, the relevant accommodations and modifications, to take place from May 9, 2025 to March 24, 2026, included were:
    a. Flexible seating when the Student was expected to sit in the classroom for the duration of instruction in both General Education and Special Education settings.
    b. Frequent academic breaks when the Student requested for the duration of the academic task in both General Education and Special Education settings.
    c. Preferential seating/proximity control near the teacher daily for the duration of the instruction in both General Education and Special Education settings.
    d. Cloze Notes when class note taking was occurring through the duration of the lesson/assignment in both General Education and Special Education settings.
    e. Sentence Stems as requested by the Student for the duration of the assessment in both General Education and Special Education settings.
    f. Close monitoring of assessment completion whenever the Student completed standardized assessments for the duration of the assessment in both General Education and Special Education settings.
    g. Communication log/behavior chart daily at the completion of each school day in the General Education setting.
13. On the May 9, 2025 IEP, the BIP indicated an FBA was completed on May 9, 2025 and indicated a need for a BIP, which was outlined in the document.

14. On the May 9, 2025 IEP, under "Placement Considerations and Decision," the following placement options were considered and selected for March 25, 2025 through May 22, 2025 and August 13, 2025 through March 24, 2026:
    a. "Inside Regular Class 80% or more of the day."
    2. For the same date range, the following placement options were considered:
    b. "Inside Regular Class less than 79% but more than 40% of the day."
15. On a May 9, 2025 Prior Written Notice (PWN), the decision noted was "Material Change in Services (Parental Consent Required)." "Description of the Actions proposed" listed the following:
    a. Goal changes to "sight word goal to adjust to [the Student's] progress."
    b. Goal changes to "behavioral social work goal" to add benchmarks.
    c. Clarifications and examples added to modifications and accommodations including flexible seating, frequent academic breaks, preferential seating with proximity to teacher, cloze notes, sentence stems, quiet/separate setting with familiar staff for testing, close monitoring of assessment completion, and communication log/behavior chart sent home daily.
    d. Exceptionality changed from "Developmental Delay" to "Emotional Disability."
    e. BIP edited to reflect new information from the FBA.
    3. "Other Relevant Factors Considered" noted that "the team discussed [the Student's] least restrictive environment (LRE) and the pros and cons of [them] attending the Connections B Program versus [the School]. At this time, a decision has not been made by the family either way and the team will wait for any further questions or discussion points."

    This PWN was signed by one of the Parents on May 30, 2025 and the box for "give consent" was marked to provide consent for the special education placement and services actions in this notice. It was noted that the consent was voluntary and may be revoked at any time.
16. A May 9, 2025 PWN stated there was a meeting to review "Special education and related services needed by your child" and "[t]he appropriate educational placement to provide special education and related services identified in your child's IEP." The decision was a "substantial change in placement (parental consent required)." The "Description of the Action Proposed" was, "It is the recommendation of the IEP team that [the Student] finish the [20]24-25 school year at [the School] and [then] transition to the Connections B program at [a different school] to begin in August 2025." The "Explanation of Why the Action is Proposed" was due to the Student's current behaviors, plan, and support and noted the Connections B program having more knowledge and support to accommodate the Student's needs. The "Options Considered and Why the Options were Rejected" was, "At this time, [the Student's parent] reported hesitancy with [the Student] attending the Connections B program. The team encouraged [the Parent] to observe the program

before making any final decisions."

This PWN was signed by one of the Parents on May 30, 2025 and the box for "Do Not Give Consent - I do not give consent for the special education placement and services actions in this notice for my child" was marked.

17. On May 20, 2025, the Principal emailed the Parent to describe the Student's behaviors, the behavior tracking sheet, and the sustainability of the Student's accommodations. The Principal wrote, "These are the services that are not sustainable in this environment here at [the School]. The amount of support [the Student] has received at this level will not be continued next school year. In order for [the Student] to continue the academic and behavioral progress that we have seen recently we believe that [the Student] needs additional support that can be provided at the Connections B program at [another location]." (C23) The Principal sent a clarification email less than an hour later on the same date, "Let me address services for next year here at [the School]. We will continue to follow the IEP as it is written[,] however the sustainability puts a lot of stress on the resources and we are not as equipped for all of the different behaviors as a staff would be in the [C]onnections program."
18. In a May 21, 2025 email to one of the Parents and the Complainant, the Special Services Coordinator stated, "I am reaching out to see if you have any additional questions after our IEP meeting and the visit to [the Connections B program]. I know there has been a lot to process at the end of the school year. Please reach out with questions. In regard to the PWN, it will require a parent signature with consent given or not given in order to implement the proposed changes."
19. On June 9, 2025, the Director of Special Education emailed unidentified recipient(s), and referenced a chart used for the Student. They explained it was noted why the information was added, which was because "… 'the team felt that [the Student] needed consistency and had outlined consequences for different behaviors so that it was clear (and consistent between staff).'" The Director of Special Education indicated their recommendation was to review the information in the fall as an IEP to discuss concerns, and add more information in the same section about the rights/procedures for students in special education regarding suspension. An unidentified person replied on June 11, 2025 and wrote, "Yes that is the chart. I agree that [the Student] needed consistent consequence[s] for behaviors but the chart was not used fairly."
20. In an emailed dated June 30, 2025, the Director of Special Education indicated the IEP team recommended a reevaluation in March due to the Student's behaviors, and that the reevaluation would include an FBA. They explained that around the same time, the team started to look at their PRP because they were struggling with the Student's behaviors. The PRP was used to consider a student's strengths and needs, as well as to bring in District experts in a particular area to support the IEP team. They indicated both processes occurred from March to May 2025, until the

reevaluation meeting in May, where final recommendations were made using the data and information gathered.

21. This Complaint was filed on June 5, 2025.

Interview Summaries

The Principal

22. In an interview with the Complaint Investigator, the Principal described having a long-standing relationship with the Student, who had attended the School since kindergarten and was entering fourth grade. The Principal's involvement typically escalated when safety issues arose due to the Student's behavior, which included sexual comments, foul language, threats, destroying property, eloping, and general disrespect. The Principal noted that the Parent, who was a staff member in the building until recently, was "very close to the situation" and privy to daily incidents. The Principal stated that communication with the Parent was "pretty much constant," and believed that nothing was ever put into place without the Parent and the Complainant being a part of the discussion.

23. The Principal expressed surprise regarding the allegation that parental consent was not obtained for material changes to the Student's IEP or placement, referencing numerous meetings with the Parent and the Complainant. While staff held regular student collaboration team meetings as standard practice to discuss student needs, including the Student's, the Principal maintained that no significant changes were implemented without prior discussion with the Parent. The Principal acknowledged the Parent might have misconstrued these internal meetings as formal IEP discussions from which the Parent was excluded. However, the Principal reiterated that the School always followed up with parents on significant matters.

24. The Principal explained that discussions about a potential placement change for the Student had been ongoing with the Parent for several years, intensifying recently due to the Student's escalating behavior. However, the Parent consistently voiced opposition to a placement change. Before a formal meeting where the new placement was proposed, the School scheduled a courtesy meeting with the Parent and the Complainant, allowing them to hear and process the information so they could prepare any questions or concerns for the formal meeting. This courtesy meeting also included reevaluation information and a potential change in the Student's exceptionality, which the School thought might be "pretty heavy and emotionally provoking content" for the Parent. Although the Parent remained quiet during the formal placement proposal meeting, they agreed to visit the proposed placement site. Ultimately, parental consent for the placement change was not provided, leading to the Student remaining at the School, with all other consented IEP changes implemented.

25. The Principal discussed an email sent to the Parent on May 20, 2025, which aimed to clarify the Student's behavior tracking. In the email, the Principal explained the

Student's behavior chart only accounted for work completion and appropriate language, not other common misbehaviors, such as whining or yelling, which were not typical for peers. The Principal noted that observed successes might be linked to recent medication changes, but historically, the Student's issues had persisted since kindergarten. The email also stated the current level of support for the Student at the School was unsustainable and would not continue into the next school year, a statement the Principal quickly reconsidered. Realizing the wording could be misinterpreted as an unwillingness to support the Student, the Principal sent a follow-up email within an hour to clarify the School's intent was to ensure the Student received appropriate and dignified support, acknowledging the Student's behaviors often fluctuated, seemingly influenced by medication.

26. The Principal understood the Parent's primary frustration with the IEP centered on a behavior chart within the IEP, designed to ensure consistent expectations and consequences. While the Parent desired consistency, they reportedly disagreed with certain consequences or perceived inconsistencies in their application to other students. It appeared the Parent's objections to the chart became more pronounced when consequences, such as out-of-school suspensions for threats, conflicted with their work schedule. The Principal emphasized the chart's consequences were standard for any student exhibiting similar behaviors, expressing ongoing concern for the Student's dignity, and the safety of the entire student body at the School.

The Director of Special Education

27. During an interview with the Complaint Investigator, the Director of Special Education confirmed that during a formal IEP meeting, the Student was identified as having an emotional disturbance following a reevaluation and functional behavior assessment, which then led to the IEP discussion. During this meeting, a change in the Student's placement was recommended. However, parental consent, which was required for material changes in placement, was not obtained for this specific recommendation. The Complainant requested the proposed changes be split into two PWNs. The Parent consented to all other recommended changes outlined in the first PWN but declined consent for the center-based program placement change in the second PWN. Consequently, the Student remained at the School in their current placement, while the other consented changes were implemented.

28. The Director of Special Education explained that upon receiving the formal complaint, they met with the Parent and the Complainant to understand the specific concerns regarding providing consent. It was determined the Parent's frustration largely stemmed from a behavior chart included in the IEP, as referenced by the Principal. While the Parent desired consistency in expectations and consequences for behaviors, they reportedly disagreed with certain consequences or felt other students were not subject to the same consequences. The Director of Special Education engaged in an email exchange with the Parent to clarify these points and ensure the Parent understood their rights, emphasizing the Student had

the same rights as all other students. To the Director of Special Education's knowledge, no examples of implementations without consent were found; instead, the issues appeared to be frustrations with the IEP's content or wording, as well as staff actions following the Student's behaviors or consequences.

The Complainant

29. During an interview with the Complaint Investigator, the Complainant said, "I disagreed with the placement to move [the Student] to a different school into a specified program versus where [the Student] currently [was] receiving special education minutes." The Complainant explained they and the Parent toured the new school and program that was being proposed, and compared it to the Student's current school to determine the difference between the two programs. The Complainant expressed they did not agree with moving the Student to the new program because they perceived there were no benefits for the Student in doing so.
30. The Complainant indicated the Principal responded to their concerns via email, stating the Student would not be at the School next year because it put stress on the staff, and the School could not provide the types of services and amount of staff the Student required. The Complainant explained the Principal then sent a follow-up email, which indicated the School would continue to follow the Student's IEP as written, but that it put stress on the staff and they were not able to handle the Student's behaviors.

    The Complainant perceived the data used to complete the Student's FBA, and to show why they should move to a different program, only came from the Student's "most trying times." They perceived there was not any data to show what, if anything, happened after more accommodations, modifications, and service minutes were put into place. The Complainant indicated the Student's behavior improved at the end of the school year, but the School stated it was only due to the Student's medication.
31. The Complainant's understanding of the Student's current placement was, "… at [the School] and general education with support and service minutes."
32. The Complainant said, "… there was a prior written notice signed by [the Parent] that states we do not consent to a different placement or the placement they recommended … ." They stated that currently, the Student would attend the School in the fall.
33. The Complainant indicated one of the amendments from May 2025 they were concerned about was regarding the behavior chart. The Complainant explained they were informed the Student engaged in negative behaviors, but stated the behavior sheet would show the Student had good days. They advocated that a behavior sheet should be sent home daily, and have that included in the IEP

amendment. The Complainant explained they did not observe the Student engaging in negative behaviors.

34. The Parent indicated they signed an IEP amendment on June 2, 2025 and a PWN for initial services placement and request for consent, dated May 9, 2025. The Parent confirmed the document was marked that they did not give consent for special education placement and services actions for the Student. The Complainant explained the document demonstrated the Parent disagreed with placing the Student at the other school and program. The Complainant perceived the other program would not be a good fit for the Student because it only focused on behavior and they believed it would not meet the Student's needs.
35. The Complainant said, "While being in the meeting, [it] was very clear to me and to my understanding that they were not going to continue to have [the Student] in the school, that [the Student] needed to leave to get more support as they would put it, and they'd be more trained in the other school to handle [the Student's] behaviors. But it almost seemed like it was a predetermined [sic] with the IEP team."
36. The Parent perceived there were times when people wanted to arrange private meetings with them prior to the IEP meeting. The Parent explained they received a text message to meet the day before an IEP meeting to "go over things," and there was already a team of people there. The Parent said, "And so that meeting wouldn't come into existence without that team of people talking and gathering their thoughts together."

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #232, in accordance with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), obtained parental consent when making material changes to the Student's IEP and special education placement. K.A.R. 91-40-21(c)(1)(A)(B), K.A.R. 91-40-27(3); 34 C.F.R. § 300.116.

According to Per K.A.R. 91-40-27(3), each agency shall obtain parental consent before taking any action, of any exceptional child, shall make a material change in services to, or a substantial change in the placement of an exceptional child. Unless the change is based upon the child's graduation from high school or exceeding the age of eligibility for special education services.

The Complainant alleged the District did not obtain parental consent when making material changes to the Student's IEP and special education placement. The Complainant also purported the District urged the Parent to relocate the Student to a different program.

The District indicated they obtained parental consent each time material changes in services and placement were recommended by the IEP team, via PWNs. The District reported consent

for reevaluation was also sought and obtained, and that no changes to the IEP were implemented without parental consent.

The Student's IEP was initiated on March 25, 2025 and amended on May 9, 2025. A Level 1 PRP meeting was held on April 11, 2025, as shown on the "IEP Considerations-Level 1" form. The Parent was not listed as attending. On April 27, 2025, the School Psychologist emailed the Parent and explained the PRP to them, that the Parent would be involved in determining next steps, and the differences between the programs being considered for the Student.

April 23, 2025 meeting notes reflected a change in the Student's behavior after winter break. The Complainant questioned if the Student required more one-on-one support and made recommendations about the behavior chart. On April 24, 2025 the Case Manager received an email from the Complainant with questions regarding the March 25, 2025 IEP and requests to add information. A Notice of Meeting from the same day proposed a meeting for May 9, 2025, and one of the Parents signed that they planned to attend. The Student's IEP from May 9, 2025 addressed social work updates between March and May 2025, and showed an FBA was completed on the same date. The IEP indicated the Student's placement as "Inside Regular Class 80% or more of the day."

On May 20, 2025, the Principal emailed the Parent and indicated the Student's current level of support was unsustainable at the School, would not continue into the next school year, and suggested the other program for continued progress.

Less than an hour later, the Principal emailed again and clarified the School would still follow the Student's IEP, but reiterated that the current level of support was straining resources. The Principal and the Complainant confirmed the content of the emails, but the Principal maintained they sent the second email to clarify the Student would still receive support. In an emailed dated June 30, 2025, the Director of Special Education indicated the IEP team recommended a reevaluation in March 2025, which included an FBA. Around the same time, the team started to look at the PRP. Both processes occurred from March to May 2025, until the reevaluation meeting in May, when final recommendations were made.

In their interview, the Principal stated nothing was done without the Parent's participation. The Principal indicated staff held regular student collaboration team meetings as standard practice to discuss student needs, but maintained no significant changes were implemented without prior discussion with the Parent.

The Principal acknowledged the Parent might have perceived these internal meetings as formal IEP discussions from which they were excluded, but reiterated that did not happen. The Parent indicated they did perceive the internal meetings as inappropriate. The Principal explained that discussions about a potential placement change had been ongoing with the Parent, but the Parent consistently opposed it. The Complainant perceived the Student's current placement was at the School, and the Student would attend the School again in the fall.

On May 9, 2025, two PWNs were issued. One PWN detailed goal changes, modifications, an exceptionality change, and BIP edits from the IEP amendment. The IEP team also recommended the Student transition to the other program in August 2025. The Parent declined the transition recommendation, but agreed to the proposed amendments. The PWN was signed by one of the Parent on May 30, 2025 and the box for "give consent" was marked to provide consent for the special education placement and services actions in that notice. It was noted the Parent had not decided on whether the Student would attend the new program, and the team would wait, pending any further discussion.

The second PWN from May 9, 2025 indicated there was a meeting to review the Student's educational placement and the decision was considered a "substantial change in placement". It was proposed the Student would attend the new school and program. This PWN was signed by one of the Parents on May 30, 2025, and the box for "Do Not Give Consent" was marked. Interview summaries corroborated the content of these documents.

Based on the documentation and interviews, the District obtained parental consent for material changes to the Student's IEP as outlined in the May 9, 2025 amendment. However, the Parent did not consent to the change in placement, and as a result, the Student remained in their current placement at the School. While the Principal made some concerning statements in their email from May 20, 2025, the Student's placement was not altered. Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the District failed to obtain parental consent when making materials changes to the Student's IEP and special education placement.

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.gov 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 #475
ON JUNE 5, 2025

DATE OF REPORT: JULY 7, 2025

Background Information

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 #475 will be referred to as "the district."

Investigation of Complaint

On June 12, 2025, the complaint investigator spoke via telephone with the Executive Director of Special Education for the district. On June 12, 2025, both parties were sent summaries via email of the issues to be addressed through this investigation. The investigator spoke by telephone with the parent on June 12 and 13, 2025. During the June 13, 2025 telephone call, the parent confirmed his agreement with the issues as outlined by the investigator.

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

- IEP for the student dated April 30, 2024
- Safety Plan: Self Harm dated September 26, 2024
- Staffing Summary dated November 6, 2024
- Staffing Summary dated March 7, 2025
- Notice of Meeting on April 4, 2025 signed by the parent on March 28, 2025
- Staffing Summary dated April 4, 2025
- Email dated April 9, 2025 from the case manager (special education teacher) to the parent
- Email exchange dated April 14, 2025 between the executive director of special education and the parent
- Email dated April 26, 2025 from the parent to the student's special education teacher
- Email dated April 28, 2025 from the executive director of special education to the parent
- Email exchange dated May 5, 2025 between the executive director of special education to the parent
- Email dated May 14, 2025 from the parent to the executive director of special education

- Email exchange dated May 15, 2025 between the executive director of special education and the parent
- Email exchange dated May 19, 2025 between the parent and the executive director of special education
- Email dated May 20, 2025 from the parent to the executive director of special education
- Email exchange dated May 20, 2025 between the parent and the student's special education teacher
- Email dated May 22, 2025 from the student's special education teacher to the parent
- Email dated May 23, 2025 from the parent to the student's special education teacher and the executive director of special education
- Daily behavior reports provided by the district covering the period of August 13, 2024 through March 4, 2025
- Behavior data summary covering the period of October 21, 2024 through March 25, 2025
- Daily behavior charts dated April 17 and 28, 2025
- Staffing Summary dated April 22, 2025
- Draft IEP for the student dated April 22, 2025 provided by the district
- Final IEP for the student dated April 25, 2025 provided by the district
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated April 25, 2025
- Staffing Summary dated April 25, 2025
- Documents submitted by the parent including the following:
    - Draft IEP for the student dated April 22, 2025
    - Letter to the parent regarding an ESI (Emergency Safety Intervention) on April 22, 2025
    - Emergency Safety Intervention Documentation Form regarding an incident on April 22, 2025
    - Emergency Safety Intervention Documentation Form regarding an incident on May 23, 2025
    - Daily schedule for the student
    - Emergency Safety Intervention Documentation Form provided by the parent on June 12, 2025 regarding an incident on April 29, 2025
- Daily schedule for the student for the period beginning April 10, 2025

Background Information

This investigation involves a 7-year old boy who has completed the first grade in a district elementary school. He has received special education services since the preschool level and has been determined eligible to receive these services under the categorical designation of Developmental Disability.

The student's parents are divorced, and the student lives with his paternal grandparents. The parent is the educational decision-maker for the student and a sister who, according to the parent, also has been determined eligible for and in need of special education.

The student has been diagnosed with a seizure disorder, ADHD, attachment disorder, and an acute stress disorder. He has an Individual Health Plan (IHP) and until April 2025 also had a Mental Health IHP with a safety plan due to expressions of suicidal ideation. In a telephone call with the investigator on June 12, 2025, the student's father stated that while the student has not recently expressed suicidal thoughts, the father stated that he believes that a safety plan should continue to be in place.

The student's IEP team has determined that he displays unsafe behavior which impedes his learning or the learning of others. He has been provided accommodations including a visual schedule, visual cues, wait time, sensory supports, and social stories. The student has a Behavior Intervention Plan (BIP).

The student is provided with Attendant Care during lunch and recess. He is supported in the general education classroom for specials, math, science, and social studies. He also receives support in a special education classroom setting for core content and social skills. His IEP team determined that he should also receive social work services, but the student declined to participate in activities with the social worker for much of the 2024-25 school year.

Issues

In his complaint, the parent raised 6 issues.

Issue One

The district failed to provide the parent with copies of the daily behavior charts on dates specified in the complaint.

Position of the Parent

The parent asserts that, pending a change in communication strategies between himself and the special education teacher, the district failed to provide the parent with the student's behavior charts on the eight school days between April 17 and May 23, 2025.

Position of the District

The district stipulates that there have been occasions when behavior data was not provided to the parent on a daily basis. However, it is the position of the district that the student's April 30, 2024 IEP does not require the daily provision of data sheets to the parent. According to the district, the April 2024 IEP states that while behavior data will be taken daily for the purpose of determining the student's progress toward attaining an IEP goal, progress on that goal was to be reported to the parent on a quarterly basis.

The district acknowledges that, based on a request from the parent, daily behavior sheets were being sent to the parent. According to the executive director of special education, the district – at the April 25, 2025 annual review meeting - proposed sending data to the parent on a weekly basis, but the parent objected. It was subsequently determined that the data would be transmitted via email rather than through the "Class Dojo" communication system in order to better maintain a record of the transmission of the data to the parent.

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 of federal or state 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.

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). However, special education statutes and regulations do not require that every action taken by a school district with regard to a student who has been determined to be a student with an exceptionality be specifically addressed in a student's IEP.

Investigative Finding

The parent participated in the development of the student's April 30, 2024 IEP. That IEP included a Behavior Intervention Plan (BIP). According to a portion of the "Present Level of Academic Achievement and Functional Performance (PLAAFPs)" section of the student's April 2024 IEP entitled "Emotions/Self-Regulation,"

> *"Due to the intensity of [the student's] physical aggression a daily data collection of compliant/non-compliant and physically aggressive behaviors will be used. When [the student] is able to display behaviors of following directions for 80% of his school day and no*

> *physical aggressions for 4 consecutive days the team will look at proposing a change to increase the amount of time he is within the general education setting."*

The student's April 2024 IEP states that his needs in the area of Emotion/Self-Regulation would be met through an accommodation/modification, an annual goal, and a Behavior Intervention Plan. The annual goal established to address the student's needs was as follows:

> *"Within the IEP year, when given a direction that [the student] perceives is aversive, displayed by eloping, engaging in physical aggression, or using profanity, he will communicate through a visual cue or verbally that he needs help on 70% of opportunities throughout his school day, as documented by observation and data collection."*

The student's April 2024 IEP established four times at which time the student's progress toward attainment of the above annual goal would be monitored and reported – October and December 2024 and March and April 2025.

According to the BIP included in the student's April 2024 IEP, data regarding compliant/non-compliant and physically aggressive behaviors was to be collected on a daily basis and reviewed monthly by a team which included the student's case manager, the school psychologist, the social worker, the behavior consultant, the student's general education teacher, and the principal. While the parent and the district both report that the parent was provided with copies of the daily charts regarding the student's behavior, the student's 2024 IEP does not require that these daily reports be provided to the parent or that the parent be a part of the monthly data review process.

The annual review/revision of the student's IEP began on April 25, 2025. The district's proposed IEP again included a BIP. The proposed plan did not require the daily provision of behavior reports to the parent. The parties were unable to come to agreement regarding revisions to the student's IEP on April 25, 2025. Though numerous attempts were made to reconvene the IEP team to complete the annual review, none were successful. The student's April 2024 IEP remained in effect until the end of the last day of the 2024-25 school year on May 23, 2025 at which time the parent agreed to the implementation of a revised IEP proposed by the district.

Summary and Conclusions

The student's April 2024 IEP – which remained in effect throughout the 2024-25 school year – did not require the district to provide the parent with copies of the daily behavior data collected on the student. The parent asserts and the district stipulates that the parent was nonetheless being provided with that data during April and May 2025. The district provided the investigator with copies of data sheets for two of the dates specified by the parent in his complaint – April 17 and 28, 2025.

