

## Special Education Formal Complaint Decisions 2016-17

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 17FC01 signifies a Formal Complaint filed in the 2017 fiscal year (July 1, 2016 to June 30, 2017). The case citation of 17FC02 Appeal Review signifies the decision of the state appeal committee for case number 17FC02. All files are PDF.

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**KANSAS STATE DEPARTMENT OF EDUCATION  
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES**

**REPORT OF COMPLAINT  
FILED AGAINST  
WICHITA PUBLIC SCHOOLS, USD #259  
ON AUGUST 1, 2016**

**DATE OF REPORT: AUGUST 24, 2016**

This report is in response to a complaint filed with our office by \_\_\_\_\_ on behalf of her son, \_\_\_\_\_. \_\_\_\_\_ will be referred to as “the student” in the remainder of this report. Ms. \_\_\_\_\_ will be referred to as “the parent.”

**Investigation of Complaint**

Diana Durkin, Complaint Investigator, spoke by telephone with \_\_\_\_\_, Due Process Supervisor for Wichita Public Schools, on August 5, 9, and 16, 2016. The investigator spoke by telephone with the parent on August 17, 2016.

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

- Email dated September 16, 2015 from the Due Process Supervisor to school staff regarding the cross enrollment of the student at Price-Harris Communications Magnet
- Email dated September 17, 2015 from the eSchool Special Education Coordinator to school staff
- Email dated September 18, 2015 from the eSchool Social Worker to school staff regarding the parent’s decision on cross enrollment of the student at Price-Harris
- IEP for this student dated October 9, 2015
- IEP Progress Report – Annual Goal dated May 20, 2016
- Special Ed Student Contact Log dated August 5, 2016

**Background Information**

This investigation involves an 11 year-old boy who has been diagnosed with Type 1 Diabetes Mellitus. His mother reports that, due to his illness, the student’s blood sugar levels are erratic and require monitoring every one to two hours in order to prevent him from having seizures. The parent also reports that the student suffers from asthma and a sleep disorder.

Records indicate that the student received special education support in Illinois

prior to entering the Wichita School District in November of 2012. Upon his transfer, the student's IEP Team recommended that he receive Resource Room services in a neighborhood elementary school along with Speech/Language and Occupational Therapy (OT) support. In January 2013, subsequent to the completion of a re-evaluation the student applied for and was enrolled in the district's virtual school program - Learning<sup>2</sup> eSchool – an accredited public school at home program for students in Kindergarten through high school. The student also received Speech/Language and OT services through his neighborhood elementary school.

On October 28, 2014, the district completed a re-evaluation of the student and recommended that 10 minutes of indirect special education services be provided every nine weeks. The student was exited from both Speech/Language and OT services. The parent gave written consent for these changes.

As of August 18, 2015, the student was concurrently enrolled in Learning<sup>2</sup> eSchool and the Price-Harris Communications Magnet. The purpose of the student's enrollment at Price-Harris was to provide access to "specials" (Art and Music). According to the Contact Log provided by the district, the student's mother had indicated in a telephone conversation with a School Social Worker that she would remain at the school with the student to be available to address his medical needs.

As of September 17, 2015 the student had not yet attended any classes at Price-Harris. According to the parent, the student's unstable blood sugar levels made it impossible for him to come to the school for services. In an email dated September 18, 2015, the eSchool Social Worker stated that the parent had opted to have the student access "specials," along with his core curriculum through eSchool only.) in her email, the Social Worker also reported that the parent wanted to maintain the level of special education services (10 minutes of indirect service once every 9 weeks) outlined in the student's October 2014 IEP. The student's IEP Team convened on October 9, 2015 to develop a new IEP; indirect special education services (10 minutes per nine weeks) were again recommended.

### **General Comments Regarding District Programs and Services**

The district offers "Homebound" service to students who are unable to attend school due to a medical issue or injury. That service is – according to the district website – "intended to be for a limited period of time" and "is intended to provide continuity of educational services between the classroom and home (to) help the student facilitate their return to a regular school setting as quickly as possible...The longest time a student can be on Homebound is nine calendar weeks. If more time is needed, we will evaluate each individual case and it will require additional medical or psychological information." The Homebound program does not offer a comprehensive educational program but is intended to

provide short-term support to enable a student to re-enter the general education curriculum with as little disruption as possible.

The services provided by the Homebound program are available to special education students. The district has established a standard application process that includes – among other elements – the requirement for a signed Release of Information to allow school staff to communicate directly with a recommending physician regarding a student’s medical needs.

The Learning<sup>2</sup> eSchool sponsored by the Wichita district provides an accredited public school at home program for students in Kindergarten through high school that blends online learning with optional face-to-face activities for a customized and interactive learning experience. The program is tuition free and offers curricular opportunities and courses that can ultimately result in a student earning a high school diploma. Students must have a computer with internet access in order to participate in the program. Any student who does not have access to a computer may use one loaned for a fee by the district. Tutorial services are available to all eSchool students on site at Chester A. Lewis Academy.

Admittance to the Learning<sup>2</sup> eSchool program is through an application process. Special education students can participate in the Learning<sup>2</sup> eSchool. In the case of the student at the center of this complaint, the parent initiated a request for his admission to the program through the standard application process, and the student was accepted.

### **Issues**

In her complaint, the parent raises three issues:

**Issue One: The district has failed to provide the student with FAPE (free appropriate public education) because the homebound services recommended by his treating physician and called for in the student’s IEPs have not been supplied.**

Federal regulations, at 34 C.F.R. 300.101, require public schools to make a FAPE available to children with disabilities. At 34 C.F.R. 300.17, the regulations define a free appropriate public education or FAPE as special education and related services that—

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the (state), including the requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program

(IEP) that meets (federal) requirements.

### **Physician's Recommendation**

If the parent provides a district with a recommendation from an outside agency or individual (in this case a physician) regarding the provision of a FAPE for a student, the district should consider that recommendation. However, the school is not obligated to implement the recommendations made by that outside individual.

It is the position of the parent that she has - since the student's initial enrollment in the district in 2012 - repeatedly requested that he be provided with in-home academic support. The parent states that the district has told her that the student was not eligible to receive these services. She therefore agreed to accept the services that were offered by the district and provided her written consent for the proposed services.

According to the parent, the student's physician has previously recommended that he receive "home tutoring" and wrote a letter in support of that position. The district acknowledges that the parent did present a physician's recommendation letter and a request for "Homebound" services in January of 2015. According to the district, that request was addressed when it was received.

The district asserts that it has no record of any request from the parent for similar services during the 2015-2016 school year and no record of the receipt of any letter from a physician regarding such services during that time period.

The parent stipulates that she can provide no record of any request for in-home services for the student between August 1, 2015 and August 1, 2016. However, when filing this complaint, the parent submitted a letter dated July 12, 2016 from the physician who provides care to the student for the management of his diabetes. In his letter, the physician states that the student has frequent episodes of hypoglycemia and hyperglycemia that has led to seizures and diabetic ketoacidosis. The physician also notes that the student has "frequent asthma exacerbations which causes his blood glucose readings to rise even higher. He requires very frequent blood glucose monitoring and assistance from his mother with management of his diabetes due to extreme highs and lows." The physician writes, "I...request that (the student) receive homebound tutoring services as needed to assist with his educational needs. I feel the homebound tutoring services would better serve the needs of (the student's) Individualized Educational Program."

It is the district's position that it will review and consider this newly presented physician's recommendation.

A formal complaint must be for a situation that occurred during a period no greater than one calendar year prior to the date the complaint is received.

Therefore, this investigation cannot address how the district handled the request it received in January of 2015. The parent has provided no evidence to show that the district failed to consider any physician's recommendation presented during the 12-month period prior to the receipt of this complaint by Early Childhood, Special Education, and Title Services on August 1, 2016. Under these circumstances a violation of this aspect of this issue is not substantiated.

### **Implementation of IEP From Previous District**

The parent contends that the district failed to provide the homebound services outlined in the student's IEP when he transferred to the current district from Chicago.

The student transferred from Chicago in November 2012. The investigation of any facts regarding the provision of services to the student at the time of that transfer would extend beyond the 12-month period allowed by law and will not be addressed in this complaint.

### **Implementation of the Student's Current IEP**

The parent contends that the district is not following the student's IEP because it is not providing homebound services.

The October 2015 IEP for this student contains no reference to any provision of homebound services. The section of the student's October 2015 IEP entitled "Description of Specially Designed Instruction and Related Service" states that the student "will receive indirect special education services to monitor his progress through eSchool per his mother's choice as educational setting."

An IEP Progress Report – Annual Goals dated May 20, 2016 indicates that the student's progress toward mastery of the goals on his October 2015 IEP was monitored in December 2015 and in March and May of 2016. A Special Ed Student Contact Log dated August 5, 2016 shows that the student's IEP Case Manager made five contacts with his eSchool teacher between November 20, 2015 and May 16, 2016. Comments on that log are as follows:

- November 20, 2015: "Received an update on (the student's) progress and current grades"
- December 18, 2015: "Update on second nine weeks grades"
- February 23, 2016: "Update on (the student's) progress at e-school (grades, etc.)"
- March 9, 2016: "3<sup>rd</sup> nine-weeks grades/progress for IEP goals update"
- May 16, 2016: "4<sup>th</sup> quarter grades"

The student's October 2015 IEP does not call for the provision of Homebound services. The district has provided evidence to show that the indirect special

education services which **are** specified in that IEP have been provided. Under these circumstances, a violation of special education laws and regulations is not substantiated on this aspect of this issue.

**Issue Two: The district failed to respond to the parent’s request for a home tutor for the student.**

According to the parent, she has made numerous requests of the school district to provide tutorial support to the student in the areas of Math and Language, noting that the student is “below average on testing.” By report of the parent, she has contacted both the district and a social worker at eSchool regarding help for her son but no response has been forthcoming.

According to the district, there is no record of the parent having made any request for additional services for the student during the 2015-16 school year.

The parent stipulates that she is unable to provide direct evidence of a request for tutorial support for the student during the 12-month period prior to the receipt of this complaint by Early Childhood, Special Education, and Title Services on August 1, 2016. Under these circumstances, a violation of special education laws and regulations is not substantiated.

**Issue Three: In developing an IEP for this student, the district failed to consider whether or not the student required assistive technology or services and did not include any assistive devices or services in the October 2015 IEP.**

In order to assure that the IEP team addresses all of the special education and related service needs of the child there are several special factors that the IEP team must consider in the development of the IEP (K.S.A. 72-987(d)). These considerations must be documented but there is no requirement on where they are documented. Some districts may choose to include documentation of these considerations within the IEP while others may choose to keep documentation separately and maintain it in the student’s file.

When developing an IEP for a student with a disability, the team must determine whether an individual child needs an assistive technology (AT) device or service, and if so, the nature and extent to be provided. It is possible that an assistive technology evaluation will be required to determine if the child would need an assistive technology service and/or assistive technology device. Any needs identified should be reflected in the content of the IEP, including, as appropriate, the instructional program and services provided to the child.

It is the parent’s contention that the IEP Team did not consider the student’s Assistive Technology needs when developing his October 2015 IEP. In a telephone call with the investigator on August 17, 2016, the parent stated that

she believes that the district should provide her son with a set of textbooks to support his eSchool instruction.

An appropriately constituted IEP Team – which included the student’s parent – developed the student’s October 2015 IEP. The “Special Considerations” section of that document contains a section entitled “Assistive Technology” which contains the question “Does the student require Assistive Technology?” The response to that question as shown on the IEP was “No.”

The parent has provided no evidence to show that she has asked the district to provide textbooks for the student. The student’s October 2015 IEP shows that the IEP Team considered his Assistive Technology needs and determined that Assistive Technology was not required. Therefore, a violation of special education laws and regulations is not substantiated on this issue.

### **Additional Comments**

“Educational placement” refers to ***the educational environment for the provision of special education and related services*** rather than a specific place, such as a specific classroom or school (K.A.R. 91-40-1(t)). An IEP team makes the decision about the child’s educational placement. For children with disabilities, special education and related services must be provided in the environment that is least restrictive, with the general education classroom as the initial consideration. The teams’ decision must be based on the child’s needs, goals to be achieved, and the least restrictive environment for services to be provided.

Placement decisions for all children with disabilities must be determined annually and must be based on the child’s IEP. The law does not require that every child with a disability be placed in the general education classroom regardless of the child’s individual abilities and needs. The law recognizes that full time general education classroom placement may not be appropriate for every child with a disability. School districts are to make available a range of placement options, known as a ***continuum of alternative placements***, to meet the unique educational needs of children with disabilities. The continuum of alternative educational placements include instruction in general education classes, special classes, special schools, ***home instruction***, and instruction in hospitals and institutions (K.A.R. 91-40-21(b); 34 C.F.R. 300.115(b)(1)).

The initial enrollment of the student in Learning<sup>2</sup> eSchool was not an educational placement decision made by an IEP Team but rather was the choice of the parent. The student’s mother told the investigator, the student had attended his neighborhood elementary school in Chicago but his medical issues compromised his attendance and negatively affected his educational progress. The parent therefore pursued enrollment for her son in a program that would allow him to be educated at home where she could closely monitor his medical needs.



In developing the October 2015 IEP for the student, the IEP team determined that **special education support** to the student could best be provided through indirect services, consultative interaction between eSchool staff and district special education personnel. The parent consented to the district's plan for the delivery of services.

The parent believes that the student is in need of tutorial support – particularly in the area of Math. According to the parent, the student's health makes it impossible for him to take advantage of the tutoring services offered on-site through eSchool at a district building . If the parent feels that the special education needs of the student are not being met, it would be appropriate for the parent to call for an IEP Team meeting to discuss the student's placement and services. An IEP Team review may lead to a variety of outcomes, including but not limited to, a recommendation for re-evaluation or a change in the student's placement or services. Prior written notice of any proposed change must be provided to the parent before any change to the student's current placement or services can be made. Additionally, if the district refused a request from the parent that the student's placement or services be modified, prior written notice of the district's refusal would have to be provided to the parent. That notice would provide an explanation of why the district was refusing the parent's request and would inform the parent that she has procedural safeguards available to her.

### **Corrective Action**

Information gathered in the course of this investigation has failed to substantiate noncompliance with special education laws and regulations on issues presented in this complaint. Therefore, no corrective actions are warranted.

### **Right to Appeal**

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Landon State Office Building, 900 SW Jackson Street, Suite 600, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

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Diana Durkin, Complaint Investigator

(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  
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES**

REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT # \_\_\_\_  
ON AUGUST 3, 2016

DATE OF REPORT: SEPTEMBER 2, 2016

This report is in response to a complaint filed with our office by \_\_\_\_ and \_\_\_\_  
\_\_\_\_\_ on behalf of their son, \_\_\_\_\_. In the remainder of this report,  
\_\_\_\_\_ will be referred to as "the student" while \_\_\_\_ and \_\_\_\_  
\_\_\_\_\_ will be referred to as "the mother" or the "father" respectively, or "the  
parents."

**Investigation of Complaint**

Nancy Thomas, Complaint Investigator, spoke with USD #\_\_\_\_ by telephone on  
August 12, August 22, and September 1, 2016. USD #\_\_\_\_ made the following  
staff persons available to be interviewed:

- \_\_\_\_\_, Mediation and Due Process Supervisor
- \_\_\_\_\_, Special Education Coordinator

The Complaint Investigator spoke to the complainant by telephone on August 9,  
August 25, August 30, and August 31, 2016. The following person was  
interviewed:

- Mother

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

- Letter dated August 18, 2015 from \_\_\_\_ to the parents acknowledging the  
referral
- Prior Written Notice (PWN) for Evaluation or Reevaluation and Request For  
Consent dated August 31, 2015
- Notice of Meeting (NOM) dated November 12, 2015 for eligibility  
determination meeting on November 30, 2015
- NOM dated December 7, 2015 for eligibility determination meeting on  
December 7, 2015
- Multidisciplinary Team Report (MTR) dated December 7, 2015

- NOM dated December 7, 2015 for IEP meeting on December 14, 2015
- PWN for Identification Initial Services, Placement, Change In Services, Change Of Placement, And Request For Consent dated December 14, 2015
- PWN for Evaluation or Reevaluation and Request for Consent dated December 14, 2015
- Email correspondence between the parents and \_\_\_\_\_ dated December 15 and 16, 2015 regarding the eligibility determination meeting and IEP held in December 2015
- SPED Contact Log for the student for the 2015-16 school year
- Student Discipline Profile for the student for the 2015-16 school year
- Kansas professional credentials for \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.
- Observation Notes dated February 29 and March 2, 2016 created by \_\_\_\_\_, OT
- Daily Pass Logs dated February 22 through March 9, 2016
- Social Skills Improvement System results for the student dated March 1, 2016
- Social Skills Improvement System results for the student dated January 22, 2016
- Preliminary Functional Assessment Teacher Interviews dated January 22, 2016
- Student Functional Assessment Interview dated March 1, 2016
- Adapted Version of the Children's Intervention Ration Profile (Pre-Intervention) dated March 1, 2016
- Functional Behavior Assessment (FBA) dated March 28, 2016
- Email dated March 3, 2016 from \_\_\_\_\_ to selected school staff regarding FBA intervention plan
- FBA Data Collection Analysis for February 17 through March 2, 2016
- Action Plans dated January 26, February 29, March 21, and March 25, 2016
- 8<sup>th</sup> Grade Team Meeting Notes dated January 28, 2016
- Antecedent/Behavior/Consequence (ABC) Charts dated weeks of February 15, February 22 and 29, 2016
- Grade Book Summaries for the 2015-16 school year
- Child Study Team Notes for the student for the 2015-16 school year
- Emails between \_\_\_\_ and parents dated September 14, 18, 27, and 28; October 1 and 2; November 10, 24, and 30; March 11, 22 and 23
- Psychological Evaluation Report written by Dr. Shelby Evans, Psychologist at The Therapy Center dated July 29, 2015
- Letter to parents from \_\_\_\_\_ dated April 11, 2016 regarding student absences and need to extend the 60 school day evaluation timeline

## Background Information

This investigation involves a fifteen year-old student who was enrolled in the eighth grade at USD #\_\_\_ during the 2015-16 school year. The student is currently enrolled in the ninth grade in the USD #\_\_\_ for the 2016-17 school year.

Records indicate the student was retained in kindergarten and attended three different elementary schools for grade kindergarten through fifth grade. A 504 plan was initiated during the student's fifth grade year due to concerns with social issues and lack of organization. The student began sixth grade at \_\_\_\_\_ Middle School and his parents report that due to bullying, the student was then enrolled in the Word of Life School where he finished sixth grade and reportedly did "great" and was socially interacting with all age levels. The student attended seventh grade at the Word of Life School and was placed in the "PACE" program to assist the student to catch up with the grade level curriculum. The student attended \_\_\_\_\_ for STEM and the \_\_\_\_\_ Magnet Middle School for eighth grade.

Documentation shows the student received medical diagnoses of Attention Deficit Hyperactivity Disorder (ADHD) and autism in July 2015 from Dr. Shelby Evans, PhD., psychologist at The Therapy Center. Records indicate the student continued to have a 504 plan and a Section 504 Behavior Intervention Plan during the 2015-16 school year and that these plans were reevaluated on December 1, 2015.

## Issues

The complainant raised four issues which were investigated.

**ISSUE ONE:** The USD #\_\_\_, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly conduct the initial evaluation, the functional behavioral assessment, and the assistive technology assessment of the child during the 2015-16 school year by not following the appropriate evaluation procedures which requires that the child be assessed in all areas related to the suspected disability; that the evaluation be sufficiently comprehensive to identify all of the child's special education and related

service needs; and that the evaluation use a variety of technically sound instruments administered by trained and knowledgeable personnel.

### Findings:

Federal regulations, at 34 C.F.R. 300.301, require that each public agency shall conduct a full and individual initial evaluation prior to the provision of special education and related service to a child with a disability.

Federal regulations, at 34 C.F.R. 300.304, require that the child be assessed in all areas related to the suspected disability, that the evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs, and that the evaluation use a variety of technically sound instruments administered by trained and knowledgeable personnel.

Federal regulations, at 34 C.F.R. 300.305, require that a review of existing evaluation data be conducted to determine what, if any, additional assessments are needed to determine if the child is eligible for special education. The review of existing data must include 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.

Documentation and interviews found that the parents verbally requested an initial evaluation of the student on August 18, 2015 upon enrollment in USD #\_\_\_\_. On that same date, \_\_\_\_, school social worker, sent a letter to the parent offering to conduct general education interventions (GEI) for not more than 18 weeks if the parents withdrew their request for an initial evaluation in writing.

Documentation shows the parents did not withdraw their request and that a review of existing data was conducted by Ms. \_\_\_\_ through interviews with school staff regarding current classroom performance and informal classroom observations. In addition, Ms. \_\_\_\_ conducted a records review of academic achievement, state and district testing results, and a July 2015 psychological evaluation provided by the parents that included medical diagnoses for the student of ADD and Autism. Documentation shows that Ms. \_\_\_\_ conducted an interview with the parents on August 31, 2015 to obtain presenting concerns as well as obtain information about the family, developmental and school history, and social/emotional/adaptive skills information.

On that same date, Ms. \_\_\_\_ provided the parents with PWN for Evaluation and Consent to conduct an initial evaluation of the student in the following areas: Health/Motor Ability; Vision; Hearing; Social/Emotional Status/Behavioral Status; General Intelligence; Academic Performance; and Communicative Status. Documentation shows that health history, social history, testing with school psychologist and speech pathologist, and the student's academic product and progress were the data used as the basis for proposing the initial evaluation.

Documentation shows the mother signed the consent for initial evaluation on August 31, 2015.

