

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #443
ON JANUARY 15, 2024

DATE OF REPORT FEBRUARY 20, 2024

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

The complaint is against USD #443. In the remainder of the report, USD #443 will be referred to as "the district", "the local education agency (LEA)", or "the school". It is noted that Southwest Kansas Area Cooperative District - USD #613 (SKACD) Interlocal provides special education services for USD#443. In the remainder of the report," the "school," the "district", and the "local education agency (LEA)" shall refer only to USD #443. The student's school of attendance is Sacred Heart Parochial School in Dodge City. In the remainder of the report, Sacred Heart Parochial School will be referred to as "the parochial school," or "the private parochial school."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on January 15, 2024 and the 30-day timeline ended on February 15, 2024. An extension was granted for the completion of the report.

Evidence Reviewed

During the investigation, the Complaint Investigator, Gwen Beegle, reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The parent was contacted on January 17, 2024 to clarify the issues of the complaint and interviewed on February 7, 2024. In addition, emails from the parent were received from January 17, 2024 to February 15, 2024. Jason Wright (Deputy Director of Special Education - SKACD), Sharon Stockton (Gifted Coordinator - SKACD), Bryan Quillen (Gifted Teacher - SKACD), and Trina Schmidt (Director of Special Education - SKACD) were interviewed on February 2, 2024. In addition, emails were received from the district from January 24, 2024 to February 6, 2024. Lynee Habiger (Principal of Sacred Heart Parochial School) was interviewed on February 1, 2024 and emails exchanged from February 1, 2024 to February 6, 2024.

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

1. Student Schedule, 2022-2023 school year
2. Re-evaluation Not Needed Agreement Waiver Request dated November 16, 2022 and signed by giving consent parent November 21, 2022
3. Student IEP dated November 21, 2022, with parent signature for attendance
4. Student Schedule and Bus Transportation, 2023-24 School Year
5. Principal and Superintendent Welcome Back August, 2023 Powerpoint Presentation
6. SKACD #613 Board of Directors Policy Approved October 10, 2023 on LEA Representative
7. Student IEP Goal Progress Report for the November 21, 2022 IEP dated October 13, 2023 postmarked October 17, 2023 with progress updates dated December 21, 2022, March 9, 2023, May 16, 2023 and October 12, 2023
8. Multiclass Progress Report (ELA) for S-1 (8/17/23-12/21/23) dated November 8, 2023
9. Notice of Meeting dated November 8, 2023 for a meeting on November 15, 2023 unsigned by parent
10. Postmarked Envelope dated November 15, 2023
11. Draft Student IEP dated November 15, 2023
12. IEP Meeting Participant Signature sheet signed by the parent on November 15, 2023
13. Audio recording of November 15, 2023 IEP meeting
14. Transcript of November 15, 2023 IEP meeting
15. Undated teacher created rubric for Acids and Bases unit
16. Undated District Monitoring and A-Reading Score Report for the student with quarterly benchmarks from Fall 2021 through Winter 2023.
17. Notice of Meeting dated November 16, 2023 for a meeting on November 28, 2023 signed by the parent on November 28, 2023
18. Certified mail receipt dated November 16, 2023
19. Draft Student IEP dated November 28, 2023
20. IEP Meeting Participant signature page, signed by the parent on November 28, 2023
21. Audio recording of November 28, 2023 IEP meeting
22. Prior Written Notice (PWN) dated November 28, 2023 for a meeting on November 28, 2023 for material change in services and other changes to the IEP
23. Prior Written Notice (PWN) dated November 28, 2023 for a meeting on November 28, 2023 for other changes to the IEP
24. Letter from the district to the parent dated December 4, 2023
25. Certified mail receipt dated December 4, 2023
26. Prior Written Notice (PWN) for a change to the IEP dated February 1, 2024 for a meeting on November 28, 2023

27. Student IEP Goal Progress Report for the November 28, 2023 IEP with progress update dated December 19, 2023
28. Proposed Resolution from the district to KSDE dated January 25, 2024
29. Audio recording of phone call dated January 26, 2024
30. Email from parent to investigator dated January 30, 2024 at 12:49 a.m.
31. Email from parent to investigator dated January 30, 2024 at 11:01 a.m.
32. Email from parent to investigator dated January 30, 2024 at 11:55 a.m.
33. Document explanations from Jason Wright to the investigator received January 31, 2024
34. Document entitled Response to Parent Questions, undated
35. Document entitled Re: LEA Representative (Private Schools in Member Districts)
36. Student notes from chemistry unit on acids and bases
37. SKACD website (https://www.skacd.com/331219_2) retrieved February 1, 2024
38. Prior Written Notice (PWN) dated February 1, 2024 for a meeting on November 28, 2023 for a change to the IEP
39. Email exchange between the parents, Bryan Quillen, Sharon Stockton, and Jason Wright with the subject title "Additional Blocks of Time" beginning January 29, 2024 at 11:22 a.m. and ending February 9, 2024 at 9:00 p.m.