Because the student's April 2024 IEP did not specify that the parent was to receive copies of daily data sheets, a violation of special education statutes and regulations *is not substantiated*

on this issue. However, the district is strongly encouraged to provide the parent with copies of data sheets for the dates identified by the parent (if they are extant) in a good faith effort to comply with the parties' mutually agreed-upon decision to share this information with the parent.

Issue Two

The district failed to timely provide the parent with a draft copy of the proposed IEP prior to the April 25, 2025 IEP meeting.

Position of the Parent

The parent contends that the district did not provide him with a copy of its proposed IEP for the student until 7:24 AM on the day the student's annual IEP review was scheduled for 1:15 PM. It is the parent's position that this late delivery of the document did not give him sufficient time to review the document and participate meaningfully when making decisions regarding the student's IEP.

Position of the District

The district stipulates that, on the morning of the April 25, 2025 annual review, the district provided the parent with a draft IEP which included revisions proposed by the district.

Applicable Statutes and Regulations

IDEA (the Individuals with Disabilities Education Act) 2004 has been cautious about encouraging the use of "draft" IEPs fearing that they may send a message that parental concerns and parental participation are not valued.

Commentary published in the Federal Register, Volume 71, pages 46540-46845 notes that if a draft is developed, a copy of that draft should be provided to parents, and the team must ensure that the parents understand that the document is a draft and is not set in stone. While it is reasonable for a district to provide drafts to parents sufficiently in advance of the meeting to give parents enough time to allow the careful consideration of the recommendations outlined in the draft, statutes and regulations do not specify precise timelines for the delivery of a draft document to the parents.

Investigative Findings, Summary, and Conclusions

In his complaint, the parent confirms that the district did provide him with a draft of the proposed IEP. The district and the parent agree that the draft was not sent to the parent until approximately six hours prior to the scheduled IEP team meeting.

There is no requirement in special education law for districts to provide parents with a draft of a proposed IEP prior to the meeting. In fact, the development of drafts is not encouraged. If a district decides to develop a draft document and to provide parents with a copy of the draft

IEP for their review prior to the team meeting, it would not, in the opinion of the investigator, be unreasonable for the parent to expect to receive the draft with enough time for a careful review – perhaps at least 24 hours prior to the IEP meeting. Many parents would not have the time for sufficient review if they did not receive the draft document until the morning of the day the meeting is to be held.

If the district decides that it wants to continue to provide parents with drafts of proposed IEPs, the investigator suggests that staff be given guidance on the timely delivery of these documents. However, because special education laws do not require districts to provide parents with draft copies of proposed IEPs, a violation of special education statutes and regulations *is not substantiated* on this issue.

Issue Three

The district failed to provide the parent with revisions to proposed IEP goals.

Position of the Parent

The parent contends that he did not feel that the goals proposed by the district in the draft IEP for the student were "S.M.A.R.T." goals, not specific, measurable, achievable, relevant, and time-bound. According to the parent, the district had agreed to revise the goals to which he objected and would provide those revised goals for the parent to review and approve. The parent asserts that he was never provided with revised goals.

Position of the District

The district asserts that – in response to feedback provided by the parent at the April 25, 2025 annual IEP review meeting – revisions were made to the district's proposed IEP goals for the 2025-26 school year. The district contends that attempts were made to reconvene the IEP team to review these revisions, but the parties could not reach mutual agreement on a time for such a meeting. Additionally, it is the position of the district that the parent refused to discuss proposed IEP revisions at one mutually agreed upon meeting time (May 19, 2025) stating in an email to the executive director of special education that he would "shut down" the meeting if the district attempted to talk about anything other than the student's lack of progress on the goals established in the student's April 2024 IEP.

Applicable Statutes 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. Collaboration among IEP team members is essential to ensure that each child's educational experience is appropriate and meaningful. All members of the IEP team are equal partners in IEP discussions. Because of their long-term perspective and unique relationship, parents bring a valuable understanding of their child to the table.

Educators, on the other hand, bring an educational focus to the meeting: an understanding of the curriculum, the challenging educational standards for the child, and the relationship to the general education environment. The IEP team should work toward consensus, however, if an IEP team is unable to come to consensus the school has the ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive a free appropriate public education (FAPE). Following the IEP team meeting, the school must provide the parents Prior Written Notice of the school's proposal for services as identified in the child's IEP. If, after all options have been exhausted, the parents and the school cannot come to agreement, either party may ultimately utilize mediation or due process proceedings to resolve the differences.

Investigative Findings

The parent was provided with a copy of a draft revision to the student's April 2024 IEP on the morning of April 25, 2025 – prior to an annual review meeting held later that same day. The staffing summary of the April 25th meeting reflects extensive discussion of many elements of the district's proposed IEP including the student's BIP and annual goals for the student. According to the summary, the executive director of special education told the parent that

> *"…we have taken notes on [the parent's] concerns, and we will adjust based on…input…Since we have not come to a consensus on the annual, we will draft something new. Dad asked if he will receive another draft, and [the executive director] said we will send home another ROI and PWN. The team shared that everything will remain the same until the team comes to a consensus. Dad asked what happens if it is not signed by 4/30 and the team said things will remain the same as parents wish to have a new proposal."*

In an email to the student's special education teacher on April 26, 2025, the parent wrote

> *"I should be available May 19, 2025. I'm available via zoom between 12p-1p Monday-Friday. It should be a rather quick meeting. Before signing a proposed BIP and IEP, we should review his current IEP and goals/benchmarks."*

On April 28, 2025, the parent sent an email to the executive director of special education writing

> *"Zoom time would have to be between 1115am-1200pm. In person, would be May 19th, 2025."*

The executive director responded on April 28, 2025 writing

> *"Thank you for your follow-up email. In order to guide our team forward, I want to be sure that I am understanding. Are you asking that an IEP team meeting be scheduled for May 19th in person or that we could meet sooner any day of the week, but it would need to be via Zoom at 12:00 PM?"*

On May 5, 2025, the executive director sent an email to the parent and the student's mother writing

> *"It is my understanding that based on the availability shared by [the parent] that May 14th and May 15t at 11:15 am via Zoom was proposed to hold the continuation of [the student's] IEP meeting from 4/25/25. We could also do May 19th in person as originally suggested, too. What option can we tentatively schedule for to allow us to provide 10 day written notice? Should the date need to change later and you consent to waiving your 10 day notice, that will be fine.*
>
> *The IEP team will also be prepared to share a draft of the updated IEP, behavior intervention plan, and data chart proposals prior to the meeting."*

The parent sent an email to the executive director on May 5, 2025 stating

> *"I waive the 10 day notice, however the meeting is just to go over this CURRENT IEP, Goals/Benchmarks. I don't think you can develop a new or draft a new IEP plan if you have no idea of his current goals/benchmarks were even met. If they weren't, I am expecting a very thorough explanation why not. Please do not have or present any proposal. I will shut it down immediately. I only care if his goals/benchmarks were met in accordance to his current IEP. If not, why not? I'll have more information regarding my availability by Friday, May 9th."*

On May 14, 2025, the parent sent an email to the executive director and the student's special education teacher stating

> *"Hello, sorry for the extremely late notice. Is May 19th still a good date to meet? If not, I can do a zoom at 1115 am tomorrow, May 15th. Please let me know if that works."*

The executive director responded to the parent via email on May 15, 2025 writing

> *"Thank you for getting back to us. In following up with the team, we were not able to get the minimally required team members to be present for today on short notice. However, we could do Monday, May 19th at 8:30 AM at [the student's school] if that would work. If so, [the special education teacher will get a Notice of Meeting together sometime today and send it to both parents/guardians."*

The parent responded that same date

> *"Could we possibly do the afternoon?"*

The executive director responded promptly writing

> *"Yes, we can offer 2:25 on Monday, May 19th at [the student's school]. We will wait to hear from you and then [the special education teacher] will follow up as previously mentioned."*

The parent wrote back stating that the proposed time would work.

On May 19, 2025, the parent sent an email to the executive director and the special education teacher stating

> *"I won't be able to make today's meeting, it'll have to go on without [the student's mother] or me present, if possible."*

The executive director wrote back to the parent stating

> *"Thank you for the notice regarding your inability to attend today's meeting. The IEP team did not convene an IEP meeting as the specific topic requested by parents/guardians was looking at the IEP goals from this past year and the data updates. This meeting was specifically set to address your concerns and questions regarding this information. I did talk with the school, though, about how we'd like to proceed.*
>
> *With this being the final week of school for the 2024-25 year, it is our desire to have a resolution to enable us to start the next school year from day one with a plan that supports [the student's] needs and allows the school-based team to move forward. At our April 25th meeting, we proposed a new IEP. You shared concerns regarding the proposed adjustments with the behavior intervention plan specifically the reinforcement system, changing of the communication/data sheet, and the ability for [the student] to spend more time in the general education environment. The meeting ended with documents left unsigned and unsettled at that time for which we were seeking a continuance meeting to resolve. The April 25th documents have been updated according to the comments shared at that meeting. Likely tomorrow, you can anticipate receiving a copy of those items for review from [the special education teacher] including the previous goals and data updates. You can opt to sign them or we can have the continuance meeting to review and finalize. However, after this Friday, May 23rd, staff will be off contract until next school year. Our goal is to work collaboratively as a team and have us all in agreement. Please be advised, though, that changes to services or placements that are not considered material or substantial (less than a 25% change) do not require parent/guardian consent in order to be implemented…*
>
> *As always, please reach out with questions. I appreciate your time and attention to this information. We look forward to hearing from you soon and tying up these loose ends."*

The parent responded on May 20, 2025 saying that he would be back in town the next day.

On May 20, 2025, the special education teacher sent the parent the updated IEP noting

> *"I included the goal that is in place now, the two goals that we want to add, and the BIP."*

The revised IEP included a number of changes including a minor revision to one of the two proposed IEP annual goals. The goal as proposed on April 25, 2025 read as follows:

> *"When given a non-preferred instruction or direction (i.e. It's time to stop playing and get out your Wonders Book for ELA), by the end of the IEP period, [the student] will demonstrate control by using a learned strategy (i.e. counting to 5, taking a deep breath, 'Stop. Think. Act*

> *Strategy') and making a safe choice (remaining in the designated area, remaining seated at his desk, using kind words) 80% of the time during 5 data collection days, as measured by teacher observation and behavior tracking."*

The goal included in the document provided to the parent on May 20, 2025 read as follows:

> *"When given a non-preferred instruction or direction (i.e. It's time to stop playing and get out your book), by the end of the IEP period, [the student] will demonstrate control by using a learned strategy (i.e. counting to 5, taking a deep breath, 'Stop. Think. Act Strategy') and making a safe choice (remaining in the designated area, remaining seated at his desk, using kind words) 80% of the time during 5 data collection days, as measured by teacher observation and behavior tracking."*

In the district's May 20, 2025 IEP proposal, the second annual goal remained unchanged from the district's original proposal on April 25, 2025.

The parent was provided with prior written notice regarding proposed changes to the student's IEP including the minor change to the annual goal outlined above. Both annual goals were listed on the prior written notice form.

The parent responded to the case manager's email with a question about the BIP (see Issue Four) which the teacher answered on May 22, 2025. The parent replied that same date writing

> *"Okay I'll be back in town between tonight and the morning, I should have everything signed and dropped off at the school tomorrow."*

No evidence was provided to show that the parent raised any additional questions about the annual goals proposed by the district. On May 23, 2025, the parent provided his written consent for all of the district's proposed actions – including both annual goals.

In a telephone call with the investigator on June 12, 2025, the parent stated that he decided to go ahead and sign the documents thinking that the team could meet in the Fall if necessary.

Summary and Conclusions

Prior to the annual IEP review meeting for the student on April 25, 2025, the district provided a draft document which included two proposed IEP annual goals for the student. The staffing summary of the April 25th meeting shows that during the IEP meeting, the parent and other members of the team engaged in extensive discussion of the district's proposed IEP. When consensus could not be reached, the decision was made to reconvene for further discussion. However, the parties were unable to agree on a time to reconvene the IEP team meeting. The district made changes to the originally proposed IEP based on feedback from the parent during the April 25, 2025 meeting and provided the parent with a revised proposal on May 20, 2025. The parent provided his written consent for the district's proposed changes, including the minor change to one annual goal, on May 23, 2025.

In his complaint, the parent alleges that the district failed to provide revisions to proposed annual goals. However, minor changes were made to at least one of the annual goals originally proposed to the parent on April 25, 2025. There is clear evidence of the district's attempt to reconvene the IEP team for further discussion of the parent's concerns regarding the student's goals, but the parent ultimately opted to consent to the two goals proposed by the district as well as other changes outlined in the district's prior written notice form. Under these circumstances, a violation of special education statutes and regulations *is not substantiated* on this issue.

Issue Four

The district removed a safety plan from the student's IEP without the parent's agreement.

Position of the Parent

The parent asserts that he did not agree to the removal of a safety plan from the student's IEP. It is the opinion of the parent that while the plan might have needed modification to remove aspects related to self-injury associated with suicidal ideation, a safety plan should remain in place to ensure the safety of other students.

Position of the District

It is the position of the district that while the parent did, on May 20, 2025, send an email to the student's special education teacher (case manager) asking why the safety plan had been removed from the student's proposed BIP, the parent did not make any specific request either at the April 25, 2025 annual IEP team meeting or during the remainder of the 2024-25 school year that the district continue to include a safety plan in the student's IEP.

The district asserts that the BIP included in the IEP initially proposed by the IEP team on April 25, 2025 and agreed to by the parent on May 23, 2025 includes strategies specifically designed to address the parent's concerns regarding the prevention of injury to other students by the student.

The district contends that had the parent made a specific request to include such a safety plan in the student's revised IEP, that request would have been given due consideration.

Applicable Statutes and Regulations

At K.S.A. 72-3430(b)6, special education statutes require that a district obtain the informed written consent of the parent before making a substantial change in placement (more than 25% of the child's school day) or a material change in services (25% or more of the frequency or duration of any one service). Adding or deleting a service is a material change in services because it is a 100% change of both the frequency and the duration of that service. If the

parent refuses to consent to add or delete a service, the school may, but is not required to, pursue the action by using mediation or due process procedures.

At K.S.A. 72-3430(b)(2), special education statutes also require that parents be given prior written notice when the district proposes to make a change to the provision of special education and related services or placement that is not substantial or material even though parental consent is not required for these changes.

When parents make a request for an evaluation, KSDE (the Kansas State Department of Education) 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.gov/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.

It is important to note that 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.

Investigative Findings

The BIP in the student's April 2024 IEP contains the heading entitled "Safety Plan" with an option to check "Yes" or "No." As of April 30, 2024, the "Yes" option had been selected. According to the parent and the district, the student was at that time expressing suicidal ideations which the IEP team (made up of staff at the student attended during his Kindergarten year) addressed.

The district provided a copy of a document entitled "Safety Plan: Self Harm" written by the school social worker on September 26, 2024. According to that document, the student should use his safety plan "when I feel increasingly agitated, when I feel like I'm a bad person, when I feel like I want to go to Heaven as an escape." During those times, the student could use coping strategies like "hold my stuffie 'Puppy,' take deep breaths, wrapy [sic] myself up securely in a blanket, color." For support, the student could "check in with [the special education teacher or the school social worker] or any other staff I feel safe with." The parent was listed as someone the student trusted who could "help me during a crisis."

Both the district and the parent (in a telephone call with the investigator on June 12, 2025) agreed that the student had not expressed suicidal ideation since his transfer to his current school for the 2024-25 school year.

When a draft revision to the student's IEP was proposed to the parents on April 25, 2025, the Safety Plan section of the proposed BIP was checked "No." That box was also checked in the revised document sent to the parent via email on May 20, 2025 by the student's special education teacher.

The staffing summary from the April 25, 2025 annual IEP team review meeting does not reflect any discussion of the discontinuation of a safety plan for the student.

At 1:12 PM on May 20, 2025, the student's special education teacher sent an email to the parent which included

> *"...the IEP that we updated from our last [April 25, 2025] meeting. I included the goal that is in place now, the two goals that we want to add, and the BIP. Please let me know if you have any questions."*

The parent responded via email at 1:16 PM that same date writing

> *"Why does [the student] currently have a safety plan on his BIP, but not on his new proposed BIP?"*

The special education teacher responded at 6:28 AM on May 22, 2025 writing

> *"Good morning! There is no safety plan for the current BIP as [the student] is not displaying the behavior that it was written for. The safety plan that he had was due to statements of suicidal ideation. Those statements are not being made so a safety plan for that is no longer deemed necessary. I hope that this explains the reasoning for not having a safety plan..."*

The parent responded via email at 8:18 AM on May 22, 2025 writing

> *"Okay I'll be back in town between tonight and the morning, I should have everything signed and dropped off at the school tomorrow."*

On May 23, 2025 the parent sent an email to the executive director of special education and the student's special education teacher stating

> *"I signed the IEP forms through blue ink. Thank you ladies! Have a wonderful summer!"*

No evidence was provided to show that the parent objected to the change in the student's BIP.

It is important to note that, aside from the change to the use of a safety plan, the district made other changes to the student's BIP when revising the student's IEP. These revisions included changes related to target behavior, strengths of the student, replacement behaviors, reinforcement strategies, reactive planning, data collection, and follow-up. None of these changes, however, constitute a material change in services (25% or more change in the frequency or duration of a service) because these changes were merely changes to the methods to be used in the BIP, but they made no change to either the frequency or duration of the BIP itself.

No reference to these changes was included in the prior written notice form provided to the parent on May 20, 2025.

Summary and Conclusions

The district is allowed to make changes to the structure and content of the behavior plan for the student without first obtaining the written consent of the parent. As noted above under the "Applicable Statutes and Regulations" section of this issue, a change to a strategy within a behavior intervention plan is a change in the instructional methodology, not a material change in services.

The parent should nonetheless be provided with prior written notice that this non-material change has been made.

Because when providing the parent with prior notice of proposed changes to the student's IEP the district failed to call out the non-material changes to the student's BIP, a violation of special education statutes and regulations *is identified* with regard to this issue.

Additional Comments

The staffing summary shows that at the April 25, 2025 annual IEP review meeting, the team engaged in discussion about one of the Supplementary Aids and Services/Accommodations included in the student's April 2024 IEP – the use of a "Token Board/Tracking System." The district proposed that the provision of this token system be continued under the new IEP. However, the parent strongly opposed the continued use of a token system, stating that he didn't "want [the student] to earn a reward for the behavior he should be doing [and didn't] want it used anymore [sic]."

The district removed the accommodation from the student's IEP when presenting its proposed revision to the IEP to the parent on May 20, 2023. However, the prior written notice form provided to the parent on that same date did not call out the removal of the accommodation and did not request written parental consent for the discontinuation of this service.

Because the district did not obtain the written consent of the parent for the removal of this accommodation, a violation of special education statutes and regulations is identified.

Additionally, the prior written notice form provided to the parent on May 20, 2025 specified a change in social work services. Specifically, the social work services which were to be provided in a special education setting were to be reduced from 20 minutes twice weekly to 15 minutes twice weekly – a reduction of 25% in services. While the form recognized that this represented a change in services, the district checked the box to indicate that this change did not require the consent of the parent. However, because this change would result in a decrease of 25% in services, parental consent was required.

The parent signed the prior notice form on May 23, 2025 giving his written "consent for the special education placement and services action(s) in this notice for my child." Nonetheless,

because the district failed to properly notify the parent that the change in social work services represented a material change in services, a procedural violation of special education statutes and regulations is identified.

Issue Five

By removing the student for special education services beyond the level of services specified in the student's IEP, the district failed to follow the student's IEP

Position of the Parent

The parent asserts that reports provided by the district regarding ESI incidents show that the student has been removed from the general education environment and placed in a special education setting for greater portions of the school day than required by the IEP.

The parent contends that an April 29, 2025 ESI report provided to him by the district showed that the student was in the resource room at the time the intervention was initiated. According to the parent, the student should have been in a general education classroom at that time.

The parent asserts that when he came to school on May 23, 2025 to pick the student up for the day at 2:40 PM, the student was not in the general education setting participating in science or social studies instruction as his daily schedule showed he should have been. Rather, the student was in a separate setting being monitored by two of the three staff members who had been involved in an ESI with the student (per an ESI form for that date). The ESI Documentation Form shows that the student's seclusion for that ESI incident ended at 1:43 PM.

Position of the District

It is the position of the district that the BIP included in the student's April 2024 IEP outlined interventions for target behaviors which could result in the student's removal from his scheduled class activities in order to address inappropriate behavior. These interventions could result in the removal of the student from a general education classroom setting, thereby resulting in a reduction in the amount of time the student spent in the general education setting on a given day. The district asserts that the parent was aware of and agreed to the district's BIP.

Applicable Statutes and Regulations

As stated 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

As noted in a letter from the building principal to the parent dated April 22, 2025, emergency safety interventions (ESIs) are utilized with students in the district when the student exhibits "behavior that presented a reasonable and immediate danger of physical harm to [the student] or others." ESI interventions involve the use of seclusion or physical restraint. These interventions can be used in situations involving students who have been determined eligible for special education services and those who have not. Specific rules have been developed regarding the application of an ESI; these rules are not governed by special education statutes and regulations.

Behavior Intervention Plans (BIPs) can also be utilized for both general education students and special education students. If a special education student has a behavior plan, that plan becomes a part of the student's IEP.

The parent participated in the development of the student's April 2024 IEP. According to that IEP, the student was – for the 2024-25 school year – to receive 275 minutes of special education services in a special education setting for 3 days each week and 255 minutes of special education services in a special education setting for 2 days each week.

The BIP included in the student's April 2024 IEP notes that

> *"[The student] requires an alternate quiet setting with limited stimuli in order to remain regulated."*

According to the BIP, if the student is in a general education setting at the time he displays physical aggression, staff will

> *"…evacuate the classroom of other students or if possible safely escort [the student] to a safe location."*

On April 29, 2025, an ESI was initiated at 2:22 PM. According to schedules presented to the investigator by both the parent and the district, the student was in a special education setting at that time, having left the general education setting at 2:10 PM. The ESI intervention ended at 2:43 PM. No evidence was presented by the parent to show that the student was kept from returning to a general education classroom setting for 7 minutes before going to the resource room as scheduled at 3:00 PM to end his school day.

On May 23, 2025, the last day of the 2024-25 school year, an ESI was initiated at 1:22 PM. The intervention ended at 1:43 PM. No evidence was provided to the investigator by either party to show whether the student did or did not leave the ESI setting for the general education setting. According to the schedules for the student provided by the parties, the student would have been in a special education setting between 2:10 and 2:30 PM and in a general education

classroom setting between 2:30 and 3:00 PM at which time the student would have returned to the special education classroom. The parent states that he arrived at school "around 2:40 pm" and found that the student wasn't in the general education classroom.

According to the executive director of special education, the building principal states that the student follows his daily schedule unless his behavior has prompted the use of interventions specified in the BIP contained in the student's IEP.

Summary and Conclusions

The parent asserts that the district has violated special education statutes and regulations by failing to provide the student with opportunities to participate in the general education environment in the manner specified in his IEP. To support this contention, the parent points to two occasions surrounding ESIs when the parent alleges that the student was not in the general education environment as his daily schedule suggests he should have been.

On April 29, 2025, the student was in the special education setting at the time an ESI was initiated. Schedules provided by the parent and the district both show that the student should have been in a special education setting at that time. No evidence was provided to show that the student was not allowed to exit the special education setting and enter the general education setting following the ESI.

On May 23, 2025, the parent alleges that the student was still being secluded at 2:40 PM when the parent arrived to pick the student up from school. That day's 14-minute ESI had concluded at 1:43 PM at which time the student would – per his schedule -- have been in a special education setting. Based on the schedules provided to the investigator by the parties, the student would have entered a general education classroom at 2:30 PM. It is, therefore, possible that the student could have missed up to 10 minutes of general education opportunity by the time the parent arrived to take the student home.

The application of an ESI is not controlled by special education statutes and regulations. An investigation of general education time missed because of the use of such an intervention falls outside the purview of this investigator.

The BIP contained in the student's April 2024 IEP states that should the student display physical aggression, the student may be removed from a general education setting and escorted to a safe location.

While this investigator cannot rule out the possibility that the student did – on one occasion specified by the parent – miss out on up to 10 minutes of general education opportunities, no evidence was presented to suggest that the continued removal of the student to a special education setting was not the result of the application of the student's behavior plan.