The Multidisciplinary Team Report (MTR) dated December 7, 2015 shows the area of Health/Motor Ability was evaluated through a records review and parent interview on October 22 and November 12, 2015 by \_\_\_\_\_, Registered Nurse (RN). The areas of Vision and Hearing were evaluated through vision and hearing screenings conducted with the student on September 3, 2015 by \_\_\_\_\_, RN.

The area of Social/Emotional Status/Behavioral Status was evaluated through student interviews on September 29 and October 27, 2015 by \_\_\_\_\_, School Psychologist. In addition, this area was assessed through the Teacher Rating Scale of the Conners 3<sup>rd</sup> Edition by Ms. Stovall and Ms. Hampton, two of the student's general education teachers. The Childhood Autism Rating Scale 2<sup>nd</sup> Edition – High Functioning (CARS2-HF) was completed by Ms. \_\_\_\_\_ on October 28, 2015 through an interview with the eighth grade team including the school counselor.

The areas of General Intelligence and Academic Performance were evaluated by Ms. \_\_\_\_\_ through the administration of subtests from the Differential Ability Scales 2<sup>nd</sup> Edition (DAS II), the Woodcock Johnson Fourth Edition Cognitive (WJ IV COG), the Beery Visual Motor Integration Test (VMI), and the Comprehensive Test of Phonological Processes 2<sup>nd</sup> Edition (CTOPP 2). Achievement testing was conducted with the student between September 22 and October 12, 2015 while cognitive testing was conducted between October 7 and October 26, 2015. Ms. \_\_\_\_\_ used the Cattell-Horn-Carroll (CHC) assessment approach to integrate and analyze the achievement and cognitive assessment results in the MRT which showed a composite score that fell in the "normative deficit" range in the area of Auditory Processing based on standard scores on the three subtests on CTOPP2 that all fell more than two standard deviations below the mean.



The area of Communicative Status was assessed by \_\_\_\_\_, Certificate of Clinical Competence – Speech/Language Pathology (CCC-SLP) on October 22, 2015. The Oral and Written Language Scales 2<sup>nd</sup> Edition (OWLS-II) and Clinical Evaluation of Language Fundamentals 5<sup>th</sup> Edition (CELF-5) were administered to the student. The assessment results from both tests show receptive language skills significantly below those of his peers (OWLS-II standard score of 61 for The MTR documents that “The need for speech language services will be discussed as a team at the Staffing.”

The MTR also reports classroom observations of the student in the general education setting conducted on September 23, October 28, and November 2, 2015. There is no documentation showing who conducted these classroom observations.

Documentation and interviews showed that a Notice of Meeting (NOM) was provided to the parent on November 12, 2015 scheduling a meeting on November 30, 2015 to review the evaluation, determine eligibility, and, if appropriate, develop an IEP for the student. Interviews with both school staff and the mother indicated that this meeting was postponed on November 24, 2015 due to a death in the family of Ms. \_\_\_\_\_. Interviews and documentation show the meeting was rescheduled for December 7, 2015 and that the parents agreed to waive the 60 school day timeline to determine eligibility for the student.

An eligibility determination meeting and IEP meeting was held on December 7, 2015 with the following persons in attendance: \_\_\_\_\_, administrator; \_\_\_\_\_, administrator; \_\_\_\_\_, counselor; \_\_\_\_\_, general education teacher; \_\_\_\_\_, school nurse; \_\_\_\_\_, school psychologist; \_\_\_\_\_, school social worker; \_\_\_\_\_, special education teacher; \_\_\_\_\_, speech language pathologist; \_\_\_\_\_, special education coordinator; \_\_\_\_\_, parent advocate; and the parents of the student. The MTR documents that the student exhibits the exceptionality category of Other Health Impaired (OHI) and Autism and that the student is in need of special education services. Interviews with both the school staff and mother and documentation show that another meeting was scheduled for December 14, 2015 in order to develop the student’s IEP.

Documentation and interviews with both school staff and the mother found that the IEP meeting was held on December 14, 2015. Documentation and interviews show that the mother requested a reevaluation at this IEP meeting for the student due to concerns with behavior and classroom performance. The team conducted a review of existing data and determined additional assessment in these areas was warranted. A PWN for Evaluation and Consent to conduct a

reevaluation of the student including a functional behavior assessment and an assistive technology assessment was provided to the mother and documentation shows signed consent as obtained on that same date. At this same meeting, the mother was also provided with a PWN for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent indicating that the student was a child with an exceptionality in the categories of OHI and Autism and proposing to provide special education instruction and counseling as a related service to the student. Documentation shows the parent provided consent for initial services on February 12, 2016.

Documentation and interviews with school staff found that the student was absent from school on January 19, 22, and 25-29; February 1-12; and March 3 through the last day of school in May 2015. Documentation shows activities to complete the FBA and ATA were conducted during the 27 days the student was in attendance following parent consent for the reevaluation.

The Student Contact Log includes an entry dated February 29, 2016 by Ms. \_\_\_\_ noting a conversation with the mother regarding possibly scheduling an evaluation meeting to review the results of the FBA and ATA on March 21 or 22, 2016.

A letter to the parents dated April 11, 2016 from Ms. \_\_\_\_\_ states that “the Wichita Public Schools stands ready, willing, and able to complete a Functional Behavior Assessment and Assistive Technology Evaluation for the student at such time as he is able to consistently attend school to allow for the collection and analysis of valid data. Upon the student’s return to the Wichita Public Schools, parental consent will be pursued as the 60 schools days allowed to complete all assessments expired on April 1, 2016.”

Documentation and interviews found that USD #\_\_\_\_ did follow the appropriate evaluation procedures in regards to the student being assessed in all areas related to the suspected disability based upon the medical diagnoses of ADHD and Autism. In addition, documentation and interviews found that the evaluation was sufficiently comprehensive to identify all of the child’s special education and related service needs including special education instruction and counseling as described in the PWN provided to the parent on December 14, 2015. Finally, documentation shows the evaluations of the student used a variety of technically sound instruments which were administered by trained and knowledgeable personnel. Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is not substantiated.

**ISSUE TWO:** The USD #\_\_\_\_, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parents the opportunity to participate during the evaluation and eligibility process for the child during the 2015-16 school year, specifically by not considering parent input when reviewing existing data, determining what additional data would be collected, and making the eligibility determination.

Findings:

Federal regulations at 34 C.F.R. 300.305, require that as part of an initial evaluation (if appropriate) and as part of any reevaluation under Part B of IDEA, the IEP Team and other qualified professionals, as appropriate, shall 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, classroom based observations, and observations by teachers and related services providers. On the basis of that review and input from the child's parents, the IEP Team and other qualified professionals, as appropriate, shall identify what additional data, if any, are needed to determine whether the child has a particular category of disability and the educational needs of the child, whether the child requires special education and related services, and whether any accommodations/modifications are needed for the child to participate, as appropriate, in the general education curriculum. The group making these decisions may conduct its review without a meeting.

Federal regulations, at 34 C.F.R. 300.306, requires that upon completing the administration of tests and other evaluation materials, a group of qualified professionals and the parent of the child must determine whether the child is a child with a disability and the educational needs of the child.

The findings of Issue One are incorporated herein by reference.

Documentation shows Ms. \_\_\_\_ conferred with school staff to gather information regarding existing evaluation data and current classroom performance between August 18 and August 31, 2015. On August 31, Ms. \_\_\_\_ met with the parents of the student to obtain parent input regarding the presenting concerns as well as obtain information about the family, developmental and school history, and social/emotional/adaptive skills information. The mother reported that at the

conclusion of the August 31, 2015 meeting, Ms. \_\_\_ provided the parents with PWN for Evaluation and Consent to conduct an initial evaluation of the student.

The PWN dated August 31, 2015 documents the data used as the basis for proposing the initial evaluation was the health history, social history, testing with school psychologist and speech pathologist, and the student's academic product and progress. However, no documentation was provided to show the other members of the IEP team reviewed and considered the information provided by the parents prior to USD #\_\_\_ providing the parents with the PWN for the initial evaluation.

The eligibility determination meeting was held on December 7, 2015 with the parent in attendance along with other members of the IEP team and qualified professionals. The mother and school staff both report that the evaluation results were reviewed during a four-hour long meeting.

In interviews, the mother described a voting process to determine eligibility for special education. Mother indicated that each team member was individually asked to state if they believed the student was eligible or not. The mother reported that Mr. \_\_\_\_, Ms. \_\_\_\_, Ms. \_\_\_\_, Dr. \_\_\_\_, and Ms. \_\_\_\_ were observers and did not get to vote. The mother remembers that Ms. \_\_\_\_, Mr. \_\_\_\_, Ms. \_\_\_\_, Ms. \_\_\_\_, and Ms. \_\_\_\_ all voted "no" while Mr. \_\_\_\_, Ms. \_\_\_\_, the mother, the father all voted "yes." The mother indicated that the parent advocate remembered that the student was a member of the IEP team and the parents were allowed to have the student also vote "yes" resulting in a "tie." The mother reports that Ms. \_\_\_\_ stated she also believed the student was eligible and that Dr. \_\_\_\_ requested the team take a break at that point. Dr. \_\_\_\_ asked permission from the parents for the school staff to confer together to discuss eligibility to which the parents agreed and left the room. The mother reports that when the team came back together, they were informed that the student would be found eligible for special education and related services.

The mother reports that an audio recording of the eligibility determination meeting was being made throughout the entire meeting; however, this audio recording is not available as the parent was asked to delete the audio recording when it was discovered that the recording device had been left in the room while the school team was conferring regarding the eligibility determination. However, the mother did provide documentation of an email conversation with Dr. \_\_\_\_ about their concerns with voting and a divided IEP team. Documentation shows the parents initially sent an email dated December 15, 2015 which states:

*“?1. Can you help me understand the roles in which the student’s IEP Team members have during meetings and how their roles will cross over to him on a daily basis?*

*?2. If disagreements are resolved by vote and we feel we are a divided team how are we as parents not supposed to be out numbered?*

*Observation2: Particular team members seem to make notable physical disagreements and pushing papers to other members before statements are even finished. Re-enforcing divided team.”*

Dr. \_\_\_\_ responded in an email to the parents dated December 16, 2015 and indicated the parents had valid concerns but these concerns would need to be addressed as part of the IEP team process.

In an interview, Dr. \_\_\_\_ indicated the parent may have misinterpreted some of the actions in the in the eligibility determination meeting held on December 7, 2015 due to the amount of people involved, the complexity of the data reviewed and discussed, as well as the length of the meeting. Dr. \_\_\_\_ described a time towards the end of the meeting when Ms. \_\_\_\_ asked everyone in the room to clarify their position on whether the student’s educational needs could continue to be met through the 504 plan or would require special education thus meeting prong 2 of the eligibility criteria. Dr. \_\_\_\_ reported that this was not a vote on eligibility determination but rather a means to determine the team member’s opinions. Dr. \_\_\_\_ reported the IEP team took a break at that point and then continued to meet and discuss whether the student met prong 2 of the eligibility criteria. Dr.\_\_\_\_, as the school representative on the team, had a duty to conduct the meeting in a manner that would produce a final decision. In that role, it was appropriate for him to inquire as to the opinions held by other members of the team. This kind of inquiry does not indicate that the final decision was made by vote. Dr. \_\_\_\_ acknowledged that the parent left a recording device in the school team meeting and that the parent was asked to delete the recording.

The allegation of a violation of special education laws and regulations on this issue is substantiated. Although there is evidence that the team did consider parental input when making the eligibility determination for the student, as USD #\_\_\_\_ did not provide any documentation to establish that parent input was considered by all members of the IEP team and other qualified professionals when reviewing existing data and determining what additional data would be collected as part of the initial evaluation process.

**ISSUE THREE:** The USD # \_\_\_\_, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to meet child find obligations as a result of the child's behavior problems during the 2015-16 school year, specifically by not including a functional behavioral assessment in the child's initial evaluation.

Findings:

Federal regulations, at 34 C.F.R. 300.304, require that the child be assessed in all areas related to the suspected disability.

Federal regulations, at 34 C.F.R. 300.305, require that a review of existing evaluation data be conducted to determine what, if any, additional assessments are needed to determine if the child is eligible for special education. The review of existing data must include 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.

The findings of Issue One are incorporated herein by reference.

Documentation shows that the review of existing data was conducted without a meeting between August 18 and August 31, 2015. Documentation shows the review of existing data included the results of the psychological evaluation conducted at The Therapy Center dated July 29, 2015 as well as classroom-based observations and observations by teachers. Documentation also shows the parent shared with Ms. \_\_\_\_ that the student could be described as being ornery, high strung (always on the go), and not liking to sit around. The parents indicated that the student will talk back to adults but that the student generally shows more respect for other adults than his parents.

Discipline reports document the first disciplinary referral for the student occurred on September 21, 2015 and that no behavioral concerns were reported at the previous school placement.

The allegation of a violation of special education laws and regulations on this issue is not substantiated as the first disciplinary referral for the student occurred on September 21, 2015 which is well after the parent request for an initial special education evaluation made on August 18, 2015, the review of existing data

conducted between August 18 and August 30, 2015, and the PWN for an initial Evaluation which was provided to the parent on August 31, 2015.

**ISSUE FOUR:** The USD #\_\_\_\_, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to complete the initial evaluation, the functional behavioral assessment, and the assistive technology assessment for the child in a timely manner during the 2015-16 school year.

Findings:

The Kansas Special Education Process Handbook notes that schools must respond to a parent request for an initial evaluation within a reasonable period of time, which has been interpreted by the Kansas Department of Education (KSDE) as being no more than 15 school days, unless there are unusual circumstances. The building principal or person designated to respond to parent requests for evaluations, should explain to the parents the following:

(a) A general education Intervention (GEI) process that precedes an initial evaluation is available to assist in determining the specific concerns and needs of their child. Parents may elect to withdraw their request for an evaluation and have their child participate in GEI; and (b) The parents may request the initial evaluation be conducted without waiting for general education interventions to conclude; in that case, the general education intervention process may be conducted as part of the initial evaluation.

Federal regulations, at 34 C.F.R. 300.504(a)(4), as well as K.S.A. 72-988(e) requires that a list of the rights available to the parents of exceptional children shall be given to the parents upon a parental request for an evaluation.

Federal regulations, at 34 C.F.R. 300.301(d) establish a timeline for completing initial evaluations. Kansas Administrative Regulations, at K.A.R 91-40-8(f), requires the initial evaluation to be completed within a 60-school-day timeline unless the agency can justify the need for a longer period of time. There are only three specific instances when an extension of the 60 school-day timeline may be justified: (1) the parent of the child repeatedly fails or refuses to produce the child for the evaluation; or, (2) if a child enrolls in a new district after the evaluation has begun and before the determination of eligibility; or, (3) if the parent and the school agree in writing to extend the timeline.

The findings of Issue One are incorporated herein by reference.

Documentation shows USD #\_\_\_ received a verbal request for a special education evaluation from the parent on August 18, 2015. USD #\_\_\_ provided PWN for the initial evaluation and obtained parent consent on August 31, 2015 and the eligibility staffing was held on December 7, 2015.

Based upon the 2015-16 school calendar, USD # \_\_\_ responded to the parent request by conducting a review of existing data and providing PWN within nine school days. Also based on the 2015-16 school calendar, the evaluation was completed in 61 school days. Documentation and interviews with both the mother and school staff found the parent signed consent to extend the evaluation timeline on December 7, 2015.

Also included in the PWN dated August 31, 2015 is a statement of procedural safeguards to protect parent's rights which stated that "You received a copy of your rights when the initial referral for evaluation was made" and explains how to obtain another copy or have questions answered. However, no documentation was provided to show when the parent was provided a copy of the Procedural Safeguards statement. An interview with Dr. \_\_\_\_\_ found that the practice at \_\_\_\_\_ for STEM and the \_\_\_\_\_ Magnet Middle School is for the school social worker to provide the Procedural Safeguards when meeting in person with the parent to discuss the referral and gather information.

Documentation shows USD #\_\_\_ obtained parent consent for the reevaluation including the FBA and ATA on December 14, 2015. Based on the 2015-16 school calendar, the reevaluation review meeting should have taken place no later than April 4, 2016 in order to comply with the 60 school day evaluation timeline. Documentation shows the student was absent from school a total of 33 days during the timeframe to complete the evaluation. Documentation shows that Ms. \_\_\_\_\_ provided the parent with a letter dated April 11, 2016 which explained the evaluation timeline could not be met due to the extended absence of the student. Ms. \_\_\_\_\_ also indicated in the letter that the school would pursue the continuation of this reevaluation once the student was able to attend school again.

The allegation of a violation of special education laws and regulations on this issue is substantiated as there is no evidence to show that USD #\_\_\_ provided a copy of the Procedural Safeguards Statement to the parent upon the parent request for an initial special education evaluation. However, documentation does show USD #\_\_\_ did obtain written consent from the parent to extend the initial



evaluation timeline in December 2015. In addition, USD #\_\_\_ had proper justification to extend the 60 school day evaluation timeline for the FBA and ATA after parent consent was obtained on December 14, 2015 due to the student not being available for conduct the assessments for 33 days of the 60 school day evaluation timeline.

### **Corrective Action**

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Violations have occurred in two areas:

- 34 C.F.R. 300.305 requires that as part of an initial evaluation (if appropriate) and as part of any reevaluation under Part B of IDEA, 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, classroom based observations, and observations by teachers and related services providers. On the basis of that review and input from the child's parents, the IEP Team and other qualified professionals, as appropriate, shall identify what additional data, if any, are needed to determine whether the child has a particular category of disability and the educational needs of the child, whether the child requires special education and related services, and whether any accommodations/modifications are needed for the child to participate, as appropriate, in the general education curriculum. The group making these decisions may conduct its review without a meeting. Specifically, USD #\_\_\_ failed to establish that parent input was considered by all members of the IEP team and other qualified professionals when reviewing existing data and determining what additional data would be collected as part of the initial evaluation process.
- Federal regulations, at 34 C.F.R. 300.504(a)(4), as well as K.S.A. 72-988(e) requires that a list of the rights available to the parents of exceptional children shall be given to the parents upon an initial parental request for an evaluation

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

1. Within 10 calendar days of the receipt of this report, submit a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will:
  - a) comply with 34 C.F.R. 300.305 by ensuring that with or without a meeting the IEP Team and other qualified professionals, as appropriate, shall review existing data and input from the child's parents, and, based on that information, shall identify what additional data, if any, is needed to determine eligibility for special education and related services.
  - b) Comply with 34 C.F.R. 300.504(a)(4), as well as K.S.A. 72-988(e) by ensuring a list of the rights available to the parents of exceptional children shall be given to the parents upon a parental request for an evaluation
2. No later than November 15, 2016, school staff who attended the December 7, 2015 eligibility determination meeting for the student shall be trained on the special education referral and eligibility determination process and timelines. This training will be provided by a person approved by the KSDE. USD # \_\_\_ will document who provided the training, the content of the training, and who attended the training and send that documentation to Early Childhood, Special Education and Title Services.
3. As the student is currently enrolled and attending ninth grade in USD # \_\_\_, the FBA and ATA for the student shall be completed within 60 school days of the first day of the 2016-17 school year, unless an exception to the 60 school day timeline specified in K.A.R. 91-40-8(f) or (g).
4. Further, USD # \_\_\_ shall, within 14 calendar days of receipt of this report, submit to Early Childhood, Special Education and Title Services one of the following:
  - a) a statement verifying acceptance of the corrective action or actions specified in this report;

- b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
- c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (f).

### **Right to Appeal**

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (c), which is attached to this report.

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Nancy Thomas  
Complaint Investigator

(f) Appeals.

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

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

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

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

**KANSAS STATE DEPARTMENT OF EDUCATION  
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES**

REPORT OF COMPLAINT  
FILED AGAINST  
DERBY UNIFIED SCHOOL DISTRICT #260  
ON NOVEMBER 4, 2016

DATE OF REPORT: NOVEMBER 18, 2016

This report is in response to a complaint filed with our office by \_\_\_\_\_ on behalf of her daughter, \_\_\_\_\_. \_\_\_\_\_ will be referred to as “the student” in the remainder of this report. Ms. \_\_\_\_\_ will be referred to as “the parent.”

**Investigation of Complaint**

Diana Durkin, Complaint Investigator, spoke by telephone with Vince Evans Director of Special Education for USD #260, on November 14 and 17, 2016. During the telephone call of November 14<sup>th</sup>, the Director told the investigator that he had not yet received written notice that this complaint had been filed. Formal written notice of the filing was subsequently provided to the Director on November 15, 2016.

With the assistance of a translator, the investigator spoke by telephone with the student’s mother on November 17, 2016.

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

- Behavior chart for the student covering the period of August 24 to September 19, 2016
- Narrative report of student behavior covering the period of September 20 to October 6, 2016
- IEP for this student dated September 20, 2016
- Short-Term Suspension form dated October 6, 2016
- Letter from the parent to the principal dated October 7, 2016
- Staffing Summary dated October 10, 2016
- Functional Behavioral Assessment (FBA) dated October 10, 2016
- Report of an Emergency Safety Intervention (ESI) dated October 19, 2016
- Short-Term Suspension form dated October 19, 2016
- IEP for this student dated November 10, 2016

## Background Information

This investigation involves a 14 year-old girl who is enrolled in the 9<sup>th</sup> grade in her local high school.

The student has a diagnosis of Autism. She is non-verbal. According to her November 2016 IEP, “a total communication approach (signs, gestures, pictures, spoken words) is used...to address her language needs. She has access to picture communication and voice output systems throughout her school day...When prompted, (the student) will use her voice output system to indicate a want or need, but she does not use (the system) independently.”

Behavior records submitted by the parent show that since the start of the 2016-17 school year, the student has hit, slapped, or spit at staff an average of twice per day. Because of an increase in these behaviors as well as a request from the parent, the student’s IEP Team completed a Functional Behavioral Assessment on October 10, 2016 and on that same date developed a new IEP for the student that included a Positive Behavioral Intervention Plan.