Background Information

The student attends Sacred Heart Catholic School in Dodge City for her general education program and she has transportation services to Dodge City Middle School where she receives gifted education services. The student's IEP dated November 21, 2022 included 120 minutes of gifted education services and two IEP goals, one in reading and one in math. The student's IEP stated that she had no other health, vision, hearing, communication, adaptive living, social emotional or written language needs. The student participates in general assessments with no accommodations and/or modifications, supports for school personnel, or use of technology. The IEP stated this student, "has been identified as a child with giftedness. Her rate of learning is faster and higher than typical peers her age. [The student] is able to learn new skills and concepts with less direct instruction, exposures, and practice than typical peers. [The student] is able to learn a curriculum that is more complex than what is provided through regular grade level curriculum. [The student] needs differentiated instruction that moves at a faster pace, is at a higher level, and has more depth and complexity, in order to learn new things and be challenged."

Issues Investigated

1. **ISSUE ONE:** The USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to properly develop the student's IEP, specifically by: (a) having the required persons attend the IEP meeting and (b) developing appropriate goals related to each academic area of need, and (c)

providing baseline performance assessments against which progress on goals can be measured. [page 5]

2. **ISSUE TWO:** The USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to implement the student's IEP, specifically (a) teaching to the IEP goals and (b) the full number of IEP service minutes were not provided during the 2023-24 school year. [page 12]
3. **ISSUE THREE:** The USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to afford parental participation and consent when changing the student's IEP, including by decreasing the number of IEP service minutes. [page 15]
4. **ISSUE FOUR:** The USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to afford the parent procedural safeguards, specifically by providing and delivering 10 day Notice of Meetings and Prior Written Notice when changing the students level of service or placement. [page 16]

Issue One

The USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to properly develop the student's IEP, specifically by: (a) having the required persons attend the IEP meeting and (b) developing appropriate goals related to each academic area of need, and (c) providing baseline performance assessments against which progress on goals can be measured.

Applicable Law

K.S.A. 72-3429(b)(1) states: "Except as otherwise provided in this section, each IEP of an exceptional child and any amendment or modification of an IEP shall be made by the child's IEP team." K.S.A. 72-3404(u)(4)(A)-(B) defines the IEP team as a group of individuals composed of: "(1) The parents of a child; (2) at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment; (3) at least one special education teacher or, where appropriate, at least one special education provider of the child; (4) a representative of the agency directly involved in providing educational services for the child who: (A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of exceptional children; (B) is knowledgeable about the general curriculum; and (C) is knowledgeable about the availability of resources of the agency; (5) an individual who can interpret the instructional implications of evaluation results; (6) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (7) whenever appropriate, the child."

K.S.A. 72-3429(c)(2) requires that the IEP include a statement of measurable annual goals, including academic and functional goals designed to “(A) Meet the child’s needs that result from the child’s disability or giftedness, to enable the child to be involved in and make progress in the general education or advanced curriculum; and (B) meet each of the child’s other educational needs that result from the child’s disability or giftedness.”

K.S.A. 72-3429(c)(3) requires “a description of how the child’s progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided, such as through the use of quarterly or other periodic reports issued concurrently with general education report cards.”

Analysis: Findings of Fact

The parent alleged that at the November 15, 2023 IEP meeting, an administrator or designee capable of designating resources was not present; therefore the IEP meeting did not have the required members in attendance. The parent alleged that the district’s failure to have required members of the IEP team present is a systemic problem, having occurred throughout her experience with the district. Because of this oversight, another meeting on November 28, 2023 had to be scheduled to complete the IEP and to remedy the problem of not providing the full number of service minutes on the student’s November 21, 2022 IEP. Additionally, the parent alleged that she was asked to waive the participation of a general education teacher at the November 15, 2023 meeting, which she declined. The parent alleged that the district dropped the literacy goal from the student’s 2023 IEP without justification for its elimination. The parent alleged that the baseline data comparable to the progress monitoring data provided were not present in the IEP.