This investigation found no evidence to support the parent's contention that the district is systematically removing the student from the general education setting by failing to follow the

student's established daily schedule. Under these circumstances, a violation of special education statutes and regulations *is not substantiated* on this issue.

Issue Six

The district failed to provide the parent with proper prior written notice of proposed changes to the student's IEP.

Position of the Parent

The parent asserts that he has not yet been provided with a summary of or minutes from the student's April 25, 2025 IEP meeting or any documents reflecting his refusal of proposed services or proposed revisions to the student's IEP.

Position of the District

The district asserts prior written notice of changes to the student's IEP was not provided to the parent following the April 25, 2025 meeting because the IEP team did not reach any final decisions on that date. Rather, the team had agreed to reconvene for further discussion wherein concerns expressed by the parent during the April 25th meeting could be addressed. The district contends that it did not finalize a proposed IEP until May 25, 2025 at which time the parent was provided with prior written notice of the district's proposed changes to the IEP.

Applicable Statutes and Regulations

As stated above under Issue Four, parents must within a reasonable time be provided with prior written notice of a substantial change in placement or a material change in services.

Investigative Findings

As outlined in previous issues above, the district convened an annual review of the student's IEP on April 25, 2025. The IEP team had not reached consensus on a number of issues by the time the meeting concluded, and the decision was made to reconvene for further discussion.

As outlined above under Issue Four, the team considered May 14, 15, and 19, 2025 as possible dates to reconvene, but none of these dates proved workable.

After the parent contacted the district on May 19, 2025 to say he would not be available for the proposed meeting that day, the executive director of special education responded to the parent explaining that they had reached the last week of school for the year and staff would no longer be under contract and available after May 23, 2025. She stated that the IEP that had been proposed on April 25, 2025 had been revised and told the parent he would receive revised copies of the IEP the following day, May 20, 2025. In the email, the executive director told the parent he could "opt to sign them or we can have [a] continuance meeting to review and finalize."

The case manager (special education teacher) sent an email to the parent on May 20, 2025 attaching the revised IEP which included staffing summaries from meetings on April 22 and 25, 2025. The parent responded with an email on May 22, 2025 asking a question about the BIP which was contained in the proposed IEP. After receiving the case manager's answer, the parent wrote back stating that he would "have everything signed and dropped off at the school tomorrow [May 23, 2025, the last day of the 2024-25 school year]."

On May 23, 2025 the parent sent an email to the executive director of special education and the student's special education teacher stating

"I signed the IEP forms through blue ink. Thank you ladies! Have a wonderful summer!"

In a telephone call with the investigator on June 12, 2025, the parent stated that he decided to go ahead and sign the documents thinking that the team could meet in the Fall if necessary.

The district provided the investigator with a copy of the initial draft IEP presented to the parent on April 25, 2025 and a copy of the revised proposed IEP sent to the parent on May 20, 2025. A comparison of these two documents shows that the district removed an accommodation at the request of the parent (the use of a token board tracking system). The revised IEP reflected parental input not outlined in the original proposed document as well as a BIP.

The district provided the investigator with copies of the documents dated April 25, 2025, signed in blue ink by the parent and returned to the district on May 23, 2025. Those documents included a revised IEP (including the staffing summaries) and a prior written notice form which outlined proposed changes to the student's IEP including a 4% increase in special education support in the special education setting for "resource core instructions and social skills" and a 25% reduction (10 minutes) in social work services in a special education setting. The prior notice also detailed the two goals the student would be working on during the upcoming school year.

Summary and Conclusions

No final decisions regarding the student's IEP were made during the April 25, 2025 team meeting. The district proposed multiple dates for a follow up meeting for further discussion of the parent's concerns. After the parent notified the district that he was unavailable for a scheduled meeting on May 19, 2025, the district – on May 20, 2025 – sent an email to the parent containing a copy of the IEP which contained staffing reports of previous meetings as well as revisions made in response to feedback provided by the parent at the April 25, 2025 meeting. On that same date, the district also provided the parent with prior written notice of proposed changes to the IEP. The executive director of special education had explained to the parent in an email the previous day that he could opt to accept the IEP or the team could hold a future meeting for further discussion. The parent signed off on the prior notice form, opting to consent to the proposed changes.

The annual review and revision of the student's IEP was not completed at the April 25, 2025 team meeting. The district was under no obligation to provide the parent with prior written notice of proposed changes at that time since no decisions had been made. It was only after the parent became unavailable for a schedule follow up meeting that it became clear to the district that another meeting could not be scheduled before the end of the 2024-25 school year. At that point, the district made the decision to provide the parent with a revised proposal for the student's IEP as well as prior written notice of proposed changes to the IEP. These documents were timely sent to the parent, one day after the May 19, 2025 meeting had been cancelled.

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 substantiated noncompliance with special education statutes and regulations on issues presented in this complaint or identified through the course of this investigation. Violation were identified with regard to

- K.S.A. 72-3430(b)6, which requires that a district obtain the informed written consent of the parent before making a material change in services (25% or more of the frequency or duration of any one service). In this case, the district failed to inform the parent that it was making a material change by reducing social work services by 25% and failed to obtain the written consent of the parent before discontinuing an accommodation.
- K.S.A. 72-3430(b)(2), which requires that parents be given prior written notice when the district proposes to make a change to the provision of special education and related services or placement that is not substantial or material even though parental consent is not required for these changes. Here, the district failed to provide the parent with notice of changes to the student's BIP.

Therefore, USD #475 is directed to take the following actions:

1. Submit to Special Education and Title Services (SETS) by no later than August 1, 2025, a written statement of assurance stating that it will comply with
    a. K.S.A. 72-3430(b)6 by obtaining the informed written consent of parents by clearly notifying them when a proposed change represents a material change in services or before removing an accommodation from a student's IEP; and
    b. K.S.A. 72-3430(b)(2) by giving parents prior written notice before making a change to the provision of special education services such as a BIP even if the consent of the parent is not required for that change.
2. By no later than August 1, 2025, USD #475 shall
    a. Provide the parent with a revised prior written notice of proposed changes to the student's IEP including changes to the BIP, social work services, and

the discontinuation of the token-related accommodation. The parent shall be informed that the proposed accommodation and social work service change represent a material change in services, and the written consent of the parent shall be obtained before these changes are implemented.

b. The district shall provide SETS a copy of the revised prior written notice form no later than August 5, 2025.

3. By no later than August 1, 2025, USD #475 shall submit to SETS a plan for training staff at the student's building regarding prior notice requirements associated with the findings of this complaint.

Further, USD #475 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).



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.gov 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 #204, BONNER SPRINGS-EDWARDSVILLE PUBLIC SCHOOLS
ON JUNE 12, 2025

DATE OF REPORT: JULY 8, 2025

This report is in response to a complaint filed with the Kansas State Department of Education against USD #204 (Bonner Springs-Edwardsville Public Schools) on behalf of ------- by her father -----. In the remainder of the report, ----- will be referred to as "the student" and ----- as "the father" or "the complainant". The student's mother is ----- and will be referred to as "the mother".

The complaint is against USD #204 (Bonner Springs-Edwardsville Public Schools). In the remainder of the report, USD #204 will be referred to as "the district". The student attended McDanield Preschool during the 2024-2025 school year which will be referred to as "the preschool" in the remainder of the report. An independent Social/Emotional evaluation was conducted by Integrated Behavioral Technologies, Inc (IBT) and will be referred to as "independent evaluation" in the remainder of the report. Families Together is mentioned and will be referred to as an outside service provider in the remainder of the report. The Wyandotte Comprehensive Special Education Cooperative provides special education support for the district; however, Bonner Springs-Edwardsville Public Schools remains the agency responsible for the student's educational services. In the remainder of the report, the Wyandotte Comprehensive Special Education Cooperative will be referred to as "the coop." School and district staff will be referred to In the remainder of this report as follows:

- Dr. Ja'Kyta Lawrie, cooperative director
- Rebecca Lambert, special education coordinator
- Michelle Clary, principal
- Cherice Woolf, special education teacher/case manager
- Rylee Birkes, social worker

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 12, 2025.

Evidence Reviewed

USD #204 made the following staff available for interviews on June 30, 2025 as part of this investigation.

- Rebecca Lambert, special education coordinator
- Michelle Clary, principal
- Cherice Woolf, special education teacher/case manager

During the investigation, the Complaint Investigator, Dr. Nikki Crawford, reviewed all evidence and documentation provided by the district and the parent. Additionally, the complaint investigator contacted the father, cooperative director, special education coordinator, principal and special education teacher on June 12,16, 17, 18, 20, 23, 24, 25, 26, 27, 30, July 1, and 2, 2025 by phone and email to clarify evidence and documentation.

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:

1. Court ordered Joint Parenting Plan for student's mother and father, no date
2. Student's birth certificate, dated May 19, 2020
3. Initial evaluation report dated March 26, 2024
4. Initial IEP dated March 26, 2024
5. Parent portal message from the teacher to the father on September 11, 2024 to schedule the spring 2025 IEP which was seen by the father, but not replied to
6. Independent social/emotional evaluation report dated October 11, 2024
7. IEP dated March 14, 2025
8. Parent portal message from the father to the teacher notifying her of upcoming student absences. This message includes the father's email and phone number, sent April 17, 2025
9. District reevaluation report conducted May 14, 2025
10. IEP amendment dated May 14, 2025
11. Student's 2024-2025 report card, dated May 23, 2025
12. Email from special education teacher to the mother including student's report card and progress report which was then forwarded to the father, by the mother on June 3, 2025
13. Email from the father to the special education coordinator noting difficulty accessing the parent portal and requesting IEP documents, dated June 6, 2025.
14. Email response from the special education coordinator to the father with requested IEP documents, sent June 9, 2025 at 11:46 a.m.
15. Email from the father to special education coordinator noting his status as a joint legal custodian, sent June 9, 2025 at 12:06 p.m.
16. Email from the father to special education coordinator sharing observations related to the student's transition behaviors, sent June 9, 2025 at 12:21 p.m.
17. Progress Report for the 2024-2025 IEP year, dated June 9, 2025

18. Progress Report for the 2025-2026 IEP year, dated June 9, 2025
19. Email from the father to the cooperative director noting the lack of communication from the school related to his child's IEP and his inability to log into the parent portal, send June 10, 2025
20. Email from the father to the special education teacher sharing his difficulty accessing the parent portal and lack of inclusion in IEP related meetings, sent June 10, 2025
21. Email response from the special education coordinator to the father, sent June 11, 2025 at 7:12 a.m.
22. Email response from the father to special education coordinator noting lack of access to the parent portal and missed invitations to IEP related meetings, sent June 11, 2025 at 8:51 a.m.
23. Email response from the special education coordinator asking the father to contact the school office in August to gain access to the parent portal and the coordinator's plans to ensure the student's case manager is aware that communications and meeting invites should also be sent to the father, sent June 11, 2025 at 9:15 a.m.
24. Email from the father to the principal on June 12, 2025 including concerns related to lack of input and parent portal access
25. Email reply from the principal to the father on June 14, 2025 at 8:30 a.m. offering a meeting to address the father's concerns
26. Email reply from the father to the principal on June 14, 2025 at 6:34 p.m with meeting times
27. Email from the principal to the father on June 16, 2025 at 11:16 a.m. offering an explanation for his lack of parent portal access and directions on how to regain access when school begins in the fall
28. Reply from the father to the principal on June 16, 2025 at 1:55 p.m. confirming meeting time
29. Email from the father to the investigator adding concerns to the original complaint, on June 16, 2025 at 3:43 p.m.
30. Email exchanges between the father and the investigator on June 17, 2025 clarifying the issues to be investigated
31. Email from father to special education coordinator stating that he does not want to meet to discuss resolution of the complaints but would rather have the investigation proceed, sent June 18, 2025 at 9:12 a.m.
32. Email reply from the special education coordinator to the father emphasizing KSDE's encouragement to resolve the complaint issues if possible, sent June 18, 2025 at 10:55 a.m.
33. Email reply from the father to the special education coordinator confirming that he is not willing to meet, sent Jun 18, 2025 at 11:39 a.m.
34. Phone call between the special education coordinator and investigator on June 23, 2025.

35. Email exchange between the investigator and father on June 27, 2025.
36. Email from father to investigator with screenshot of parent portal exchange with the special education teacher on April 29, 2025, sent June 29, 2025
37. Interview with the special education coordinator on June 30, 2025
38. Interview with the principal and special education teacher on June 30, 2025
39. Lesson plan example for the 2024-2025 school year shared by the special education teacher
40. Data sheet used to collect data for the student's IEP transition goal, no date
41. Email with exchange with special education coordinator July 1, 2025 attempting to identify when the district was in possession of the independent evaluation
42. Email exchange with the special education coordinator July 2, 2025 confirming that the independent evaluation report was never loaded into the IEP document management system and that the social worker obtained consent for the reevaluation on March 13, 2025

Background Information

The subject of this complaint is a 5 year old student who recently completed preschool and will enroll in kindergarten for the 2025-2026 school year. The student's parents do not live in the same home but share legal custody and the student spends time in each parent's home. The student qualified for special education services in March 2024 under the exceptionality of Developmental Delay. Since the student initially qualified for services there have been two additional evaluations; an independent evaluation on October 11, 2024 resulting in additional diagnoses of Autism Spectrum Disorder (AHD) and Attention Deficit Hyperactivity Disorder (ADHD), combined presentation and a district reevaluation, report dated May 14, 2025.

The current IEP amendment dated May 14, 2025 includes four goals; speech/language, transitioning, number identification, and letter identification including upper and lower case.

- The special education services for the 2024-2025 IEP year included:
    - 180 minutes in the special education classroom, 2 days per week for social/emotional, math and literacy goals
    - 160 minutes in the special education classroom, 2 days per week for social/emotional, math and literacy goals
- Special education services for the 2025-2026 IEP year include:
    - 30 minutes of direct services in a regular education classroom, 5 days per week for social/emotional, math and literacy goals
    - 60 minutes of direct services outside of a regular education classroom, 5 days per week for social/emotional, math and literacy goals
- Related services for the 2024-2025 IEP year included:

  - 20 minutes in the special education classroom, 1 day per week for speech/language goals
  - 20 minutes of direct services outside of a regular education classroom, 1 day per week for speech/language goals
- Related services for the 2025-2026 IEP year include:
  - 20 minutes of direct services outside of a regular education classroom, 2 days per week for speech/language goals
- Amended related services for the 2024-2025 and 2025-2026 IEP years:
  - 20 minutes of direct services outside of a regular education classroom, 1 day per week

Program Modifications, Accommodations, and Supplementary Aids and Services listed in the May 14, 2025 IEP include:

1. Access to headphones
2. Access to a choice of learned calm-down strategies
3. Access to first/then statements and/or visuals
4. Access to social stories and visuals for new and un-preferred activities
5. Use of verbal praise paired with reinforcement
6. Use of verbal redirections during classroom and therapy activities
7. Use of visual/picture supports to aide in the understanding and expression of language skills

Issues Investigated

Based on the written complaint and an interview with the complainant, four concerns which fall under IDEA regulations were identified and investigated.

Issue One

Did USD #204 deny the father his rights to be a member of any decision making team for his child, including eligibility, initial evaluation, reevaluation, development and amendment of an individualized education program (IEP) for the provision of a free appropriate public education (FAPE)?

Applicable Law

Federal regulations at CFR 300.300 Parental Consent. (a) Parental consent for initial evaluation; (b) Parental consent for services; and (c) Parental consent for reevaluations address the specific requirements to engage parents fully in the IEP process. Additionally, K.A.R. 91-40-25 states that parents have an opportunity to examine records and participate in meetings. (a) 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.

Parent Position

The father's formal complaint alleges a number of ways the district excluded him from contributing to educational decision making for his child which included the lack of notification for IEP meetings, lack of PWNs, lack of notification for changes in services, lack of progress reports, and apparent revocation of his parent portal access. He states, "…the IEP paperwork suggests that the district treated [the student] as having only one educational decision-maker…"

District Position

The district response dated June 25, 2025 states, "Upon reviewing information for this complaint, it was discovered that in the student's enrollment file with [the district], the birth certificate does not list [the father] as a parent. The district is not aware of, or [has] access to any other legal document indicating [the father] as a legal guardian for the student".

Analysis: Findings of Fact

The following finding of facts is based upon a review of the documentation noted previously and interviews with all parties.

1. The court ordered Joint Parenting Plan states the student's parents have, "Joint Legal Custody [which] means that both parents have equal rights to participate in, contribute to, and have responsibility for their child's health, education, and general welfare in their child's best interests".
2. The father's name is listed as an educational decision maker on the initial IEP dated March 26, 2024, but his contact information is not included.
3. The teacher sent a message via the parent portal to the father on September 11, 2024 to schedule the spring 2025 IEP which was seen by the father, but not replied to
4. The May 14, 2025 reevaluation report mentions the father, "[The student] goes to [their] dad's house on Friday nights and alternates every other weekend".
5. The father sent a message to the special education teacher via the parent portal about the student's upcoming absences and included his email address and phone number on April 17, 2025.
6. The father sent an email to the special education coordinator noting difficulty accessing the parent portal and requesting IEP documents, dated June 6, 2025.
7. The special education coordinator responded to the father with the requested IEP documents, sent June 9, 2025 at 11:46 a.m.
8. The father sent an email to the special education coordinator, noting for the first time his status as a joint legal custodian, sent June 9, 2025 at 12:06 p.m.

9. Email from the father to the cooperative director noting the lack of communication from the school related to his child's IEP and his inability to log into the parent portal, send June 10, 2025
10. Email from the father to the special education teacher sharing his difficulty accessing the parent portal and lack of inclusion in IEP related meetings, sent June 10, 2025
11. The special education coordinator responded asking the father to contact the school office in August to gain access to the parent portal and the coordinator's commitment to ensure the student's case manager is aware that communications and meeting invites should also be sent to the father, sent June 11, 2025 at 9:15 a.m.
12. Email from the principal to the father on June 16, 2025 at 11:16 a.m. offering an explanation for his lack of parent portal access (due to a change in portal versions) and directions on how to regain access when school begins in the fall.
13. In a June 16, 2025 interview with the father he shared that he was notified of the initial IEP meeting (March 26, 2024) but couldn't attend due to work.
14. An email from father to the investigator on June 17, 2025 lists several of his concerns related to lack of representation at the IEP meetings including notes reflecting the student's emotional difficulty transitioning into his care and the IEP team's suggestion that the student experienced academic and behavioral regression due to the student's absence while in the father's care.
15. In a phone conversation with the special education coordinator on June 23, 2025 she reported that the although the father's name was included in the student's district preschool registration his contact information was not included, his name did not appear on the student's birth certificate and the district had no legal documentation that the father was one of the student's legal guardians.
16. The district's June 25, 2025 response stated, "The teacher did send a message in September 2024 via district app regarding scheduling of the annual IEP meeting. Records show that [the father] did see the message but did not reply. [The father's] first and only contact with the teacher was the April 2025 message which is also when we learned of his contact information".
17. In an email exchange between the father and the investigator on June 27, 2025, the father wrote, "I did not personally deliver the Joint Parenting Plan to the school. However, I am listed as [the student's] father on her IEP, and the district included behavioral analysis describing difficulties [they] experienced during transitions to my home."
18. In the special education teacher interview on June 30, 2025 the teacher noted that she shared a QR code with the mother on back to school night that gave parents access to the parent portal. The mother offered to share the code with the father. When the teacher noticed the father had gained access to the parent portal the teacher assumed there had been communication between the parents. Additionally

the teacher stated, "mom provided dad's name and said that she would pass information on to him."

19. The teacher also shared that through the parent portal dad was asked about an early spring IEP (2/20/25) meeting date, viewed the message, but didn't reply. When asked why the father hadn't been invited to the March 2025 IEP meeting the teacher replied, "I hadn't received any communication from him and I had gotten great communication from mom and only needed one parent to agree to the meeting".
20. In the principal interview on June 30, 2025 she shared, "In Skyward [the student information system] there was not a different phone number or address listed for the father, typically when information is listed like that it is assumed people live at the same address".

Conclusion

There seems to be confusion on the district's part between their obligation to provide notice to each parent and their obligation to gain consent from one parent. IDEA 34 C.F.R. § 300.300 requires informed consent from one parent for evaluation, initial services, and reevaluation. However, the Kansas Special Education Handbook states, "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. If the school is only aware of one parent's address, the school must make reasonable efforts to locate the other parent in order to provide notice. However, 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." (p. 3).

Although the student's parents were never married and thus not divorced, the father meets the definition of a parent as noted in K.S.A. 72-3404. Definitions. (m) "Parent" means: (1) A natural parent; (2) an adoptive parent; (3) a person acting as parent; (4) a legal guardian; (5) an education advocate; or (6) a foster parent, if the foster parent has been appointed the education advocate of an exceptional child. Additionally the father was treated as a parent by the district on a number of occasions as evidenced by:

- the father's name is listed as a parent on the initial March 2024 IEP,
- an IEP scheduling question sent through the parent portal,
- mentions of him in IEP team minutes, and
- the sharing of IEP information upon the father's request in June 2025.

It is noted that the district quickly shared the IEP related information when the father sent a request. It is also noted that the district had an easy working relationship with the mother who

offered to share information with the father and also that the father read, but did not respond to, a parent portal message, nonetheless, the district had an obligation to notify the father about IDEA related issues and actions.

Parent participation is foundational to IDEA and the district has the power to set the tone for parent partnerships which can be a powerful influence on a student's educational success. Research supports early intervention for students who have disabilities and the role of the family as partners in this work, should not be taken lightly. The investigator strongly suggests a policy and procedure review of student intake and registration in regards to gathering information about the family structure to ensure all parents are listed, including full contact information for each. The investigator also encourages the father to consider that he may well have a relationship with this district for many years to come and that focusing on building positive relationships with teachers and administrators can help clarify the sometimes confusing and overwhelming IDEA landscape.

In this case, the district failed to notify the father of all IEP related actions and issues as required by K.A.R. 91-40-25 which denied him of his right to be an active member of the IEP team.

Based on the foregoing, The district is *OUT of compliance* for Issue One, and corrective actions are required.

Issue Two

Did USD #204 fail to amend the student's most recent IEP considering the student's ASD and ADHD diagnoses?

Applicable Law

Federal regulations at 300.324(b)(ii)(B) state that in the public agency must (ii) Revise the IEP, as appropriate, to address (B) The results of any reevaluation conducted under §300.303;

Parent Position

In a June 16, 2025 email, the parent stated, "[the student] was formally diagnosed in October 2024 with Autism Spectrum Disorder and ADHD – Combined Presentation, as confirmed in [the student's] reevaluation on 05/14/2025. Despite this, the IEP continues to classify [the student] only as Developmentally Delayed, with no autism-specific or ADHD-specific goals, accommodations, or service models. There is no documented IEP team discussion or reevaluation consideration regarding eligibility under Autism…"

District Position

The district response dated June 25, 2025 states, "It should be noted that upon knowledge of the ADHD and ASD diagnoses and ongoing observed behavior concerns, the IEP team conducted a re-evaluation in the area of social/emotional and subsequently completed an

amendment to the IEP in May 2025. The amendment acknowledges the diagnoses, and added additional services in the area of social work. A social/emotional goal was added during the annual IEP in March 2025".

Analysis: Findings of Fact

The following finding of facts is based upon a review of the documentation noted previously and interviews with all parties. The findings of previous issues are incorporated herein by reference.

1. An October 11, 2024 independent social/emotional evaluation report for the student reflects new diagnoses of ASD and ADHD, combined presentation.
2. The independent social/emotional evaluation was initiated by the mother.
3. The March 14, 2025 IEP includes evidence that the team responded to the student's difficulties in transitioning between activities by including a new IEP goal, "By March 13, 2026, when given a verbal prompt to initiate a familiar routine activity, [the student] will get the correct supplies (e.g. paper, pencil, markers) and begin the activity within (30) seconds for (4 out of 5) activities".
4. The March 14, 2025 IEP includes two new accommodations (in italics) for social/emotional needs:
    a. access to a choice of learned calm-down strategies
    b. FIRST/THEN statements and/or visuals
    c. social stories and visuals for new and un-preferred activities
    d. verbal praise paired with reinforcement
    e. verbal redirections during classroom and therapy activities
5. The March 14, 2025 IEP also notes that the student was currently under evaluation for possible social work services and on a waitlist for ABA therapy.
6. The March 14, 2025 PWN does not include the independent evaluation results as a consideration for a change in services. There is no evidence in the March 14, 2025 IEP that the independent evaluation results were reviewed or considered.
7. The May 14, 2025 district's reevaluation report notes the new diagnoses of ASD and ADHD from the October 11, 2024 independent evaluation as well as the addition of a social work support to develop self-regulation skills and strategies when [the student] feels overwhelmed or frustrated.
8. The May 14, 2025 amended IEP present levels section notes, "[The student] is diagnosed with Autism Spectrum Disorder and Attention Deficit Hyperactivity Disorder (ADHD), combined presentation, from independent evaluation in October 2024. [The student] is currently on a waiting list for ABA therapy services with [outside evaluator] and [outside service provider]".
9. In the June 23, 2025 phone call with the special education coordinator she said, "the district isn't aware of the October, 2024 independent evaluation, nor is the

classroom teacher". She also shared that the report was not in their IEP documents management system.