## Issues

In her complaint, the parent states her concern as follows:

**“Irregularities in the education of (the student). The school is not respecting the rights of the student.”**

Specifically, the parent asserts that upon return from a short-term suspension, the student was moved to a different classroom without the knowledge of the parent. The parent contends that the student was isolated in a room that had no windows or cameras, coming out only to participate in her PE class and get the mail. According to the parent, the student was “only accompanied (in her classroom) by a Para.”

The 2004 reauthorization of the Individuals with Disabilities Education Improvement Act (IDEA) outlines important procedures that districts must follow when taking certain specific special education actions. These procedures are sometimes referred to as “procedural safeguards” or “parent rights.”

One of the procedural safeguards afforded to parents is Prior Written Notice. This notice must be provided to parents within a reasonable amount of time before the date the school proposes to initiate or change the

- identification,
- evaluation,
- **educational placement** (emphasis added) of their child, or
- the provision of special education and related services to their child.

“Educational **placement**” refers to the educational environment for the provision of special education and related services rather than a specific place, such as a specific classroom or school (K.A.R. 91-40-1(t)).

While a district might better maintain its good working relationship with a parent by communicating its intent to reassign a student to a different classroom, the law does not require the district to provide such notice nor is the district required to obtain parental consent before making the reassignment, so long as the classrooms are in the same place on the continuum of service environments. “Placement” is not determined by the name of the teacher or by the classroom **unless** the student’s IEP specifies a specific classroom. For example, if a student’s IEP reads “services will be provided in Mrs. Jones’ 4th grade class at Eisenhower Elementary School,” then parent permission would be needed to move the student from Mrs. Jones’ classroom. However, if the IEP reads “services will be provided in a regular 4th grade classroom,” then parent permission would not be needed to change the student’s classroom assignment, if everything else stayed the same. Placement is not the same as location.

The “Special Education Services” section of the student’s September 2016 IEP states that the student would

“receive instruction in a regular education building and take special education courses within special education classrooms with a focus on functional academics and life skills. Services will be provided daily for the length of the school day, except when (the student) is receiving related services.”

The “Related Services” section of the August 2016 IEP states:

“(The student) will receive indirect adapted PE services to check on her progress in the physical education classroom in a general education building. (She) will receive this service for 10 minutes, once every nine weeks in accordance with the school calendar.

...(The student) will receive speech/language services 20 minutes twice a week in a special education classroom in a regular education building.”

It is the district’s position that while the teacher and the classroom assignment for the student were changed as of October 24, 2016, the student’s educational **placement** was unchanged, and she continued to receive all of the special education and related services called for in her September 2016 IEP.

According to the district, the student was reassigned from one special education classroom (located in a regular education building) to another special education classroom (in the same regular education building) with a different supervising

teacher. Both the student's current teacher and her previous teacher are special educators.

The district states that the change in classroom assignment was made to better serve the student by reducing her frustration. In both classrooms, special education teachers design instruction for students and supervise the delivery of instruction by paraeducators. In both settings, the student has interacted with multiple staff members – including paraeducators. She has at no time been assigned solely to one paraeducator.

The current special education teacher for the student oversees instruction to students in three different classrooms. For four days beginning on October 24, 2016, instruction for the student was delivered in one of those classrooms. However, the district subsequently determined that the student's needs could better be addressed by moving her to another of those classrooms while reassigning other students to the classroom used by the student on October 24<sup>th</sup>. The student's current classroom offers more space for the facilitation of activities designed to address her sensory needs.

The district acknowledges that the student's new classroom – like many classrooms used by both regular and special students – is located on the interior of the building and has no windows. None of the building classrooms have cameras.

According to the district, the parent sent an email to the building principal expressing concerns regarding the classroom change for the student. An IEP Team meeting – attended by both the parent and her advocate – was held on November 10, 2016. The team discussed the classroom change, and the student's IEP was rewritten to include a Positive Behavioral Support Plan.

The change in the student's classroom assignment made by the district did not represent a change in her educational placement. The law did not require parental notice of the change, nor was the district required to obtain parental permission before making the change. The student has continuously received instruction in a special education classroom located in a regular education building as required by her September 2016 IEP. A violation of special education laws and regulations is not substantiated on this issue.

### **Additional Comments**

During the telephone call with the investigator on November 17, 2016, the parent indicated that while she is concerned about possible future educational changes for her daughter, she is satisfied with her current classroom assignment and with the plan the district has in place to address the student's needs.



### **Corrective Action**

Information gathered in the course of this investigation has failed to substantiate noncompliance with special education laws and regulations on issues presented in this complaint. Therefore, no corrective action is directed at this time.

### **Right to Appeal**

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Early Childhood, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

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Diana Durkin, Complaint Investigator

(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect. Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

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

(A) The issuance of an accreditation deficiency advisement;

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

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

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

**KANSAS STATE DEPARTMENT OF EDUCATION  
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES**

REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT # \_\_\_\_  
ON NOVEMBER 2, 2016

DATE OF REPORT: DECEMBER 2, 2016

This report is in response to a complaint filed with our office by \_\_\_\_\_ on behalf of her daughter, \_\_\_\_\_. In the remainder of this report, \_\_\_\_\_ will be referred to as “the student” while \_\_\_\_\_ will be referred to as “the mother.”

**Investigation of Complaint**

Nancy Thomas, Complaint Investigator, spoke with USD #\_\_\_\_ by telephone on November 15 and November 21, 2016. USD #\_\_\_\_ made the following staff persons available to be interviewed:

- \_\_\_\_\_, Superintendent
- \_\_\_\_\_, High School Principal
- \_\_\_\_\_, Director of Special Education
- \_\_\_\_\_, School Nurse
- \_\_\_\_\_, Transition Counselor
- \_\_\_\_\_, Physical Therapist
- \_\_\_\_\_, Physical Therapy Assistant
- \_\_\_\_\_, School Psychologist
- \_\_\_\_\_, Speech Language Pathologist
- \_\_\_\_\_, General Education Teacher
- \_\_\_\_\_, Special Education Teacher
- \_\_\_\_\_, Special Education Teacher

The Complaint Investigator spoke to the complainant by telephone on November 15, and November 17, 2016. The following person was interviewed:

- Mother

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

- Letter from Mr. \_\_\_\_\_ to the parent on September 23, 2016 regarding the denial of the transportation request for the student and stating the district's transportation policy
- Typed summary of Contact Information with the Mother
- Grade transcript for the 2016-17 school year
- Grade transcript for the 2015-16 school year
- Prior Written Notice (PWN) for Substantial Change of Placement and Request For Consent dated November 10, 2016
- Individual Education Program (IEP) dated November 10, 2016
- Typed Team Meeting Record dated November 10, 2016
- Letter dated December 7, 2015 from Dr. Scott Luhmann, Surgeon, and Janet Schlick, RN, Spine Care Coordinator, at Shriner's Hospital regarding restrictions following spinal surgery
- Physical Education/Work Excuse from Janet Schlick, RN, Spine Care Coordinator, at Shriner's Hospital dated May 6, 2016
- Nursing Notes dated October 5, 2016
- Notice of Meeting (NOM) dated October 14, 2016 for an IEP meeting on November 10, 2016
- Attendance Record for the 2015-16 school year
- Attendance Record for the 2016-17 school year
- Handwritten tardy log with school arrival times for the 2016-17 school year
- PWN for Substantial Change of Placement and Request for Consent dated March 11, 2016
- IEP dated March 11, 2016
- NOM dated March 1, 2016 for an IEP meeting on March 11, 2016
- Handwritten Team Meeting Record dated March 11, 2016

### **Background Information**

This investigation involves a fourteen year-old student who was enrolled in the eighth grade at \_\_\_\_\_ Community Junior High School in USD #\_\_\_ during the 2015-16 school year. The student is currently enrolled in the ninth grade at \_\_\_\_\_ Community Senior High School in USD #\_\_\_ for the 2016-17 school year.

Records and interviews indicate the student was initially evaluated and found eligible for early childhood special education and related services at age four. Subsequent reevaluations found the student eligible under the categorical disability of intellectual disability and the student has received special education and related services since that time according to the Mother. Records indicate

that the student participates in the Dynamic Learning Maps (DLM) assessment which is the statewide alternate assessment in Kansas measuring academic achievement for students with the most significant cognitive disabilities.

The student lives with her extended family within the city limits and the residence is approximately one mile from the school building. The mother reports the walk to school is through both residential and business areas along a sidewalk. The mother reports that the student is usually driven to school but has also walked to school in the past with either the mother or another person supervising the student.

The mother indicated she was unable to continue driving the student to and from school due to car trouble beginning in the spring of 2016 and this is when the student began to walk to school unsupervised. The mother indicated the student had walked to/from school successfully when she was supervised in the past. The mother indicated she had tried walking with the student to school; however, this was not successful because "If I try to walk with her we fight because she wants to stop and talk to people while I'm trying to rush her to school." The mother reported she has been unable to find anyone else willing to walk the student to school.

The mother expressed concerns related to the student's safety when walking to and from school and described multiple incidents of the student stopping to talk to strangers and going into local businesses along her route to/from school resulting in her being late getting to school and returning home. When the student is late returning home, the mother will frantically call the school to ascertain the departure time and then go search for the student herself. The mother also shared an incident when the unsupervised student stole a bicycle from a yard to get to school.

### **Issues**

The complainant raised three issues which were investigated.

**ISSUE ONE:** The USD #\_\_\_\_, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to appropriately respond to the parent's request for transportation as a related service during the past 12 months.

## Findings:

Federal regulations, at 34 C.F.R. 300.503, require that written notice must be given to parents a reasonable time before the responsible public agency refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student. This notice must include the following information:

- A. a description of the action proposed or refused by the agency;
- B. an explanation of why the agency proposes or refuses to take the action;
- C. a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposal or refusal;
- D. a statement that the parents of a child with a disability have procedural safeguards protection and the means by which a copy of the description of the procedural safeguards can be obtained;
- E. sources for parents to contact to obtain assistance in understanding their procedural safeguards;
- F. a description of other options that the IEP Team considered and the reasons why those options were rejected; and,
- G. a description of other factors that are relevant to the agency's proposal or refusal.

In the August 15, 2008 Letter to Lieberman, the Office of Special Education Programs (OSEP) provided the following guidance in regards to FAPE: *“Under 34 CFR §300.17(d), FAPE means, among other things, special education and related services that are provided in conformity with an IEP that meets the requirements of §§300.320 through 300.324. Therefore, a proposal to revise a child's IEP, which typically involves a change to the type, amount, or location of the special education and related services being provided to a child, would trigger notice under 34 CFR §300.503.”*

Federal regulations, at 34 C.F.R. 300.320, require that each public agency shall develop an individualized education program for each child with a disability that includes a statement of the special education and related services, and supplementary aids and services, to be provided to the child or on behalf of the child.

In this case, the mother reported she asked about the student riding the bus to and from school on multiple occasions because of the situation where another student who has a physical disability residing at the same residence as the student is provided bus transportation to and from school. These verbal requests

were reportedly made by the mother to the special education teachers in both 8<sup>th</sup> and 9<sup>th</sup> grade, the principal of the Junior / Senior High School, as well as the bus driver who stops at their residence. However, Ms. Loehoefener, Ms. \_\_\_\_\_, and Mr. \_\_\_\_\_ indicated they had no recollection of a specific parent request for transportation as a related service and believed the parent was only wanting bus transportation because of the car trouble. Mr. \_\_\_\_\_ confirmed that the mother had asked the bus driver about transportation for the student and reported that the bus driver had also informed the mother of the district's transportation policy.

The mother indicated she remembers talking about transportation as a related service during the two IEP team meetings held on March 11, 2016, and November 10, 2016. The Mother believes USD \_\_\_\_\_ denied her requests for transportation because the Student “. . . *physically can walk.*” The Mother believes “. . . *mentally she shouldn't have to. Because she is not safe.*” The Mother acknowledges she has never put her requests for bus transportation in writing.

At the March 11, 2016 IEP team meeting, the mother reports she was told the student did not require transportation as a related service because the district's transportation policy does not provide for transportation to students living in town unless the student has a physical disability and transportation is written into that student's IEP. The March 11, 2016 IEP documents the decision that special transportation is not needed for the Student on page 33 of 43. The IEP Team Meeting Notes do document a discussion regarding physical restrictions due to spinal surgery in December 2015 and notes the mother has a hard time getting her up in the mornings; however, there is no documentation of any discussions regarding transportation as the Team Meeting Notes only state “*Last couple of pages of IEP done.*” The mother was provided with a prior written notice (PWN) as a result of the IEP meeting proposing a substantial change of placement for services but not for refusing the mother's request for transportation as a related service.

The summary of Contact Information documents a phone call between Ms. \_\_\_\_\_ and the mother on September 20, 2016 where another verbal transportation request was made. Ms. \_\_\_\_\_ “*told her the district's policy regarding transportation within city limits (information that we had used in the past), but she would need to confirm that information with Mr. \_\_\_\_\_.* She mentioned possible setting up a meeting. I told her to let me know.”

The summary also documents that Mr. \_\_\_\_\_ sent a letter to the Mother on September 23, 2016 regarding the district's transportation policy which stated “A



*letter was requested regarding your child's (the Student) transportation denial. Your address is not within busing range. Our district only provides in-town transportation for students with a physical disability that is written into their IEP. This is currently not the case for your daughter."*

The IEP dated November 10, 2016 documents the parent concerns ". . . about the fact that she talks to anyone." The IEP also includes a handwritten note that states *"the aunt asked about transportation and wondered why the bus could pick up one kid & not the other. It was decided that the Student would not be riding the bus to school because she doesn't have a physical disability that would require that accommodation. When it is warmer in the spring, a transition plan was discussed to help her learn to walk to school independently."* This IEP notes the determination that special transportation is not needed. The IEP Team Meeting Notes from the November 10, 2016 meeting indicate the team discussed that the student had been late to school on five days when walking alone. The notes also state *"School bus transportation was discussed. District policy is to bus students outside of city limits. Exceptions were made for students with physical disabilities. Walking could be monitored by her interrelated teacher this spring as suggested by \_\_\_\_\_. . . . A walking route will be planned."* The mother was provided with a PWN as a result of the IEP meeting proposing a substantial change of placement for services but not for refusing the mother's request for transportation as a related service.

Documentation and interviews found that USD #\_\_\_ failed to appropriately respond to the parent's request for transportation as a related service on three separate occasions during the past 12 months.

Transportation as a related service was discussed at the March 11, 2016 IEP team meeting and the mother was told about the district's transportation policy to only provide in town transportation to students with physical disabilities who had this written in their IEP; however, USD #\_\_\_ did not provide the mother with a PWN refusing the request for bus transportation.

There is documentation that the mother made another verbal request on September 20, 2016 to Ms. \_\_\_\_ and was again told about the district's transportation policy and provided with a letter from Mr. \_\_\_\_\_ denying her request; however, this letter did not include all of the required components of a PWN.

Finally, the IEP Team Meeting held on November 10, 2016 includes written information documenting the discussion of transportation as a related service for

the student and a determination that special transportation is not required because the student does not have a physical disability. Again, USD #\_\_\_ did not provide the mother with a PWN refusing the request for bus transportation.

Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is substantiated.

**ISSUE TWO:** The USD #\_\_\_, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed provide a free appropriate public education (FAPE) to the student during the past 12 months, specifically by not providing transportation as a related service which resulted in the student being continually late to school thus denying the student access to her educational program as required by the individual education program (IEP).

#### Findings:

Every child with exceptionality is entitled to receive a free appropriate public education (FAPE) under Federal regulations, at 34 C.F.R. 300.17 and 34 C.F.R. 300.101. Parent rights are intended to ensure that children receive FAPE. 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. as described in Kansas regulations, at K.A.R. 91-40-1(z).

Federal regulations, at 34 C.F.R. 300.320, require that each public agency shall develop an individualized education program for each child with a disability that includes a statement of the special education and related services, and supplementary aids and services, to be provided to the child or on behalf of the child.

The Kansas Special Education Services Process Handbook in Chapter 5 – Special Education and Related Services states that “*Transportation is a related service when it is needed in order for the child to benefit from special education. Each situation is considered individually, and if for a particular child, transportation is*

*required, then the school must provide it or make other arrangements for the child to be transported. In addition to travel to and from school, transportation, as a related service, also includes travel between schools as well as travel in and around school buildings. Thus, the IEP team may need to also assess a child's ability to access school facilities. Like all related services, when an IEP team determines it is needed, transportation services will be included on the child's IEP.*

*If the IEP team determines that the parent will provide transportation that should be indicated on the IEP. For some children, special considerations for transportation may be necessary. For example, if a child uses a wheelchair, a bus with a lift may be needed. The IEP for a child with severe asthma who requires air conditioning may need to specify an air-conditioned bus. A child may need a paraeducator on the bus for his/her safety and well-being. In determining who should attend the IEP meeting, the IEP team may consider the need to invite the bus driver, if there are special transportation needs. Behavioral considerations could be an example. Certainly, if a driver was included in a behavioral intervention plan, s/he could be involved in the development of that plan.*

The findings of Issue One are incorporated herein by reference.

Documentation and interviews found that during the 2015-16 school year, the student was transported by car to the school by her family until April when the car broke down. Attendance records show the student was tardy to school on 24 occasions and had unexcused absences on five occasions during that school year. Of the tardies, five of these (or 21%) occurred in April and May; of the unexcused absences, four of these (or 80%) occurred in that same time frame. The school district has a policy that students may miss up to 10 days in the school year with parent excused absence. Unexcused absences will result in in-school suspension (ISS). School staff reports that the school did not discipline the student for her tardies and unexcused absences because “*she was dependent on the parents getting her there and the school did not feel it was fair to discipline her.*”

The March 11, 2016 IEP requires that the student receive 2,085 minutes per week of specialized instruction, 40 minutes per week of physical therapy, and 20 minutes per week of occupational therapy. The IEP describes the student as having a very short attention span with academic skills at the 2<sup>nd</sup>/3<sup>rd</sup> grade level. The student can be disruptive in the classroom when asked to do a non-preferred activity by refusing to do the activity, by getting up and leaving the classroom, or by throwing a temper tantrum. The IEP indicates the student is accompanied by special education staff in order to get to the appropriate classroom throughout the school day. The IEP includes a goal for the student to get to each class on

time. The student is eligible to take the alternate assessment for students with the most significant cognitive disabilities.

Ms. \_\_\_\_\_ reported the student did not miss any special education or related services when she was late to school during first hour during the 2015-16 school year when she walked to school. The student's transcript shows she received the following grades during the fourth quarter of the 2015-16 school year:

American History	C+
Computer Awareness	B+
English 8	B-
Exploratory Ag	A
JH Math 2	B-
JH Study Habits	B
PE 8	A
Science 8	C-

Documentation and interviews found that during the 2016-17 school year, the family car was still broken down so the student walked to school until mid-November. Attendance records show the student was tardy to school on five occasions and had unexcused absences on two occasions between August 17 and November 7, 2016. The student was assigned to four after school detentions as a result of these absences for 15 minutes each on September 22 and September 23, 2016 and for 30 minutes each on October 19 and October 20, 2016.

The November 10, 2016 IEP requires that the student receive 1,615 minutes per week of specialized instruction, 40 minutes per week of physical therapy, 30 minutes per week of occupational therapy, 5 minutes per week of psychological services, and 76 minutes per week of speech/language therapy. The IEP states the student will need adult assistance as an adult and recommends a referral to Developmental Services of Northwest Kansas. The IEP describes the student as having a very short attention span and being impulsive. Academic skills are rated a very low in comparison to same age peers. The student is described as often late to school. The IEP Team Meeting Notes reflect the student will continue to attend public school until the age of 21.

Ms. \_\_\_\_\_ reported the student did not miss any special education or related services during first hour when she was late to school while walking to

school during the 2016-17 school year. The student's transcript shows she received the following grades during the first quarter of the 2016-17 school year:

Creative Art	B
English 9	A
Health/PE	A
HS Math 1	A-
HS Science 1	B+
Life Skills	B
Nutrition and Wellness	B-
Study Habits	B

In the documentation and during the interview, school staff shared that the student did not require transportation as a related service because she was able to walk to school and there was no physical need for her to ride the bus. They reported that she independently walked to school in past years without incident or concerns. In addition, the student was known to have independently walked to and from the community pool which is located near the school, to and from the fairgrounds, as well as around town during non-school time without incident.

The allegation of a violation of special education laws and regulations on this issue is not substantiated. There is evidence to support that the student was late arriving to school due to transportation not being provided as a related service and that the student can be distracted during her walk to school. However, there is also evidence to support that the student has the capacity to walk independently to and from school, and has done so for a significant period of time. In addition, there is no evidence to support that the student missed any of the services as required by her IEP which negatively impacted her educational program as documented through her grades. This is not a determination that this student does not need transportation. That is not the role of the investigator. Rather, it is the conclusion of this investigator that the evidence in support of this student's need for transportation is not sufficient for this investigator to impose a requirement for transportation to be added to the student's IEP without action from the IEP team.

**ISSUE THREE:** The USD #\_\_\_, 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 students with disabilities during the past 12 months, specifically having a school district policy that only provides in-town transportation to students

with a physical disability that is written into their individual education program (IEP).

Findings:

Federal regulations, at 34 C.F.R. 300.320, require that each public agency shall develop an individualized education program for each child with a disability that includes a statement of the special education and related services, and supplementary aids and services, to be provided to the child or on behalf of the child.

State regulations, at K.A.R. 91-40-1(ccc) states “Related services” means developmental, corrective, and supportive services that are required to assist an exceptional child to benefit from special education. State regulations, at K.A.R. 91-40-1 (vvv), states “Transportation” means the following:

- (1) Travel to and from school and between schools;
- (2) travel in and around school buildings; and
- (3) specialized equipment, including special or adapted buses, lifts, and ramps, if required to provide special transportation for a child with a disability.”