The district responded: “The attendance page of the draft IEP (presented 11/15/23) clearly indicates that [the parochial school principal] was present and properly identified as the “Administrator/Designee”. As such her attendance and participation in the IEP meeting allowed her to speak to (and allocate) available resources.” The district responded that the October 13, 2023 progress report showed that the student had “advanced reading skills,” completed her project at 90% accuracy or above, and was marked “yes” for making adequate progress toward meeting her reading goal. The district responded that the October 13, 2023 progress report showed that the student had the ability to “evaluate and solve higher order problems” at 90% accuracy or above, and the progress report was marked “yes” for making adequate progress toward meeting her math goal. The district also responded that “IEP goals are developed by professional educators and are not subject to parental consent. Goals are designed to be specific, measurable, and targeted to a child’s needs. The school created goals and monitored progress toward those goals as outlined in KSA 72-3429(c)(2) et seq.” Finally, the district responded that baseline performance measures were reported for each of the goals at the November 15, 2023 meeting.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD # 443.

Required IEP Member Attendance

At the November 21, 2022 IEP meeting, documentation showed that the following persons were present for the entire meeting: the gifted teacher, the parent, the general education teacher, and the parochial school principal.

The parent reported that she was asked to waive the participation of a general education teacher at the November 15, 2023 meeting, which she declined.

At the November 15, 2023 IEP meeting, documentation showed that the following persons were present for the entire meeting: the gifted teacher, the parent, and the parochial school principal. The student's homeroom/science teacher from the parochial school was present for part of the meeting; the parochial school principal reported that the ELA teacher had been invited but did not attend. At this meeting, a proposed IEP dated November 15, 2023 was presented and discussed; another meeting was later scheduled to complete the IEP.

The district reported that the parochial school principal signed as the administrator/designee and served as the LEA Representative at the November 15, 2023 IEP meeting. The district provided the SKACD Board Policy dated October 10, 2023 as evidence. The Board Policy stated: "The LEA representative is a required member of every IEP team. In order to serve as the LEA representative or designee, the member of the LEA must meet these requirements: be qualified to provide or supervise special education services; be knowledgeable of the general education curriculum; be knowledgeable of the availability of the school's resources [K.S.A. 72-3404(u)(4)]. The LEA representative must have the authority to commit school resources and be able to ensure that whatever services are described in the IEP will actually be provided because the school will be bound by the IEP that is developed at an IEP meeting (Federal Register, August 14, 2006, p. 46670." The Board policy goes on to state that the SKACD administrators would serve as the LEA representative when they are present at IEP meetings and when they are not present, the member district administrator would assume that role.

The SKACD website (https://www.skacd.com/331219_2) lists USD #443 as a member district. The district reported that "any private school in the boundaries of one of our districts falls under the public school where they are located. Therefore, [the student's school] in Dodge City, falls under USD 443. As an interlocal, we are the LEA and we have delegated that responsibility to our building administrators when we are not in attendance." The district reported and provided a copy of a presentation on special education LEA responsibilities given to member district principals and superintendents annually.

The parochial school principal reported that she is generally the program supervisor for services housed in her building, with specific limitations on the roles of the public school staff there. The parochial school principal stated that she does not allocate special education

resources that belong under the educational cooperative's administrative responsibilities, like special education or gifted education pull out programs. The parochial school principal stated that she does not have "access or supervise their resources but supervise here as best I can," providing logistical arrangements and support for IEP services.

At the November 28, 2023 IEP meeting, documentation showed that the following persons were present for the entire meeting: the assistant director of special education, the gifted education coordinator, the gifted teacher, the parent, and the parochial school principal. The student's homeroom/science teacher from the parochial school was present for part of the meeting, and the parochial school principal left the meeting to get input from the student's ELA teacher, who had been invited but did not attend the meeting.

Developing Appropriate Goals

The IEP dated November 21, 2022 included two goals: (a) "In one instructional year given multidisciplinary learning extensions, [the student] will demonstrate advanced reading skills by interpreting text from various sources, she will construct one authentic project with a score of 90% or above on a teacher made rubric," and (b) "In one instructional year given multidisciplinary learning extensions, [the student] will apply mathematical applications to evaluate and solve higher order problems with 90% or above on a teacher made rubric."