10. In the June 30, 2025 interview with the special education teacher, she reported hearing that an independent evaluation had been conducted but could not specifically remember if the mother shared this news directly, or through the school secretary. The teacher stated, "Our parent/teacher conferences happened October 16 and 17, [2024], [the mother] may have told me then or may have told the secretary who relayed the message. The mother told us it had happened but I didn't see the report until the May [2025] IEP amendment meeting." During the interview the special education teacher checked her emails to see if perhaps the mother had emailed the report but found no correspondence related to the independent evaluation. The special education teacher added that if the mother would have handed her the evaluation report she would have immediately uploaded it into the IEP document management system.
11. In the June 30, 2025 interview with the special education teacher, when asked about the new diagnoses found by the October 11, 2024 independent evaluation, "What we were doing in the special education classroom was addressing ASD and ADHD behaviors. The diagnosis wouldn't have changed what I had in place for [the student]. The needs are displayed without the diagnosis".
12. In the June 30, 2025 interview with the special education teacher, when asked why the district reevaluation was initiated in the spring of 2025 she replied, "I had concerns about [the student] transitioning into the building. We had handled it, but worried that there would be a backslide in kindergarten".
13. When the special education coordinator was asked in the June 30, 2025 interview why the district conducted a reevaluation she shared that the team was, "seeing some behaviors and social emotional concerns".
14. In an email exchange with the special education coordinator on July 1, 2025 when asked when the district received the independent evaluation report she shared, "I spoke with [the social worker]. She recalls having received the report from [the special education teacher] sometime around December/January. This occurred in person and we do not have an email record of it. [The social worker] then included [the independent evaluation] in her re-evaluation conducted in the Spring". When the special education coordinator was asked if the social worker had any documentation of sharing the report results with the IEP team anytime prior to the May IEP amendment meeting, she replied, "[The social worker] said she received it from [the special education teacher] so the case manager already had it. [The social worker] does not have an email record of anything about the report. It may have been discussed in person between team members".

Conclusion

Federal regulations at 300.324(b)(ii)(B) state that in the public agency must (ii) Revise the IEP, as appropriate, to address (B) The results of any reevaluation conducted under §300.303;

Additionally, 34 CFR § 300.502(c)(1) addresses how districts should consider Independent educational evaluation. "(c) Parent-initiated evaluations. 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—(1) 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;"

In this case, the independent evaluation report is dated October 11, 2024 and notes two new diagnoses. There is no evidence that the report results were acknowledged or considered by the IEP team prior to, or at, the student's March 26, 2024 IEP meeting as evidenced by a PWN or comment in the IEP minutes. IDEA requires that independent evaluations at least be considered by the IEP team. As noted in the district's response, they did acknowledge the independent evaluation in the May 14, 2025 IEP amendment however, this was months after they received the report in December, 2024 or January, 2025.

There is evidence that the district responded to the student's difficulty in transitioning from one activity or location to another, however, there is no evidence that the IEP team reviewed the results of the independent evaluation until the May 14, 2025 reevaluation/IEP amendment meeting. Additionally, neither the special education coordinator nor special education teacher cite the new diagnoses as impetus for the district's reevaluation in the spring of 2025.

The district is not clear as to when the report was received or even who received it, and has no evidence that anyone other than the social worker was aware of the report's new diagnoses prior to the May 14, 2025 meeting.

Based on the foregoing, it is found that the IEP team did not acknowledge or consider the results of the October 2024 evaluation prior to, or at, the March 14, 2025 IEP team meeting. The district is *OUT of compliance* and corrective actions are required.

Issue Three

Did USD #204 fail to include a description of the child's progress towards the annual IEP goals in progress reports or the report card?

Applicable Law

Federal regulations at 300.320(a)(2)(i) and (3)(i) state that the IEP must include measurable goals and descriptions of the child's progress toward meeting these annual goals. Additionally, the Kansas Special Education Process Handbook states, "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. (p. 79)

Parent Position

The parent complaint states, June 16, 2025 email, "Several progress benchmarks are marked simply as "MPG" ("Making Progress") without quantifiable data. For example, behavior regulation benchmarks are tracked with no baseline measures or objective metrics, making true progress impossible to validate".

District Position

The district response dated June 25, 2025 states, "[The district] denies this allegation. Student's progress towards IEP goals were included in the quarterly progress reports…"

Analysis: Findings of Fact

The following finding of facts is based upon a review of the documentation noted previously and interviews with all parties. The findings of previous issues are incorporated herein by reference.

1. Baseline for the IEP goals are included in the IEP document. For example, the baseline for the social/emotional goal in the May 14, 2025 IEP amendment reads, "Currently, [the student] can take up to 5 minutes to both enter the classroom upon arrival, and before beginning [their] daily work routines."
2. The quarterly progress reports include acronyms such as NMP (not making progress) and MPG (making progress) as quarterly data.
3. A review of all progress reports since the first quarter of the 2024-2025 school year reflect the use of quantifiable data in the goals, benchmarks and description of progress. For example:
    a. The social/emotional goal for the fourth quarter of 2025 states, "By March 13, 2026, when given a verbal prompt to initiate a familiar routine activity, [the student] will get the correct supplies (e.g. paper, pencil, markers) and begin the activity within (30) seconds for (4 out of 5) activities.
    b. The benchmark for that same quarter states, "By the end of quarter 4, May 2025, when given a verbal prompt to initiate a familiar routine activity, [the student] will get the correct supplies (e.g. paper, pencil, markers) and begin the activity within 3 minutes for (1 out of 5) activities.
    c. The description of progress states, "[The student] is able to initiate a familiar routine activity within 3 minutes, at least one time, in the 5 observed data collection days once [they are] in the classroom. [The student] still struggles to enter the classroom approximately once per week".

Conclusion

IDEA requires that the IEP must include measurable goals and descriptions of the child's progress toward meeting these annual goals.

The parent's concern was that there were no baseline measures nor quantifiable data and that the use of acronyms to report progress were not specific enough to understand how the student was progressing.

In this case, there is quantifiable data in the baselines stated in the IEP, and the goals, benchmarks and description of progress, also include quantifiable data in addition to the use of acronyms.

Based on the foregoing, it is found that the district did include quantifiable data in the baseline, goals and description of progress for the IEP goals. The district is *IN compliance* and corrective actions are not required.

Issue Four

Did USD #204 fail to implement the student's IEP specifically related to the student's behavioral supports?

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. 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.

Parent Position

The father cites concerns that the student was not provided with the required social/emotional support as evidenced by information included in the May 14, 2025 reevaluation report. The report shares that, "[The student] was observed one morning in February, struggling to come into the school from parent drop off. [The student began hiding [their] face and crying in the corner of the school entrance indoors. When [the student] was greeted by a Preschool teacher, [the student] ignored. Teachers were trying multiple ways creatively to help [the student] transition to the classroom. After 7-10 minutes, [the student] was able to transition into the classroom and put [their] bookbag and belongings away".

District Position

The district response dated April 24, 2025 states, "[The district] denies this allegation. In the March 2025 annual IEP, a social/emotional/behavioral goal was added into the IEP. [The student] has several accommodations as well that address this area. In May 2025, the social/emotional re-evaluation was conducted and the IEP was amended to add social work as a related service".

Analysis: Findings of Fact

The following finding of facts is based upon a review of the documentation noted previously and interviews with all parties. The findings of previous issues are incorporated herein by reference.

1. The May 15, 2025 reevaluation notes an incident of the student struggling to transition to the classroom in February 2025.
2. The March 2024 IEP was the plan in place when the February 2025 noted incident occurred. The March 2024 IEP does not include a social/emotional goal but does include accommodations including:
    a. FIRST/THEN statements and/or visuals
    b. social stories and visuals for new and un-preferred activities
    c. verbal praise paired with reinforcement
3. There is no evidence in the description of the incident in February 2025 that accommodations were not followed.
4. The March 14, 2025 IEP team added a social/emotional goal to support the student's transition skills: "By March 13, 2026, when given a verbal prompt to initiate a familiar routine activity, [the student] will get the correct supplies (e.g. paper, pencil, markers) and begin the activity within (30) seconds for (4 out of 5) activities".
5. In the June 30, 2025 teacher interview, the teacher shared multiple examples of how she regularly implemented the student's accommodations noted in the March 26, 2024 IEP, some of which are also noted in the teacher's lesson plans.
6. The special education coordinator shared in a July 2, 2025 email that consent for the district's reevaluation was obtained from the mother on March 13, 2025.
7. The March 14, 2025 IEP team also noted that, [the student] is currently under evaluation for possible Social Work services.
8. The March 14, 2025 IEP includes two new accommodations (in italics) for social/emotional needs:

1. f. access to a choice of learned calm-down strategies
2. g. FIRST/THEN statements and/or visuals
3. h. social stories and visuals for new and un-preferred activities
    i. verbal praise paired with reinforcement
4. j. verbal redirections during classroom and therapy activities

9. The May 14, 2025 IEP team amended the IEP to include social work services of 20 minutes, 1 day per week to support the March 14, 2024 IEP social/emotional goal: "Social Worker will help support this goal to develop self-regulation skills and strategies when [the student] feels overwhelmed or frustrated".

Conclusion

In February 2025 when teachers observed the student's struggle to transition to the classroom, there were only three social/emotional related accommodations in the IEP, and no social/emotional IEP goals. Soon after, the district obtained consent from the mother on March 13, 2025 for the reevaluation and during the March 14, 2025 IEP meeting, the team added two new accommodations to support the student's social/emotional behavior, a social/emotional goal and noted that, [the student] was currently under evaluation for possible Social Work services. The May 2025 IEP amendment includes social work services to support the student's social/emotional needs

The father's concerns that his child's social/emotional needs be met are certainly understandable and it can be distressing to read about one's child struggling. It is suggested that both the district and parents should monitor the student's behaviors as the student adjusts to kindergarten in the fall. If the student continues to find transitioning from one activity to the next difficult, it is appropriate for the father to request further information in the form of a Functional Behavioral Assessment (FBA) to specifically determine what is maintaining the student's behaviors and how to best address these behaviors in light of the student's ASD and ADHD diagnoses.

In this case, there is evidence that the district implemented the social/emotional accommodations during the 2024-2025 IEP year as well as responded appropriately to meet the student's needs with the addition of accommodations, a social/emotional IEP goal and social work services throughout the spring of 2025.

Based on the foregoing, it is found that the district is *IN compliance* and corrective actions are not required.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of K.A.R. 91-40-25 was found based on the lack of parent notification for IEP related actions. Corrective actions are required.
    a. The district shall immediately, within 21 school days, by August 11, 2025, submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state statutes and regulations at K.A.R. 91-40-25 which dictate parent notification and participation in the IEP process.
    b. A district administrator shall immediately, by August 21, 2025 contact the father to ensure he has all of his child's IEP related documents as well as the Parent's Rights Notice, Procedural Safeguards and missed PWNs.
    c. The district shall engage an outside provider and training materials, both approved by SETS to conduct training for all preschool staff and

administrators on the school/district obligation to contact parents for IEP related issues. This training shall include:

i. distinctions between parent notification and parent consent

ii. parent participation that addresses non-traditional families such as parents who don't live in the same home.

This training shall be completed by October 1, 2025.

d. The district shall submit documentation of all IEP related documents shared with the father and required staff training to Special Education and Title Services (SETS), by October 15, 2025.

2. ISSUE TWO: A violation of 34 C.F.R.300.324(b)(ii)(B) and 34 C.F.R.300.502(c)(1) was found based on the lack of district review of independent evaluation results prior to, or, at the March 14, 2025 IEP.

a. The district shall immediately, within 21 school days, by August 11, 2025 submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations and statutes at 34 C.F.R. 300.324(b)(ii)(B) and 34 C.F.R.300.502(c)(1) which requires the district to consider the results of independent evaluations.

b. The district shall review any policies and procedures for the handling of independent IEP evaluation to determine if the issue in this case was due to the lack of written guidance or human error. If the issue is found to be policy or procedural related, corrections will be made to these by September 30, 2025.

c. The district shall engage an outside provider and training materials, both approved by SETS to conduct training for all preschool staff and administrators on the district's obligation for addressing independent IEP evaluations as stated in 34 C.F.R. 300.324(b)(ii)(B) and C.F.R.300.502(c)(1) by September 30, 2025.

d. The district shall submit documentation of the policy and procedural review noted above and of staff training to Special Education and Title Services (SETS), by October 15, 2025.

3. ISSUE THREE: A violation of 300.320(a)(2)(i) and (3)(i) and was not found based on the IEP's inclusion of measurable goals and descriptions of the child's progress toward meeting these annual goals. Corrective action is not required.

4. ISSUE FOUR: A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was found not based on the district's implementation of the student's social/emotional accommodations. 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.gov 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 #501
ON FEBRUARY 6, 2025

DATE OF REPORT: MARCH 6, 2025

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 #501, Topeka Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #501.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint. A complaint is considered to be filed on the date it is delivered to both the KSDE and the District. In this case, the KSDE initially received the complaint on February 6, 2025, and the 30-day timeline ended on March 8, 2025.

Allegations

The following issue will be investigated:

Issue One

Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the agreed-upon compensatory education as part of the corrective action in Complaint 25FC501-001. K.A.R. 91-40-51(e)(f)(2).

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video on February 20, 2025. District staff were interviewed on February 24, 2025.

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:

1. District Response, 02/18/25
2. 25FC501-001 Investigative Report, 11/15/24
3. Student Corrective Action/Options/Services Provided, no date

4. 25FC501-001 Summary of February Discussions, no date
5. Corrective Action #2 proposal summary, no date
6. Email, re: Corrective Action Completed for 25FC501-001, 02/04/25
7. Letter from KSDE, Corrective Action Complete, 02/04/25
8. Letter, Receipt of Complaint, 02/06/25
9. Formal Complaint Request Form, no date
10. Tutoring Contacts Google Sheet, no date
11. Email, re: 25FC501-001 status update of corrective actions, 11/25/24
12. Email, re: Proposal, 12/02/24
13. PWN, 11/01/24
14. Student IEP, 09/16/24
15. IEP Amendment, 02/18/25
16. PWN, 02/18/25
17. Corrective Action #2 proposal summary, no date
18. Email, re: [Student] Wed Check In, 10/30/24

Background Information

This investigation involved an eighth-grade student enrolled in the District. The Student was receiving services as a child with a Specific Learning Disability per the IDEA.

In Investigative Report 25FC501-001, completed by the Complaint Investigator and dated November 15, 2024, Corrective Action #2 was written as, "Further, within 15 calendar days of the date of this report, USD #501 will convene an IEP meeting to determine how to implement and schedule up to 30 hours of compensatory services to be delivered within one calendar year. The Parent may accept all, a portion of, or none of the offered compensatory services, by notifying the [D]istrict in writing within 15 school days of the date the offer is delivered to the [P]arents. The District shall provide copies of the amended IEP and a schedule of when the compensatory services will be provided to SETS."

According to the District Response, neither party appealed the Complaint Investigator's decision in 25FC501-001.

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. In the District Response, the District explained that staff members made 17 attempts to find an instructor to tutor the Student, and the specific timeline and due date for the tutoring services were to be completed "within the current school year." These attempts were documented on the "Tutoring Contacts" Google Sheet,

with dates ranging from December 30, 2024 to January 17, 2025. The District stated that since the Parent agreed to the proposal on December 2, 2024, the District only had 32 work/school days to find a tutor before the second complaint was filed on February 6, 2025. The District noted that USD #501 schools were closed for seven days in January and February 2025 due to snow.

2. On November 25, 2024, the General Director of Special Education and Special Services stated in an email to the Virtual School Special Education Consultant Teacher and the Special Education Consulting Teacher that they asked for an extension until December 3, 2024 for the IEP review and any necessary amendments.
3. On December 2, 2024, the Virtual School Special Education Consultant Teacher called the Parent to discuss a plan for the Student's compensatory services of up to 30 hours.
    a. Options discussed included:
        i. "Continuing with current tutoring for 20 minutes, two times per week, and add 100 minutes weekly through home school"; and
        ii. "Continuing with current tutoring for 20 minutes, two times per week, and adding 30 minutes, two times per week, through home school."
    b. The Parent decided for tutoring to remain at 20 minutes, two times per week, with the Teacher, and added 30 minutes, two times per week, through home school.
    c. A "Services Provided" section indicated the Teacher offered tutoring for 20 minutes for 19 days (totaling 380 minutes) on December 3, 5, 9, 10, 12, 17 and 19, 2024; and on January 14, 16, 21, 23, 28 and 30, 2025; and on February 4, 6, 11 and 13, 2025. December 17 and 19 were both listed twice.
4. The District stated that their proposal, which was discussed with and approved by the Parent, was for 30 minutes of tutoring twice a week from January to the end of the school year.
    a. The Parent emailed the Virtual School Special Education Consultant Teacher on December 2, 2024, with an acceptance of the proposal.
    b. On December 2, 2024, the Parent signed a Prior Written Notice (PWN) for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent.
    c. A copy of the Student's IEP, originally dated September 16, 2024, was signed and accepted by the Parent on December 2, 2024.
5. An email from the Parent dated December 23, 2024 said, "… due to the findings in the complaint I did go over some additional things … that I think should be starting in January, such as additional tutoring to take place at [the School] two times a week on top of the times [the Student] meets with [the Teacher]. When will that begin?"
    a. The Special Education ELA Teacher replied to the Parent's email on January 16, 2025, but did not address the tutoring question.

b. The Parent replied to the Special Education ELA Teacher on January 16, 2025 and stated they had not received information about tutoring.

c. On January 17, 2025, the Parent indicated via email they were concerned their question about tutoring hours had not been answered. The same day, the General Director of Special Education and Special Services replied to the Parent and stated they would follow up about tutoring when staff returned. Also, the same day, the Special Education Consulting Teacher replied to the Parent's email and stated there was a staff member who could start tutoring in February but that they were actively looking for a tutor to start earlier.

6. The District Response stated, "On February 4, 2025, [the Dispute Resolution Coordinator] of the Kansas Department of Education emailed the District and stated, 'We have received verification that all corrective actions have been completed. Thank you. The file is now closed.'" An attachment of the letter was included in the email.

a. The same day, the Parent replied to the Dispute Resolution Coordinator and stated they disagreed because they had signed an agreement with the District to start compensatory services in January, and those services had not started yet.

b. On February 5, 2025, the General Director of Special Education and Special Services replied to the Parent and stated there was a challenge in finding a staff member who would tutor after their school day and apologized that staff had not been secured yet.

c. On February 6, 2025, the General Director of Special Education and Special Services replied to the Parent that they would work to find someone who could start tutoring the next week and make any necessary adjustments to ensure the Student received the proper services.

7. On February 14, 2025, the Virtual School Special Education Consultant Teacher called the Parent to discuss current opportunities at the School. The Parent stated the Student liked the Teacher and that their services had been helpful. The Parent asked if it was possible for the Teacher to provide any of the weekly 60 minutes of tutoring services. The Virtual School Special Education Consultant Teacher spoke with the Teacher the same day, who stated they would be happy to extend their time with the Student.

a. On February 18, 2025, the Virtual School Special Education Consultant Teacher spoke with the Parent about fulfilling the remaining 1,420 minutes of compensatory services. The Parent agreed the Student would meet with the Teacher for 60 minutes two times per week, outside of the school day, through the end of the school year on the following dates: February 18, 20, 25 and 27, 2025; March 6, 11, 25 and 27, 2025; April 1, 3, 8, 10, 15, 17, 22, 24 and 29, 2025; and May 1, 6, 8, 13, 15 and 20, 2025.

8. An IEP amendment dated February 18, 2025 indicated:

a. On February 14, 2025, the Virtual School Special Education Consultant Teacher spoke with the Parent about making up missed compensatory services.
b. On February 18, 2025, the Virtual School Special Education Consultant Teacher spoke with the Parent to finalize the tutoring schedule to make up compensatory services.
c. It was signed by the Parent on February 18, 2025.

9. A PWN for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated February 18, 2025, detailed the plan for the Student to receive the remaining 1,420 minutes of compensatory services from February 18, 2025 through May 20, 2025. The form was signed by the Parent on February 18, 2025.

10. During interviews with the Complaint Investigator, the Parent indicated they perceived the Student's tutoring services were supposed to start in January 2025. The Parent stated they met with the Virtual School Special Education Consultant Teacher who shared with them that, "... it was 30 hours that was ... needed. ... We're gonna set this up for the second half of the school year like twice a week from January ... to the end of the school year. Is that okay with you? You know, do you accept these terms? And I said, yes ... ."

11. The Parent indicated they asked for a timeframe when the services would start and did not receive an answer. The Parent shared they were later told the District did not have any staff available to start tutoring the Student until February and were having a hard time fulfilling the request. The Parent explained that nobody addressed their email questions regarding the tutoring services, and it took several times for someone to respond.

12. The Parent said, "... somebody else that said, oh, the first complaint was completed and closed out. They satisfied all the requirements. And I said, 'no, they have not ... we're still missing this piece of that first complaint.' And I was told I had to file another complaint."

13. When asked by the Complaint Investigator about documentation for the compensatory service agreement, the Parent described receiving a Word document proposal for 30-minute tutoring sessions twice weekly at the School, supplementing the Student's existing virtual math tutoring and homework help. The Parent stated they signed a revised proposal which extended the Student's virtual sessions with the same tutor. The Parent explained the tutor had worked with the Student before, and they had a good rapport. The Parent confirmed the extra time was supposed to cover the Corrective Action but also stated it had not officially started yet.

14. During interviews with the Complaint Investigator, the General Director of Special Education and Special Services explained that the dates listed on the Corrective Action/Options/Services Provided document were dates that tutoring was provided before the Complaint Investigator issuing their findings from the investigation in November 2024. The District made arrangements with the Parent to start tutoring immediately because the District recognized that there were services missing. The

General Director of Special Education and Special Services stated it was set up so the tutoring would go through the end of the year regardless of the investigative findings.

15. The General Director of Special Education and Special Services explained that tutoring for the Student was already in place with the Teacher. The Virtual School Special Education Consultant Teacher reached out in early December to set up the tutoring from the Corrective Action and indicated to the Parent that it would start in January. Additionally, they stated it came to their attention that the District had not been able to find anyone to stay after school and tutor the Student. The General Director of Special Education and Special Services explained they learned that the District had a staff member who could tutor the Student but could not start until the end of February. "My understanding from [the Virtual School Special Education Consultant Teacher] was that [their] first plan did not necessarily have specific start and end dates, but when [they] visited with [the Parent] on [the] phone, [they] did mention it starting in January."
16. The General Director of Special Education and Special Services indicated their understanding of the Corrective Action was that the District had a year to ensure the tutoring was done, and had to make arrangements with the Parent within 15 days of how that would be done.

    The General Director of Special Education and Special Services indicated that the Virtual School Special Education Consultant Teacher came up with the idea to continue the tutoring with the Teacher because the Teacher was the special education teacher at the virtual school. The General Director of Special Education and Special Services believed the Student received 20 minutes of tutoring twice per week starting in early November.
17. The General Director of Special Education and Special Services stated that from December 2, 2024 to the date of the interview, the Student continued to receive tutoring services from the Teacher, but had not received any additional time that had been agreed to on December 2, 2024 because there was no staff member available to provide the services at that time. The General Director of Special Education and Special Services indicated the Student's time with the Teacher, which was 40 minutes per week, had been uninterrupted other than snow days and holidays.
18. When asked what the District's current plan was to provide the corrective action minutes, the General Director of Special Education and Special Services said that on February 18, 2025, the Virtual School Special Education Consultant Teacher and the Parent agreed the Student would meet with the Teacher for 60 minutes two times per week outside of the school day through the end of the school year, which would equal 24 sessions. The General Director of Special Education and Special Services said, "And it looks like in the agreement they went ahead and added the 380 [minutes] that [the Teacher] had already done as part of the 1800. [The Parent] agreed to that."