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

Documentation shows that USD #\_\_\_ adopted the transportation policy for exceptional students from the Kansas Association of School Boards on October 8, 2015 and reinstated this policy for the new term on July 13, 2016.

Policy JQ titled “Exceptional Students” states “All programs for exceptional students shall be managed in accordance with the local plans for exceptional students, the policy and rules of the school board, and the rules and regulations of the state board of education.”

Policy ED titled “Student Transportation Management” states “Use of buses by the district shall conform to current state law. At times it may be expedient to pay mileage to parents who transport their child to a specified point to meet the bus, or to provide private transportation in lieu of providing bus service. Mileage payments to parents may be made only with board approval.

USD #\_\_\_ also provided a copy Policy JQA titled “Physically Disabled Students.” This policy states “Physically disabled students, including those temporarily disabled by illness, operation, or accident authenticated by a physician’s order, may be eligible for

alternative educational services or accommodations in their regular program which allow for meaningful participation in the program.”

Ms. \_\_\_\_\_ also provided the Transportation section from the Kansas Special Education Process Handbook, referred to in Issue Two of this report, to document the district’s transportation policy. She indicated that staff are aware that a physical disability was not the only reason a student might require transportation as a related service. She described a situation in the past where a student required transportation as a related service and this was provided.

Currently, Ms. \_\_\_\_\_ indicated there were 57 students with IEPs in grades preschool through 12<sup>th</sup> grade who live in town. Of those students, one is receiving special transportation from the school through a regular school bus stopping to pick up this student at his in town residence as an extra stop on the regular bus route.

Ms. \_\_\_\_\_ correctly stated that a physical disability is not the only reason a student might require transportation as a related service. There is nothing in the definition of the term "related service" that requires a physical disability. All that is required is that the service be needed in order for the child to benefit from special education. Thus, transportation would be needed if, without it, a child cannot get to school to benefit from special education.

The Circuit Court of Appeals for the 11th Circuit has said the IDEA mandated that only “special education” and not “related services” must correlate to the unique needs associated with a child’s disability. The court said a related service does not mean a service related to a disability. Rather, a related service is defined simply as a service a child with a disability needs to benefit from special education. In Donald B. v. Bd. Of Sch. Comm. Of Mobile County, Ala., 26 IDELR 414 (11th Cir. 1997), the court explained that a school may have to provide transportation to a child with a speech impairment, who is fully mobile, if, “in its absence, a disabled child ... would be denied a genuine opportunity for equitable participation in [a special education program].” This court said that to determine whether transportation is necessary, the court (or school) must consider five factors: (1) the age of the student; (2) the distance that must be traveled; (3) the nature of the area through which the child must pass; (4) the child’s access to private assistance in making the trip; and (5) the availability of other forms of public assistance in route, such as crossing guards or public transit. Safety was a primary concern for this court in each of the first three factors. Moreover, this case involved a child with a speech impairment who was fully mobile. If the child

in this case had an intellectual disability, as the student who is the subject of this complaint has, the court would likely have also looked at the capacity of the child to safely walk to school.

Documentation shows that USD #\_\_\_ has appropriate policies in place regarding the consideration and provision of transportation as a related service for students with IEPs. However, there is evidence that the procedures and practices of USD #\_\_\_ do not support the implementation of these policies.

Instead, the district has interpreted its policies regarding transportation for all students, and communicated the interpretation that transportation is not available for children with disabilities when the disability is not a physical disability, to the parent of the student who is the subject of this complaint, and to the student's IEP team. Interpreting its policies in this manner resulted in the IEP team to deny the parent's request for transportation because the student does not have a physical disability and without considering the individual and unique needs of this student for transportation.

Moreover, the evidence indicates that school administrators are communicating the interpretation, that transportation is not available for children with disabilities when the disability is not a physical disability, to other parents and IEP teams.

Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is substantiated not only to the student who is subject to this complaint, but also as a systemic violation regarding other children with disabilities.

### **Corrective Action**

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Violations have occurred in two areas related to prior written notice and transportation as a related service as noted below:

- a) Federal regulations, at 34 C.F.R. 300.503, require that written notice must be given to parents a reasonable time before the responsible public agency refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student. This notice must include the following information:
  - A. a description of the action proposed or refused by the agency;



- B. an explanation of why the agency proposes or refuses to take the action;
- C. a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposal or refusal;
- D. a statement that the parents of a child with a disability have procedural safeguards protection and the means by which a copy of the description of the procedural safeguards can be obtained;
- E. sources for parents to contact to obtain assistance in understanding their procedural safeguards;
- F. a description of other options that the IEP Team considered and the reasons why those options were rejected; and,
- G. a description of other factors that are relevant to the agency's proposal or refusal.

- b) Federal regulations, at 34 C.F.R. 300.320, and state regulations, at K.A.R. 91-40-1(ccc) and K.A.R 91-40-1(vvv) require that each public agency shall develop an individualized education program for each child with a disability that includes a statement of the special education and related services, and supplementary aids and services, to be provided to the child or on behalf of the child. To comply with this requirement, an IEP must be based on the unique needs of the child and not on administrative directives (See Adams v. State of Oregon, 31 IDELR 130 (9<sup>th</sup> Cir. 1999)).

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

1. Within 10 calendar days of the receipt of this report, submit a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will:
  - a) comply with 34 C.F.R. 300.503 by ensuring that appropriate prior written notice will be given to parents a reasonable time before the responsible public agency refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student. This notice must include the following information:
    - A. a description of the action proposed or refused by the agency;
    - B. an explanation of why the agency proposes or refuses to take the action;
    - C. a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposal or refusal;

D. a statement that the parents of a child with a disability have procedural safeguards protection and the means by which a copy of the description of the procedural safeguards can be obtained;

E. sources for parents to contact to obtain assistance in understanding their procedural safeguards;

F. a description of other options that the IEP Team considered and the reasons why those options were rejected; and,

G. a description of other factors that are relevant to the agency's proposal or refusal.

- b) Comply with 34 C.F.R. 300.320, K.A.R. 91-40-1(ccc) and K.A.R. 91-40-1(vvv) by ensuring that the public agency will develop an individualized education program for each child with a disability that includes a statement of the special education and related services, including transportation as a related service if needed, and supplementary aids and services, to be provided to the child or on behalf of the child that is based on the unique individual needs of the child and not administrative directives.
2. No later than February 1, 2016, the administrative staff at USD #\_\_\_ shall review and revise their procedures for considering transportation as a related service for students with disabilities to align with state and district policies, and to specify that transportation is available to any child with a disability, including children who do not have a physical disability, and that the determination of whether transportation will be included in an IEP is a decision of an IEP team and is based on the unique needs of the individual child. USD #\_\_\_ will document these updated procedures and provide a copy to Early Childhood, Special Education and Title Services at the KSDE.
3. No later than February 15, 2016, school staff who were interviewed during this investigation shall be trained on the policies and new procedures, requiring an individualized analysis of the unique needs of each child, regardless of the category of disability, with regard to transportation as a related service. In addition, they shall be trained on when and how to provide prior written notice to parents. This training may be provided by school district personnel approved in advance by the KSDE. USD #\_\_\_ will document who provided the training, the content of the training, and who attended the training and send that documentation to Early Childhood, Special Education and Title Services at the KSDE.

4. No later than twenty school days from the date of this report, the IEP team for the student who is the subject of this complaint shall be reconvened to appropriately consider whether transportation as a related service is needed for this student based on the unique needs of this student. The student shall not be denied transportation as a related service solely because the student does not have a physical disability. USD #\_\_\_ shall provide the parent with appropriate prior written notice of the decision regarding transportation as a related service. USD #\_\_\_ will provide copies of the documents resulting from this IEP team meeting to Early Childhood, Special Education and Title Services at the KSDE.
5. No later than February 15, 2017, the USD #\_\_\_ shall send written notice of the district's revised procedures regarding transportation, that require an individualized analysis of the unique needs of the child, regardless of the category of disability, to the parents of all children with IEPs who:
  - a) do not have transportation as a related service in their IEP;
  - b) who attend schools within the district, including preschools; and
  - c) who live within the city limits of Oberlin, Kansas

No later than February 22, 2017, USD #\_\_\_ shall send written documentation of this corrective action, including a copy of the letter sent to parents, to Early Childhood, Special Education and Title Services at the KSDE.

6. Further, USD # 259 shall, within 14 calendar days of receipt of this report, submit to Early Childhood, Special Education and Title Services one of the following:
  - a) a statement verifying acceptance of the corrective action or actions specified in this report;
  - b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
  - c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (f).

### **Right to Appeal**

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (c), which is attached to this report.

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Nancy Thomas  
Complaint Investigator

(f) Appeals.

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

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

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

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

**KANSAS STATE DEPARTMENT OF EDUCATION  
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES**

REPORT OF COMPLAINT  
FILED AGAINST  
DODGE CITY UNIFIED SCHOOL DISTRICT # \_\_\_\_  
ON FEBRUARY 2, 2017

DATE OF REPORT: MARCH 3, 2017

This report is in response to a complaint filed with our office by \_\_\_\_ and \_\_\_\_ on behalf of their son, \_\_\_\_\_. \_\_\_\_\_ will be referred to as "the student" in the remainder of this report. Mr. and Mrs. \_\_\_\_\_ will be referred to as "the parents."

**Investigation of Complaint**

Diana Durkin, Complaint Investigator, spoke by telephone with \_\_\_\_\_, Director of the Southwest Kansas Area Cooperative, on February 16 and 17, 2017. On February 17, 2017, the investigator spoke with \_\_\_\_\_, Assistant Director of the Cooperative. The investigator also spoke by telephone with the student's mother on February 17, 2017.

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

- IEP for this student dated April 26, 2013
- IEP Amendment Between Annual IEP Meetings dated June 10, 2013
- Notice of Meeting dated September 20, 2013
- Draft IEP for the student dated October 30, 2013
- Team Summary dated October 30, 2013
- Email dated November 5, 2013 from the Assistant Director of the Cooperative to the parents
- Email dated November 19, 2013 from the Assistant Director of the Cooperative to the parents suggesting mediation
- Email from the Assistant Director of the Cooperative to the parents dated March 24, 2014 regarding an expiring IEP and a request for reevaluation
- Email from the Assistant Director of the Cooperative to the student's mother dated April 16, 2014 addressing the issue of the student's IEP
- Email from the Assistant Director of the Cooperative to the student's mother dated September 28, 2015 indicating the district was ready, willing, and able to write a new IEP
- Email dated May 27, 2016 from the Assistant Director of the Cooperative to the student's mother suggesting that an IEP Team meeting be scheduled

- Assistive Technology/Orientation & Mobility Evaluation conducted by the Kansas State School for the Blind dated September 22-23, 2016
- Email correspondence between the Assistant Director and the student's mother covering the period of March 14, 2016 and January 5, 2017 regarding (among other things) the provision of braille materials
- Notice of Meeting dated November 10, 2016
- IEP for this student dated November 18, 2016
- Prior Written Notice for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated November 18, 2016
- KSSB (Kansas State School for the Blind) Action Plan dated August 9, 2016 and last updated on February 16, 2017
- Email from the parent dated February 19, 2017 summarizing 2015-16 school year issues related to the complaint
- Email dated February 13, 2017 from the Assistant Director of the Cooperative to the student's mother regarding the provision of compensatory services

### **Background Information**

This investigation involves a 12-year-old boy who has been diagnosed with a rare genetic disorder – Malignant Infantile Osteoporosis – which causes abnormal hardening of bones which constrict and put pressure on nerve endings resulting in a variety of issues including vision and hearing loss.

According to a report of a vision assessment conducted on September 19, 2016 by St. Jude's Research Hospital, the student's right eye has a retinal chorioretinal scar, and his left eye has a hypopigmented lesion. Both eyes show optic nerve damage. His uncorrected distance vision was reported as 20/400; uncorrected near vision was reported as 20/400 for each eye. Bilateral acuity with correction was reported as 20/200.

A hearing test completed at St. Jude's in 2009 indicated the student has normal hearing in his right ear and a moderate to severe loss in his left ear. The student uses a bilateral FM system and Cros system for his unilateral loss.

The student has a history of eating problems and has been seen for extended inpatient stays at the Kriger Institute in Baltimore, Maryland. According to the student's mother, these eating issues had stabilized for a time but have recently increased. A return to Maryland for assessment is anticipated. It was recently determined that the student is lactose intolerant.

The student first received special education services from the Southwest Kansas Area Cooperative at age three while enrolled in a private preschool program. During his kindergarten year, special education services were delivered "by special arrangement" and the student was home-schooled following in-patient treatment for eating problems.

The student was enrolled in a private school setting at the beginning of his first-grade year but by report of the parent he was “kicked out of” that school in December following a significant incident. After that incident, the student participated in an evaluation at the Kansas State School for the Blind (KSSB). Staff from Project Stay were also brought in to conduct an evaluation of the student. The district subsequently proposed an IEP for services in the public school setting, but the parent declined those services. The mother reports that she and her sister home-schooled the student for the remainder of the 2011-12 school year and for the 2012-13 school year.

During the student’s third grade year (2013-14) he was again home schooled but began attending a private parochial school for an hour a day. His level of participation in the private school increased to three hours a day by the end of the school year.

During the 2014-15 school year (4<sup>th</sup> grade), the student started his school day at the parochial school, leaving before lunch to return home. The parochial school/homeschool split continued for the student’s 5<sup>th</sup> grade year. He remained at the parochial school through lunch each day, ultimately spending about two thirds of the day at the school. Since the start of the 2016-17 school year (6<sup>th</sup> grade), the student has been attending a full day of classes at the parochial school.

According to the student’s mother, the student continues to demonstrate social/emotional concerns which she believes are exacerbated by his perfectionism.

### **IEPs**

On April 26, 2013, at the end of the student’s second grade year, the district convened an IEP Team meeting and developed an IEP for this student with a proposed implementation date of August 21, 2013. That IEP was then amended on June 10, 2013 to add consultative services for Assistive Technology.

On October 30, 2013, another IEP Team meeting was held, and the district proposed a new IEP. The parents did not agree with the services proposed by the district nor with other proposed changes. In email correspondence with the district on October 11, 2013, parents expressed concerns regarding the individual who would be providing TVI services to the student and expressed interest in exploring other alternatives to meet the student’s needs. In an email response on November 5, 2013, the Assistant Director of the Cooperative expressed willingness to discuss alternative approaches. In November of 2013 the district suggested mediation to help achieve consensus regarding revisions to the student’s IEP. The mediation process moved forward over the next few months, but the parties could not come to agreement.



According to the Assistant Director for the Cooperative, he contacted the parents in March of 2014 to schedule a meeting for the purpose of obtaining their signature on a prior written notice form addressing changes proposed by the district in the October 2013 meeting. The Assistant Director reports that at that same time he suggested that a three-year reevaluation of the student be completed. According to the Assistant Director, no meeting was held, and no reevaluation was conducted.

The Assistant Director states that he again contacted the parents in September of 2015 regarding the scheduling of an IEP Team meeting, but no meeting was ever scheduled or conducted. District services to the student continued to be guided by the student's April 2013 IEP and the subsequent June 10, 2013 amendment.

On September 22 and 23, 2016, the Kansas State School for the Blind conducted an "Assistive Technology/Orientation & Mobility Evaluation" of the student. A "Social/Emotional Evaluation" was conducted by a School Psychologist on October 11, 2016.

An IEP Team meeting was held on November 18, 2016. At that time, the district proposed a new IEP with changes in services. The district provided the parents with prior written notice of proposed changes at the November 18<sup>th</sup> meeting, but the parents did not give written consent for those changes until January 5, 2017. Since January 5<sup>th</sup>, services have been provided as outlined in the student's November 18, 2016 IEP.

### **Issues**

In their complaint, the parents raise two issues:

**Issue One: The district failed to provide braille materials called for in the student's IEP.**

Federal regulations, at 34 C.F.R. 300.101, require public schools to make a free appropriate public education (FAPE) available to children with disabilities and, under 34 C.F.R. 300.17, defines FAPE in part as special education and related services provided in conformity with an IEP.

In order to assure that the IEP Team addresses all of the special education and related service needs of the child when developing his/her IEP, regulations specify several factors that the IEP Team must consider in the development of the IEP. When developing an IEP for a child who is blind or visually impaired, the IEP team must consider instruction in braille (K.S.A. 72-987(d)(6)). This statute also says the use of braille should be provided unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's

future needs for instruction in braille or the use of braille), that instruction in braille or the use of braille is not appropriate for the child. If braille is to be taught as a method of accessing printed material, it is to be indicated in the IEP.

According to the district, it was first decided when the student was in preschool during the 2008-09 school year that the student should learn to read braille, and braille readiness skills were introduced. A paraeducator for the district began to be trained in braille and provided the limited amount of brailled materials needed by the student.

When the parents began to home school the student at the first-grade level, he no longer had an IEP that was in effect. In a telephone conversation with the investigator, the student's mother stated that she and her sister brailled all of the instructional materials needed by the student at that time.

With a plan in place to have the student begin the process of entering a parochial school classroom during the 2013-14 school year, the district convened an IEP Team meeting and developed the student's April 10, 2013 IEP. That IEP contained the following statement:

“While (the student) obtains information about his environment primarily through his visual pathway, his preferred print size is too large for efficient use of print.”

The April 2013 IEP notes that parents believe that “braille should be his academic mode” and contains the following two goals:

“Goal 1: In 3 weeks at KSSB, (the student will improve his braille skills as measured by the KSSB summer report.

Goal 2: For the duration of this IEP (the student) will be able to appropriately use the CCTV, BrailleNote, and braille writer to access the general curriculum 90% of the time according to the checklist that will be placed in his file.”

The “Assistive Technology Plan” section of the April 2013 IEP states, “Due to (the student's) visual needs, he will have access to the following assistive technology devices: CCTV, BrailleNote, and braille writer. Assistive technology will be provided in the general education classroom.”

In the “Special Considerations” section, the April 2013 IEP states that “parents only want technology services from SKACD at this time. They will provide other services (the student) needs privately.”

When the district proposed a new IEP in October of 2013, that draft noted under “Program Accommodations and Modifications” that the student would be

provided with “printed materials in braille format.” The “Assistive Technology Plan” in that draft IEP stated that “educational materials (e.g. textbooks, handouts, library books, etc.) in a braille format” would be provided. However, as noted above in the IEP section of this report, despite mediation efforts the revision to the student’s IEP was not completed, and the April 2013 IEP (and June 2013 Amendment) for the student remained in effect.

According to the student’s mother, she and her sister continued to provide braille materials for the student and were able to provide for his braille needs through his fourth-grade year. As the student entered 5<sup>th</sup> grade and began attending the parochial school for a greater portion of his school day, the student’s mother reports that the braille workload became increasingly challenging. She states that by mid-year she was no longer able to keep up.

The district began purchasing some braille materials and having other materials brailled through contract services.

Copies of district-provided email correspondence between the Assistant Director of the Cooperative and the student’s mother over the period of early March 2016 through January 5, 2017 show that the district did provide the student with some braille materials. However, the student’s April 2013 IEP was never amended to reflect the provision of these materials.

The parents contend that during the student’s fifth grade year braille chapters for Science and Social Studies texts were sometimes not provided at all or were not made available in a timely manner. No supplemental materials for these courses were ever made available in braille. None of the ELA (English/Language Arts) series and tests were provided in braille.

According to the parents, a Vocabulary Workshop Book was not made available in braille during the 2015-16 school year although the district was notified in April of 2015 that it would be needed. The parents state that after the start of the student’s fifth grade year they were notified by the district that the textbook would not be provided in braille and the student would need to access it on his Notetaker. The parents report that their independent attempts to get the text on Notetaker were unsuccessful as were attempts made in conjunction with the principal, classroom teacher, and the district’s TVI (Teacher of the Visually Impaired). According to the parents, they were told by the TVI specialist that they could “look up how to do it in the manual.” The parents were able to locate what they believed to be an “unofficial” version of the text that the student used for the remainder of the year.

The parents state that the district was made aware of some of the materials that would be needed for the student’s sixth grade classes as early as March 23, 2016. However, according to the parents, the following braille materials have been unavailable to the student during the 2016-17 school year:

- History class: No braille materials were provided for the first four to six weeks and none were provided between mid-November and January 30, 2017.
- Math Skills class: No supplemental materials (worksheets and/or tests) have been made available to the student at any point during the 2016-17 school year.
- Science class: At the start of the year, only the first four chapters of the 21-chapter course textbook were made available to the student in braille. The teacher did not cover the textbook in a sequential fashion and the student did not have access to braille versions of the chapters that were being taught.

The parents assert that there has never appeared to be any clear protocol established under which the student's classroom teacher could request that materials be braille, no direction as to how the teacher was to get materials to the district for braille, or nor any guidelines regarding timelines for submission of materials.

The parent states that staff members of the Cooperative have reported to her that they have been frustrated with their own lack of success in acquiring the braille materials they have requested for the student.

The district convened an IEP Team meeting on November 19, 2016 and developed a new IEP for the student. In addition to proposed changes to the direct special education services for the student, the November IEP contained other changes. The "Supplementary Aids and Services" section of the student's November 2016 IEP was revised to contain the following statement:

"(The student) will be provided low vision technology **and braille materials** (emphasis added) throughout the school day in the general education setting."

Under "Program Accommodations and Modifications," the November 2016 IEP states that "written materials will be transcribed to braille" on a daily basis in "all areas."

On January 5, 2017, the parents provided their written consent for the district's proposed changes to the IEP.