The proposed IEP dated November 28, 2023 stated that the student did not have needs in reading that require special education or related services "based on the student's most recent evaluation and ongoing data collection." The IEP stated the student's "score on Fastbridge aReading is 551 which is a broad assessment of reading skills and is higher than 95% of the students in the same grade across the nation." The district reported that the gifted education teacher conferred with the student's ELA teacher prior to the November 15, 2023 IEP meeting; the district provided the student's FastBridge score report dated November 8, 2023 and the student's ELA grade report as evidence that the student's needs were being met in the classroom. At the November 28, 2023 meeting, the audio recording showed that the ELA teacher's comments were reported, stating that the student did not receive enrichment during her ELA class, taking the entire period to complete the regular class work.

The proposed IEP dated November 28, 2023 stated that math is an area of strength for the student whose score on Fastbridge aMath is 236, which is higher than 97% of the students in the same grade across the nation. The IEP stated this student, "will benefit from advanced curriculum and extensions in Mathematics. Her participation in learning will serve to maintain intellectual engagement. This engagement will allow her to explore the material in greater depth."

The proposed IEP dated November 28, 2023 stated that the student did have needs in mathematics that required special education or related services, and it included 45 minutes of gifted education services and the following goal: "In one instructional year given the

enrichment class, [the student] will conduct one research project per quarter in multiple areas of the curriculum through a variety of extensions using technology, research and STEM and will create and deliver one product per quarter of her choice with a score of 90% or above on a teacher made rubric." The district reported that the interdisciplinary nature of the enrichment class would also entail reading above grade level, although it declined to write a goal for the student in reading.

Measurable Goals, Baselines and Progress Measures

On the November 21, 2022 IEP, the student had two goals, one in reading and one in math. The baseline for the reading goal stated, "[the student's] aReading score is 548, which puts her in the 97% in the nation. Due to [her] advanced abilities in reading, [the student] needs to be challenged beyond what grade level content can provide." The evaluation procedure stated, "Teacher made rubric." The benchmarks for the reading goal included (a) to determine a research project, (b) to use books and online resources to formulate questions and gather information on the topic, (c) to gather and summarize information, culminating in a restatement of the student's annual goal (d) In one instructional year given multidisciplinary learning extensions, [the student] will demonstrate advanced reading skills by interpreting text from various sources, she will construct one authentic project with a score of 90% or above on a teacher made rubric."

On the November 21, 2022 IEP, the baseline for the math goal stated, "[the student's] aReading score is 230, which puts her in the 95% in the nation. Due to [her] advanced abilities in math, [the student] needs to be challenged beyond what grade level content can be provided." The evaluation procedure stated, "Teacher made rubric." The benchmarks for the math goal included for the student to evaluate and solve higher order mathematical problems (a) with a score of 82.5% or better on a teacher designed rubric, (b) with a score of 85% or better, (c) with a score of 87.5% or better, culminating in a restatement of the goal's criteria (d) with a score of 90% or better on a teacher designed rubric.

As stated above, the student's IEP dated November 28, 2023 included only one goal in the area of mathematics, which was: "In one instructional year given the enrichment class, [the student] will conduct one research project per quarter in multiple areas of the curriculum through a variety of extensions using technology, research and STEM and will create and deliver one product per quarter of her choice with a score of 90% or above on a teacher made rubric."

The baseline for this goal stated: "[The student] has demonstrated advanced mathematics skills by using scientific notations and conversions in the areas of chemistry from various sources. Completion of her final project within enrichment time is currently at 90%." According to the gifted teacher this baseline referred to the student's performance during the fall semester of the 2023-24 school year. Benchmarks for the goal were that the student would, for each quarter of the school year, complete one of four "project based activities as an extension to

her Mathematics curriculum. Completion of her final project [for each quarter] within the enrichment time will be 90% accuracy on the rubric assessment or higher.”

Conclusion

In this case, the parent had three areas of concern regarding the development of the IEP, that the proper team members had not been present, that the district did not adequately support the decision to eliminate the student’s reading goal, and that the goals were not measured using baselines and progress measured that related to each other.