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the agreed-upon compensatory education as part of the corrective action in Complaint 25FC501-001. K.A.R. 91-40-51(e)(f)(2).

According to K.A.R. 91-40-51(e)(f)(2), if a report requires corrective action by an agency, that agency, within 10 days of the date of the report, shall submit to the state director of special education one of the following: documentation to verify acceptance of the corrective action or actions specified in the report; 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; oral written notice of appeal. Each appeal shall be made in accordance with subsection (f). If an agency files a request for an extension of time within which to complete one or more corrective actions required in a report, a review committee of at least three department of education members shall be appointed by the commissioner to review the request and the offered justification for the extension of time. A decision on the request shall be made by the committee within five business days of the date the request was received. The decision of the review committee shall be final. If a local education agency fails to respond to a report within the time allowed, the sanctions listed in paragraph (f) (2) may be invoked.

K.A.R. 91-40-51(e)(f)(2) also states that 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: the issuance of an accreditation deficiency advisement; the withholding of state or federal funds otherwise available to the agency; the award of monetary reimbursement to the complainant; or any combination of the actions specified in paragraph (f)(2).

The Parent alleged that Corrective Action #2 from complaint 25FC501-001 had not yet been implemented, and should have started in January 2025. The Parent stated they signed the proposal for Corrective Action on December 2, 2024. The Corrective Action listed, in part, in the 25FC501-001 report stated, “Further, within 15 calendar days of the date of this report, USD #501 will convene an IEP meeting to determine how to implement and schedule up to 30 hours of compensatory services to be delivered within one calendar year. The Parent may accept all, a portion of, or none of the offered compensatory services … .”

The District stated they were complying with the Corrective Action requirement and were in the process of obtaining a tutor for the Student. The District indicated the specific timeline and due date for the tutoring services to be provided to the Student, was to be completed within a calendar year. The General Director of Special Education and Special Services asked for an extension until December 3, 2024 for the IEP review and any amendments. The District indicated they demonstrated a good faith effort to find a tutor to provide the Student with 30 hours of tutoring as agreed to in the IEP meeting.

The Parent accepted and agreed to the District's proposal of 30 minutes of twice-weekly tutoring, which they were told would start in January 2025. The District made 17 documented attempts to find a tutor for the Student from December 30, 2024 to January 17, 2025. A tutor was available to begin in February, with efforts being made to find someone to start earlier. The District offered 30 hours of compensatory tutoring for the current school year. The District's proposal detailed 100 minutes of tutoring weekly for 18 weeks.

On February 18, 2025, the Parent and the Virtual School Special Education Consultant Teacher agreed that the Teacher would provide 60 minutes of tutoring twice weekly to fulfill the remaining 1,420 compensatory minutes, with specific dates scheduled through May 20, 2025. The Parent confirmed the extra time was supposed to cover the corrective action. A PWN dated February 18, 2025 detailed the plan for the Student to receive the remaining 1,420 minutes of compensatory services from February 18, 2025 through May 20, 2025. An IEP amendment dated February 18, 2025 summarized discussions with the Parent about finalizing the tutoring schedule to make up compensatory services. The Parent signed both documents on February 18, 2025.

Based on the foregoing, according to IDEA and Kansas special education regulations, i*t is not substantiated* that the District failed to implement the agreed-upon compensatory education as part of the corrective action in Complaint 25FC501-00. The District's obligation to provide the agreed upon compensatory education is due to be completed within one calendar year from issuing the Report of Complaint for investigation 25FC501-001.

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.gov 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 HODGEMAN COUNTY PUBLIC SCHOOLS
ON APRIL 29, 2025

DATE OF REPORT: MAY 29, 2025

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." ------- will be referred to as "the Complainant" or "the Parent".

The complaint is against USD#227 Hodgeman County Public Schools. It is noted that Southwest Kansas Area Cooperative District #613 provides special education services for USD#227 Hodgeman County Public Schools. In the remainder of the report, USD #227 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 29, 2025, and the 30-day timeline ends on May 29, 2025.

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). While all materials submitted were reviewed, the following documentation and information were used in consideration of the issue(s). The Special Education Director (Trina Schmidt), the Special Education Teacher (Shelly Jones) and the SWACD Nurse (Haley Hahn) were interviewed on May 19, 2025. The Parent was interviewed on May 1, 2025 to clarify the issues in the complaint and May 22, 2025. Permission was given by the Parent to interview Lisa Wassinger, a Special Education Professional in the Student's school and classrooms, who was interviewed on May 21, 2025. Emails with follow up questions were exchanged between the District through May 22, 2025 and with the Parent through May 25, 2025.

Materials Submitted by the District

1. Undated Student Schedule
2. Student's IEP dated December 8, 2023
3. Prior Written Notice (PWN) dated December 8, 2023 for a meeting on December 8, 2023 for a material change in services, signed by the Parent giving consent on December 8, 2023

4. Consideration of Special Education Evaluation, signed by Parent giving consent to waive reevaluation on February 21, 2023
5. Student Progress Report for IEP dated December 8, 2023, with entries dated in December, 2023; March, 2023; and May, 2023
6. Student Progress Report for IEP dated December 8, 2023, with entries dated in October and November, 2024
7. Letter from Jordan Jones (D.O, Children's Mercy Hospital) dated February 15, 2024 and the same, dated February 24, 2024
8. Classroom Communication Log with entries from August 22, 2023 to December 20, 2024
9. Calendar of service with handwritten attendance notes, August 2024 to May 2025
10. Emails from Jason Wright (Assistant Special Education Director) to the Trina Schmidt (Special Education Director, SKACD) dated September 11, 2024 at 5:15 p.m., forwarded to Shelly Jones (Special Education Teacher) with replies dated September 11, 2024 at 8:54 p.m. and September 17, 2024 at 8:25 p.m.
11. Student Attendance Report with entries from September 19, 2024 to March 13, 2025
12. Email and records request form from Gina Pack (Nurse Administrator, Hodgeman County Health Department) to Southwest Kansas Area Cooperative District #613 (SKACD) dated October 11, 2024 at 10:27 a.m.
13. WebKIDSS Email Documents Log, with entries October 15, 2025 to November 21, 2024
14. Service logs for the Student dated November 1, 2024 to May 5, 2025
15. Statement by Megan Rupp (CPTA) dated November 1, 2025
16. Statement by Eric Ford (Physical Education Teacher) dated November 1, 2025
17. Accident Report by the Special Education Teacher dated November 1, 2025
18. Notes, dated November 5, 2024
19. Email from Jewel Fivecoat (LMSW Children's Mercy) dated November 7, 2024 at 3:14 p.m.
20. Letter from Jordan Jones (D.O, Children's Mercy Hospital) dated November 6, 2024
21. Notice of Special Education Meeting dated November 10, 2024 for a meeting on November 11, 2024 for annual IEP with no Parent signature
22. Notice of Special Education Meeting dated November 10, 2024 for a meeting on November 11, 2024 listing participants, signed by the Parent indicating attendance on November 11, 2024
23. Student IEP dated November 11, 2024
24. Prior Written Notice (PWN) dated November 11, 2024 for a meeting on November 11, 2024 for eligibility, special education and related services, placement, non-material changes to the IEP and other changes to the IEP, signed by the Parent giving consent on November 11, 2024

25. Individual Health Plan dated November 14, 2024 and November 21, 2024 for IEP dated November 11, 2024
26. Emergency Evacuation Plan dated November 11, 2024
27. Email exchange between the Special Education Director, SKACD #613 and Robert Reed (Elementary Principal and Superintendent, Hodgeman County Schools) dated November 12, 2024 at 1:03 p.m. and ending at 4:01 p.m.
28. Email exchange between the Parent, Thomas Martin (School Psychologist), and Haley Hahn (SAKCD Nurse) beginning November 20, 2024 at 12:43 p.m. and ending on November 21, 2024 at 10:16 a.m.
29. Student Progress Report for IEP dated November 11, 2024 with entries dated in December, 2024; March, 2025; and May, 2025.
30. Staff training notes by SAKCD Nurse dated December 17, 2024
31. Classroom Communication Log with entries from January 7, 2025 to May 13, 2025
32. Email exchanges among the Special Education Director, the Special Education Teacher, Glenna Williamson (Physical Therapist), the Principal-Superintendent, the School Psychologist, and the SKACD Nurse beginning March 26, 2024 at 2:39 p.m. and ending on March 27, 2025 at 11:54 a.m.
33. Email from the Special Education Teacher to the Parent dated April 23, 2025 at 8:07 p.m.
34. General Education Grade Report for 2024-25 school year
35. Email from the Special Education Teacher to the Special Education Director dated May 21, 2025 at 4:24 p.m.
36. The District's Response to the Complaint

Additional Materials Submitted by the Parent

37. "First Notice of Meeting" dated October 31, 2024 for a meeting November 11, 2024, to discuss possible changes to the IEP and for the annual review of the IEP
38. "Second Notice of Meeting" dated November 10, 2024 for a meeting November 11, 2024, to discuss possible changed to the IEP and for the annual review of the IEP
39. "First Prior Written Notice" dated October 31, 2024 for a meeting November 11, 2024 to discuss eligibility, special education and related services, educational placement and other changes to the IEP, not requiring consent
40. "Second Prior Written Notice" dated November 10, 2024 for a meeting November 11, 2024 to discuss eligibility, special education and related services, educational placement and other changes to the IEP, not requiring consent
41. "Third Prior Written Notice" dated November 11, 2024, printed on November 19, 2024 by the School Psychologist, received by the Parent on November 19, 2024, to discuss special education and related services, educational placement and other changes to the IEP, not requiring consent.

42. Email exchange between the Parent to the School Psychologist beginning November 20, 2024 at 12:42 p.m. and ending November 21, 2024 at 2:32 p.m.
43. Text messages between the Parent and the Special Education Teacher beginning April 7, 2025 at 4:22 p.m. and ending April 9, 2025 at 1:58 p.m.
44. Email exchange between the Special Education Teacher, the Parent, the Principal and the Special Education Director, beginning April 23, 2025 at 8:07 p.m. and ending April 30, 2025 at 1:29 p.m.
45. Text messages from the Parent to the Special Education Teacher beginning April 22, 2025 at 10:35 p.m. and ending April 23, 2025 at 1:43 p.m.

Background Information

The Student is 8 years old, and receives special education under the category of Developmentally Delayed, with additional medical diagnoses of Down's Syndrome, Macrophage Activation Syndrome, Juvenile Idiopathic Arthritis and Interstitial Lung Disease. The Student has arthritis "flare ups" which impede mobility and stamina. The Student's vision is limited by scarring in the left eye and by neurotrophic keratitis, and the Student has not consistently passed hearing screenings, even as a newborn. The Student's medical care is actively followed by the Division of Rheumatology at Children's Mercy Hospital and Fry Eye Associates for vision.

The Student's last special education evaluation was at the age of 2 years 11 months in 2020; the triennial evaluation due in 2023 was waived by Parent and IEP team. The Student's initial Evaluation Data Summary (2020) provided to the investigator included no assessment information, except to note progress in AEPS score during the birth to three program; external OT, PT, and Speech Language reports were referenced. The Student was found eligible for special education services. The Evaluation Data Summary disputed the Student's low birthweight asserted by IEPs in 2023 and 2024.

The Student received education in a resource room and second grade classroom with special education services in the District elementary school. The Student received related services of OT, PT, Vision and Speech/language therapy. The Student spoke with one to five word utterances, needed adult support for basic needs including toileting, traveled from class to class by walking or riding an Amtryk or a wagon, required blended or cut up food, and needed supervision during lunch to ensure he does not eat something he could not swallow.

Issues Investigated

1. ISSUE ONE: Did the District afford Parent participation in the IEP, specifically including information about medical concerns and the inclusion of services, accommodations or modifications to address these concerns?
2. ISSUE TWO: Did the District hold IEP meetings needed to respond to new information provided by the Parent or to address the Student's lack of progress or other issues in compliance with state and federal regulations?

3. ISSUE THREE: Did the District provide accurate present levels of performance in the Student's IEP?
4. ISSUE FOUR: Did the District provide the Parent with copies of the IEP?
5. ISSUE FIVE: Did the District USD#227 implement the Student's IEP by providing the special education and related services required by the IEP and in compliance with state and federal regulations?
6. ISSUE SIX: Did the District provide copies of the IEP to the school staff tasked with implementing or administering the IEP and in compliance with state and federal regulations?
7. ISSUE SEVEN: Did the District provide accurate and proper Prior Written Notice to the Parent as required by state and federal regulations?

Issue One

Did the District afford Parent participation in the IEP, specifically including information about medical concerns and the inclusion of services, accommodations or modifications to address these concerns?

Applicable Law

Federal regulations at 34 C.F.R. § 300.321(a)(1) require that each public agency must ensure that the IEP Team includes the parents of the child. Federal regulations at 34 C.F.R. § 300.322(a) and state regulations at K.A.R. § 91-40-17(a)(1) require that each public agency must take steps to ensure that one or both 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 early enough they have the opportunity to attend and scheduling the meeting at a mutually agreed upon time and place.

According to 34 C.F.R. 300.503 (a) and (b), written notice must be given to the parent of a child with a disability a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, placement, or the provision of FAPE to a child, and that the notice must include a description of the action, and explanation of why, a description of the evaluation, assessment, record or report the agency used as a basis for the proposed or refused action, description of other options considered and reasons they were rejected, and a description of other factors relevant to the agency's proposal or refusal.

According to K.S.A. 72-3430: (a) The rights of parents of exceptional children shall include, but not be limited to, the rights specified in this section. (b) The parents of exceptional children shall have the right to: (1) Examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child; (2) written prior notice in accordance with K.S.A. 72-3432, and amendments thereto, 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.

State regulations at K.A.R. § 91-40-25(a)(2) require prior written notice of any meeting to the parents of the child, to include the purpose, time, and location of the meeting and the titles or positions of persons who will attend on behalf of the agency. K.A.R. § 91-40-25(e) clarifies that a meeting does not include informal conversations on teaching methods, lesson plans, or coordination of services, or preparatory activities to develop a proposal that will be discussed at a later meeting.

Further, the Kansas Special Education Process Handbook states: "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."

Analysis: Findings of Fact

The Parent, in the written complaint, alleged that on October 11, 2024, the Parent met with and informed the Principal that the medical records and medication guide referred to in the IEP were not present in the school's medical file. The Parent further alleged that the IEP stated that the Healthcare Plan would be added to the IEP dated December 8, 2023 upon receipt of medical records from the doctor, and that those records were provided to the school on or about February 15, 2024.

The Parent alleged that she contacted the School Board President on October 14, 2024 to discuss her concerns, including the doctor's recommendation to have consistent paraprofessionals to provide services throughout the day. Subsequently, the Parent met with the Special Education Director on October 21, 2024 to discuss the IEP, the paraprofessionals, and the absence of the Health Plan, the doctor's recommendations, and the medication guides provided to the school at the time of the IEP. The Parent alleged that she was contacted by the SAKCD Nurse on November 5, 2025, who told the Parent that the Student did not need an Individual Healthcare Plan and that health could be addressed in the IEP. The Parent reported this to the Special Education Director and Special Education Teacher and was told that an IHP would be written.

The Parent alleged that she was contacted by the School Psychologist on November 19, 2024, to discuss the proposed IEP after the IEP team met on November 11, 2024 . When the Parent received the IEP on November 21, 2024, she expressed disagreements with the proposed IEP including IHP and requested time to allow the doctor to review it. The Parent alleged that she was not further contacted regarding her disagreements with the IEP, the Emergency Evacuation Plan (EEP) or the IHP.

The Parent alleged that she contacted the Special Education Teacher to complete the IEP on March 25, 2025 and received a return call from the Special Education Director on March 26,

2025, with whom she discussed her concerns, including with the wheelchair aspect of the Healthcare Plan and offered an alternative. The Parent alleged that the Special Education Director was to call her back the following Friday but that the Special Education Director did not return the call.

The Parent alleged that when the School began using the wheelchair, she contacted the Special Education Teacher regarding her disagreement with it, her concerns with its suitability for the Student, and that the Student's IEP stated that he should be given a choice between walking or using the Amtryke, or to use the wagon during a flare up of arthritis, with no mention of wheelchair use. The Parent alleged that the school did not contact her about meeting to make changes to the IEP, the IHP, or the EEP.

District Response

The District responded: "[The Parent] reached out to the Hodgeman County Health Department on October 11, 2024 in regards to Liam's health file with Jetmore Elementary. The Health Department then forwarded the same doctor's note and accommodations that [the Parent] had previously sent and were added into his previous IEP. [The Student's] annual IEP was held on November 11, 2024. Prior to the annual IEP meeting, the Director, Trina Schmidt visited with [the Parent] on October 21, 2024 to hear her concerns and note items she wanted to address in the upcoming IEP meeting.

When [the Special Education Director] met with [the Parent], she was not happy that there was not a medical file at Jetmore Elementary. I explained that that is a general education file. For IEPs we can write a Health Care Plan that is with his IEP file, but not a part of the IEP. She agreed to that and I then spoke to our SKACD nurse for her to reach out to [the Parent] and begin a Health Care Plan.. [The SKACD Nurse] reached out to [the Parent] as well as reviewed the report that was given by Liam's doctor.. [The SKACD Nurse] met with [the Parent] on November 5, 2024. At that time,[the Parent] informed her that there was nothing new with [the student's] health..

On November 7, 2024, [the Special Education Director] received an email from Children's Mercy Hospital in Kansas City. The social worker was sending the new information from the doctor in terms of accommodations for [the Student] at school. [The Special Education Director] reviewed the information with [the Parent] as well as it was reviewed at Liam's IEP meeting. This is the same doctor's note that was received on February 15, 2024 and then again November 6, 2024. The only difference was the accommodation recommendation that [the Student] have the same para throughout the day. It was explained to [the Parent] multiple times that [the Student's] IEP states that he will have support for his entire school day. It is not in his best interest to have one adult assigned to him. If that adult were to be absent, then we would be out of compliance with the IEP.. It is better for students to have support from several staff members to ensure that they do not become too independent upon one adult. I also

explained to [the Parent] that doctor's can make recommendations for IEPs but it is our job to ensure FAPE and that the student's needs are being met. [The Parent] was given time to share her concerns during the IEP meeting.. Attached [is] a copy of the draft IEP with hand written notes where [the Parent]'s input was noted and then added to the final IEP."

Findings of Fact

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #227.

Two IEPs fall within the 12 month investigation period, the first dated December 8, 2023 and the second dated November 11, 2024.

As recorded in the IEP dated December 8, 2023, the Parent's input into the IEP included the following. The Parent wanted the Student to increase communication of basic wants, needs, and feelings, and for the Student's occupational therapy to focus on life skills like tying shoes, buttoning, and zippers. The Parent asked the staff to use the Amtryke for transportation between classes and continue to use the wagon. The Parent stated that the Student had increased problems with "stemming" that she associated with many changes of paraprofessionals through the day. With regard to the Student's health, the Parent asked for staff to be alert to flare ups, to avoid sun when topical steroids were in use, to avoid sick people, and to provide lots of fluids using a cup with straw to facilitate the Student's fluid intake. The Parent noted that the Student's hearing was affected by small ear canals and that follow up with the eye doctor was in place.

The IEP dated December 8, 2023 noted 'YES" to the question, "Does this child require a Health Care Plan?" The IEP stated "need explicit doctor's orders stating restrictions and medical reasons for needed accommodations." Under "Parent Input" the IEP stated that the Student's "arthritis doctor would be sending orders to assist with our healthcare plan. Once orders are received, the healthcare plan will be added to the IEP."

Attached to the IEP was a letter from the Student's doctor at Children's Mercy, dated February 15, 2024, which detailed the student's diagnoses, treatment, treatment effects, anticipated needs, symptoms, and suggested accommodations, including a single paraprofessional through the day, rest or nap, and reduce intensity of PE after occupational or physical therapy. When asked in an interview, the SAKCD Nurse indicated that the letter was not deficient in any way and it contained typical information, but that she was not aware of the letter before her addition to the Student's IEP team in November, 2024.

The Parent reported and the Special Education Teacher agreed in an interview that the letter was provided to the Special Education Teacher near the time of its date in mid-February, 2024. The Parent reported that the District did not contact her to complete the Health Plan, which the Parent assumed was made part of the IEP upon receipt of the doctor's letter.

When asked in an interview, the Special Education Teacher reported sharing the letter with a School Psychologist (no longer with the District), and that they reviewed the letter. The Special Education Teacher reported that, finding no new accommodations in the letter, it was placed in a classroom file and no further action was taken.

Emails dated September 11, 2024, show that the Parent contacted the Assistant Special Education Director to discuss the Parent's concern that the Student have a single paraprofessional during the day. In turn, the Assistant Special Education Director contacted the Special Education Director and the Special Education Teacher of this concern.

The Parent reported that she learned that there was no information since 2020 (at the time of the student's transition from preschool) in the Student's medical file from the Public Health Nurse, who contacted her in October, 2024, with questions regarding the Student's immunization requirements (no live vaccines due to autoimmunity status).

According to documentation, on October 10, 2024, the Parent and the Public Health Nurse contacted the District for a copy of the IEP, which the parent reported that she obtained later the following afternoon.

In the morning of October 11, 2024, the Parent met with the Principal to report her concerns with the lack of health plan, vaccine forms, and medication guides in the Student's file or attached to the Student's IEP.

The Parent reported and documents showed that she communicated with the Board President on October 14, 2024, who in turn directed her to expect a contact from the Special Education Director. The Special Education Director reported that she returned a call to the parent on October 15, 2024.

The Parent and the District agreed that the Parent and the Special Education Director met on October 21, 2024. The Special Education Director reported and her email summary of the meeting dated October 21, 2024 showed that the discussion included the following topics: (a) the Special Education Teacher received the doctor's letter after the prior IEP meeting and "didn't want to amend the IEP since there had just been a meeting," (b) the IEP that the parent had and the District's IEP did not match, (c) updating the health plan, (d) accommodations, (e) updating the planner, (f) crowded rooms [infectious disease risk], (g) para consistency, and (h) the need to meet soon. In an email reply to the Special Education Director dated October 21, 2024, the Special Education Teacher denied the Director's statement that she didn't want to amend the IEP, added information on the communication with the parent, and included that Parent was concerned about increased toileting accidents. In that email, the Special Education Teacher asserted that toileting accidents were because of a change in the staff's process, from directing the Student to use the toilet to requiring the Student to ask for the toilet. In an interview, the Special Education teacher denied that there were any regressive toileting problems associated with the change of paraprofessional support and stated that the staff

took the student to the toilet during second grade breaks and transitions from class to class. In an interview with the Special Education Paraprofessional, the Paraprofessional stated that the Special Education Teacher asked the Student to use the toilet rather than directing the Student to do so.

On November 5, 2024, the SAKCD Nurse contacted the parent to discuss the Health Plan to be included in the upcoming IEP. The SAKCD Nurse, when interviewed, stated that the Student's needs did not necessarily require a separate health plan, but it was added at the request of the parent.

The Parent and the District agree that the Parent received Notice of Meetings dated October 31, 2024 and November 10, 2024 for an IEP meeting on November 11, 2024.

On November 11, 2024, the Student's IEP team met and the Student's annual IEP was written. Related to health care, the IEP dated November 11, 2024 noted 'YES" to the question, "Does this child require a Health Care Plan?"

In addition, new information was added to the parent input section regarding health, including the parental questions regarding the lack of information in the medical file or on the prior IEP, why the Children's Mercy recommendations for accommodations and services including a single paraprofessional were not enacted, and why the student was playing dodgeball given his disabilities. The Parent shared toileting regression noted at home along with new aggression toward siblings. Also included was information regarding hearing (ear tubes), vision care, and the Parent's reiteration of the use of the Amtryke or wagon, with the wagon only to be used during a flare up. In an interview and in the written complaint, the Parent reported that the questions were never answered.

Under Health Conditions, further parental information added the need for close monitoring of arthritis at school, the Student's medical team, that medications were taken at home, and urging consideration of the Children's Mercy letter provisions. The IEP stated that the doctor's letter and the IHP would be attached to the IEP in images. In an interview, the Special Education Director stated that the Children's Mercy letter was discussed at the IEP Team meeting, but no notes were taken.

The Parent and the District agree and the WebKIDSS email document log shows that the Parent received PWN regarding the IEP dated November 11, 2024 on October 31, 2024 and November 10, 2024, and November 21, 2024.