According to the Director of the Cooperative, textbook orders placed prior to the start of the 2016-17 school year were not fulfilled as anticipated. Further, the turnaround time for the Braille of tests and worksheet materials has been too long to ensure that the student has had them when needed. The district stipulates that it has not been able to in a timely manner provide the student with the braille materials called for in the IEP proposed on November 19, 2016 and consented to by the parents on January 5, 2017.

It is clear to the investigator that both the parents and the district agree that the provision of braille materials for this student was inconsistent during his fifth-grade year, and the situation did not improve during his sixth-grade year. However, the student's April 2013 IEP (including the June 2013 Amendment) did not call for the district to provide braille materials. While the district proposed a draft IEP in October of 2013 that did address the provision braille materials, that proposed IEP was never agreed to by the parents. It was not until the parents gave their written consent for proposed changes to the student's IEP on January 5, 2017 that the district was compelled, or even permitted, to provide braille materials.

Because since January 5, 2017 the district has failed to consistently provide this student with braille materials as specified in his November 2016 IEP, a violation of special education laws and regulations is substantiated on this issue.

**Issue Two: During the first quarter of the 2016-17 school year, the district failed to provide the student with access to a CCTV (closed caption television) as required by his IEP.**

As stated above under Issue One, federal regulations, at 34 C.F.R. 300.101, require public schools to make FAPE available to children with disabilities and, under 34 C.F.R. 300.17, defines FAPE in part as special education and related services provided in conformity with an IEP.

Each IEP for a child with an exceptionality must include a statement of – among other things – “the special education and related serviced and supplementary aids...to be provided to the child...to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum...” (K.S.A. 72-987(c)(4)).

The “Assistive Technology Plan” section of the April 2013 IEP states, “Due to (the student’s) visual needs, he will have access to the following assistive technology devices: **CCTV** (emphasis added), BrailleNote, and braille writer. Assistive technology will be provided in the general education classroom.”

The “Program Accommodations and Modifications” section of the student’s November 2016 IEP states that “low vision technology will be made available” daily in all areas. The “Assistive Technology Plan” section of the November 2016 contains the following statement:

“Due to (the student’s) visual needs, he will have access to the following assistive technology devices: **CCTV** (emphasis added), BrailleNote, and braille writer.”

According to the parents, a CCTV has been in place in the student’s parochial school math classroom. However, from the beginning of the 2016-17 school

year, the CCTV did not work properly. A part was needed for repair, but that part did not arrive until after the end of the first quarter of the 2016-17 school year. The parents report that the student had to use other strategies to access classroom materials and became very frustrated and stressed.

The district stipulates that while the CCTV is now working, it was inoperable for an extended period. According to the Assistant Director for the Cooperative, he first received email notification about the condition of the CCTV on August 19, 2016. The district agrees that it did not obtain a part needed to repair the machine in a timely manner and concedes that the student did not have access to a working CCTV during the first quarter of the 2016-17 school year.

Because the student did not for the first quarter of the 2016-17 school year have access to the CCTV called for in his April 2013 IEP, a violation of special education laws and regulations is substantiated on this issue.

### **Proposed Resolution**

Parents have proposed a one-school-year compensatory placement for the student at the Kansas State School for the Blind (KSSB) as a method of resolving the concerns outlined in their complaint.

On February 13, 2017, the Assistant Director of the Cooperative sent an email to the student's mother stating:

"We agree that despite our intentions and the attempts to handle these situations in a timely manner, the CCTV needed repaired (sic) and it took some time to get it repaired, and the brailled materials have not arrived in a timely manner. We also agree to the one year compensatory service at the Kansas School for the Blind contingent on them accepting him as a student. Please let me know when you would like to have an IEP meeting to resolve this situation."

On February 16, 2017, the district conducted a meeting with the parents and KSSB staff to discuss placement of the student at KSSB. Under a "KSSB Action Plan," the student would

- attend KSSB full-time for the 2017-18 school year.
- An IEP to address services at KSSB would be developed in May of 2017.
- KSSB would complete an "assessment of areas of concern" before October 1, 2017.
- Prior to August 14, 2017, a determination would be made by parents and KSSB staff as to if/when the student would stay in the dorm.
- The district would be responsible for paying parents to transport the student to and from Dodge City.

- Preparation for a return to the district would be planned during the second semester of the 2017-18 school year.

According to the Assistant Director of the Cooperative and the student's mother, the district has indicated that it would support an immediate transfer of the student to KSSB and continued placement of the student at KSSB through the end of the 2017-18 school year.

At the time of the writing of this report, no decision had been made by the parents regarding the district's proposal.

### **Corrective Action**

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations. A violation has occurred with regard to 34 C.F.R. 300.101, which requires public schools to make FAPE available to children with disabilities and, under 34 C.F.R. 300.17, which defines FAPE in part as special education and related services provided in conformity with an IEP. In this case, the district failed to provide the CCTV called for in the student's April 2013 IEP and the braille materials called for in his November 2016 IEP.

Therefore, the USD #443 is directed to take the following actions:

Obtain written parent consent for, and implement, the KSSB Action Plan in the proposed resolution described in the preceding section of this report, titled "Proposed Resolution," and inform Early Childhood, Special Education and Title Services when the student is in attendance at KSSB. If the parent does not consent to the proposed resolution within 10 calendar days of the receipt of this report, USD #443 shall not be bound by the proposal, and instead shall take the following actions:

- 1) Submit, within 20 days of the receipt of this report, a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will comply with 34 C.F.R. 300.101 and 34 C.F.R. 300.17 by
  - a. ensuring that the student has access to a working CCTV, and
  - b. providing the student with the braille materials required for his classroom instruction.
- 2) Submit to Early Childhood, Special Education and Title Services within 10 school days of the receipt of this report a plan to ensure that braille materials are received by the student in a timely manner. That plan should include

- a. a list of multiple resources/strategies available to the district to secure braille services, and
  - b. specific procedures outlining steps to be followed by school staff to obtain braille materials including establishment of timelines for submission of requests for various types of materials for braille,
- 3) Within 10 school days of the receipt of this report, schedule a meeting with these parents to finalize a plan for the provision of compensatory services for this student to address the district's failure to provide (1) a working CCTV for the first quarter of the 2016-17 school year and (2) any braille materials required by this student since January 5, 2017.
  - 4) Within 10 calendar days of the meeting specified in item 3 above, submit a copy of this plan to Early Childhood, Special Education and Title Services.
  - 5) Provide Early Childhood, Special Education and Title Services with written notice when all portions of the compensatory services plan have been completed.

Further, USD #443 shall, within 10 calendar days of the date of this report, submit to Early Childhood, Special Education and Title Services one of the following:

- a) A statement verifying acceptance of the corrective action or actions specified in this report;
- b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
- c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (c).

### **Right to Appeal**

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Early Childhood, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

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Diana Durkin, Complaint Investigator



(f) Appeals.

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

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

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall

initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

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

**KANSAS STATE DEPARTMENT OF EDUCATION  
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES**

REPORT OF COMPLAINT  
FILED AGAINST

\_\_\_\_\_ SCHOOL DISTRICT # \_\_\_\_\_  
ON FEBRUARY 24, 2017

DATE OF REPORT: MARCH 19, 2017

This report is in response to a complaint filed with our office by \_\_\_\_\_ on behalf of his son, \_\_\_\_\_. \_\_\_\_\_ will be referred to as “the student” in the remainder of this report. Mr. \_\_\_\_\_ will be referred to as “the parent.”

**Investigation of Complaint**

Diana Durkin, Complaint Investigator, spoke by telephone with \_\_\_\_\_, Director of Special Education for USD #512, on March 6, 2017. The investigator also spoke by telephone with the parent on March 8 and 9, 2017.

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

- Email dated December 9, 2016 from the school psychologist to the parent
- Emails dated December 15, 2016 from team leader to parent
- Prior Written Notice of Evaluation and Request for Consent dated January 5, 2017 (amended on February 27, 2017)
- Email dated January 5, 2017 from Behavior Specialist to private school principal and parent
- Emails dated January 5, 2017 between Behavior Specialist and parent
- Emails between January 5 and 20, 2017 between the parent and Behavior Specialist
- Email dated January 12, 2017 from the team leader to the parent
- Emails dated January 20, 2017 from the team leader to the parent
- Email dated January 20, 2017 between the Behavior Specialist and
- the parent
- Email dated January 20, 2017 from the parent to the team leader
- Email dated January 24, 2017 from team leader to parent
- Emails dated January 24, 2017 between the parent and Behavior Specialist
- Emails dated January 24, 2017 between parent and team leader
- Emails dated January 25, 2017 between parent and team leader
- Emails dated January 25, 2017 between parent and Behavior Specialist
- Email dated January 27, 2017 from team leader to parent

- Email dated January 27, 2017 from parent to team leader and Behavior Specialist
- Email dated January 27, 2017 from the Behavior Specialist to the parent
- Email dated January 27, 2017 from the parent to the team leader and Behavior Specialist
- Email dated January 27, 2017 from the parent to the team leader
- Meeting Agenda/Minutes dated January 27, 2017
- Email dated January 31, 2017 from Behavior Specialist to private school principal
- Behavior Support Plan dated February 2017
- Email dated February 3, 2017 from the parent to the team leader and Director
- Email dated February 3, 2017 from team leader to parent
- Emails dated February 6 - 9, 2017 between Behavior Specialist, parent, and private school principal
- Meeting Agenda/Minutes dated February 10, 2017
- Emails dated February 13, 2017 from Behavior Specialist to private school principal
- Emails dated February 13, 2017 from private school staff to Behavior Specialist
- Email dated February 15, 2017 from the team leader to the parent
- Email dated February 17, 2017 from parent containing Meeting Agenda/Minutes developed by the parent
- Email dated February 17, 2017 from the parent to the team leader and Director of Special Education
- Second email dated February 17, 2017 from the parent to the team leader and Director of Special Education
- Email dated February 21, 2017 from Behavior Specialist to private school staff
- Emails dated February 23, 2017 between parents, private school staff and Behavior Specialist
- Emails dated February 23, 2017 between Behavior Specialist and private school staff
- Summary of February 27, 2017 record review meeting
- Emails dated March 3- 9 between parent and team leader
- Emails dated March 7 - 9, 2017 between parents and team leader and private school principal
- Email dated March 7, 2017 from Behavior Specialist and private school staff
- Email dated March 8, 2017 from the principal of the private school to the parent and district behavior specialist
- Samples of ABA Data Collection forms (blank)
- Samples of GEI Summary forms (blank)
- Sample Prize List
- Student Reinforcement Survey
- Online calendar for the district

## **Background Information**

This investigation involves an 11-year-old boy who has since preschool attended a small private parochial school within the \_\_\_\_\_ school district. The student is currently in the 5<sup>th</sup> grade.

According to the parent, the student had for some time demonstrated needs that indicated he could benefit from support under an IEP. Prior to the student's advancement to 5<sup>th</sup> grade, the school's flexibility in addressing those needs had – in the opinion of the parent – allowed the student to succeed. However, with the change to a middle-school block schedule and with an increased homework load, the parent felt that the student might be evidencing needs greater than the school could adequately address.

The parent reports that during the first semester of the 2016-17 school year he approached the principal of the private school to ask how to secure an evaluation of the student. In December of 2016, after learning that the parochial school was located within the attendance boundaries of \_\_\_\_\_ Elementary School, the parent contacted \_\_\_\_\_ to request that his son be evaluated.

The School Psychologist assigned to \_\_\_\_\_ (who was later designated as the team leader for the evaluation) contacted the parent on December 9, 2016. She explained the procedures established by the district which required that the student be enrolled at \_\_\_\_\_ in order for the evaluation to move ahead. The parent completed enrollment forms and returned them on December 12, 2016. A team meeting was scheduled for January 5, 2017.

## **Issues**

In his complaint, the parent raises the following issue:

**The district has refused to provide specific information which the parent has requested regarding the special education evaluation of the student.**

## **Applicable Regulations**

Referrals for initial evaluation may come from a variety of sources including a student's parents. Regardless of whatever screening and general education intervention processes are routinely used in district schools, a parent may request an evaluation at any time.

After the district receives the referral for an initial evaluation, the district designates specific staff members to conduct the evaluation. The district must provide the parents with prior written notice regarding the evaluation. The purpose of providing notice to the parents is so they understand what action the public agency is proposing (in this case, to conduct an initial evaluation) and the

basis used for determining the action is necessary. There are standard components of content the notice must contain. The Prior Written Notice must include:

- 1) A description of the action proposed by the agency,
- 2) An explanation of why the agency proposes the action,
- 3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed action,
- 4) A statement that the parents have protection under the procedural safeguards and how a copy of the procedural safeguards can be obtained,
- 5) Sources for parents to contact to obtain assistance in understanding their procedural safeguards, and
- 6) A description of other options considered and the reasons why those options were rejected; and,
- 7) A description of other factors that is relevant to the agency's proposal.  
(K.S.A. 72-990, 34 C.F.R. 300.503(b))

Further, the district must provide Prior Written Notice to the parents that describes any assessments or other measures the evaluation team will use to produce the data needed to meet the requirements of eligibility determination. (K.A.R. 91-40-8(c); 34 C.F.R. 300.305(c)).

Notice to the parents must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

The written consent of the parent must be obtained before the district can conduct the initial evaluation (34 C.F.R. 300.300(a)).

There is no specified timeline for beginning and/or proceeding with the initial evaluation itself, but the evaluation should be started within a reasonable time after the written consent of the parent is obtained.

In Kansas, the initial evaluation process must be completed within a specified timeline of 60 school-days (consistent with federal regulations at 34 C.F.R. 300.301(c)). The timeline for conducting the initial evaluation starts upon receipt of written parental consent to conduct the evaluation, and ends with the implementation of an IEP if the child is found eligible for special education services. If through the initial evaluation the student is **not** found eligible for special education services, the 60-day timeline ends upon completion of the evaluation report and eligibility meeting (K.A.R. 91-40-8(f)).

Congress has mandated that schools should afford parents the opportunity to participate in any decision-making team meeting conducted by the district regarding identification, evaluation, placement, or the provision of a free appropriate public education (FAPE) to the student (34 C.F.R. 300.501(b)(c)).

The term “meeting” in this regulation does not include “preparatory activities” in which the district engages in order to develop a proposal or a response to a parent proposal that will subsequently be discussed in a later meeting. This applies to meetings regarding evaluation and eligibility. The parent has a right to participate in the meeting where such decisions will be reached. The regulations do not require districts to allow parents to be directly involved in conducting evaluations. Specifically, the regulations regarding evaluation state that a parent has a right to be involved in (a) the review of existing evaluation data and the determination of what additional data are needed to determine eligibility (34 C.F.R. 300.305(a)), and (b) the determination of eligibility (34 C.F.R. 300.306). There is nothing in these regulations that provides the parents with a right to be involved in or to be informed of every activity that is being performed in an evaluation.

In Letter to Johnson, 56 IDLER 51 (OSEP 2010), OSEP (Office of Special Education Programs) commented on the amount of information a district needed to provide a parent in order to obtain informed consent. OSEP said,

“In obtaining parent consent under the IDEA (Individuals with Disabilities Education Act), public agencies (such as school districts) are required to provide parents with all information relevant to the activity, so that the parent can signify in writing that he or she understands that the public agency is asking their permission to conduct an initial evaluation of their child, to initially provide special education and related services to their child, or to conduct any reevaluation of their child. For example, in seeking parental consent for the initial provision of special education and related services, the public agency is seeking the parent's consent to the provision of special education and related services generally. The public agency is not asking the parent to signify that he or she understands the precise nature of all of the services or activities that would be included in an individualized education program (IEP) if the public agency were to develop an IEP for their child.”

FERPA (The Family Educational Rights and Privacy Act of 1974 – amended in 2009) and federal regulations at 34 C.F.R. 300-612-300.624 allow parents to inspect and review all education records of their children. An “educational record” is defined as any record that is directly related to a student and is maintained by an educational agency that receives Federal funds. The school must comply with a request to inspect education records without unnecessary delay and within a period of no longer than 45 days after the parents request to review the records.

In Letter to Anonymous, 15 FAB 14 (FPCO 2111), the Family Policy Compliance Office (FPCO), which oversees FERPA, stated that a district is not required to create educational records or to provide information in response to a parent request if those records or that information is not maintained by the district.

Rather, the district is required to comply with each individual request by a parent for access to a tangible education record that is maintained by the district at the time of the request.

In short, school districts should respond to reasonable requests for information from parents. And, districts are required to provide parents with access to the education records of their children and to reasonable requests for explanations and interpretations of the information in those records (34 C.F.R. 300.613). Districts are also required to ensure parents have an opportunity to participate in any meeting regarding identification, evaluation, placement or FAPE (which does not include preparatory activities). However, there is no requirement in law that requires a school district to respond to every request for information that a parent makes, particularly when the information is information that is not maintained by the district in tangible education records.

### **Specifics of the Case**

On December 15, 2016, the team leader sent an email to the parent and private school responding to email questions from the parent regarding the date, time, and location of the team meeting scheduled for January 5, 2017. She listed meeting participants and their roles in the meeting and stated that the meeting should last approximately 30 minutes.

The team leader outlined the purpose of the January 5<sup>th</sup> meeting as follows:

“I hope to use the time to get to know the student through his parents and the team that works with him often, discuss what the school has already put into place, problem solve as a team any other options for the general education team, and then discuss the next step and/or the plan moving forward.”

In an attachment to her December 15<sup>th</sup> email, the team leader enclosed GEI (General Education Intervention) paperwork to be completed by private school staff.

The team meeting was held as scheduled on January 5<sup>th</sup>. In attendance were the following:

- the School Psychologist for \_\_\_\_\_ Elementary School
- district Behavior Specialist
- the Principal from the private school
- the Principal from \_\_\_\_\_ Elementary School
- private school classroom teachers

At the meeting, the district provided the parent with prior written notice of its proposal to conduct an evaluation. According to the notice form, “the evaluation



will review existing evaluation data, including information (the parent wishes) to provide, information related to enabling your child to be involved in and progress in the general curriculum, current classroom-based assessments, observations, and/or teacher and other staff observations.”

The form reflects that assessments would be conducted in two areas and provided the following descriptions:

- “Social/Emotional Status – May include assessment of social/emotional/behavior development relating to learning, interpersonal relations and self; and/or Functional Behavior Assessment.
- Work habits – May include classroom observation, assessment of work samples, interest inventories or aptitude.”

The parent gave his written consent for the district to conduct the evaluation on January 5, 2017 – starting the 60-school day timeline for the evaluation.

At the meeting, the parent requested additional information regarding the evaluation process. The parent states that he was told by the team leader (the \_\_\_\_\_ Elementary School Psychologist) that she would “pull something together.” The parent states that he requested that he be given the information he requested by the following Friday, January 13, 2017.

On January 12, 2017, the team leader sent an email to the parent outlining the following steps in the evaluation:

- “Some members of the team will complete observations
- An ABC data sheet will be created and the staff can consult with the behavior support teacher for training on data collection
- Baseline data is collected
- After sufficient baseline data has been collected, and a behavior support plan is found to be appropriate, a support plan will be created based on the function hypothesis.
- The staff at (the private school) will/can collaborate and consult with the \_\_\_\_\_ staff for implementation of the support plan and they will be responsible for implementation.
- ABC and other appropriate data will continue to be collected
- Progress will be observed and taken into consideration.”

The parent responded to the team leader on January 12<sup>th</sup> writing,

“Thank you for starting to put this together. I'm starting to get a picture of how this is going to go. However, some of the parts of the picture are still vague to me and need some clarification. Are you responsible for the execution of each of these steps? If not, please find out who will be responsible for each part.

Also, please find out from the person responsible for each part how long their part should take. Based on what we discussed in the meeting, my expectation would be that these duration (sic) support a completion of the process in April.

Once you have received this information, please update this plan with the person responsible and the expected durations for each step.

I would guess that it will take you a few days to gather this information. I'll look for an update to this by Friday, January 20th."

On January 20, 2017, the team leader sent an email to the parent writing,

"The implementation of the evaluation is a team effort. The \_\_\_\_\_ staff has already reached out to the staff at [private school] to begin data collection.

At this point the exact days and times for observation and implementations have not yet been established. As those times are scheduled the team can communicate those appointments with you to keep you informed as the process moves forward.

You are correct with the estimation of April being the completion of the evaluation process. Would you be able to attend an evaluation meeting on March 23, 2017 at 8:00 in the morning? At that meeting we will discuss all of the information that has been collected and the plan moving forward."

The parent sent an email to the team leader on January 20, 2017 writing,

"... you did not provide the information that I requested.

It's good to know that things are moving forward. Although, from my perception it is all happening very slowly. Because of that perception, I have been quite frustrated for the last couple weeks. I know for a fact that I do not know how this process should go, so I do not have appropriate expectations for the schedule. In order for me to know that things are progressing appropriately, I first need to understand the durations of the process so that I can set my expectations and won't be frustrated about the situation. I heard your hesitation to provide me with specific dates that you do not have. However, I did not ask for specific dates, I asked for general durations.

For example, I am looking for something like this:

- Some members of the team will complete observations - Bobby Joe Smith is heading this up. - The observations are expected to take one calendar week.
- An ABC data sheet will be created and the staff can consult with the behavior support teacher for training on data collection - Billy Ray Thompson is creating this sheet. - The creation of the sheet will take one day and then it will take 2 more for the training to be completed.
- Baseline data is collected ... AND
- After sufficient baseline data has been collected, and a behavior support plan is found to be appropriate, a support plan will be created based on the function hypothesis... SO
- The staff at (the private school) will/can collaborate and consult with the \_\_\_\_\_ staff for implementation of the support plan and they will be responsible for implantation... ON
- ABC and other appropriate data will continue to be collected ...
- Progress will be observed and taken into consideration. The first step is observations ...

Regarding the specific dates, I definitely would like you and/or the rest of the team to communicate any and all specific scheduling items as they are set. ...I understand that the implementation is a team effort. That's one of the main reasons why I'm asking the information about who is responsible for each part. I would like to know who I should be directing questions to during each of the steps.