For the first concern, the district asserted that the private parochial school principal was the LEA representative and provided policy and practice evidence supporting its claim that the private parochial school principal had the authority to act as the LEA designee in this case. The district policy clearly states that member district administrators can act as the LEA representative on IEP Teams when the interlocal administrators are not present. However, the application of this policy to private school administrators is incorrect. K.S.A. 72-3404(u)(4)(C) requires that the LEA representative be “knowledgeable about the resources of the agency.” Because the parochial school principal was not acting in the designee role, the finding is that there was no LEA representative present at the November 15, 2023 meeting and that the district is in violation of ensuring that all required team members were present at the student’s IEP meeting.

As a secondary matter, the parent declined to waive the participation of a general education teacher. A general education teacher partly attended the November 15, 2023 and November 28, 2023 IEP meetings and the input of a second general educator was given at the 2023 meeting. While the district did provide a general education teacher for input in the student’s IEP conferences, it was not full participation of an IEP team member because only gathering input from the teacher dismisses the requirement that general education teachers assist in the development, review, and revision of an IEP (K.A.R. 91-40-17(h)).

For the second concern, the district showed that it collected reading information from the student’s general education teacher and when a disagreement with the parent about the reading goal arose at the IEP meeting, the district asserted its decision making authority and eliminated the goal based on their professional expertise. According to the Kansas Special Education Process Handbook, the IEP team should work toward consensus and if the team cannot do so, the Local Education Agency (LEA) representative at the meeting has the authority to make a decision and to then provide parents with the appropriate notice and consent for the action, if consent is required. While it is understandable that the parent would have liked a greater explanation than was provided at the meeting when this decision was made, it is within the district’s authority to make the final decision at the IEP meeting in this situation. Therefore it is found that the district was not out of compliance in eliminating the student’s reading goal.

For the third concern, the parent's complaint about the measurement of progress points to a question of measurability of the student's IEP goals. For the goals associated with the November 21, 2023 IEP, the student's Fastbridge scores were used as the baseline and both goals had benchmarks that addressed the goal's academic content, either by percentage accuracy increases "to evaluate and solve higher order mathematical problems" or by subskill elaboration to "demonstrate advanced reading skills by interpreting text from various sources." Thus, both goals center on progress in the advanced curriculum through academic performance with an academic test as baseline and teacher made rubric as evaluation. While the baseline and the teacher made rubrics are not aligned, both address the underlying goal purposes of measurable academic growth.

However, the goal on the November 28, 2023 IEP targeted the student's participation in the enrichment class to "conduct one research project per quarter" as measured by a teacher made rubric, using the previous project's rubric rating as the baseline measure for the four future quarterly projects to come. Here, the goal does not address progress in the advanced curriculum but only participation in the activities of the enrichment course. K.S.A. 72-3429(c)(2)(A) requires that measurable annual goals are designed to enable the child to be involved in *and make progress* in the general education or advanced curriculum (italics added). While it is noted that the activities of conducting research through choosing and creating products as described by the district is an academically enriching course of study in gifted education, the goal failed to show how the goal's design enabled the child in both elements of the statute, to be involved in AND make progress in the advanced curriculum. Therefore it is found that the district did not meet the standard of K.S.A. 72-3429(c)(2)(A) in writing the IEP goal in the November 28, 2023 IEP.

Based on the foregoing, *it is substantiated* that USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to properly develop the student's IEP, specifically by having the required persons attend the IEP meeting and by providing baseline performance assessments against which progress on goals can be measured. *It is not substantiated* that the district failed to develop appropriate goals related to each academic area of need.

Issue Two

The USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to implement the student's IEP, specifically (a) teaching to the IEP goals and (b) the full number of IEP service minutes were not provided during the 2023-24 school year.

Applicable Law

State statutes and regulations at K.S.A. 72-3429(c)(4) require that the IEP include a statement of the special education and related services to be provided to the child to be involved in and advance in the general curriculum, and K.S.A. 72-3429(c)(7) requires that the IEP includes the projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications. State regulations at KAR 91-40-16(b)(2) require "Those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown." State regulations at KAR 91-40-16(b)(3) require that an IEP is in effect for each exceptional child at the beginning of each school year.

Analysis: Findings of Fact

The parent alleged that the instruction during the current school year was reported as a unit on acids and bases and that the description provided of instruction during the November 15, 2023 meeting did not disclose how that unit was addressing the student's IEP goals of reading and math. The parent alleged that the teacher-made rubric for the unit did not pertain to advanced reading or solving higher order math problems. The parent alleged that when she inquired about future instruction, the district did not provide how the student's goals would be addressed. Finally, the parent alleged that the student's IEP had not been implemented in that the number of service minutes had been reduced from 120 to 45 minutes per week since the beginning of the 2023-24 school year.