The Parent signed the PWN dated November 11, 2024 at the IEP meeting. Documentation on the PWN stated that the PWN was hand delivered on November 11, 2024 by the School Psychologist, who later met with the Parent on November 19, 2024. The Parent reported she received the PWN from the School Psychologist on November 19, 2024.

Prior Written Notice (PWN) dated November 11, 2024 stated that it was for a meeting on November 11, 2024 for the purposes of eligibility, special education and related services,

placement, non-material changes to the IEP and other changes to the IEP, signed by the Parent giving consent on November 11, 2024. The PWN dated November 11, 2024 agreed with the totals in the IEP for related services: direct pull-out speech language therapy (20 minutes 3 times a week), physical therapy (25 minutes one time a week), occupational therapy (25 minutes one time a week), direct vision services (25 minutes one time weekly) along with indirect vision services (15 minutes every other week).

The PWN dated November 11, 2024 stated that the student would not be with nonidentified peers (in special education) for180 minutes 2 days, 175 minutes 2 days, and 185 one day per week for language arts, math and functional living. The associated IEP required: special education in the special education classroom for functional and social skills (30 minutes twice weekly; 25 minutes twice weekly and 35 minutes, one time weekly), math (75 minutes five times weekly), and language arts (75 minutes five times weekly.

The PWN dated November 11, 2024 stated that the student would be with nonidentified peers for 235 minutes for 4 days and 205 minutes for one day per week for science, social studies, read aloud, and specials. The IEP required: Special education in the general education classroom included physical education (30 minutes four times weekly), lunch (25 minutes five times weekly), recess (40 minutes five times a week), music (30 minutes five times weekly), computers (30 minutes five times weekly), science and social studies (30 minutes five times weekly), morning routine (40 minutes five times weekly), and end of the day routine (10 minutes, 5 times a week). The IEP and the PWN dated November 11, 2024 added training for staff by the SKACD Nurse on arthritis flare up, 30 minutes annually.

The PWN dated November 11, 2024 does not mention special education support for the time spent in general education: specials (physical education, music, computers), recess, lunch, beginning/end of day routines, or the academic periods of science/social studies and read aloud. Additionally the PWN does not address the parent's concerns, enumerated in the parental input portion of the IEP (above) and the content of the Special Education Director's October 21, 2024 meeting with the parent: (a) toileting regression, (b) paraprofessional consistency or single para through the day, (c) walking or using the Amtryke for in school transportation with the wagon reserved only for flare ups, (d) dodgeball being inappropriate given the Student's disabilities, (e) further consideration of the Children's Mercy Letter recommendations, and (f) health considerations, including a health plan, monitoring the Student's arthritis and avoiding ill persons. Finally, the PWN does not mention the elimination of ESY services.

The District reported providing a copy of the IEP to the parent on November 11, 2024 at the time of the IEP meeting. According to the District's practice, this was a draft IEP (see explanation below).

The Parent and the District agree that the School Psychologist met with the Parent to deliver a copy and discuss the IEP (without the Health Plan) on November 19, 2024. At that time, the

Parent reported asking for more time to review the PWN and IEP and to have the doctor review the IEP, and emails showed that she asked for a copy of the Health Plan that was to be included in the IEP and a digital copy of the IEP, which were provided on November 21, 2024. Emails further document that the Parent stated that there were errors in the IEP and Health Plan which needed to be corrected. The School Psychologist, in an email reply to the Parent, stated that he would ask the Director to contact the Parent for her signature on the PWN. The Parent reported that she wanted to see the IEP in its entirety and inquired of the Special Education Teacher about revoking her signatures at or around the same time, between November 11 to November 21, 2025. In an interview and in documentation, the Parent did not perceive the IEP to be final at that time, because she asked the School Psychologist for time to have the doctor review the IEP and Health Plan and received the reply that the Special Education would follow up with her to get her signature.

The Special Education Director, in an interview, stated that the District practice before an IEP is considered final, is to add input from the meeting, have the IEP reviewed and errors corrected when it is sent to the MIS clerk. In this case, the review occurred on November 13, 2024. Although the Special Education Teacher reported that she sent the IEP home in the Student's backpack on November 14, 2025, and the Parent denies receiving it and documentation on the IEP or WebKIDSS email record did not show that the Special Education Teacher provided a copy on November 14, 2024. Documents show that the Special Education Teacher emailed a copy of the IEP dated November 11, 2024 to the Parent on November 21, 2024 and the Parent confirmed receiving it then.

The Parent reported that she contacted the Special Education Teacher on March 25, 2025 and provided a text message as evidence. The Parent reported asking "where we stand on [the Student's] IEP" and that the Special Education Teacher stated that the message would be forwarded to the Special Education Director.

A portable wheelchair was purchased by the District for the Student March 27, 2025. Emails dated March 26-27, 2025 showed that the Special Education Teacher, Special Education Director, SKACD Nurse, and PT discussed in detail the health and safety needs of the Student, due to the instability of the wagon and the perceived unsuitability of the Amtryke during times of arthritis flare ups. The PT questioned the use of a wheelchair and stated that she did not agree with its use at this time for the Student. The Parent reported and emails dated March 26, 2025 showed that the Parent during a call with the Special Education Director, expressed concern about using a wheelchair at school, asked who was qualified to prescribe a wheelchair when the Student's doctor did not, and asked to be involved in any purchase of a transportation device. To address this, the Special Education Teacher suggested calling the wheelchair a "manual chair" and the SKACD Nurse added the word, "etc" to the health plan's description of needed transportation at school.

According to the Parent, the wheelchair was in use by April 4, 2025. On April 8, the parent stated that she contacted the Special Education Teacher by text to report her concerns about the safety of the wheelchair. In the text, the Parent stated: "I've been doing some looking on the internet about that chair and I do not think it is right for him. All it is gonna take is him stepping on the footrest one time to flip it over plus not once have I even been consulted on this and I never agreed to a wheel chair in the first place when I spoke with Trina about it, she said she would get in contact with you and would call me back on Friday. Still as of today nothing. The IEP states he gets to pick between the trike or the wagon but during a flare up wagon only. [The Special Education Director] mentioned the wagon is getting too small and said maybe if we got one with bigger rubber tires and sidebars that would work. I told her I had two of them and I would bring one of them up to the school for him to use. I just don't understand if [Children's Mercy doctor] does not prescribe him a wheelchair why are you guys. And yes that is a wheelchair. The IEP says nothing about a wheelchair. Only a trike or wagon and that is what I want. I can have that other wagon here by the middle of the week. This all could have been avoided if when I told Thomas there were too many things that I disagreed with on the Healthcare and the IEP I wasn't going to sign he told me he would let the director know and she would reach out to obtain signatures. Until I text you about where do we stand on [the Student's] IEP there has been nothing. Now I am getting to the point I am starting to believe it does not matter what a Dr or a parent recommends or would like done, you guys are still gonna do what you want. It is wrong. There was nothing even brought up at the IEP meeting about a wheelchair."

The Parent reported that the Special Education Teacher said she would forward her concern to the Special Education Director, who did not reply.

The Parent and the District agree that the wheelchair was in use during April, 2025 and that on at least one occasion, the wheelchair was used when the Student refused to leave an outdoor Easter activity (on or about April 17, 2025) to return inside. The District and the Parent agree and emails showed that the Parent contacted the Special Education Teacher to express her concern with the use of the wheelchair and other issues.

The Parent and the District agree that no IEP meeting was held to discuss the student's changing mobility needs, the purchase of the wheelchair, or the Parent's disagreement with use of a wheelchair for either mobility or for compliance at school

Analysis

In this case, the Parent attended and participated in the development of two IEPs dated December 8, 2023 and November 11, 2024. Further, it is noted that many District personnel talked with or met with the Parent to hear her concerns and that follow up communication occurred at points.

The Parent's overarching concern in this issue is that the District did not honor the information she provided or requests made especially about the student's accommodations, health, mobility, or the use of multiple paraprofessionals throughout the day, which the Parent saw as related to the accommodations, health, and mobility. While the District is not obligated to agree to the Parent's requests or provision of new information, it is obligated to provide prior written notice when it will refuse to do so.

Following the IEP dated December 8 2023, in February 2024 the Parent provided information requested by the District as directed in the IEP Team. The District did not distribute the Children's Mercy letter to the IEP team, involve the SKADC Nurse to review the letter or develop a Health Plan, or provide PWN to state their refusal to add the Health Plan. It is found that this event precedes the 12 month investigation period for this issue. However, it sets the context for subsequent communication between the Parent and the District.

On September 11, 2024, the Parent contacted the Assistant Special Education Director regarding multiple changes of staff throughout the day, who forwarded the concern to the Special Education Director, who emailed and received a response from the Special Education Teacher. The District did not initiate a meeting or provide PWN refusing the Parent's request for a single paraprofessional throughout the day.

Beginning October 11, 2024, the Parent contacted more than one school official and staff to again request a single paraprofessional through the day and to complain about the failure to add a Health Plan and update the Student's medical information, in light of the Children's Mercy letter. The District convened an IEP meeting for the Student's annual IEP on November 11, 2024 and Health Plan was discussed and subsequently added to the Student's IEP on November 11, 2024.

However, when the Parent received the Health Plan and the IEP, November 19 and 21, 2024, the Parent alerted the District that she found errors in the Health Plan and asked for additional time to review the IEP. The District did not respond with a PWN refusing this request, but continued as if the conversation did not occur, giving the Parent the impression that the IEP process was not complete. The Parent contacted the Special Education Teacher on March 25, 2025 and asked, "where do we stand on the IEP?" This indicates the Parent's assumption that the IEP process was not complete, having previously expressed that she wanted to correct elements of the Health Plan; this was reiterated in her April 8, 2025 communication with the District.

Instead, on March 26 and 27, 2025, the District staff discussed a wheelchair as necessary for the student's anticipated needs. The District did not convene an IEP meeting despite its awareness of the Student's changing anticipated mobility and safety needs and the Parent's concerns, which she continued to report to the District after the purchase of the wheelchair. Particularly of note is the disagreement of the PT, who clearly stated she was not in agreement with using a wheelchair for the student at this time. Further, when the District began using a

wheelchair to transport the Student, it changed the student's IEP without parental involvement, IEP team involvement, and without prior written notice.

For these reasons, the District failed to afford Parent participation in the IEP, specifically including information about medical concerns and the inclusion of services, accommodations or modifications to address these concerns.

Conclusion

Based on the foregoing, *it is substantiated* that USD 227 is out of compliance on this issue.

Issue Two

Did the District hold IEP meetings needed to respond to new information provided by the Parent or to address the Student's lack of progress or other issues in compliance with state and federal regulations?

Applicable Law

Federal and state statutes and regulations at 34 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.

Analysis: Findings of Fact

The Parent alleged that she contacted the school in several ways to express her disagreements with the Student's IEP, IHP, EEP, and related issues of the Student's education. The Parent alleged that from October 11, 2024 through April 22, 2025, she contacted the Principal, the Special Education Director, the School Board President, the Special Education Teacher, and the School Psychologist to express concerns with the IEP, the IHP, and the Student's program. The Parent alleged that she did not "sign off" on the IEP after being contacted with the draft on November 19 and 21, 2024 due to her expressed concerns with the IEP's content. The Parent alleged that she had numerous concerns with the IEP and that she was not given the opportunity to discuss them with the School.

District Response

The District replied: "[The Parent] shared the doctor's information with [STAT] in February 2024 which was addressed in [the] 23-24 school year IEP. Then Children's Mercy sent another letter on November 7, 2024 with information regarding his condition and recommended accommodations. When [the Parent] met with the SKACD nurse on November 5 2024, [the Parent] indicated that there was nothing new with his health. The doctor's note from

November 2024 was the same information as the previous note from February 2024. The current Doctor's information was addressed during the IEP meeting on November 11, 2024.

[The Parent] never mentioned concerns regarding [student] progress on IEP goals. When looking at [the Student's] IEP goals from 23-24 and 24-25, [the Student] is making progress on all goals.

[The Parent]'s concern was having a full time para, which was addressed during the annual IEP and when [the Special Education Director] met with [the Parent]. [The Student] has full time support from either a special education teacher or a para for 100% of his day. He does not have the same person throughout the day, but has support throughout the day."

Findings of Fact

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 #227.

As in Issue One, the Parent, in the complaint and in interviews, reported that she contacted the District (School Board Member, Special Education Director, Principal) to make them aware of her concerns. The District, in its response, interviews, and documents, reported that District personnel (Special Education Director and Nurse) explained to the Parent that the Student would have a para with him during the school day, but it would not be the same individual.

As stated in Issue One, PWN dated November 11, 2024 does not mention ESY, a single paraprofessional or special education services in the general classroom, the addition of the Health Plan to the IEP, or the elimination of ESY services.

The Parent in the written complaint stated that she "would not sign off" on the IEP and Health Plan provided to her during the period between November 11, 2024 and November 21, 2024. The District, in its response and in interviews, reported that the Parent stated she wished to withdraw her signatures as participating in the IEP and on the PWN dated November 11, 2024. The District stated that the Special Education Director asked for that withdrawal in writing and that the Parent reported that she did not want to withdraw her signatures and deprive the Student of special education and related services. When asked about withdrawing her signatures, the Parent did not recall the conversation related by the Special Education Director.

When asked in an interview, the Special Education Teacher stated that she understood the Parent's wish to withdraw signatures to show disagreement with the IEP rather than a wish to withdraw consent for services.

The Parent reported, and documentation showed, that the Parent wanted to review the IEP and Health Care plan in its entirety and communicated that to the District on or before November 21, 2025.

As stated in Issue One, the Parent notified the District of her concerns regarding the use of the wheelchair at school in late March, and again by text April 8, 2025. The Parent provided text messages dated April 22 and 23, 2025 reiterating her protest of the use of the wheelchair, particularly as used in the "Easter party" incident April 17, 2025.

Incident

In interviews, the Parent, the Special Education Teacher, and the Special Education Paraprofessional each mentioned an incident using the wheelchair when the Student refused to return into the school building following an outside activity described as an Easter celebration. According to the Special Education Teacher, when the Student refused adult requests to go into the building, the Special Education Teacher directed two paraprofessionals to get the wheelchair. According to the Special Education Teacher, the Student got into the wheelchair when directed to do so, and a brief time out was used following the incident because of the student's disobedience.

The District provided an email from the Special Education Teacher to the Parent dated April 23, 2025 at 8:07 p.m. which stated that she would only communicate with the parent using the District email, with a note at the bottom stating that the reason was due to parental texts at night. The Parent and the District agree that the Parent's texts were asking for information about the Easter incident.

The Parent provided the texts to the Special Education Teacher that preceded and the email chain that followed the April 23, 2025 8:07 p.m. email from the Special Education Teacher to the Parent, that included responses from the Principal and the Special Education Director. Texts and emails dated April 22, 2025 to April 30, 2025 show that the Parent again stressed that she had not given her consent to use the wheelchair, her direction that it should not be used to make the student comply with a direction, her denial that the student was unable to walk from the outside shelter if he walked to it at the start of the outdoor activity, that she wanted to "do away with the wagon and the wheelchair" due to the Student's improvement, and her disagreement with the use of the wheelchair as described by the Special Education Teacher: "Yes, Liam was placed in time-out following the outside Easter Party activity. As he was hesitant to come back inside after the outdoor fun, I offered him a choice; he could get up and walk in school to rejoin the party or stay seated, go to time out then join the party after time out. He chose to remain seated under the outdoor shelter. At that moment I arranged for the chair to help him return back into the school so he could enjoy the remainder of the party after completing his timeout."

Principal: "He went out with the class for the activity. He chose to go to the covered area. He sat down and refused to walk in when the class was done with the activity. The paras got the chair and he climbed in the chair himself. The chair was not used as a restraint, it was used to transport him inside. The staff does not need to be carrying him."

In the email exchange, the Parent protested this use of the wheelchair which was not for the purposes of aiding the Student to walk but to deal with a refusal to come indoors when directed.

In the interview with the Special Education Paraprofessional, time out was frequently used in the resource room when the student was returned from general education or would not comply with adult directions. The Special Education Teacher estimated that timeout was used three times during the school year. In an interview, the Parent expressed a concern that the use of timeout was not included in the daily communication log provided to her and that the use of timeout was more frequent than reported.

Analysis

In this case, the Parent repeatedly expressed that the IEP resulting from the November 11, 2024 IEP meeting was inaccurate and needed to be changed, including at the time of the home meeting on November 19, 2024, scheduled by the District to deliver the IEP and PWN after the IEP was considered to be final by the District.

Additionally, the District did not provide an IEP meeting at the time of the wheelchair purchase and use, which the District determined necessary for the Student's anticipated needs. The District was aware of the Parent's concerns at the time of the purchase and afterward when she expressed her concern and protest in numerous ways and to at least three members of the IEP team from April 8, 2025 through April 30, 2025. Further, the District was aware that another IEP Team member with special expertise in mobility (the PT) had stated her disagreement with the use of a wheelchair for the student in the internal discussion among School staff prior to its purchase.

In this case, the Parent repeated concerns and provided new information about the Student's needs, including a review of the wheelchair's suitability and use. In situations like this, the District should convene an IEP meeting or otherwise address through amendment or PWN the new information and other matters being asserted by the Parent. Additionally, the District was aware that at least one of the IEP team members with expertise in motor development, stated disagreement with the purchase of a wheelchair for the purposes of mobility. Further, it is found that a secondary use of the wheelchair to promote compliance was observed in this case.

Conclusion

Based on the foregoing, *it is substantiated* that the District is out of compliance on this issue.

Issue Three

Did the District provide accurate present levels of performance in the Student's IEP?

Applicable Law

Federal regulations at 34 CFR § 300.320(a)(1)(i) state: "(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include (1) A statement of the child's present levels of academic achievement and functional performance, including—(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children)."

According to KS Stat 72-987(c) "The IEP for each exceptional child shall include:(1) A statement of the child's present levels of academic achievement and functional performance, including: (A) How the child's disability or giftedness affects the child's involvement and progress in the general education curriculum; (B) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and (C) for those children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objections."

The Kansas Special Education Process Handbook explains, "The Academic, Developmental and Functional Needs of the Child In developing each child's IEP, the IEP team is required to consider the academic, developmental, and functional needs of the child. A child's performance on state or district assessments would logically be included in the IEP team's consideration of the child's academic needs. . . The consideration of state and district-wide assessment programs is consistent with the emphasis on the importance of ensuring that children with disabilities participate in the general curriculum and are expected to meet high achievement standards." (page 71).

Analysis: Findings of Fact

The Parent alleged that there were numerous inaccuracies and inconsistencies with the present levels of performance and other aspects of the IEP including parental concerns, health, vision, math, OT and PT needs, mobility, accommodations, reading and communication. Health examples include that the student passed a vision screening when vision in one eye is documented to be extremely limited by scarring, lack of clarity whether the student could or could not track smoothly from left to right, inaccurate medications with past medications listed as current without the updates provided by the parent, medical concerns added that were not provided by the parent or doctor, such as sensitivity to the sun only being a problem with certain medications. Inaccuracies on parent input included that the parent wanted the Student to walk or use the Amtryke, with the wagon used only during an arthritis flare up, mixing juice with water rather than water alone, the parent's input into PT and OT including response to lack of energy and need for emphasis on daily living skill, and failure to add the contents of the Children's Mercy letter to the "other" section of the IEP. The Parent alleged that the IEP was inconsistent in describing the student's communication of feelings and needs, and that the math measures contradicted each other (counting with manipulatives to 39, recognizing

numbers to 41, counting by 10s to 100, but understanding numbers only to 10). The Parent alleged that the Student's reading of nonsense words could not be replicated at home. The Parent alleged inaccuracies in accommodations, including providing a water bottle when the student cannot drink from a water bottle.

District Response

The District responded: "Present levels of performance are updated annually at each annual IEP meeting. Liam's present levels were updated to be accurate as of his performance at the end of October beginning of November 2024. When reviewing the last two years, there was significant progress in his academic performance and it was detailed in the current performance in the November 2024 IEP."

Findings of Fact

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 #227.

The Parent reported in an interview that passing the vision screening seemed impossible given that the Student had extremely limited vision in his left eye, that it was unclear if the student could or could not express his feelings, that she could not replicate the reading of nonsense words at home, and she questioned how it was possible for a student who could only count to 29 with manipulatives or recognize numbers to 30 could also count by 10s to 100.

The SKACD Nurse stated in an interview that the nature of the screening did not preclude passing the screening under the conditions.

The IEP dated November 11, 2024, stated that the Student would participate in the standard assessment.

The Student's grade card for the second grade, 2024-25 showed that reading/phonics, English/writing, handwriting, spelling, math, science/social studies, computer lab, music, physical education, and art were coded as "W, Works on level of ability." Reading, math, computer lab, music and physical education added letter grades to the W code.

The District provided progress reports for the IEP dated December 8, 2023 with entries as follows. IEP goals are abbreviated.

1. Goal 1 (Motor) to improve visual motor skills by copying a line and square with appropriate pencil grasp, measured by OT Rubrics and Checklists
    a. May 15, 2024 "yes" progress
    b. October 13, 2024, maintained performance
    c. November 11, 2024, slight improvement
2. Goal 2 (Motor) to get on, off and ride the Amtryke, measured by PT observation

   a. May 6, 2024 "benchmark met"
   b. October 2, 2024, slight improvement
3. Goal 3 (Communication) verbally question, request and refuse, measured by SLP data and observation
   a. May 14, 2024 "yes"
   b. October 7, 2024, moderate improvement
4. Goal 4 (Communication) verbally answer WH questions measured by SLP data and observation
   a. May 14, 2024 "yes"
   b. October 7, 2024, slight improvement
5. Goal 5 (Math), count by 10s measured by weekly evaluation
   a. May 14, 2024 "yes"
   b. October 15, 2024, moderate improvement
6. Goal 6 (Reading) read 10 CVC words measured by weekly evaluation
   a. May 14, 2024 "yes"
   b. October 15, 2024, moderate improvement
7. Goal 7 (Math) know number relationships to 10 measured by weekly evaluation
   a. May 14, 2024 "yes"
   b. October 15, 2024, moderate improvement

The District provided progress reports for the IEP dated November 11, 2024 with entries as follows. IEP goals are abbreviated.

1. Goal 1 (Motor) to improve visual motor skills by copying a line and square with appropriate pencil grasp, measured by OT Rubrics and Checklists
   a. December 13, 2024, maintained performance
   b. March 7, 2025, maintained performance
2. Goal 2 (Communication) to respond to who, what, where, why questions given picture and prompt, measured by SLP data
   a. December 4, 2024, slight improvement
   b. March 7, 2025, slight improvement
   c. May 7, 2025, slight improvement
3. Goal 3 (Communication) identify emotions of characters in story, picture or situation, measured by SLP data
   a. December 4, 2024, slight improvement
   b. March 7, 2025, slight improvement
   c. May 7, 2025, slight improvement
4. Goal 4 (Reading) read high frequency words, measured by weekly assessments , some marked "VISION"

a. December 18, 2024, slight improvement
b. December 19, 2024, maintained performance with behavior in vision sessions noted
c. March 14, 2025, not measured due to student absences for vision sessions
d. March 10, 2025, slight improvement

5. Goal 5 (Written Language) write his first and last name measured by observation
   a. December 18, 2024, slight improvement
   b. March 10, 2025, slight improvement
6. Goal 6 (Math) tell time to the half hour
   a. December 18, 2024, moderate improvement
   b. March 10, 2025, slight improvement
7. Goal 7 (Math) compose and decompose numbers to 10 measured by weekly assessment
   a. December 18, 2024, slight improvement
   b. March 10, 2025, slight improvement
8. Goal 8 (Motor) improve balance
   a. December 12, 2024, maintained performance
   b. March 3, 2025, slight regression

Present Levels of Performance on the IEP

This IEP dated November 11, 2024, was organized to report strengths, needs, current performance, and impact of the disability in each of the following: Health (including vision), Motor, Communication, Cognition, Adaptive Behavior, Social Emotional, Reading, Written Language, and Math. No general education assessments, standardized, norm referenced, or standardized curriculum-based measures were reported in any area on the IEP. Classroom or related service provider observations were used to provide present levels of performance, below.

Hearing and Vision screenings dated November 11, 2024 indicated a passed vision screening. Vision record review included the Student's limited vision in the left eye and did not change from the prior IEP, but vision assessment was updated and discussed the student's identification of 9 colors and continued lack of tracking across the midline. This section of the IEP included a 2023 and a 2024 summary of Vision. Health parent input is dated November 5, 2024 referring to the Children's Mercy Letter and recommendations. A Health Plan is required, and accommodations but no goal for Vision services is included in the IEP.