... I'd either like to schedule a quick phone call with you each Friday or Monday to touch base on the status. If it would be easier for you, I would be content to receive an e-mail from you at the end of each week that contains all of the following information:

- Which step(s) of the plan is currently in process
- Which step(s) of the plan is next
- Tasks completed throughout the past week
- Tasks planned throughout the upcoming week
- Notable calendar items that have been scheduled to occur within the upcoming 2 weeks
- Whether or not the process is following the expected schedule
  - If the process is not following the expected schedule, identify the cause of the deviation
  - If the process is ahead of the expected schedule, congratulate the team
  - If the process is behind the expected schedule, identify remediation steps that will be implemented in order to get back on schedule..."

In an email dated January 24, 2017, the team leader wrote, “Attached is a tentative timeline for the evaluation. Collaboration with [private school] has already been initiated, and initial observations have been scheduled. I will plan to touch base with you regarding the status of the evaluation the week of February 13th, after the initial observations, baseline data has been collected, and a support plan has started to be compiled. Of course, between now and then, communication between home and school will continue through interviews, checklists, and questionnaires. If you have any questions throughout the evaluation period, please let me know! I look forward to meeting your student and working with him throughout the evaluation timeline.”

In an attachment to an email to the parent dated January 24, 2017, the team leader provided the following details about the evaluation:

<u>Assessment Procedure</u>	<u>Anticipated Timeline</u>
Observations at [private school] to collect baseline data	Weeks of January 23 & January 30
Motivational Assessment questionnaire and Functional Assessment Interview phone conference with parent	Week of January 30
Motivational Assessment questionnaire And Functional Assessment Interview In person with HL teachers	Friday, January 27
Administration of the Behavior Assessment System for Children (BASC)	
Send home questionnaire for parent	Week of January 30
Send questionnaire to teacher	Week of January 30
Send questionnaire to principal	Week of January 30
Request questionnaires to be returned by February 6	
Interview student one-on-one using student form of BASC (2 sessions; approximately 30 minutes each)	Week of February 6
Functional Behavior Assessment (FBA) implement positive behavior support plan at [private school]; Behavior Support Teacher will visit, observe, and consult with HL teacher on an ongoing basis throughout this time	February 13 thru March 10
Spring Break	March 13 – 17

The parent states that he continued to be dissatisfied with the information he was given and asserts that the schedule was insufficiently specific and contained no contact information that would allow him to follow up individually with evaluators. The parent responded to the team leader via email on January 24, 2017 saying, "I don't appreciate the opposition that I am receiving regarding regular communication throughout the process. I am still going to require weekly status updates on this process. Waiting until the week of February 13th is unacceptable. You can plan to call me for a 15-30-minute status call this Friday, January 27th. I will be available from 7:00am - 8:30am, 10:30am - 1:30pm, and after 5:30pm. Please let me know tomorrow what time on Friday works best for you."

The parent developed a form which he completed to document a telephone conference with the team leader which took place on January 27, 2017. That form – entitled "Meeting Agenda/Minutes" – indicates that the parent spoke for between 20 and 40 minutes with the team leader about current assessment activities, upcoming evaluation-related activities, a status report regarding the evaluation (reported as "progressing as expected according to the schedule"), and a discussion of the parent's "perception of opposition to the communication of information...(with) general consensus for the opposition (being) due to this type of request having never been received before."

The "Meeting Agenda/Minutes" form also notes that the team leader would be providing the parent with contact information for the Director of Special Education by the end of the day. It is the position of the parent that the team leader told him she should not have to call the parent and referred him to the Director of Special Education for the district for further updates.

The parent then contacted the Director of Special Education by telephone. The Director told the parent that the district was obligated to complete the initial evaluation of the student in 60 school days. She also told the parent that the team leader would contact him regarding some elements of the evaluation but would not be providing updates on a weekly basis.

On February 3, 2017, the parent sent an email to the team leader and the Director of Special Education that included another "Meeting Agenda/Minutes" which he had developed. The form noted that the team was "working on observations and gathering information." The form further notes that the Behavior Specialist had made an initial classroom observation and intended to make other observations "during strategic class periods." According to the form, the Behavior Specialist had also met with private school staff to discuss motivation systems and to train staff on proper ways of documenting ABC data. Further, the Behavior Specialist and her team were reported to be completing the Motivational Assessment Scale

evaluation process. Parents had completed a questionnaire and returned it to \_\_\_\_\_. The student was to be interviewed the following week using the student BASC form.

On the February 3<sup>rd</sup> Meeting Agenda/Minutes form, the parent notes that the Director had refused to comply with his request to be provided with weekly status updates on the progress of the evaluation process. The parent wrote that he planned to contact KSDE, Families Together, the Disability Rights Center, and/or Keys for Networking regarding the district's refusal to provide current status on the evaluation by February 7, 2017. In the "Open Discussion" portion of the form, the parent notes that "additional status requests should be routed through the Director of Special Education..."

The parent developed another Meeting Agenda/Minutes form dated February 10, 2017. The form does not indicate that the parent spoke with district staff on this date but notes that "the team is currently working on collecting baseline data" and indicates that the student was to have been interviewed "using the student BASC form." The form also notes that the parent has contacted the "Kansas Department of Education regarding the (district's) refusal to provide the information requested regarding the status of the evaluation." Upcoming activities are listed. The parent has included the statement that "since no communication to the contrary, the process is assumed to be continuing according to the schedule." The form also notes that the parent planned to "file a formal complaint using the process as defined in Chapter 11 of the Kansas Special Education Process Handbook...by February 10, 2017."

On February 17, 2017, the parent emailed the February 10, 2017 Meeting Agenda/Minutes form to the team leader and the Director of Special Education. On February 17, 2017, the parent sent a second email to the team leader and to the Director of Special Education containing another Meeting Agenda/Minutes form. On this form the parent states that he has "completed and filed a formal complaint to the Kansas Department of Education" and plans to "request mediation between the (district) and the parents of (the student) regarding the issue of refused communication."

According to the parent he called the Kansas State Department of Education and was told that he had a right to review the educational records for the student. On February 17, 2017, the parent contacted the principal of \_\_\_\_\_ Elementary to request a review of the student's records, focusing particularly on his special education records and the evaluation process.

On February 23, 2017, the parent sent an email at approximately 3 AM stating that he and the student had been working for hours to complete an English assignment. It was decided that the evaluation should be expanded to include additional areas.

On February 27, 2017, the parent and the student's step-mother met with the team leader, the principal of \_\_\_\_\_, and the Director of Special Education to review student records (as requested on February 17<sup>th</sup>). At the end of that meeting, the parent raised the topic of academic testing for the student and asked if that area of assessment was covered on the prior written notice form of January 5, 2017. There was discussion regarding the addition of cognitive and academic testing to the evaluation process. The parent gave his written consent to amend the prior written notice to include these additional assessment areas. The descriptions of those assessments are as follows:

- "General Intelligence – May include assessment of general mental abilities including specific strengths and weaknesses and/or sensory perceptual learning processes.
- Educational Performance – May include assessment of educational skills and achievement levels including pre-academic education."

The parent has provided the investigator with documentation of over 50 emails covering the period of December 9, 2016 to March 8, 2017. These emails reflect correspondence between the district, the parent, and /or private school staff regarding various elements of the evaluation of the student.

At the time of this writing, the evaluation team had not yet met to review the results of the evaluation. Scheduling conflicts for the student's family necessitated a rescheduling of the evaluation team meeting originally scheduled for March 23, 2017. No decision has yet been made regarding the student's eligibility for special education and related services.

### **Parent's Position**

It is the parent's position that the district's refusal to provide him with a written schedule for the evaluation and weekly updates on the progress of the evaluation has violated his right to be given information he has requested.

It is the parent's contention that it is his right to be fully involved in the evaluation process and decision-making regarding the student. He asserts that in order for him to play an informed part in decision-making after the evaluation is completed he should have been told what would happen during the evaluation and when. Specifically, the parent states that he wanted to know

- what assessments the district would be giving,
- who would be administering those assessments, and
- when each assessment would be administered.

Further, the parent contends that he should have been given periodic (weekly) status updates about the evaluation including

- those aspects of the evaluation that had been completed,
- those elements of the evaluation that were currently in process, and
- those elements that were still to occur.

The parent states that while he expected that the district would professionally complete an assessment of his son in a timely manner, it is his belief that the district's failure to provide him with a detailed schedule and weekly updates on the progress of the evaluation could result in his lacking information that would be essential to his understanding of assessment data and the adequacy of the assessment process.

### **District's Position**

It is the position of the district that it has fully complied with all regulations regarding initial evaluations and that the parent's insistence on periodic updates regarding the evaluation process placed unreasonable and excessive burden on staff.

### **Findings**

The district responded to the parent's request for an evaluation of his son in a timely manner and scheduled a meeting to discuss the parent's request. A decision was made by the evaluation team – which included the parent – that an evaluation should be conducted.

The district provided the parent with prior written notice of its intent to conduct the evaluation he had requested. The prior written notice form contained all legally required elements including descriptions of the assessments and other measures the evaluation team planned to use to produce the data needed to meet the requirements of eligibility determination. The parent provided his written consent for the district to proceed with the evaluation and subsequently gave written consent for the district to perform additional evaluations.

Once parental consent was obtained, it became the responsibility of the district to conduct the evaluation. The district must complete the evaluation within prescribed timelines but is under no legal obligation to provide the parent with additional information regarding the progress of the evaluation or to comply with the parent's request for weekly updates regarding the evaluation. The parent is a participant in the assessment portion of the evaluation only insofar as providing information to evaluators regarding the student.

Although the parent was dissatisfied with the structure and content of the information the district provided him with regard to the progress of the evaluation, the district **did** provide the parent with a significant amount of additional information beyond what was contained in the prior written notice and request for consent for the evaluation developed by the district.



The district properly and timely complied with the parent's request to review educational records which the district maintained on the student. However, the district was not required to make an evaluation schedule a part of the student's educational records if such a schedule had not already been created and maintained by the district.

The district is required to share information with the parent regarding the results of the evaluation once the evaluation is completed. The district is also required to ensure the parent's right to participate in any decision-making meeting regarding the impact of those results on determining the student's eligibility for special education services. While the parent asserts that the district's failure to provide all the information he requested *might* interfere with his ability to be a fully informed participant in the eligibility meeting, he offered no evidence to support this contention and there is no provision in law that would require the district to provide the kind of information at issue in this case.

A violation of special education laws and regulations has not been substantiated.

### **Corrective Action**

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

### **Right to Appeal**

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Early Childhood, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

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Diana Durkin, Complaint Investigator

(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect. Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

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

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

**KANSAS STATE DEPARTMENT OF EDUCATION  
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES**

REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT # \_\_\_\_  
ON FEBRUARY 6, 2017

DATE OF REPORT: MARCH 16, 2017\*

\*Extension of 10 days granted to allow for resolution of the systemic allegation

This report is in response to a complaint filed with our office by \_\_\_\_ and \_\_\_\_\_ on behalf of eligible students with disabilities enrolled at \_\_\_\_\_ Middle School who have IEPs requiring speech/language therapy services including their daughter, \_\_\_\_\_, during the past 12 months. The Kansas Department of Education has accepted the \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_\_ proposal to resolve the systemic complaint on behalf of all eligible students; however, the individual allegation of noncompliance is being investigated.

Note that child complaint investigations are limited to allegations of violations that have occurred not more than one year prior to the date the complaint is filed with the Kansas Department of Education. In this case, the child complaint investigation shall cover the timeframe beginning on February 6, 2016 to present.

In the remainder of this report, \_\_\_\_\_ will be referred to as "the student" while \_\_\_\_\_ and \_\_\_\_\_ will be referred to as the "father" or "the mother" respectively, or "the parents."

**Investigation of Complaint**

Nancy Thomas, Complaint Investigator, spoke with \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_\_ by telephone on March 1, March 6, March 7, and March 10, 2017. The \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_\_ made the following staff persons available to be interviewed:

- R \_\_\_\_\_, Special Education / Case Manager of the student during the 2015-16 school year
- T \_\_\_\_\_, Special Education Teacher / Case Manager of the student during the 2016-17 school year
- G \_\_\_\_\_, Special Education Coordinator, \_\_\_\_\_ Special Education Cooperative

In addition, the Complaint Investigator and the \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_\_ staff exchanged emails regarding the investigation on February 9, February 15, February 22, and February 28, 2017; March 3, March 7, March 9, March 10, March 13, and March 14, 2017.

The Complaint Investigator spoke to the complainant by telephone on February 8 and February 21, 2017. The following person was interviewed:

- Mother

In addition, the Complaint Investigator and the mother exchanged emails regarding the investigation on February 9, February 13, February 14, February 15, February 22, and February 28, 2017.

In completing this investigation, the complaint investigator reviewed the following material provided by the parents and the \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_\_:

- Individualized Education Program (IEP) for the student developed on May 8, 2015 (WebKIDSS – IEP filed on 03/10/17)
- Another copy of the IEP for the student developed on May 8, 2015 (WebKIDSS – IEP filed on 08/02/15)
- IEP for the student developed on May 8, 2016 (KIDSS 03/01/2017)
- Teacher Information Page for the student reflecting the IEP developed on October 21, 2014
- Teacher Information Page for the student reflecting the IEP developed on May 8, 2015
- Teacher Information Page for the student reflecting the IEP amended on May 11, 2015
- Teacher Information Page for the student reflecting the IEP developed on May 8, 2016
- Teacher Information Page for the student reflecting the IEP amended on May 16, 2016
- Teacher Information Page for the student reflecting the IEP amended on June 8, 2016
- Speech Therapy Log created by R \_\_\_\_\_, Special Education Teacher, documenting speech/language therapy services provided between September 14, 2015 and February 19, 2016
- Progress Notes for the student created by A\_\_\_\_\_, Speech Language Pathologist (SLP), dated August 21, 2015 through February 25, 2016

- Progress Notes for the student created by J \_\_\_\_\_, SLP, dated March 1, 2016 through May 25, 2016
- Progress Notes created for the student by H \_\_\_\_\_, SLP, dated December 1, 2016 through December 14, 2016
- Quantum Time Sheets for H \_\_\_\_\_, SLP, dated August 29, 2016 through December 15, 2016
- Quantum Time Sheets and Travel Logs for J \_\_\_\_\_, SLP, dated April 19, 2016 through May 26, 2016
- Attendance Records for the student for the 2015-16 and 2016-17 school years
- Unsigned Quantum Health Professionals, Inc. contract for H \_\_\_\_\_ for the dates of August 15, 2016 through May 24, 2017
- Letter to Parents dated January 26, 2017, from \_\_\_\_\_, Executive Director of Special Services for \_\_\_\_\_ Public Schools and \_\_\_\_\_ Special Education Cooperative, regarding the plan to hire another SLP and provide some type of compensatory services as determined by each affected student's IEP team

### **Background Information**

This investigation involves a thirteen year-old student who was enrolled in the sixth grade at the \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_\_ during the 2015-16 school year. The student is currently enrolled in the seventh grade at the \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_\_ for the 2016-17 school year. The student has attended her neighborhood school, \_\_\_\_\_ Middle School, for both the sixth and seventh grades.

Records and interviews indicate the student initially began receiving special education and related services at age 18 months while residing in Florida. Documentation shows the student has a medical diagnosis of Down Syndrome. Records and interviews indicated the student has received special education and related services through early intervening services and Individualized Education Programs (IEPs) since that time.

The student's most recent special education evaluation was conducted by the \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_\_ on May 8, 2015. At that time the student was determined to continue to be eligible for special education and related services under the eligibility category of Intellectual Disability. The most current IEP requires the student to receive special education, occupational therapy (OT), and speech/language therapy in order to receive a free appropriate public education (FAPE).

## Issues

One issue raised by the Complainant was investigated.

**ISSUE ONE:** The \_\_\_\_ Special Education Cooperative / USD # \_\_\_\_, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP of the student, specifically by not providing the speech/language therapy services required by the IEP during the past 12 months.

### Findings:

Federal regulations, at 34 C.F.R. 300.17, require that a student be provided with a free appropriate public education (FAPE). Public agencies must provide special education and related services in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324.

Federal regulations, at 34 C.F.R. 300.320(a)(4)(i) require that each public agency include a statement in the IEP of the special education and related services that shall be provided to the child in order to meet the IEP goals.

Federal regulations, at 34 C.F.R. 300.324(a)(4)(ii), require the public agency to ensure that the child's IEP team is informed if any changes are made to the child's IEP through the amendment process.

The IEP in effect for the student during the 2015-16 school year was developed on May 8, 2015 with the parent in attendance. Two versions of this IEP were provided as documentation for this investigation. Both of the IEPs included a goal to "*expand her utterances to 3-7 words when asking or answering a question, or commenting on a person, activity, or object with 70% accuracy over three consecutive trials.*" There were three benchmarks for this goal which were to be measured through SLP therapy data covering three reporting periods throughout the school year. One of the IEPs reflects special education and OT are to be provided to the student and the number of days per week the services are to be provided; however, there is no listing of speech/language therapy or any listing of the amount of minutes any of these services are to be provided to the student.

Ms. G explained this error was the result of a computer system malfunction and provided another copy of the May 8, 2015 IEP (WebKIDSS – IEP filed on 08/02/15). This IEP documented that *“beginning on 5/11/15, the student will receive speech therapy 2 times a week for 20 minutes in the special education classroom.”* In addition, the Teacher Information Page corresponding to the student’s IEP developed on May 8, 2015 and amended on May 11, 2015 showed A \_\_\_\_ providing services for two 20-minute sessions for each week beginning on August 20, 2015 through February 29, 2016, and J \_\_\_\_ providing services for two 20- minute sessions for each week beginning on March 1, 2016 through May 7, 2016.

Mr. R\_\_\_\_ reported the student was originally supposed to be seen by the SLP on Tuesday and Thursday mornings but this schedule changed to Monday morning and Tuesday afternoon in mid-October. Mr. R\_\_\_\_ stated A \_\_\_\_ was the assigned SLP but the student did not receive speech/language therapy consistently.

The Speech Therapy Log kept by Mr. R\_\_\_\_ during the 2015 – 16 school year between the dates of September 14, 2015 and February 19, 2016 documents only one of three possible speech/language therapy sessions was provided to the student between the dates of February 6 and February 19, 2016. Mr. R\_\_\_\_ reported that A\_\_\_\_ stopped coming around the end of February.

Progress Notes for the student created by A \_\_\_\_ document two of three possible speech/language therapy sessions were provided to the student between the period of February 6 and February 25, 2016. However, discrepancies were noted between the classroom log and the progress notes. A school vacation day and one student absence were noted as reasons speech/language therapy was not provided on February 11 and February 18 respectively; however, these are not noted on the classroom log.

Mr. R\_\_\_\_ indicated J \_\_\_\_ started coming on Tuesday and Thursday afternoons in April, 2016, but again, the speech/language therapy sessions were not provided consistently. Progress Notes for the student created by J \_\_\_\_ show no speech/language therapy services were provided during the month of March 2016. Documentation shows speech/language therapy was provided to the student on April 5, 2016 but not again until May 6, 2016.

The mother reports an IEP meeting was held at the beginning of May to plan for the 2016-17 school year and a new SLP attended the meeting. At the IEP team

meeting, the mother shared concerns with overall speech intelligibility and stuttering marked by initial sound repetitions. It was determined that the student continued to need speech/language therapy but, because the new SLP had just met the student, the SLP would add an amount of services to the IEP at the end of the school year after having worked more with the student.

The IEP in effect for the 2016-17 school year was developed at the May 8, 2016 IEP team meeting with the parent in attendance. This IEP includes a goal to “*use complete sentences with audible and clear speech to ask and answer questions and comment on a person, activity, or object with at least 70% accuracy over three consecutive trials.*” There are two benchmarks for this goal which are to be measured through SLP therapy data and observations covering two reporting periods throughout the school year. Speech/language therapy is shown as a related service; however, no amount of time for this service is shown.

Again, Ms. G indicated a computer system error resulted in the IEP not including the speech/language therapy services information. Teacher Information Pages corresponding to the student’s IEP developed on May 8, 2016 and amended on May 16 and again on June 8, 2016 were provided to document the services required by the student’s IEP. The Teacher Information Page dated May 8, 2016 showed J \_\_\_\_ providing services for two 20-minute sessions for each week beginning on May 8 through May 15, 2016. The Teacher Information Page dated May 16, 2016 showed J \_\_\_\_ providing services for two 20-minute sessions for each week beginning on May 16 through May 25, 2016. The Teacher Information Page dated June 8, 2016 showed H \_\_\_\_ providing services for two 20-minute sessions for each week beginning on August 18, 2016 through May 7, 2017.

The mother reports contacting Ms. T \_\_\_\_ about two weeks after the beginning of the seventh grade school year to check on the status of speech/language therapy services. Ms. T \_\_\_\_ indicated to the mother that speech/language therapy services had not yet started and that she would check to see when these would begin. The mother reported she checked with Ms. T \_\_\_\_ for the status of speech/language therapy weekly through the months of September, October and November but was told each time that these services had yet to begin.

Ms. T \_\_\_\_ stated she was not aware that the student’s IEP required speech/language therapy until mid-October. Ms. T \_\_\_\_ indicated she contacted H \_\_\_\_ and was told that the student was not on the list to receive speech/language therapy services this school year. Ms. T \_\_\_\_ acknowledged



that the student did not receive any speech/language therapy services until late November or early December.

Progress Notes created by H \_\_\_\_ note that the student was “*not on my list until Dec. 1<sup>st</sup>. Speech had dropped off IEP in spring '16.*” Documentation shows the student received a speech/language therapy session on December 7, 2016, and did not attend the next scheduled speech/language therapy session on December 12, 2016, due to the student’s illness. December 14, 2016 is shown as the last log entry for the student for “documentation”.