The district responded that with regard to teaching to the IEP goals, "Instructional methodologies are developed by professional educators and are not subject to parental consent. Special education services were in place which are designed to assist [the student] in meeting her IEP goals. We find no fault of the instructional methods used during the 11/21/22 IEP year." The district acknowledged its error in reducing the amount of special education service minutes during the 2023-24 school year.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD # 443. The findings of Issue One are incorporated herein by reference.

Teaching to the IEP Goals

The student's progress report for the November 21, 2022 IEP, which included progress monitoring dates of December 21, 2022, March 9, 2023, May 16, 2023 and October 12, 2023,

briefly described the work the student had completed each quarter and stated that the student met all sub skill benchmarks for the reading goal and all percentage accuracy benchmarks for the math goal.

The student's progress report for the 2023-24 academic year, which included progress monitoring on December 20, 2023, stated that the student learned about wind turbine aerodynamics, pitch and gear ratios with a rubric score of 90% accuracy.

The district reported that the student's IEP goals had been adequately addressed in the multidisciplinary instruction provided in the gifted education enrichment class. The district provided the student's class notes documenting the reading difficulty and mathematics applications in the chemistry unit on acids and bases.

Amount of Services Provided

The district and the parent agree that the proper number of service minutes were not provided during the 2022-23 school year.

The district acknowledged its error in providing the amount of special education service minutes during the 2023-24 school year. The parent and the district agreed that the student was entitled to 120 service minutes per week from the beginning of the school year through the November 15, 2023 IEP meeting, when the district proposed reducing the services to 45 minutes per week. The parent and the district agree that no resolution was reached at this meeting and that another IEP meeting was satisfactorily scheduled on November 28, 2023.

At the November 28, 2023 meeting, the district and the parent agreed that the parent did not consent to the material reduction of the special education services from 120 service minutes agreed to in 2022 to 45 minutes in the district proposed IEP. The district and the parent agree that the district proposed a remedy to the parent and both parties agree that they continue to attempt to negotiate a solution to meet the requirement of 120 minutes for the current school year.

Conclusion

In this case, the district provided evidence that it had addressed the student's IEP goals through the student's progress reports and providing student work samples showing advanced reading and math applications in the chemistry unit taught in the middle school enrichment class.

The district acknowledged and sought to remedy its error in scheduling the student's gifted education services. It is found that the district did not meet its obligation in providing the amount of special education services required in the November 21, 2022 IEP.

Based on the foregoing, *it is not substantiated* that USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to

implement the student's IEP, specifically teaching to the IEP goals. *It is substantiated* that the district failed to provide the full number of IEP service minutes during the 2023-24 school year.

Issue Three

The USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to afford parental participation and consent when changing the student's IEP, including by decreasing the number of IEP service minutes.

Applicable Law

State statutes and regulations at KAR 91-40-17(a)(1) require each agency to take steps to ensure parental participation at each IEP team meeting, and KAR 91-40-17(a)(2) requires providing written notice to the parents at least 10 days in advance of the IEP meeting.

According to K.S.A 72-3430(b)(2) a procedural safeguard afforded to parents is the Prior Written Notice for certain proposed special education actions. The Prior Written Notice documents a description of the action proposed or refused by the district. It is required when the district proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or provision of FAPE to a child. This requirement is triggered regardless of whether it is the school or the parent who is initiating the request. K.S.A. 72-3430(b)(2)(A)-(B) states that parents have the right to written prior notice whenever an agency proposes to initiate or change; or refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

KAR 91-40-27(a)(3) requires that each agency shall obtain parental consent when making a material change in services to or a substantial change of the placement of an exceptional child. Material change in service means an increase or decrease of 25 percent or more of the duration or frequency of a special education service, related service, or supplementary aid or service specified on the IEP of an exceptional child, according to KAR 91-40-1(mm). Substantial change in placement means the movement of an exceptional child for more than 25% of the child's school day from a less restrictive environment to a more restrictive environment, or from a more restrictive environment to a less restrictive environment, according to KAR 91-40-1(sss).

Analysis: Findings of Fact

The following findings are based upon a review of documentation and interviews with the parent and staff in USD # 443. The findings of Issue One and Issue Two are incorporated herein by reference.