Motor performance summarized progress in OT and PT sessions, noted limitations to participate in school activities including PE, and recommended continued services with goals. The OT goal did not change from the prior year, except to delete copying a line but continuing copying a square with appropriate pencil grasp. A new PT goal for balance was added.

Communication section notes that the student met his goal of verbally requesting or refusing items and can answer some WHAT questions. It noted continued difficulty to answer WH questions accurately (answers Yes to both, are you happy? And are you sad?). Limited speech and language affect his ability to initiate and maintain communication and to express or recognize emotions and participate in class. Continued services recommended with goals.

No cognitive update.

Adaptive Behavior repeats information from the prior year (answering yes no questions; verbal requests; knowing body parts, locations, and people; following directions, handwashing, feeding self and drinking from a cup) and adds some elaboration (errors in answering yes/no questions; getting on and off the toilet; and dislike of paper straws). The IEP dated November 11, 2024, stated, as did the previous one, that the Student needed adult support for basic needs including toileting, used a wagon to travel from class to class, and supervision during lunch. The IEP stated that the Student's adaptive behavior and daily living skills were "currently not age appropriate and require intervention and accommodations." This section of the IEP stated that the need for special education in this area will be met by accommodations, with no IEP goal written.

No needs were recorded in Social Emotional Behavior stating: "[The Student's] academic progress is not impacted by his ability to understand, experience, express, and/or manage emotions."

Reading: The IEP dated November 11, 2024 stated that the Student could read his first and last name, the letters of the alphabet and their sounds, two high frequency words (a, I) segment and read CVC words at 6/10 correct. The Student read 32 letters, 16 letter sounds, and 11 nonsense CVC words per minute and "these are K-2 grade level skills". The IEP stated that the Student had needs in comprehension, phonics, and phonological awareness that the IEP would provide.

Written Language - Writing: The IEP dated November 11, 2024 stated that the Student could write his first name and the numbers 0, 1, 7, and 10. The IEP stated that the Student's inability to write fluently (meaning to write by hand) "impedes his progress and interferes with completion of work" and the IEP would provide special education "to assist with fine motor skills needed to improve writing." The Written Language section does not refer to writing to tell a story or write answers to questions, but rather the physical act of handwriting.

Math: The IEP dated November 11, 2024 stated that the Student could count by 10s with 70% accuracy, and was unable to recognize numbers over 31. The Student could count manipulatives to 29 and knew the relationship of numbers to their quantities, to 10, with 60% accuracy. The Student could count backwards from 10, recognize shapes, tell time to the hour and add sums to 9. The IEP stated: "Due to [the Student's] significant delay in math concepts he will be provided special education to teach and assist with the writing of numbers,

understand size, shape and patterns, the relationship between numbers and quantities, identifying more or less of a quantity, and understanding one to one correspondence."

Analysis

The Parent's complaint in this case was that the performance statements on the IEP contradicted themselves within the document. One example is that, in the Social Emotional present level of performance, it was determined that the student had no needs and could express and manage his emotions, while in the Communication section, it states the Student has "difficulty identifying, expressing and responding to various emotions" and a goal related to identifying emotions was written. A second example is the practical understanding of the math present levels, whether a student could skip count by 10s to 100 with 60% accuracy, and at the same time recognize numbers to 31 or count with manipulatives to 29 or understand number quantities to 10.

In this case, the present levels of academic and functional performance included on the IEP and considered by the IEP team contained only one type of information, teacher observation, as no other assessments were conducted to allow consideration of the student's academic standing or functional performance. The IEP does, however, point toward the Student's accountability for learning when it states that the student will be assessed by state and district general education assessments.

The Student's grade card indicated that the Student was not working on second grade curriculum ("working at own level") in every academic subject. The IEP's present level statement in reading briefly mentions the Kansas Standards (K-2), the general education curriculum, but does not identify which standards are being used for the Student's IEP to show his access and progress. The Student's performances as described in the IEP approach, but do not indicate mastery of Kindergarten academic standards in reading. No other Language Arts Standards were included. Writing in the Student's IEP focuses on the physical act of writing and Kansas Standards in ELA for Kindergarten, First and Second grade refer to writing as producing written work while using correct grammar and conventions. Neither Kansas Math Standards nor a developmental sequence of skills are referenced in the IEP to produce a logical curricular scope and sequence against which a present level of performance can be presented. No general education or special education assessments other than classroom observations are provided in the Student's IEP.

Without reference to the Kansas Standards or specific academic curricula or functional developmental skill sequences, it is found that the student's IEP does not identify how the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children).

Conclusion

Based on the foregoing, it is found that the District *is out of compliance* on this issue.

Issue Four

Did the District provide the Parent with copies of the IEP?

Applicable Law

Federal regulations at 34 C.F.R. § 300.322(f) state that the public agency must give the parent a copy of the child's IEP at no cost to the parent."

Analysis: Findings of Fact

The Parent alleged that the District did not provide easy access to the Student's IEP when she requested a copy of it October 11, 2024. The Parent stated that when she did receive a copy of the IEP, it was incomplete and did not include the IHP.

The District responded, "[The Parent] was given a draft copy of the new IEP at the November 11, 2024 meeting. [The Parent] had copies of prior IEP's when [the Special Education Director] went to her house to visit with her and hear her concerns. During the IEP meeting on November 11, 2024, [The Parent] had copies of prior IEP's that she kept referring back to. SKACD's practice is to provide the parent a copy of the draft IEP at the meeting and then send home the final copy after the IEP has been finalized and reviewed.

The one time when [the Parent] asked for a copy of [the Student]'s IEP from [the Principal], the new school principal, he was not able to get her a copy at that time. He was new to Jetmore and SKACD and did not have all of the login information to be able to print an IEP. He did have a copy of IEP 2 for each of the students in his building."

Findings of Fact

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 #227.

As stated in Issue One, October 10, 2024 while meeting with the County Health Nurse the Parent requested copies of the IEP dated December 8, 2023. When the Parent met with the Principal on October 11, 2024, she asked if he had a copy of the IEP, which he did not. On October 11, 2024, when the Parent went to the District Office, she was at first refused, then provided a copy of the Student's IEP dated December 8, 2023.

The Parent was provided a copy of the Student's IEP dated November 11, 2024 on November 21, 2024, along with its associated Health Plan.

Analysis

While it was inefficient for the Parent to get a copy of the Student's IEP dated December 8, 2023 when she asked for a copy of it in October, the District did provide it. The District also

provided a copy of the IEP dated November 11, 2024 on November 21, 2024 at no cost to the parent.

Conclusion

Based on the foregoing, it is found that the District is *not out of compliance* on this issue.

Issue Five

Did the district USD#227 implement the Student's IEP by providing the special education and related services required by the IEP and in compliance with state and federal regulations?

Applicable Law

Federal regulations at 34 C.F.R. § 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 C.F.R. § 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 and state regulations (34 C.F.R. § 300.39(a)(1), (b)(3); K.A.R. § 91-40-1(lll).) state that 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).) Further, "the amount of services to be provided must be stated in the IEP so that the level of the school'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 (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP (Federal Register, August 14, 2006, p. 46667)" (Kansas Special Education Process Handbook, p. 105).

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 Student's IEP was not implemented in several ways. First, no paraprofessional was present during related services, when she had been assured that the

student had 100% paraprofessional coverage. Second, the Student was injured in a dodgeball game, which was contraindicated by the student's blindness in one eye and mobility limitations as indicated by the IEP's accommodations and services. Third, the PT therapy being provided was not in the special education setting, but in the PE classroom. Fourth, the District failed to provide the choice of walking or Amtryke, with a wagon during flare ups, when the Student transitions between activities or places in the school. Fifth, the District added the use of a wheelchair which was not in the IEP, opposed by the Parent and contraindicated by the medical provider's recommendation provided to the District. Finally, the District failed to implement all the Student's accommodations.

District Response

The District responded: "As you can see by the attached Related Service Providers logs and the daily communication log from the Special Education Teacher, [the Student] has been provided the services and minutes as outlined [in the] IEP. There were days when the service providers came to see [the Student] and [the Student] was absent.

There are monthly calendars attached which show the days [the Student] was absent and which days the related service providers were scheduled to come see [the Student]. In the margins you will find a note regarding how many sessions he attended that month as well as for the year. Attached you will also find [the Student]'s official attendance record from the School office. "

Findings of Fact

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 #227.

Two IEPs are within the investigation period, as found previously.

The IEP dated November 11, 2024 called for no ESY services.

Special Education and Related Services, Location and Duration

According to the student's IEP dated December 8, 2023, the student's time in general education totaled 165 (two days weekly), 195 (one day weekly) or (210 two days weekly). Special education in the general education classroom included physical education (30 minutes four times weekly), lunch (25 minutes five times weekly), recess (45 minutes five times a week), music (30 minutes five times weekly), computers (30 minutes five times weekly), science and social studies (30 minutes five times weekly), morning routine (20 minutes five times weekly), and end of the day routine (10 minutes, 5 times a week). These total 220 minutes 4 days and 200 minutes one day per week.

Special education in the special education classroom included functional and social skills (10 minutes twice weekly), functional and social skills (55 minutes twice weekly), functional and social skills (40 minutes, one time weekly), math (80 minutes five times weekly), and language arts (75 minutes five times weekly. These total 165 2 days, 195 one day and 210 2 days per week.

Special education and related services included direct pull-out speech language therapy (20 minutes 3 times a week), physical therapy (25 minutes one time a week), occupational therapy (25 minutes one time a week), vision (25 minutes one time weekly), along with indirect vision services (15 minutes every other week).

The Student's IEP called for ESY services, as follows: (a) PT for 25 minutes weekly, (b) Vision 25 minutes three of four weeks, and (c) Speech/language for 20 minutes weekly, with one goal, to ride the Amtryke.

The PWN dated December 8, 2023 listed each individual service with frequency, duration and location, with no summary of the amount of time the student would or would not be with nonidentified peers.

Special education and related services recorded on the IEP dated November 11, 2024 included direct pull-out speech language therapy (20 minutes 3 times a week), physical therapy (25 minutes one time a week), occupational therapy (25 minutes one time a week), direct vision services (25 minutes one time weekly) along with indirect vision services (15 minutes every other week). T*he PWN dated November 11, 2024 agreed with the totals in the IEP for related services.*

Special education in the special education classroom included functional and social skills (30 minutes twice weekly), functional and social skills (25 minutes twice weekly), functional and social skills (35 minutes, one time weekly), math (75 minutes five times weekly), and language arts (75 minutes five times weekly. *The PWN dated November 11, 2024 stated that the student would not be with nonidentified peers (in special education) for180 minutes 2 days, 175 minutes 2 days, and 185 one day per week for language arts, math and functional living.*

Special education in the general education classroom included physical education (30 minutes four times weekly), lunch (25 minutes five times weekly), recess (45 minutes five times a week), music (30 minutes five times weekly), computers (30 minutes five times weekly), science and social studies (30 minutes five times weekly), morning routine (40 minutes five times weekly), and end of the day routine (10 minutes, 5 times a week). These total 240 minutes for 4 days and 210 minutes for one day per week. The IEP added training for staff by the SKACD Nurse on arthritis flare up, 30 minutes annually.

The PWN dated November 11, 2024 stated that the student would be with nonidentified peers for 235 minutes for 4 days and 205 minutes for one day per week for science, social studies, read aloud,

and specials. The PWN dated November 11, 2024 does not mention special education support in the general education classroom for recess, lunch, morning routine, or end of the day closing.

Indirect or staff support services included vision 15 minutes every other week (both IEPs) and training on arthritis by nurse 30 minutes annually on the November 11, 2024 IEP. Documentation showed that the SKACD Nurse provided this training on December 17, 2024.

The District provided a schedule for the Student's second grade school year, beginning in August, 2024 through May, 2025.

Table 1 compares the Student's second grade schedule to the requirements in the IEPs. The Student's schedule shows the code "2nd/RR" for the location for 7 activities throughout the day. When asked in an interview to explain the 2nd/RR code used on the student's schedule, the Special Education Teacher stated that if the activities of the classroom were too difficult for the Student, the Student was taken to the Resource Room to work on a similar but adapted activity. An interview with a Special Education Paraprofessional corroborated this statement. According to interviews with the Special Education Teacher and the Paraprofessional, the student was taken to the second grade classroom but removed based on his tolerance for the activities (according to the Special Education Paraprofessional) or removed because of his level (according to the Special Education Teacher). Both agreed that the student did not stay for the scheduled period in general education classroom activities. The Special Education Teacher did not record and declined to estimate how many times the student left the general education classroom when scheduled to be in second grade. The interview with the Special Education Paraprofessional agreed that no data were recorded regarding the removals from general education classroom.

The interview with the Special Education Para was used to attempt to clarify the schedule as it was implemented. The Special Education Para stated that the Student was scheduled into the second grade through lunch, from 8 am till 12:05 pm, except for the pull out therapies or computer class 20 minutes each day, for a total of 220 minutes each day. According to the schedule, an additional 25 minutes (afternoon recess) and an unclear amount of time for end of the day closing were scheduled in 2nd grade, for a total of at least 245 minutes of special education support in general education for four of five days a week.

According to the Special Education Paraprofessional, the student was generally scheduled to be in the special education classroom in the afternoon following lunch recess at 12:05, which would be approximately 225 minutes, or 200 minutes if afternoon recess occurred with general education peers.

According to the Special Education Teacher, the student generally napped through the scheduled computer class "special" (1:25-1:55 p.m.), and so on Thursdays from 10:40-11:10 a.m., he was taken for an individualized lesson when the computer teacher had a break in her class schedule.

The schedule indicates that the Student was not scheduled for functional activities or social skills, as required by his IEPs.

The schedule indicated, and a follow up question to the District affirmed, that math and reading were scheduled for 80 minutes at the same time, and the Special Education Teacher varied between math and reading activities, with no specific time assigned to either. The schedule period for social studies and science overlapped with closing day routine by 30 minutes and is scheduled in both "2nd/RR" and 2nd. The schedule adds Library (15 minutes, once weekly) and Art 30 minutes, once weekly to time in 2nd, and during the same afternoon period as math fact fluency 25 minutes, 3 times weekly in "2nd/RR".

Table 1: Comparing IEP required services to 2nd grade schedule for the Student

Service/Location	*Duration through Nov 10	*Duration after Nov 11	Student's Daily Schedule	Location
Sp/L - Special Ed	20 min/3 times	unchanged	same	Sp/L room
PT - Special ED	25 min/one	unchanged	30 min/one	2nd
OT - Special Ed	25 min/one	Unchanged	same	RR
Vision - Special Ed	25 min/one	Unchanged	20 min/one	RR
Functional - social skills - Special Ed	10 min/twice 55 min/twice 40 min/one	25 min/ twice 35 min/twice 35 min/one	Not scheduled	
Math - Special Ed	80 min/5 times	75 min/5 times	**Math-Read 80 min/5 Spell-math 20 min/5 Math facts 25 min/3	2nd/RR
Language Arts Special Ed	75 min/5 times	unchanged	**Math-Read 80 min/5 Phonics 25 min/5 Read/write 30 min/5 Read Aloud 15 min/5 Spell-math 20 min/5	2nd/RR
Phys Ed - Gen Ed	30 min/4 times	unchanged	25 min/4 times	2nd
Lunch - Gen Ed	25 min/5 times	unchanged	same	2nd
Recess - Gen Ed	45 min/5 times	40 minutes	45 minutes	2nd
Computers - Gen Ed	30 min/ 5 times weekly	unchanged	same	2nd/RR
Music - Gen Ed	30 min/5 times	unchanged	35 min/ 5 times	2nd
**Sci - Soc Stu - Gen Ed	30 min/5 times	unchanged	same	2nd/RR
Morning open - Gen Ed	20 min/5 times	40 min/5 times	20 min/5 times	2nd
**Closing - Gen Ed	10 min/5 times	unchanged	40 min/5 times	2nd

**overlapping times
*minutes/times per week

Related services

Using Table 1, the student was scheduled for Speech Language services as in his IEP. The student's vision services were scheduled for only 20 of the required 25 minutes, and the PT session scheduled for the required 25 minutes overlapped with PE class one time per week. Interviews and documents showed that the student was taken to PT and then, if time and energy allowed, he was taken to the PE class to join in the activities there, indicating that he did not receive 25 minutes of PT services in the special education setting. On Friday, November 1, 2024, documentation showed that the student arrived late to school, participated in PT, and then was taken to PE class, where he was injured during the PE dodgeball activity at approximately 10:00 a.m. According to the schedule, PT is from 9:50 to 10:10 a.m., and according to the IEP, PT is in the special education setting.

The District provided a service log that showed the following times related services were provided:

SP/L: 44 entries, 18 student absences, November 1, 2024 to April 30, 2025
PT: 14 entries, no student absences, November 1, 2024 to May 5, 2025
OT: 26 entries, 6 student absences, September 9, 2024 to March 13, 2025
No contact logs were provided for direct vision services.

The District provided a calendar of services and student absences, kept by the Special Education Teacher. In August, 2024, the Student was Present for 7/7 service days, with no related services recorded. In September, 2024, the Student was present for 20/21 service days, with SP/L 12/12, Vision 3/4 , PT and OT 4/4 sessions. These totals match what is expected according to the IEP dated December 8, 2023.

In October, the Student was present 20/22 days, with Sp/L 24/24, Vision 8/9, OT 8/8, and PT 8/8. These totals show a mismatch with the IEP, as SP/L had only 12 possibilities (3 days a week, 4 weeks), with some student absences noted for half days on Speech days. Similarly, there were only 5 possible occurrences for OT and Vision with absences noted on vision days and 4 opportunities for PT, as scheduled.

The calendar of services report gave the following: In November, 2024, the Student was present 11.5 of 13 days, with Sp/L 6/8, Vision not given, OT 2/3, and PT not given. In December, the Student was present for 12.5 of 15 days, with Sp/L 1/9, Vision 2/3 , OT and PT not given. In January, 2025, the Student was present for 8/18 days, with SP/L 6/9, Vision 1 /4, and OT 1 /4, and PT not given. In February, the Student was present 10/16 days, with Sp/L 4/8, Vision 1/3, PT 3/4, and OT not given. In March, the student was present 5/15 days, with Sp/L 4/9, Vision 1/3, OT 1/3, and PT not given. In April, the Student was present for 10/16 service days, with SP/L 9/10 Vision 3/5, PT 3/3, and OT 3/4.

At the end of April, totals for services written on the calendar of services are: Speech language, 60/77, Vision 19/30, OT 20/28, and PT 26/27. However, adding the monthly individual services as given on the calendar, total 66 sessions for Sp/L, 19 for vision, 19 for OT and 18 for PT services, and these totals include the doubled frequencies reported for October, 2025 and do not include monthly that were omitted from the calendar of service.

Analysis

It is noted that the related services contact logs provided were incomplete, and the classroom records difficult to interpret, having at least one month where all related services would have needed to be provided twice as often as in the IEP to be accurate If accurate, other IEP service requirements would necessarily be in arrears. While the Student's absences affected the frequency with which related services could be provided, records precluded accurately ascertaining the frequency of service delivery when the student was present at school.

In this case, the classroom schedule lacked clarity and congruence with the services required by the Student's IEPs, and it did not change when the Student's IEP changed November 11, 2024. The classroom practice was to withdraw the student from the second grade classroom whenever the staff determined necessary. Also, the Student's schedule obfuscated when the student was solely in special education services in special education settings and which services were being provided. Thus, the schedule does not accurately portray either the student's academic activities in the general classroom or the special education classroom.

It is found that the Student's written or implemented schedule do not align to requirements in the IEP and therefore the District failed to implement the Student's IEP.

Speech language and OT services were scheduled in alignment with IEP requirements. Vision services were scheduled 5 minutes less than the IEPs required. Based on the classroom practice of taking the student to PE on the same day as PT in the special education setting, when both were scheduled at the same time, it is unclear how much PT the student received during his second grade year, especially in light of the description of the November 1, 2024 incident and interview descriptions of the schedule's implementation. It is found that the contact logs for related services and the calendar of services were incomplete.

From the evidence in this case, the Student likely participated more readily in second grade lunch, recess, and specials (except for PE) than in the second grade classroom for academic subjects. The IEP goals are not linked to the general education curriculum for kindergarten, first or second grade standards, and the second grade report card said the student was "working at his level" in all academic subjects. It is noted that the Student made slight improvement on progress reports associated with the IEPs. However, special education services are by definition specially designed instruction, and it is found that the District has failed to schedule and implement the special education, specially designed instruction, required by the IEP.

Conclusion

Based on the foregoing, ***it is substantiated*** that the District is out of compliance on this issue.

Issue Six

Did the District provide copies of the IEP to the school staff tasked with implementing or administering the IEP and in compliance with state and federal regulations?

Applicable Law

Federal regulations at 34 C.F.R. § 300.323 (d) and state regulations at K.A.R. § 91-40-16(b)(4) and (5) require 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; and they are informed of their specific responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

Analysis: Findings of Fact

The Parent alleged that the Principal did not have a copy of the IEP when he met with her October 11, 2024 and that he reported to her that he could not access a copy. The Parent alleged that the Principal stated that teachers do not have a copy of the Student's IEP or if they do it is "watered down."

The District responded: "[The Special Education Teacher] at Jetmore Elementary, gives each staff member a copy of IEP 2 before school begins each year. [The Special Education Teacher] also visits with each staff member and goes over accommodations and modifications for each student. [The Special Education Teacher] keeps a notebook of just IEP 2 snapshots for her paras to refer to as they work with students and to be able to quickly answer any questions that teachers may have."

Findings of Fact

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 #227.

Participation signatures on the IEP dated November 11, 2024 included in person or virtual participation by the Student's occupational and physical therapists, the vision specialist, speech language pathologist, second grade teacher, school counselor, school psychologist, the Parent, the father, SKACD Nurse, the Special Education Teacher, and the Special Education Director as LEA.

The District reported that the Special Education Teacher gave each staff member a copy of the IEP2 (IEP in brief) at the beginning of the year and reviewed accommodations for each student. In an interview, the Special Education Paraprofessional affirmed that the Special Education Teacher provided a beginning of the year orientation to the paraprofessionals, but denied having a copy of the IEP2, instead affirming that the IEPs were kept in a book in the classroom that could be accessed by request to the Special Education Teacher. When asked if the Special Education Teacher shared the new IEP dated November 11, 2024 after the IEP meeting, the Special Education Paraprofessional stated that IEPs were only reviewed at the beginning of the year during orientation.

Analysis

From the evidence and district response, it is found that the District provided orientation to classroom staff and kept copies of IEPs available upon request in the Special Education classroom. It is found that the participants in the IEP team meeting on November 11, 2024 had the information needed to carry out their responsibilities to implement the IEP. It is noted that the classroom practices to share the IEPs with classroom staff following updates could be improved.

Conclusion

Based on the foregoing, the District is not out of compliance on this issue.

Issue Seven

Did the District provide accurate and proper Prior Written Notice to the Parent as required by state and federal regulations?

Applicable Law

According to 34 C.F.R. § 300.503 (a) and (b), written notice must be given to the parent so of a child with a disability a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, placement, or the provision of FAPE to a child, and that the notice must include a description of the action, and explanation of why, a description of the evaluation, assessment, record or report the agency used as a basis for the proposed or refused action, description of other options considered and reasons they were rejected, and a description of other factors relevant to the agency's proposal or refusal.

Notice requirements at K.A.R. § 91-40-26 state in providing notice to parents of any action proposed or refused by an agency, the notice must include a description of other options that the agency considered and why they were rejected, and a description of other factors relevant to the agency's proposal or refusal. K.A.R. § 91-40-17 requires notice of IEP team meetings at least 10 days in advance of the meeting. 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

The Parent alleged that the District had provided differing versions of the Notice of Meeting (NOM) and the Prior Written Notice (PWN) associated with the IEP meeting on November 11, 2024. The Parent alleged that NOM inaccuracies included the participants at the meeting on the two NOMs provided, dated October 31, 2024 and November 10, 2024. The Parent alleged that the District gave her three versions of the Prior Written Notice associated with the November 11, 2024 IEP meeting, dated October 31, November 10, and November 11, 2024, and that she received a copy of the PWN dated November 11, 2024 on November 19, 2024, when the School Psychologist delivered it during a home visit.