The mother contacted Ms. T \_\_\_\_ in mid-January for the status of the speech/language therapy services and was told the services had stopped. Ms. T \_\_\_\_ acknowledged the student did not receive the speech/language therapy services required by the IEP during the months of January and February 2017 but indicated the services were scheduled to begin again in mid-March.

Ms. \_\_\_\_\_ wrote a letter to the parents of students assigned to receive speech/language therapy from H \_\_\_\_ on January 26, 2017 explaining that the SLP had left employment at the end of 2016 and a search was underway to hire a new SLP to provide the required speech/language therapy services. The letter also describes the process that would be used to determine the amount of compensatory services that would be provided to each student due to this gap in speech/language therapy services.

The mother indicated she was very concerned with the lack of speech/language therapy services during the 2015-16 and 2016-17 school years and was seeing regression in the student’s communication skills. The mother reported people familiar with the student were having difficulty understanding and communicating with the student during the 2016 holiday break. In addition, the mother noticed the student’s stuttering was becoming more pronounced. When the mother received the parent letter dated January 26, 2017, she consulted with the student’s physician, Dr. Essau, and obtained a prescription for speech/language therapy services for two 45-minute speech/language therapy sessions per week. The mother indicated these services were provided at Newman Regional Hospital each Tuesday and Thursday beginning on February 16, 2017. The mother indicated private insurance is being used to pay for these services at this time.

Based on the documentation reviewed and interviews, the \_\_\_\_\_ Special Education Cooperative / USD # \_\_\_\_ did not provide special education and related

services in conformity with the student's IEP in effect during the 2015-16 school year and the 2016-17 school year. Inconsistent and lack of documentation make it impossible to determine the exact amount of speech/language therapy services provided to the student. It appears the student should have received speech/language therapy services for 14 weeks of school to include 28 speech/language therapy sessions during the 2015-16 school year during the timeframe of the parent's allegation of noncompliance beginning on February 6, 2015. It appears the student should have received 27 weeks of speech/language therapy to include 54 speech/language therapy sessions during the 2016-17 school year. Based upon the documentation reviewed, it appears that only seven speech/language therapy sessions were provided to the student as required by the two IEPs in effect during this timeframe. This would mean speech/language therapy services were only provided approximately 10% of the time.

Although the original IEP reviewed for the 2015-16 school year did not include the amount of time the speech/language therapy was to be provided due to computer error, a subsequent copy of the IEP did include this information which was verified through the Teacher Information Page. Interviews found that the IEP team that met on May 8, 2016, did not determine the amount of speech/language therapy that would be required in order for the student to achieve the IEP goals and benchmarks; instead, the SLP unilaterally determined the amount of services to be provided. This IEP was amended on June 8, 2016 and, although the IEP document itself does not state an amount of time speech/language therapy services were to be provided during the 2016-17 school year, there is documentation to show an intent to continue to provide 20 minutes of speech/language therapy for two sessions per week to the student beginning on August 18, 2016. Interviews and documentation show that the SLP assigned to provide services to Ms.T \_\_\_\_'s classroom at \_\_\_\_\_ Middle School was unaware of the requirement to provide speech/language therapy per the student's IEP until December 1, 2016.

Anecdotally there is reason to believe that the student has shown regression in speech/language skills based upon parent observations. It is noted that the parent attempted to remedy the lack of speech/language therapy services provided at the \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_\_ as required by the IEP by privately obtaining and paying for speech/language therapy services at the Newman Regional Hospital beginning on February 16, 2017.

Based on the foregoing, the allegation of a violation of special education laws and regulations is substantiated resulting in the student not receiving FAPE.

### **Corrective Action**

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Violations have occurred in three areas:

- 34 C.F.R. 300.17, requires that a student be provided with a free appropriate public education (FAPE). Public agencies must provide special education and related services in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324. In this case, the \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_ did not provide special education and related services in conformity with the student's IEP in effect during the 2015-16 school year and the 2016-17 school year for approximately 90% of the time specified in those IEPs resulting in approximately 1,500 minutes of speech/language services over the past year and informal observations of regression by the parent. The parents attempted remedy this situation by privately obtaining and paying for speech/language therapy services themselves.
- 34 C.F.R. 300.320(a)(4)(i) requires that each public agency include a statement of the special education and related services that shall be provided to the child in order to meet the IEP goals. Subparagraph of this regulation also requires the IEP to state the frequency and duration of each of those services. In this case, the IEP documents provided through the \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_'s computerized IEP system inconsistently included a listing of the required special education and related services, and the frequency and duration of those services, required for the student. This system error most likely contributed to misunderstandings with both the parents and school staff resulting in the IEP not being implemented as intended resulting in a denial of FAPE to the student.
- 34 C.F.R. 300.324(a)(4)(ii), requires the public agency to ensure that the child's IEP team is informed if any changes that are made to the child's IEP through the amendment process. In this case, there is evidence that the SLP, not the IEP team, unilaterally determined the amount of speech/language therapy to be provided during the 2016-17 school year

following the IEP team meeting. The IEP was amended on June 8, 2016 to reflect this change; however, neither Ms. T \_\_\_\_ nor H \_\_\_\_ were made aware of the IEP amendment at the beginning of the 2016-17 school year resulting in the student not receiving the speech/language therapy required by the IEP thus resulting in a denial of FAPE to the student.

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

1. Within 10 calendar days of the receipt of this report, submit a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will:
  - a) Comply with 34 C.F.R. 300.17, by providing special education and related services in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324.
  - b) Comply with 34 C.F.R. 300.320(a)(4)(i) by including a statement in the IEP of the special education and related services, including the frequency and duration of those services, that shall be provided to the child in order to meet the IEP goals.
  - c) Comply with 34 C.F.R. 300.324(a)(4)(ii), by ensuring that the child's IEP team is informed if any changes that are made to the child's IEP through the amendment process.
2. Within 30 days of receipt of this report, reconvene the student's IEP team to determine the amount of compensatory services to be provided to the student as a result of not providing speech/language therapy beginning on February 6, 2015 through the mid-March 2017. The amount of compensatory services offered as a result of this corrective action shall total, at a minimum, 1,500 minutes, and should be based on a determination of the services this student needs to reach the speech/language goals in her current IEP. The offer of compensatory services may take into account the services obtained privately by the parent at private expense. The \_\_\_\_ Special Education Cooperative / USD # \_\_\_\_ will allow the parents to choose to have these required services provided at no cost to the parent through the already established SLP provider at the Newton Regional Hospital or to have these required services provided at the \_\_\_\_ Special Education Cooperative / USD # \_\_\_\_ . A copy of IEP team meeting notes and a plan to provide the compensatory services will be submitted to Early Childhood, Special Education and Title Services no later than May 1, 2017.

3. Within 60 days of receipt of this report, the \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_ will:
  - a) reimburse the parents for any speech/language therapy services provided to the student at private expense beginning on February 16, 2017, and ending upon the resumption of the speech/language services specified in the student's IEP at school; and
  - b) submit to Early Childhood, Special Education, and Title Services documentation of the speech/language services provided privately for the period specified in (a), above, and payment of those services.
4. Within 30 days of receipt of this report, the \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_ will consult with the computerized IEP system contractor to ensure that the program will correctly print IEPs including the listing of special education and related services, and the frequency and duration of those services. A plan will be developed to disseminate this program update or procedure to all special education staff. A copy of the plan and evidence of dissemination will be provided to Early Childhood, Special Education and Title Services no later than June 1, 2017.
5. Within 60 days of receipt of this report, the \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_ will review and revise procedures and practices related to making an amendment to the IEP, specifically related to how information about amendments is shared with the other members of the IEP team. A summary of this review and any changes to the procedures along with a plan to disseminate these changes to special education staff shall be provided to Early Childhood, Special Education and Title Services no later than June 1, 2017.
6. Further, the \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_ shall, within 10 calendar days of receipt of this report, submit to Early Childhood, Special Education and Title Services one of the following:
  - a) a statement verifying acceptance of the corrective action or actions specified in this report;
  - b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or

- c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (f).

### **Right to Appeal**

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (c), which is attached to this report.

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Nancy Thomas  
Complaint Investigator

#### (f) Appeals.

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

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the

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

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

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

**KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION SERVICES**

REPORT OF COMPLAINT  
FILED AGAINST

\_\_\_\_\_ PUBLIC SCHOOLS #\_\_\_\_\_  
ON MARCH 6, 2017

DATE OF REPORT: MARCH 28, 2017

This report is in response to a complaint filed with our office on behalf of \_\_\_\_\_ by her parents, \_\_\_\_\_ and \_\_\_\_\_. \_\_\_\_\_ will be referred to as “the student” in the remainder of this report. Mr. and Mrs. \_\_\_\_\_ will be referred to as “the parents.”

**Investigation of Complaint**

Diana Durkin, Complaint Investigator, spoke by telephone with \_\_\_\_\_, Director of the \_\_\_\_\_ Cooperative in Education (\_\_\_\_\_), on March 20, 2017. On March 27, 2017, the investigator spoke by telephone with the student’s mother.

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

- Letter dated February 1, 2017 from the parents to the Superintendent of USD #\_\_\_\_\_
- Email dated February 7, 2017 from the Superintendent to the student’s mother
- Email dated February 16, 2017 from the parents to the Superintendent
- Email dated February 16, 2017 from the Superintendent to the parents
- Letter dated February 24, 2017 from the parents to the Superintendent
- District Board Policy regarding copying costs
- Minutes from July 18, 2016 Board meeting

**Background Information**

This investigation involves a request by the parents of a 9<sup>th</sup> grade student enrolled in her local high school. The student has been enrolled in the district since 2005.

The parents express concern that the student “has not progressed academically since 3<sup>rd</sup> grade,” and they want to “study her records to look for missing information or holes in her education...to explain her lack of progress.”



## Issue

In their complaint, the parents outline the following issue:

**The district has not provided the parents with copies of the student's educational records.**

The Family Educational Rights and Privacy Act (FERPA) of 1974, as amended (2006), as well as State special education laws and regulations require schools to have reasonable policies in place to allow parents to **review and inspect** (emphasis added) their child's educational records. "Educational record" means those records that are directly related to a student and maintained by an educational agency and may include (but are not limited to) records associated with academic work completed and level of achievement. Federal special education regulations, at 34 C.F.R. 300.613, which are identical to FERPA regulations, require that a district provide a parent, upon request, **access to** (emphasis added) the child's records. Regulations state that the district must comply with a request such as this "without unnecessary delay and before any meeting regarding an IEP...and in no case more than 45 days after the request has been made."

Records should be in a location that: (a) parents can find, (b) is maintained during normal business hours; and (c) is not physically inaccessible (such as downstairs or upstairs, with no elevator available). Upon request, someone who can interpret or explain the records should be made available to the parents.

Parents may also request that copies of their child's education records be made for them. **However**, a school is required to provide copies of educational records **only** if failure to provide those copies would effectively **prevent** the parent from exercising the right to review and inspect the records. If, for example, a parent does not live within a reasonable driving distance from the school, the school may need to provide a copy of requested records.

If copies are provided, schools may charge a reasonable fee and may take a reasonable time to provide the copies to the parents. In those cases where a failure to provide copies of records would prevent a parent from exercising the right to inspect and review educational records, and the parents are unable to pay the fee, the school must provide the records without charge.

Generally, the working file and anecdotal records of a teacher or other staff member would not be considered to be part of a child's education record. FERPA regulation 34 C.F.R. 99.3(b) states that the term "education records" does not include "records of instructional, supervisory and administrative personnel, and educational personnel ancillary to those persons, that are kept in the sole possession of the maker of the record, and are not accessible or

revealed to any other person except a temporary substitute for the maker of the record.”

### **Specifics of the Case**

On February 1, 2017, the parents sent a letter to the Superintendent of Schools for the district requesting “a copy of all of (the student’s) records since August 17, 2005” (the date the student was first enrolled in the district as a preschool student). In that letter the parents asked for copies of the following:

“...all documents generated by both school and district personnel and outside sources, as well as all confidential, medical, psychological, regular education, special education and other documents within the district’s possession. Please include all of her records *which include but are not limited to:* (the student’s) cumulative file, her confidential file, and her compliance file. Please include all reports written as a result of the school’s evaluations; reports of independent evaluations; medical records; summary reports of evaluation team and eligibility committee meetings; any correspondence between (the parents) and school officials, staff and those contracted by the school district; any correspondence written between school personnel regarding our daughter or us including emails; any records maintained by the school nurse, (the student’s) teachers, and any member of the multidisciplinary team, student assistance team, 504 team, student services office and the director of security; recordings of meetings, notes, and letters written in connection with any planning or discussions, or other matters in connection with our daughter...or us. Please include any and all personally identifiable information that exists.”

The parents requested that they be mailed a “complete copy of all personally identifiable records” and requested that “any copying fees be waived to facilitate (their) access to (the student’s) records.”

On February 7, 2017, the Superintendent sent an email to the student’s mother noting that the parents’ request would include “over 1000 pages” of documents. The Superintendent stated that the district “charges 25 cents per copy for records which covers the copy cost and labor to find, compile and produce the copies.” He attached copies of Board Policy and minutes from a July 18, 2016 School Board meeting which provided guidance on the district’s policy. The Superintendent stated that the \$250 cost of copying would need to be paid by the parents before the copies would be processed.

In the February 7<sup>th</sup> email, the Superintendent also wrote, “I can arrange, with prior notice, for you to be able to review (the student’s) records at no cost in our buildings.”

On February 16, 2017, the parents sent an email to the Superintendent asking “how and when might (they) obtain copies of (the student’s) records that (they) requested last week?”

The Superintendent responded to the parents via email on February 16, 2017 writing “If you could narrow the scope of your request for records I could consider waiving the fee for copies. Since your present request is so large I do not feel I can waive the fee. I can arrange for free for you to examine (the student’s) records at the high school and at the special education office...”

In a telephone call on February 17, 2017, the Director of the \_\_\_\_\_ again told the parents that the students records could be made available for their review. He repeated that offer at a re-evaluation meeting on February 22, 2017.

The parents wrote a letter to the Superintendent on February 24, 2017 stating

“after reflecting on our conversation in your office yesterday, we are not able to review (the student’s) Educational Records in SPED building (sic) because our home burnt down and we are just now completing our home and purchasing furniture, plus I work with my husband every day, so my time is already full.

In addition...we can’t afford the records that include labor for retrieving documents because this cost is over our fixed budget and against FAPE and IDEA guidelines.

We are asking for you to wave (sic) the fees for printing the records and requesting copies because we are unable to view them in person and these terms you gave are preventing us from exercising our rights to view (the student’s) records.”

The Director of \_\_\_\_\_ sent an email to the parents on February 27, 2017 stating

“...you are entitled to review all of (the student’s) records and we reiterate that you are welcome to review them at the \_\_\_\_\_ office...I can be available after school hours if it is more convenient for you...FERPA (the Family Educational Rights and Privacy Act) does not obligate the school district to provide copies to you at no cost and at this time we are refusing that request.

Please give us some dates that you would be available to review (the student's) records so that we may schedule that at a time that is mutually agreeable..."

### **Parents' Position**

The parents assert that it is a hardship for them to view the records in a public location because the student's mother is a caregiver for the student's father when he is not working; they are shopping to replace household items lost in a fire; they have a large family; and the student requires care.

According to the parents, they are not able to pay for copies of records because they live on the father's limited disability income.

### **District's Position**

The district contends that – beginning with the Superintendent's first response 6 days after the parents' initial contact – repeated good faith offers have been made to find a mutually agreeable time for the parents to inspect the student's records.

The district maintains that the parents have demonstrated that they are able to make the approximately 7.2-mile drive necessary for them to travel to the Cooperative offices as well as to the high school and district office. According to the district, the parents have on several occasions come to the \_\_\_\_ offices – the location at which the student's records have been collected and are currently being held. The district provided the following examples in response to the parent's assertion that it would be a hardship for them to come to a district office to review records:

- According to the district, the student's father came to the \_\_\_\_ office on October 2, 2016 and picked up copies of the last 4 IEPs for the student as well as progress reports, a psychological evaluation from 6<sup>th</sup> grade, and report cards from all three of the student's years in junior high.
- The student's mother has met on several occasions with the School Psychologist and Speech/Language Pathologist including meetings on October 20, 2016 and during the week of November 7, 2016.
- On December 15, 2016, the parent met for over an hour with the Director of the Cooperative to discuss the student's programming and inclusion as well as her vocational aptitudes.
- The student's mother met with the Director of the Cooperative for 30 minutes at his office on February 1, 2017 and stopped in again at the office for 5-10 minute meetings on February 28, 2017 and March 6, 2017.
- The student's mother was at the student's school for more than 2 hours on February 2, 2017 requesting an opportunity to observe the student in her classes.

- The student's mother and her advocate met with the student's special education teacher for 2 hours on February 6, 2017. Later that week, the student's mother met with the school principal, speaking with the principal and other school staff for approximately 2 hours.
- The parents participated in a 3-hour re-evaluation meeting for the student on February 22, 2017.
- The student's mother met with the Superintendent for an additional 45 minutes after the re-evaluation meeting.
- The student's mother made brief stops at the Superintendent's office on February 28 and March 2, 2017.
- The student's mother met with the student's journalism teacher for an hour on March 1, 2017 and met with the school counselor on March 6, 2017.
- The parents alternate dropping off the student weekly at a private rehabilitation facility in town.
- Since making her February 1, 2017 request for copies of student records, the student's mother has, by district estimate, come to her daughter's school 10-12 times to either request permission to observe her daughter in class or to ask to speak to various staff members.

The district also asserts that the parents have been provided with electronic copies of the last 17 Prior Written Notice forms and electronic copies of the last 6 IEPs.

On October 6, 2016, the district made paper copies of all evaluations of the student between 2005 and 2016 at the request of the parents. Those copies were held for the parent to pick up until December 20, 2016 and were then destroyed.

According to the district, the Board of Education annually sets a fee for copies of records and adopted a policy that advance payment of the expense of copying open records shall be borne by the individual requesting the copies. On July 18, 2016, the Board established a fee of \$.25 a page for copies. The district reiterates a willingness to consider reducing that fee for the parents if the parents can lower the total number of copies requested.

### **Findings**

FERPA requires districts to allow parents the right to review and inspect their child's educational records. However, districts are required to make **copies** of those educational records for parents **only if** failing to do so **prevents** the parents from reviewing and inspecting those records. The requirement that copies be provided hinges not on whether it would be more convenient for the parent to have printed copies but on whether the parental review can only be conducted if copies are made available.

The district responded in a timely fashion to the parents' February 1, 2017 letter regarding the student's records and demonstrated a willingness to work with the parents to schedule a mutually agreeable time for the record review.

While the parents lead busy lives, there is evidence to support the district's contention that the parents are able to travel to the Cooperative office where the student's records can be made available to them.

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

### **Corrective Action**

Information gathered in the course of this investigation has failed to substantiate noncompliance with special education laws and regulations on issues presented in this complaint. Therefore, no corrective action is directed at this time.

### **Right to Appeal**

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Early Childhood, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

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Diana Durkin, Complaint Investigator

(f) Appeals.

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

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

decision shall be rendered as soon as possible by the appeal committee.

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

(A) The issuance of an accreditation deficiency advisement;

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

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

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



**KANSAS STATE DEPARTMENT OF EDUCATION  
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES**

REPORT OF COMPLAINT  
FILED AGAINST  
\_\_\_\_ PUBLIC SCHOOLS, USD # \_\_\_\_  
ON MARCH 13, 2017

DATE OF REPORT: APRIL 10, 2017

This report is in response to a complaint filed with our office by \_\_\_\_\_ on behalf of her daughter, \_\_\_\_\_. \_\_\_\_\_ will be referred to as “the student” in the remainder of this report. Ms. \_\_\_\_\_ will be referred to as “the parent.”

**Investigation of Complaint**

Diana Durkin, Complaint Investigator, spoke by telephone with \_\_\_\_\_, Due Process Supervisor for \_\_\_\_\_ Public Schools, on March 28 and 31, 2017 and on April 6, 2017. The investigator spoke by telephone with the parent on April 2 and 6, 2017.

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

- Report of Psychoeducational Evaluation dated December 13, 2016 from the Associates in Psychological and Family Services
- Multidisciplinary Team Report dated February 1, 2017
- IEP for the student dated February 1, 2017
- Email dated February 14, 2017 from the parent to the Social Worker at the student’s elementary school
- Email dated February 15, 2017 from the Social Worker to the parent
- Email dated February 16, 2017 from the parent to the Social Worker
- Email dated February 17, 2017 from the parent to the Principal
- Email dated February 22, 2017 from the parent to the special education teacher
- Email dated February 23, 2017 from the special education teacher to the parent
- Summary of classroom observation conducted by the parent on February 24, 2017
- Email dated March 2, 2017 from the parent to the special education teacher
- Email dated March 2, 2017 from the Principal to the parent
- Email dated March 8, 2017 from the parent to the Principal
- Email dated March 9, 2017 from the Principal to the parent
- Email dated March 10, 2017 from the Principal to the parent
- Email dated March 10, 2017 from the parent to the Principal
- Email dated March 13, 2017 from the special education teacher to the parent
- Email dated March 13, 2017 from the Principal to the parent

- Email dated March 13, 2017 from the parent to the Principal
- Email dated March 14, 2017 from the parent to the Principal
- Summary developed by the parent regarding her observation on March 31, 2017
- List of questions developed by the parent regarding the student's February 1, 2017 IEP
- Notice of Meeting dated March 29, 2017
- IEP for the student dated April 3, 2017
- IEP signature page dated April 3, 2017
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated April 7, 2017

### **Background Information**

This investigation involves a 12-year-old girl who is enrolled in the 5<sup>th</sup> grade in her neighborhood school.