The parent and the district agree that the district enacted a more than 25% change to the student's IEP at the beginning of the 2023-24 school year without first seeking parental participation and consent.

Conclusion

Based on the foregoing, *it is substantiated* that USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to afford parental participation and consent when changing the student's IEP, including by decreasing the number of IEP service minutes.

Issue Four

The USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to afford the parent procedural safeguards, specifically by providing and delivering 10 day Notice of Meetings and Prior Written Notice when changing the students level of service or placement.

Applicable Law

State statutes and regulations at KAR 91-40-17(a)(1) require each agency to take steps to ensure parental participation at each IEP team meeting, and KAR 91-40-17(a)(2) requires providing written notice to the parents at least 10 days in advance of the IEP meeting.

According to K.S.A 72-3430(b)(2) a procedural safeguard afforded to parents is the Prior Written Notice for certain proposed special education actions. The Prior Written Notice documents a description of the action proposed or refused by the district. It is required when the district proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or provision of FAPE to a child. This requirement is triggered regardless of whether it is the school or the parent who is initiating the request. K.S.A. 72-3430(b)(2)(A)-(B) states that parents have the right to written prior notice whenever an agency proposes to initiate or change; or refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

Analysis: Findings of Fact

The parent alleged that the district did not provide a ten day notice of meeting for the November 15, 2023 meeting. The parent alleged that the district did not provide prior written notice to change the IEP as proposed at the November 15, 2023 or subsequent November 28, 2023 IEP meeting.

The district responded that it contacted the parent by phone on October 27, 2023 to schedule the meeting at an agreeable time, 19 days before the meeting was to be held on November 15, 2023. The district responded that it mailed the notice of meeting on November 8, 2023, seven days before the meeting was to be held, and hand delivered the notice of the meeting on the

day of the meeting. The district reported that it sent, by certified mail, a letter apologizing and proposing a resolution that included two prior written notices pertaining to the November 28, 2023 IEP meeting.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD # 443. The findings of Issue One, Issue Two, and Issue Three are incorporated herein by reference.

The parent reported that she received the notice of meeting in the regular mail on November 18, 2023 and the parent provided a copy of the envelope postmarked on November 15, 2023.

The district and the parent agreed that the November 28, 2023 meeting was scheduled at a mutually agreeable time with satisfactory notice of meeting.

The parent report and documentation of the November 28, 2023 meeting showed that the parent asked for a written copy of the district's proposal to remedy the student's scheduled gifted education time during the 2023-24 school year.

The district reported and provided a certified mail receipt dated December 4, 2023 for the letter and two prior written notice statements dated November 28, 2023. The parent reported that she did not receive the certified mail.

The district reported and provided a copy of a prior written notice dated February 1, 2024 for a meeting on November 28, 2023. In it, the district refers to a change of the IEP to eliminate the student's reading goal.

The district and the parent agreed that they communicated in order to resolve the disagreements in the IEP. These communications included a phone call on January 25, 2023 and email exchanges from January 29, 2024 and February 8, 2024.

Conclusion

In this case, the district failed to provide procedural safeguards when it changed the student's level of service at the beginning of the 2023-2024 school year (Issue Three). Also, the district arranged a mutually agreeable time to meet but failed to effectively convey a 10 day notice of meeting for the November 15, 2023 IEP meeting. In addition, the district provided a delayed PWN for the change in IEP goals dated February 1, 2024 for the meeting held on November 28, 2023. Without providing prior written notice to change the student's IEP goals, which was a subject of disagreement at the student's November IEP meetings, the district erred in implementing the changed goals in November 28, 2023 proposed IEP. In Kansas, a reasonable length of time to provide prior written notice is 15 school days, or three weeks.