The District responded: "[The Parent] was provided a PWN on November 11, 2024 outlining the services for [the Student] for the next IEP school year. Attached you will also find the PWN for the November 2023 IEP meeting. After the November 11, 2024 IEP meeting, [the Parent] called [the Special Education Teacher] to rescind her IEP signature. [The Parent] had signed the IEP which is for attendance as well as the PWN. [The Special Education Teacher] as well as [the Special Education Director] informed her to put it in writing and we would honor her request. During a phone call with [the Parent], she explained that she didn't want to rescind because [the Student] needed the services."

Findings of Fact

The findings of Issue One, Issue Two, Issue Three, Issue Four, Issue Five and Issue Six are incorporated herein by reference.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #227.

The email documents log provided by the District showed that the Special Education Teacher sent a Notice of Meeting on October 31 and November 10, 2024, Prior Written Notice on October 31, November 11, and November 21, 2024.

The Parent and the District agreed that there were two different versions of the Notice of Meeting and three versions of the PWN associated with the November 11, 2024 meeting, and that two versions of the PWN were sent to the Parent before the IEP meeting was held. When asked in an interview, the Special Education Teacher stated it was a mistake on her part to provide the PWN in advance of the meeting, and that she changed the Notice of meeting and PWN that she sent based on the information in the draft IEP at the time.

The Parent reported that she wanted to see the IEP dated November 11, 2024 in its entirety when she discussed signature withdrawal with the Special Education Teacher. The Parent did not recall the Special Education Director asking her to withdraw her signatures in writing. In an

interview the Parent was aware that her consent was not needed to implement the IEP if services or placement did not change 25%.

According to the Special Education Director, it is the practice to complete a regression checklist to determine ESY eligibility, and the Student did not qualify for ESY services (Summer, 2025) because he did not regress during periods of absence, using the District's ESY assessment. According to texts dated April 7-8, 2024, the Parent questioned the elimination of ESY services and the Special Education Teacher replied that the student did not demonstrate regression during winter and spring breaks from school. The Parent questioned which breaks had been used to determine the Student's regression at the time of the November 11, 2024 IEP, before either winter or spring break, and noted that summer break was quite a bit longer.

The PWN dated November 11, 2024 does not include withdrawing ESY services.

Analysis

The District made errors in providing Prior Written Notice, documented throughout the report. Included are: providing PWN before the IEP team met November 11, 2024; failing to communicate refusal of the Parent's proposals (Issue One and Two), failing to ensure the PWN accurately portrays the services as described in the IEP (Issue 5), failing to provide notice for the removal of a service (ESY) which requires consent (Issue Seven), and failing to provide PWN when changing the IEP without a meeting (Issue One). Further the PWNs provided in this case failed to allow time before service implementation to communicate the changes in the IEP to parents or staff implementing the IEP. The District's practice of IEP review and MIS entry should be taken into account when providing PWNs, showing when the services as determined by the IEP will begin to be implemented.

As found in Issue Five, the Prior Written Notice dated November 11, 2024 did not include the removal of ESY therapy services provided in summer 2024 as per the IEP dated December 8, 2023. Therefore, the Student's ESY services continue to be in place for the current IEP.

Conclusion

Based on the foregoing, it is substantiated that USD#227 *is out of compliance* on this issue.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. § 300.503 and K.S.A 72-3430(b) was found based on the facts above regarding provision of PWN and involvement in changing the IEP to add the use of a wheelchair. Corrective action is required (as follows):
    a. CORRECTIVE ACTION:
        i. By July 1, 2025, the District 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 and state statute K.S.A 72-3430(b).

ii. By August 15, 2025, the District will convene an IEP Team meeting with the Parent to discuss the Student's health, mobility and functional needs and plans, including

1. The content and recommendations of the Children's Mercy doctor and letter and how these relate to the Student's IEP
2. The Parent's request to provide a single paraprofessional throughout the day
3. To have the Student walk or ride the Amtryke as the regular mode of transportation in the School
4. To identify the kind of alternative means of transportation in the school with clear identification of the function of any alternative means of transportation (e.g.., due to health condition, due to emergency evacuation, or to promote compliance with adult directions) and specifying the conditions when the school can use the alternative method,
5. The communication of each use of the alternative means of transportation to the Parent on a daily basis, and
6. Adaptive or functional behavior goals and services for the Student

iii. By August 19, 2025, the District will provide PWN to the parent that accurately portrays the proposed offer of FAPE for the Student. The PWN shall allow at least 3 days prior to service initiation to allow the parent time to review and respond to the PWN. The Parent shall respond to the PWN no later than August 22, 2025.

iv. By September 15, 2025, the District shall provide evidence to KSDE that the actions in Item 1a ii and iii have been completed. Evidence shall include the completed PWN with Parent response, IEP Team meeting notes showing requirements of Item a ii , the Student's IEP including any amendments made, and the PWN required above.

v. By September 15, 2025, the District will provide professional development by an outside expert approved by KSDE as qualified to provide education on providing Prior Written Notice when proposing or refusing a parental proposal, in concert with Item 2b iii, below.

1. The District shall provide to KSDE the professional development's date, provider, content, agenda, intended audience, and attending participants by name and title.
2. The District shall make the professional development available to all special educators (including IEP case managers or teachers, school psychologists, related services providers, and administrators).

3. The District shall ensure that the special educators, related service providers, and administrators from the Student's school attend the professional development.

2. ISSUE TWO: A violation of 34 CFR § 300.324(b)(1)(ii)(c) and KSA 72-3429(f) was found based on facts above, including the failure to convene an IEP meeting in response to new information provided by the parent. Corrective action is required (as follows):
   a. CORRECTIVE ACTION:
      i. By July 1, 2025, the District shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulation at 34 CFR § 300.324(b)(1)(ii)(c) and state statute KSA 72-3429(f).
      ii. By August 15, 2025, the District will convene an IEP Team meeting with the Parent as directed in 1a ii, above
      iii. By September 15, 2025, the District will provide professional development by an outside expert approved by KSDE as qualified to provide education on providing Prior Written Notice holding IEP meetings when needed more than annually, in concert with and meeting the same requirements as required by Item 1a vi (above).
3. ISSUE THREE: A violation of 34 CFR § 300.320(a)(1)(i) was found based on the facts above including inadequate present levels of performance. Corrective action is required (as follows):
   a. CORRECTIVE ACTION:
      i. By July 1, 2025, the District shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulation at 34 CFR § 300.320(a)(1)(i).
      ii. By August 15, 2025 the District shall provide assessments to determine the student's present levels of academic and functional performance, including measuring the Student's academic levels related to the general education curriculum and the Kansas State Standards for K-2 students, adequate to guide specialized instruction for the student to make progress in the general curriculum and on IEP goals.
         1. The District shall ensure that the assessments are conducted and or summarized by a person with expertise in special and general education assessments, such as a school psychologist
         2. If the assessments require parental consent, the District shall provide PWN-E to the parent, who shall have 10 days to reply with consent or refusal to consent.
         3. The present levels of performance shall be considered at the IEP meeting (Item 1a ii and Item 2a ii) and the IEP updated or amended based on the consideration of the present levels of academic and functional performance.

i. By September 15, 2025, the District shall provide evidence to KSDE that the actions in Item 3a ii have been completed. Evidence shall include the completed PWN, IEP Team meeting notes showing requirements of Item a ii , the Student's IEP including any amendments made, and the PWN documenting changes to the IEP.

4. ISSUE FOUR: A violation of 34 C.F.R. § 300.322(f) was not found based on the facts above. Corrective action is not required

5. ISSUE FIVE: A violation of 34 C.F.R. § 300.323(c)(2), based on the facts above. Corrective action is required (as follows).

   a. CORRECTIVE ACTION

      i. By July 1, 2025, the District shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulation at 34 C.F.R. § 300.323(c)(2).

      ii. By July 1, 2025, the District shall offer compensatory education to the Parent. In this case, a minute to minute formula is not available, therefore the aim of the compensatory education is to bring the child near the place he would be if services had been implemented. The parent shall have the opportunity to accept or reject all, some or none of the compensatory education in the District's offer. Prior to making the offer, the District will meet with the Parent to allow parental input into the nature, timing, and location of the compensatory services offered. Accommodations in the Student's IEP shall continue to be in place during compensatory education. The offer will

         1. Include compensatory education during summer, in addition to existing ESY related services in Issue 7 (below)
         2. Include after or before school tutoring, twice weekly for 45 minutes each or three times weekly for 30 minutes each
         3. Focus on
            a. Academic instruction in language arts and math designed to provide access to and progress in the general education curriculum with consideration given to the K-2 Kansas Curriculum Standards in ELA and Math and in accordance with the Student's IEP in place when the compensatory education take place.
            b. Functional and adaptive behavior skills, in accordance with the Student's IEP in place at the time when compensatory education takes place.
         4. Include transportation to ESY services and for the before or after school tutoring.

iii. By August 1, 2025, the District will provide to SETS a copy of its offer of compensatory services, the Parent's response, and the final determination of compensatory services to be implemented.

iv. By December 15, 2025, the District will provide to SETS a record of the compensatory services provided to the Student, including its content and student attendance.

v. By September 15, 2025, the District will offer professional development to all special educators by an outside expert approved by KSDE on how to describe the frequency, location, and duration of special education services and implement those services, including how to create, follow, and provide for individual needs using a student schedule of services in general and special education settings.

1. The District shall provide to KSDE the professional development's date, provider, content, agenda, intended audience, and attending participants by name and title.
2. The District shall ensure that the special education teachers in the Student's School shall participate in the professional development, and
3. The District shall ensure that a special education administrator, school psychologist or outside professional development provider (above) review the Student's schedule for the 2025-26 school year to ensure it meets the qualities necessary to implement the Student's IEP

vi. By December 15, 2025, the District shall provide evidence that a special education administrator, school psychologist or outside professional development provider (above) provided monthly technical assistance (September, October, November and December) to the special education teacher and paraprofessionals to review the implementation of the Student's IEP services and daily schedule of services provided in the special and general education settings.

vii. By September 15, 2025, the District will review its policy on maintaining and accurate recording of related services in a contact log, make corrections if needed, provide the policy to SETS, and provide evidence to SETS that it disseminated training on the policy to paraeducators implementing or recording related services such as vision, PT, OT, and Speech/language therapy services.

6. ISSUE SIX: A violation of 34 C.F.R. § 300.323 (d) and state regulations at K.A.R. § 91-40-16(b)(4) and (5) was not found. No corrective action is required.

7. ISSUE SEVEN:

a. CORRECTIVE ACTION: A violation of 34 C.F.R. § 300.503 (a) and (b) was found

i. By July 1, 2025, the District shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulation at 34 C.F.R. § 300.503 (a) and (b).

ii. By July 1, 2025, the District will provide notice to the Parent that the Student continues to be eligible for the ESY therapies per the IEP dated December 8, 2023.

    1. Before that date, the District will meet with the IEP team to amend the Student's IEP to include a new ESY goal based on the Student's current IEP.
    2. Before that date, the District will work with the Parent to find a mutually agreeable time and place to offer the therapies, outside the regular school day and include this time and place of the therapies to the Parent in its notice.
    3. The District will include transportation to the therapy location in its notice.
    4. The PWN shall allow at least 3 days prior to service initiation to allow the parent time to review and respond to the PWN.

iii. By September 15, 2025, the District will provide professional development by an outside expert approved by KSDE as qualified to provide education on providing Prior Written Notice to all District special education teachers, related service providers, school psychologists, principals, and special education administrators.

iv. Through December 15, 2025, any PWN provided in the Student's School shall be overseen by special education administrators for alignment with the associated IEP, accuracy and completeness.

v. By January 1, 2026, the District shall provide evidence and assurance that corrective actions in Issue Seven were completed.

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.gov 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 #287
ON JUNE 23, 2025

DATE OF REPORT: JULY 23, 2025

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of students with disabilities taught by Tristan Lee and Kandace Nellessen, special education teachers employed by the Three Lakes Educational Cooperative who worked in USD #287 during the 2024-25 school year. The complaint was made by -------, a parent of children enrolled in USD #287; however, it is noted that the complainant is not the parent of any of the students taught by either Mr. Lee or Ms. Nellessen. In the remainder of the report ------- will be referred to as the "complainant".

This is a systemic complaint since it involves multiple students. Because the complainant is not the parent or legal guardian of any of these students, written parental consent will be required to release a copy of this investigation report to the complainant if any personally identifiable information regarding the students taught by either of these teachers is contained in this investigation report.

The complaint is against USD #287 (West Franklin Public Schools) who contracts with the Three Lakes Educational Cooperative (TLEC) to provide special education and related services to students with disabilities enrolled in the district. In the remainder of the report, both of these responsible public agencies will be referred to as "the local education agency (LEA)".

The Kansas State Department of Education (KSDE) allows for a 60-day timeline to investigate a complaint and allow for an appeal process 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 June 23, 2025 and assigned the case for investigation on June 26, 2025.

Evidence Reviewed

Both parties were contacted via telephone during the investigation to gather and clarify information. The complainant was interviewed by phone on June 30, 2025. The LEA made the following staff available for a phone interview on July 18, 2025:

- Matthew Brenzikofer, Superintendent for USD #287
- Michelle Heiman, Interim Director of the TLEC
- Alissa Smith, Special Education Facilitator for Ms. Nellessen

- Jordyn Schwinn, Special Education Facilitator for Mr. Lee
- Janine Henry, Early Childhood Coordinator

The LEA and the complainant provided the following written documentation which was used in consideration of the issue:

1. Formal Complaint Request Form dated June 23, 2025 written by the complainant
2. Email dated June 26, 2025 written by the complainant to the Investigator
3. Screenshot of USD #287 staff page showing Tristan Lee's teaching assignment as "PreK" and Kandace Nellessen's assignment as "Special Education"
4. Screenshot of TLEC staff page showing Mr. Lee and Ms. Nellessen had teaching assignments in USD #287
5. List of students taught by Mr. Lee during the 2024-25 school year
6. List of students taught by Ms. Nellessen during the 2024-25 school year
7. Response to the Allegations dated July 3, 2025 written by Michelle Heiman, Interim Special Education Director for TLEC
8. Transcript for Ms. Nellesen from Troy University documenting 67 college credit hours earned
9. Elementary Education Degree Seeking Plan for Ms. Nellessen at Ottawa University for the 2023-24 school year
10. Emergency Substitute Teaching Certificate for grades PRK-12 for Ms. Nellessen in effect between July 1, 2024 through June 30, 2027
11. Substitute Teaching Extension Waiver for Ms. Nellessen dated December 11, 2024
12. Acceptance letter for Ms. Nellessen to WGU dual special education / elementary education degree program starting August 1, 2024
13. Special Education and Elementary Education Dual Degree Seeking Plan for Ms. Nellessen at Western Governor's University (WGU) starting September 2024 with anticipated graduation date of December 2026
14. Transcript dated January 7, 2025 for Ms. Nellessen from WGU documenting five hours of college hours of credit earned during the Fall 2024 semester
15. Transcript from Wichita State University for Mr. Lee documenting a Master of Arts degree in Communication earned on May 9, 2024
16. Emergency Substitute Teaching Certificate for grades PRK-12 for Mr. Lee in effect from August 1, 2024 through June 30, 2026
17. Graduate Plan of Study for Elementary Education Unified for Mr. Lee at Wichita State University dated October 1, 2024
18. Kansas teaching license with endorsements for Early Childhood Unified and Elementary Education for Jordyn Schwinn
19. Kansas teaching license with endorsements for Adaptive Special Education and Early-Late Childhood Generalist for Alissa Smith

Background Information

The two teachers who are the subject of this complaint were employed by the TLEC to provide special education services for students with IEPs enrolled in USD #287 during the 2024-25 school year. Mr. Lee provided direct specialized instruction to 15 students who had IEPs in an early childhood special education setting while Ms. Nellessen provided direct specialized instruction to five students with IEPs at West Franklin Elementary School at Appanoose and 11 students with IEPs at West Franklin Elementary School at Williamsburg.

Issues Investigated

Based on the written complaint, one issue was identified and investigated.

Issue One

USD 287 and Three Lakes Educational Cooperative (TLEC), in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide special education services to the students by appropriately trained and qualified teachers during the 2024-25 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.256(A) require that each state education authority (SEA) must establish and maintain qualifications to ensure that personnel necessary to provide special education services are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

State regulations at K.A.R. 91-31-34 describe the requirements for LEAs to follow in order to provide appropriately qualified staff for teaching assignments in Kansas school districts as follows:

1. Each education system shall employ persons who hold licenses or certificates with specific endorsements for the positions held
2. If a teacher holding an appropriate license or certificate is not available, the education system shall use a teacher holding a valid Kansas teacher license or certificate at any level or in any field or subject for not more than 140 days in the same assignment.
3. If a teacher holding a valid Kansas teacher license or certificate is not available, the education system will use a substitute teacher holding a valid Kansas substitute teacher license or certificate for no more than 90 days in the same assignment.
4. If a substitute teacher holding a valid Kansas substitute teacher license is not available, the education system will use a person who holds a baccalaureate degree and an emergency substitute teaching license or certificate for no more than 45 days in the same assignment.

5. 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 for no more than 25 days in the same assignment or more than 75 days in semester.
6. If an education system documents that there is an insufficient supply of substitute teachers, the education system may appeal to the commissioner of education for authority to allow individuals holding an emergency substitute teaching license or certificate to continue to teach for an additional length of time. (Please refer to K.A.R. 91-31-34(b)(5)(B) and the explanation below in the Special Education Reimbursement Guide).

The 2024-25 *Special Education Reimbursement Guide for State Categorical Aid* describes the requirements for school districts to receive reimbursement for providing special education services to students with disabilities. This document uses the following definitions for "qualified personnel" and "special education teacher":

- Personnel: "personnel who have met SEA-approved or SEA-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education or related services" (based on C.F.R. 34 CFR 300.23).
- Qualified: "qualified means being certified, licensed, registered or otherwise authorized by the state to render services in a particular profession or occupation" (based on KAR 91-40-1(zz))
- Special teacher: "a person, employed by or under contract with a school district or a state institution to provide special education or related services, who is: (1) Qualified to provide special education or related services to exceptional children as determined pursuant to standards established by the state board (based on K.S.A. 72-3404(j))

The Special Education Reimbursement Guide correctly explains the exception allowed in K.A.R. 91-31-34(b)(5)(B), on page 23, as follows:

> Exceptions to KSDE Licensure requirements (including Substitutes)
>
> *Waivers*
>
> *LEAs may claim reimbursement for teachers providing services for duties performed in areas/fields or instructional levels for which they are not endorsed under licensure waivers that have been approved by the Kansas State Board of Education.*

Analysis: Findings of Fact

The following findings of fact are based upon interviews and record review.

The complainant reported that in September 2024 she made the Principal of West Franklin Elementary School at Appanoose aware that multiple staff members lacked the licensure required for the special education roles they were performing; however, to her knowledge, no action was taken to employ appropriately trained and licensed special education teachers.

She indicated that Tristan Lee acted as an early childhood special education teacher and Kandace Nellessen acted as a special education teacher for the entire 2024-25 school year providing direct specialized instruction to disabled students with IEPs enrolled in USD #287 despite only holding emergency substitute teacher licenses and working in these teaching positions beyond the limits set in the state requirements. For these reasons, she believes the LEA has failed to provide a free appropriate public education (FAPE) to all students with IEPs who received direct special education instruction from these two teachers during the 2024-25 school year.

The complainant reported she learned that both of these unlicensed staff would be returning to those same assignments for the 2025-26 school year along with two other staff taking over administrative assignments related to learning and instruction without administrative credentials and licensure. The complainant noted that she shared her concerns regarding the use of unlicensed personnel in special education and administrative roles within USD #287 with the School Board President on June 24, 2025. When the complainant asked why individuals were hired for positions requiring credentials they do not hold, she was told, "It happens all the time".

The complainant believes all these hiring decisions reflect a pattern of noncompliance for both the 2024-25 and the 2025-26 school years. It must be noted that the IDEA does not allow for the investigation of noncompliance that has not yet occurred and, as such, this investigation will focus solely on the allegations of noncompliance during the 2024-25 school year.

The LEA reported that efforts were made to recruit and hire staff with Kansas certification as special education teachers for all open special education positions during the 2024-25 school year. These efforts included posting for open positions on both the USD #287 and TLEC websites and Facebook pages as well as on TalentEd, and Educate Kansas; however, not enough qualified candidates applied.

The staff at TLEC reported collaborating with the staff at USD #287 regarding finding staff who would be the "best fit" for the open elementary special education teacher and the ECSE teacher positions in USD #287.

The LEA staff indicated Mr. Lee was chosen because he holds a Master's degree and had previously worked as a paraprofessional in an early childhood special education setting in another Kansas school district.

The LEA staff indicated Ms. Nellessen was chosen because she was currently enrolled in a program to earn her baccalaureate degree and teacher certification in both elementary and special education. In addition, Ms. Nellessen had worked as a paraprofessional in USD #287 and was familiar with the district staff and routine, had participated in the 2023-24 professional development activities, and had some exposure to the curriculum and educational programs used for teaching reading and math.

The LEA reported and documentation shows that Mr. Lee and Ms. Nellessen were both issued emergency substitute teaching licenses for grades preschool through 12th grade by the Kansas State Board of Education prior to the beginning of the 2024-25 school year.

The LEA reported that, despite continued recruitment efforts, no appropriately credentialed candidates were found. Interviews and documentation show that TLEC requested and was granted waivers to extend the number of days allowed on a substitute license for Mr. Lee and Ms. Nellessen to teach High Incidence Special Education during the 2024-25 school year.

The LEA also reported that both Mr. Lee and Ms. Nellessen were provided with training and support to ensure they were prepared to teach students with disabilities. Both teachers were assigned veteran special education staff as mentors for weekly supervision and collaboration.

Mr. Lee was mentored by Jordyn Schwinn who holds a Kansas teaching license with endorsements for Early Childhood Unified and Elementary Education. Ms. Nellessen was mentored by Alissa Smith who holds a Kansas teaching license with endorsements for Adaptive Special Education and Early-Late Childhood Generalist.

During an interview, Ms. Schwinn and Ms. Smith reported they met with each teacher on a weekly basis, modeled teaching in the classroom, attended all IEP team meetings; assisted with developing data collection methods; monitored IEP goal progress; assisted in IEP development; and were available for questions as needed. They reported that every student taught by Mr. Lee and Ms. Nellessen made progress towards IEP goals during the school year.

In addition, USD #287 staff reported that both Mr. Lee and Ms. Nellessen participated in the professional development which was provided to all USD #287 staff during the 2024-25 school year. Mr. Lee and Ms. Nellessen attended before-school orientation, back-to-school workshops, and five days of professional development opportunities focusing on teaching strategies throughout the school year.

Conclusion

In this case, the LEA was unable to recruit and hire staff holding a valid Kansas teacher license or certificate with appropriate endorsements to teach the open early childhood special education and elementary special education positions available at the beginning of the 2024-25 school year. The LEA was also unable to hire staff holding a valid Kansas teacher license or certificate at any level or in any field or subject, or to hire a substitute teacher holding a valid Kansas substitute teacher license or certificate for the open positions.

Following the guidelines in state regulations at K.A.R. 91-31-34, the TLEC hired Mr. Lee who holds a baccalaureate degree and an emergency substitute teacher license for the early childhood special education teacher position in USD #287. The LEA believed Mr. Lee was the best available choice for the position based on his education and past work experience. The LEA provided ongoing training and support for duties related to ECSE and, when no acceptable

candidates for the open position were located, TLEC requested and was granted a waiver to extend the number of days allowed on a substitute license for Mr. Lee to teach High Incidence Special Education during the 2024-25 school year.

Again, following the guidelines in state regulations at K.A.R. 91-31-34, the TLEC hired Ms. Nellessen who holds an emergency substitute teacher license for the open elementary special education teacher position in USD #287. The LEA believed Ms. Nellessen was the best available choice for the position based on her past work experience and her enrollment in a degree seeking program leading to teacher certification in special education. The LEA provided ongoing training and support for duties related to elementary special education and, when no acceptable candidates for the open position were located, TLEC requested and was granted a waiver to extend the number of days allowed on a substitute license for Ms. Nellessen to teach High Incidence Special Education during the 2024-25 school year.

Based on the foregoing, there is evidence to support a finding that the LEA provided special education services to the students with IEPs during the 2024-25 school year by employing appropriately trained and qualified teachers as required by the Kansas State Department of Education (KSDE) guidelines and requirements. As such, the LEA is found to be in compliance with the requirements of 34 C.F.R. 300.256(A) and K.A.R. 91-31-34.

It is noted that no personally identifiable information of students is included in this investigation report and, as such, no written parental consent is required in order to release this report to the complainant.

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.gov 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)