Based on the foregoing, *it is substantiated* that USD #443 has, in violation of state regulations implementing the Kansas Special Education for Exceptional Children Act, failed to afford the parent procedural safeguards, specifically by providing and delivering 10 day Notice of Meeting and Prior Written Notice when changing the students level of service or placement.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of K.S.A. 72-3429(b)(1), K.S.A. 72-3404(u)(4)(A)-(B) and K.S.A. 72-3429(c)(2) was found, based on facts listed above. Corrective actions are required (as follows):
 - a. **CORRECTIVE ACTION** for KSA 72-3429(b)(1), K.S.A. 72-3404(u)(4)(A)-(B)
 - (i) Within 21 days, by March 12, 2024, USD #443 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state regulations at K.S.A. 72-3429 (b)(1), K.S.A. 72-3404(u)(4)(A)-(B) which require that the required members of the IEP team are present for IEP team meetings.
 - (ii) Within 21 days, by March 12, 2024 USD #443 will disseminate information on the required members of an IEP team, including participation of general education teachers, to all persons involved in special education and gifted education IEP team meetings.
 - b. **CORRECTIVE ACTION** for K.S.A. 72-3429(c)(2)
 - (i) Within 21 days, by March 12, 2024, USD #443 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state regulations at K.S.A. 72-3429(c)(2) which require that IEPs contain measurable annual goals that enable the child to be involved in and progress in the general or advanced curriculum.
 - (ii) Within 21 days, by March 12, 2024 USD #443 will disseminate information on the requirements of measurable annual goals to all persons involved in special education and gifted education IEP team meetings
 - (iii) Within 30 days, by March 21, 2024 USD #443 shall reconvene the IEP team to ensure that the present levels and measurable annual goals are developed correctly.
 - c. **Dates due:** a. (i) and (ii) March 12, 2024; b. (i) and (ii) March 12, 2024 (iii) March 21, 2024.
2. **ISSUE TWO:** A violation of KAR 91-40-16(b)(2) was found, based on the reduction of service minutes in the student's November 21, 2022 IEP. Corrective actions are required (as follows):
 - a. **CORRECTIVE ACTION** for KAR 91-40-16(b)(2)
 - (i) The district shall immediately, by March 12, 2024, submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state regulations at KAR 91-40-16(b)(2) which require that services for which parental consent has been given are provided.
 - (ii) The district shall immediately, within 21 days, by March 12, 2024, schedule the IEP services for which permission has been given.

- (iii) The district shall, within 30 days by March 21, 2024, offer compensatory instruction of its choosing to the parents, who may accept none, some, or all of the offered services. The offer shall be no less than 1500 minutes of compensatory education (calculated at 75 minutes for 20 weeks) directed toward the IEP goals in advanced reading and mathematics on the November 21, 2022 IEP.
 - (iv) The parents shall have 10 days to accept none, some, or all of the compensatory education offer. The district will provide PWN to the parents resulting from the parents' response to the compensatory education offer.
 - (v) The district shall submit the PWN to SETS as evidence of its completion within 70 days by May 3, 2024.
 - b. **Dates due:** (i) and (ii) March 12, 2024; (iii) March 21, 2024; and (v) May 3, 2024.
- 3. **ISSUE THREE:** A violation of KAR 91-40-17(a)(1), KAR 91-40-17(a)(2), K.S.A. 72-3430(b)(2)(A)-(B), and KAR 91-40-27(a)(3) was found, based on the district's change of the IEP without parental participation and required consent at the beginning of the 2023-24 school year. Corrective action is required (as follows):
 - a. **CORRECTIVE ACTION:**
 - (i) The district shall immediately, within 21 days, by March 7th, 2024, submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state statutes and regulations at KAR 91-40-17(a)(1), KAR 91-40-17(a)(2), K.S.A. 72-3430(b)(2)(A)-(B), and KAR 91-40-27(a)(3) which require that services for which parental consent has been given are provided.
 - b. **Date due:** (i) March 12, 2024.
- 4. **ISSUE FOUR:** A violation of KAR 91-40-17(a) (2) and K.S.A. 72-3430(b)(2)(A)-(B) was found based on the district's failure to provide adequate notice of meeting and timely prior written notice for changes in the IEP as enumerated above. Corrective action is required (as follows):
 - a. **CORRECTIVE ACTION** for KAR 91-40-17(a) (2) and K.S.A. 72-3430(b)(2)(A)-(B)
 - (i) The district shall immediately, within 21 days, by March 12, 2024, submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state regulations at KAR 91-40-17(a)(2) and K.S.A. 72-3430(b)(2)(A)-(B) which require a 10 day notice of meetings and prior written notice for IEP changes proposed or refused by the district.
 - (ii) The district shall, within 21 days by March 12, 2024, disseminate information on the requirements of adequate notice of meetings and the requirements of PWN, including timely methods to convey these to parents.
 - b. **Dates due:** (i) and (ii) March 12, 2024

Right to Appeal

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

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

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

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

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

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

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