In September of 2015, the parent took the student to see a physician for the purpose of discussing the possibility that the student might have an attention deficit disorder. At that time, the parent reported to the evaluating Physician's Assistant (PA) that the student was behind in her reading, was easily frustrated over her homework and was observed by her classroom teacher to have "difficulty staying on task and doing more than 1 task at a time."

The student was given a diagnosis of ADD, not hyperactive and was referred to South Central Mental Health in Andover for evaluation and treatment. The parent indicated that she wanted to save medication as a last resort, but was worried that the student would fall behind in school if nothing was done. A summative report of the evaluation noted that "counseling will be helpful." The student subsequently participated in therapy for 4 months.

In January of 2016, the parent had the student evaluated by an outside agency for "diagnostic clarification regarding attention problems." The student was diagnosed as having "Attention-Deficit/Hyperactivity Disorder, Combined presentation, Moderate" and "Unspecified Anxiety Disorder." It was recommended by the outside agency that a Section 504 Accommodation plan be established to "address attention and anxiety issues."

The parent pursued Section 504 support. On January 21, 2016, the parent sent a fax to the Principal of the student's elementary school asking that a 504 plan be established for the student. On January 25, 2016, the parent signed a Parent Request for a 504 Evaluation form stating that she suspected her daughter has a disability (ADHD) that affected one or more major life activities. She provided the district with a copy of the outside evaluation report.

On February 29, 2016, the parent, School Nurse, Principal, and a general education teacher met for the purpose of conducting a 504 Evaluation. The team determined that

“(the student) requires 504 accommodations due to her diagnosis of ADHD and Anxiety. Her ADHD impacts her ability to concentrate. Her anxiety impacts her confidence level. She gets nervous and won’t ask for help.” A 504 Accommodation Plan was recommended. According to the plan, the student

- would have questions read to her upon request,
- would have directions repeated to her to ensure understanding,
- would be allowed up to 10 extra minutes to finish assignments,
- would have homework assignments shortened by 60%,
- would be given preferential seating with close proximity to the teacher, and
- would be given frequent breaks.

The parent did not feel that the student’s needs were adequately addressed under the 504 Accommodation Plan and in October of 2016 requested that the student be evaluated to determine eligibility for special education services. That evaluation was completed, and on February 1, 2017 a multidisciplinary team determined that the student was eligible for and in need of special education services under the category of Learning Disability.

### **Issue**

In her complaint, the parent raises the following issue:

**The district has failed to provide the special education services called for in the student’s February 1, 2017 IEP.**

Federal regulations, at 34 C.F.R. 300.101, require public schools to make a free appropriate public education (FAPE) available to children with disabilities and, under 34 C.F.R. 300.17, define FAPE in part as special education and related services provided in conformity with an IEP. The IEP is intended to describe and guide services for each child on an individual basis.

The term “special education” means instruction specially designed to meet the unique needs of a child with an exceptionality. The amount of special education 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).

### **Specifics of the Case**

Following an initial evaluation, an eligibility team met on February 1, 2017 and determined that the student was eligible for and in need of services. An IEP was developed for the student on that same date showing that special education services were to be initiated on

February 1, 2017. According to the section of the student's IEP entitled "Statement of Special Education/Related Services, the student was to receive 50 minutes of Special Education Services in the regular education classroom 5 times a week. Under "Description of Specially Designed Instruction and Related Services," the IEP states:

"(The student) will receive class within class services for reading/writing for 30 minutes x 5, and math for 20 minutes x 5."

On February 14, 2017, the parent sent an email to the Social Worker at the student's school to ask whether the student had begun working with a special education teacher. The parent wrote that the student had reported that she had worked one-on-one with her classroom teacher but not with a paraeducator or special education teacher.

The Social Worker responded to the parent on February 15, 2017 stating that the student had begun receiving the "special education services as outlined in her IEP. (The student) receives special education services in her classroom and they are provided by a para (who) was also previously in the classroom and assists other identified and non-identified students."

The parent responded to the Social Worker via email on February 15, 2017 stating that she had received a call from the student's special education teacher. According to the parent, the special education teacher told her that a paraeducator in the fifth-grade classroom was helping this student as well as other students. In her email, the parent states that she then followed up with the student who confirmed that the para was helping other students in the classroom but had not yet provided any help to the student herself. The parent expressed her desire to ensure that the student was receiving "her 50 minutes a day" of support.

On February 16, 2017, the parent sent an email to the Social Worker asking for an IEP team meeting.

On February 17, 2017, the parent sent an email to the Principal of the school to request a meeting to discuss the student's IEP. In her email, the parent wrote that the process for providing services to the student as reported by the special education teacher in the February 15<sup>th</sup> telephone call was not what the parent was told was going to happen in the IEP Team meeting. According to the parent, she thought that "maybe the teachers give the math lesson of the day and someone would go over to (the student) and (explain) it to her in more detail or that (the student) would get the 20 minutes going over other areas that she needs help in. (In) reading/ writing...someone (would be) with her in the classroom reading/writing for 30 minutes..."

According to the parent's February 17<sup>th</sup> email, she was told by the special education teacher that the para was in the classroom, and "(the student) can ask for help if she needs it." The parent wrote that it was not her understanding that the student would receive 50 minutes of help only if she asked for it.

In the February 17<sup>th</sup> email the parent asked the following questions:

- “How am I going to know if today (the student) received the 50 minutes per day that she needs?”
- Is there a way that you can track the time spent with (the student) since the Para is in the classroom helping other students too?...
- How long is the Para in the classroom for the math portion and how much for the reading portion?”

On February 22, 2017, the parent sent an email to the special education teacher to say she had not received any follow up from the school regarding the scheduling of a meeting to discuss the student’s IEP. The special education teacher responded to the parent on February 23, 2017 suggesting that the parent meet with “a couple of us” after a parent/teacher conference.” The parent agreed to the proposed time and indicated she would be observing in the student’s classroom prior to the meeting. The parent was told that the para was in the student’s classroom every day from 10:45 until 12:25 and from 1:50 until 3:20. The special education teacher stated that she was in the classroom “at various times as well.”

On February 24, 2017, the parent observed the student in the 5<sup>th</sup> grade classroom. In a summary of that observation, the parent stated that the student was not observed to have worked in any small group with the para or classroom teacher. The parent noted that between 10:45 and 12:25, the student’s interactions with the paraeducator and the special education teacher totaled a little over 11 minutes. Between 1:50 and 3:20 interactions between the student and special education staff totaled under a minute.

A meeting to discuss the student’s IEP was held on March 1, 2017. On March 2, 2017, the parent sent an email to the special education teacher (copying the building principal) expressing frustration over the outcome of that meeting. The parent asked the special education teacher for a written definition of “class within class service” at the student’ elementary school. She also asked for a written statement from the school stating that the student “might not get her 20 minutes in math or 30 minutes in reading/writing...even though the IEP (says she will have that service **5 days a week**)...not **some** days (emphasis added).” The parent requested that the student’s daily plan be put in writing and stated that she was told at the meeting that the para was now “focusing more on (the student) since her IEP.” According to her email, the parent was told that “the Para will try to meet with her maybe once a week in a back table with a small group of kids to help her a little bit more.”

The Principal emailed the parent on March 2, 2017 and indicated that she would send a response to the parent’s request by the end of the following week. On March 10, 2017, the Principal sent an email to the parent containing the following information:

“Description of Class within a Class

In a typical ‘class within a class’ (CWC) structure, a group of students, some with disabilities and some without, are taught together with a general

education teacher and a special education support person in one classroom. Typically, this involves the general education teacher teaching the lesson with the special education teacher or para assisting, by helping to keep students on task and answering individual questions as needed. However, there are various ways children can be supported in this model so we are not limited to just this example.

What a typical day looks like for (the student)  
IEP Focus

(The student) has been in (the same 5<sup>th</sup> grade classroom) all year. This is where the class within a class model is being supported, the IEP will determine what is different for (the student).

...(The student's) IEP (reflects) time and service...(and) a list of classroom accommodations...

The IEP states she will have class with in a class support for:

- Math: 20 minutes (out of the 60 minute math period). Math is supported the whole 60 minutes of the period with the class with in a class model. (The student) has the opportunity of receiving some extra support the whole 60 minutes. However, (the student) will join a small group of students for 20 minutes while residing in the classroom supported by sped staff. The math block is from 10:45-11:45.
- English Language Arts: Reading: 15 minutes (out of the 90 minute reading period). Reading is supported 60 minutes of the 90 minute period with the class with in a class model. (The student) has the opportunity of receiving some extra support the whole 60 minutes. However, (the student) will join a small group of students for 15 minutes while residing in the classroom supported by sped staff. The reading block is from 1:50-3:20. Class with in a class support is provided at 1:50-2:30 and 3:00-3:20.
- Writing: 15 minutes (out of the 30 minute writing period). Writing is supported the entire 30 minutes of the period with the class with in a class model. (The student) will join a small group of student, supported by sped staff, for 15 minutes while residing in the classroom. The writing block is from 12:20-12:55.

In our meeting last week, we discussed some additional ways students could be supported in our class with in a class model. Since that conversation we added a table for a small group of students to be supported together in the room, but in closer proximity to the identified sped support person. We also considered supporting her needs in a least restrictive environment.”

The parent responded to the Principal in an email dated March 10, 2017. In her message, the parent noted that “what was discussed in the meeting (on March 1<sup>st</sup>)...is very different than what is on the letter (included in the Principal’s email of March 10, 2017). The parent asked the Principal when the student would begin to join the small group supported by special education staff since “that is not what the school has been providing as special education services” for her. The parent also stated that she had been told at the March 1, 2017 meeting that “the school would try the small group setting once a week.” The parent indicated that she wanted to come to the school to observe the student in the small group setting during math, reading and writing. The school agreed to allow the parent’s observations.

In an email on March 13, 2017, the parent notes that “(the student) started (working in a small group) today in reading but not in math.” On March 14, 2017, the parent sent an email to the Principal requesting a meeting for the purpose of amending the student’s IEP. An IEP Team meeting was scheduled for April 3, 2017.

On March 31, 2017, the parent returned to the school to observe the student’s instruction. In a written summary of that observation, the parent noted that the student worked in a small group setting with special education support and was seen “asking more questions.” In the parent’s opinion, the student appeared “more comfortable...more involved” with the instruction being presented.

An IEP Team meeting was held on April 3, 2017. The parent left the meeting with her draft copy of a revised IEP. A follow-up meeting was held on April 7, 2017 for the purpose of addressing questions raised by the parent after she had reviewed the draft.

### **District’s Position**

The district acknowledges that the student’s February 1, 2017 IEP did not provide the parent with a clear picture of the level of the school’s commitment of special education services to the student and concedes that the student did not receive 50 minutes of special education services per day. When revising the student’s IEP on April 3, 2017, additional minutes of service were included through the end of the 2016-17 school year on May 17<sup>th</sup> to address the diminished level of services to the student between February 1 and April 3, 2017.

### **Findings**

Prior to the development of her February 1, 2017 IEP, the student was assigned to a 5<sup>th</sup> grade classroom that was designated for class within a class service delivery. A paraeducator was assigned to that classroom to provide special education support to identified students as well as offering support to other students who could have experienced some incidental benefit from the paraeducator’s presence. A special education teacher also came to the classroom at various times to support identified students.

While the development of an IEP for this student may have led to an increase in the monitoring of the student by the paraeducator and/or special education teacher, there is no indication that the level of direct support to the student was increased until the parent questioned whether or not the student was receiving the special education service specified in the student's February 1, 2017 IEP.

The student's February 1, 2017 IEP clearly states that she is to receive a total of 50 minutes of special education support on a daily basis. No evidence was presented by the district to show that 50 minutes of individualized instruction was consistently delivered to the student. The incidental benefit that the student received from being in a class within a class setting did not rise to the level of support required by her February 1, 2017 IEP. Under these circumstances, a violation of special education laws and regulations is substantiated on this issue.

### **Corrective Action**

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Specifically, a violation has occurred with regard to 34 C.F.R. 300.101 and 34 C.F.R. 300.17 which require districts to provide FAPE to students in conformity with an IEP which describes and guides services to exceptional students on an individual basis.

The district has addressed this violation by holding an IEP Team meeting on April 3, 2017 for the purpose of revising the student's IEP. The IEP Team determined that 20 minutes of additional support each day to the student through the end of the 2016-17 school year should be provided in order to compensate the student for missed services.

In a telephone call on April 6, 2017, the parent confirmed to the investigator that she is satisfied with the efforts made by the district to address missed services. The parent gave the district her written consent for the proposed change to the student's IEP on April 7, 2017. Under these circumstances, no additional corrective actions will be required.

### **Right to Appeal**

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Landon State Office Building, 900 SW Jackson Street, Suite 600, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

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Diana Durkin, Complaint Investigator



(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  
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES**

REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #\_\_\_\_  
ON APRIL 10, 2017

DATE OF REPORT: MAY 10, 2017

This report is in response to a complaint filed with our office by \_\_\_\_\_ on behalf of her son, \_\_\_\_\_ during the 2016-17 school year, specifically during first semester. Allegations occurring greater than 12 months from the date the child complaint was filed with Kansas Department of Education and allegations that have not yet occurred cannot be investigated under federal regulations. In the remainder of this report, \_\_\_\_\_ will be referred to as "the student" while \_\_\_\_\_ will be referred to as the "the mother" or "the parent."

**Investigation of Complaint**

Nancy Thomas, Complaint Investigator, spoke with \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_\_ by telephone on April 25, and April 27, 2017. The \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_\_ made the following staff persons available to be interviewed:

- Ms. L, Special Education / Case Manager
- Ms. S., Paraprofessional
- Ms. T, General Education Geometry Teacher

In addition, the Complaint Investigator and the \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_\_ staff exchanged emails regarding the investigation on April 14, April 18, April 19, April 20, April 21, April 24, and April 25, 2017.

The Complaint Investigator spoke to the complainant by telephone on April 13, and April 24, 2017. The following person was interviewed:

- Mother

In addition, the Complaint Investigator and the mother exchanged emails regarding the investigation on April 13, April 14, and April 17, 2017.

In completing this investigation, the complaint investigator reviewed the following material provided by the parent and the \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_\_:

- Individualized Education Program (IEP) for the student developed on January 14, 2016
- IEP Snapshot for the student printed on August 31, 2016
- Email dated August 31, 2016 from Ms. L to Ms. T with IEP Snapshots for students in the Geometry class attached
- Grade card printed on December 30, 2016 showing Geometry grade for first quarter as B+; second quarter as D; and first semester as C
- Grade card printed on March 9, 2017 showing Geometry grade for first quarter as B+; second quarter as C-; and first semester as C+
- Notes of a phone conversation between the parent and Ms. T held on March 28, 2017
- Student Progress Report for Geometry class dated April 25, 2017 showing grades for the 2<sup>nd</sup> quarter between October 25 and December 21, 2016 with the student earning 500/500 points for the final project
- Grade card printed on April 26, 2017 showing Geometry grade for first quarter as B+; second quarter as A-; and first semester as A

### **Background Information**

This investigation involves a sixteen year-old student who is currently enrolled in the tenth grade at \_\_\_\_\_ Middle School and High School in the \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_\_ during the 2016-17 school year.

The most recent reevaluation of the student was conducted on January 15, 2015. Records and interviews indicate the student is eligible for special education and related services under the disability category of Other Health Impaired and that the student has been diagnosed with Autism.

The student had an IEP in effect during first semester of the 2016-17 school year. The student's IEP was reviewed and revised at the annual IEP team meeting held in January 2017 and both the parent and school staff report this IEP now includes specific accommodations for the student's social anxiety.

### **Issues**

Two issues raised by the Complainant were investigated.

**ISSUE ONE:** The \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_\_, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP of the

student during the math final exam at the end of the first semester of the 2016-17 school year.

Findings:

Federal regulations, at 34 C.F.R. 300.17, require that a student be provided with a free appropriate public education (FAPE). Public agencies must provide special education and related services in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324.

The student's IEP in effect during first semester of the 2016 school year was developed on January 14, 2016. That IEP required 208 minutes per day of specialized instruction in the general education setting; 52 minutes per day of specialized instruction in the special education setting; 5 minutes per week of consultation/indirect counseling services; and 5 minutes per week of consultation/indirect transition services.

During the 2016-17 school year, paraprofessional support was provided to the student in the general education core classes of English 10, Geometry, Physical Science, and World History. The IEP noted paraprofessional support is needed to provide redirection, separate environment, organization, reminders, attention to detail, review, re-teaching, and/or proof reading in the general education setting. The student received specialized instruction in the resource room for Academic Support with the special education teacher for career planning, study skills, extended time, re-teaching, review, re-reading, organization and identifying/utilizing strategies to address deficits/strengths.

The parent reported that the student was not provided the required special education services in the general education Geometry class on December 21, 2017 during the final exam. The parent indicated that because this support was not provided, the student failed the final project and his grade for the second quarter was reduced to a D (65%) and to a C (76%) for the first semester. Even after this lack of special education service was brought to the attention of school staff and it was agreed to give the student credit for the final project, the grades had not been changed by the end of March 2017 resulting in the need to file the child complaint.

Ms. L and Ms. T reported that Ms. S was the paraprofessional assigned to work with the student during the Geometry class. Ms. S indicated that she regularly provided support as required by the IEP for the student including redirection, separate environment, organization, reminders, attention to detail, review, and re-teaching of math concepts.

Ms. L reported that Ms. S was on medical leave beginning on December 8, 2017. Ms. G was assigned as the substitute paraprofessional for Ms. S until she went on maternity leave on December 19, 2016. Because of the final exams occurring at this time, Ms. L and another paraprofessional, Ms. E, developed a schedule to provide support to the students with IEPs at \_\_\_\_ Middle School and High School during their scheduled final exams on December 20 and December 21, 2017. Based upon that schedule, the only finals scheduled for December 21, 2016 were during first hour; accordingly, the student was provided support during the first hour final on December 21, 2016 and not during the fourth hour Geometry class period.

Ms. T reported that the Geometry class final was a project that included the student creating and presenting a PowerPoint on uses for geometry in real life, three careers in Geometry, and the largest employer of mathematicians.

This class worked on this project for approximately one week and was worth 500 points. Ms. T stated that she did not follow the final exam schedule and instead had the students present their PowerPoints during the fourth hour Geometry class during finals week. The student was given the opportunity to present on December 21, 2016 but refused and therefore was given 0 points for his final project grade. Ms. T reported that per school district procedure, the final grades were recorded in the computer prior to the holiday break.

Ms. T stated that as a first year general education teacher she was not really aware of what was required by the student's IEP and that she depended on Ms. S to tell her what needed to be done. She did not recall receiving an IEP Snapshot for the student via email and could not find it in her saved files. However, as a former special education teacher, she was sure the IEP included a statement that any special education services missed because of staff absence would not be made up or rescheduled so the paraprofessional not being available due to a staff shortage on December 21, 2016 during the final exam was really not an issue especially since she was aware that the student was able to be successful doing improvisation in front of the Drama class.

The parent reported she became aware of the situation after receiving the grade card and contacted Ms. L and Mr. P, Principal at \_\_\_\_ Middle School and High School to discuss the situation. Mr. P instructed Ms. L to investigate the situation and she discovered that the student had completed the PowerPoint presentation and had submitted it to Ms. T via Google documents prior to the end of first semester. The student told Ms. L that he was unable to present in front of the class that day because the paraprofessional had not been in the classroom to support him. Ms. L stated this social anxiety was consistent with his autism diagnosis. Ms. T reported she had not seen the completed assignment due to

technology problems and Ms. L arranged for Ms. T to review the PowerPoint slides the student had created for the presentation. Ms. T acknowledged these met all of the requirements and would have earned all of the points had she been aware of them at the time. As a result of the investigation, Mr. P determined that Ms. T would award the final exam project 500/500 points and the second quarter and first semester grade would be changed to reflect the additional points. This decision was shared with the parent toward the end of January.

The parent reported she believed school staff had resolved the issue but found that the grade had not been changed as agreed when she check grades in March 2017. At that time, the grade card did reflect a grade change but did not reflect that the student had been awarded full points for the final exam project. The parent spoke by phone with Ms. T on March 28, 2017 about the grade and the situation that had occurred during the final exams. Ms. T shared that she believed the student should have been able to present the PowerPoint during class as she knew the student was successful doing improvisation in the Drama class. When asked about the discrepancy in the grades and the time lapse to correct the grade, Ms. T reported she was having difficulty with the computer and thought she had correctly changed the student's grade.

The parent filed the child complaint on April 10, 2017 and documentation shows the grade was changed as agreed upon in January as of April 25, 2017.

Based on the foregoing, the allegation of a violation of special education laws and regulations is substantiated as paraprofessional support was not provided to the student during the Geometry final on December 21, 2016. It is noted that once the issue was brought to the attention of the \_\_\_\_ Special Education Cooperative / USD #\_\_\_\_, efforts were made to mitigate the effect of the lack of special education services to the student.

**ISSUE TWO:** The \_\_\_\_ Special Education Cooperative / USD #\_\_\_\_, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to ensure that each teacher and provider were informed of his or her responsibilities related to implementing the IEP of the student during the math exam at the end of the first semester of the 2016-17 school year.

#### Findings:

Federal regulations, at 34 C.F.R. 300.323(d), require the public agency to ensure that the 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. Each teacher and provider must be informed

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.

The parent alleges that Ms. T was not aware of the accommodations required for the student during the final exam in the Geometry class on December 21, 2016.

The findings of Issue One are incorporated herein by reference.

Ms. L indicated that her procedure at the beginning of each school year is to provide a copy of the IEP Snapshot for each student on her caseload to each student's general education teachers. The IEP Snapshot includes demographic information for each student, a listing of goals/benchmarks/objectives, anticipated services, classroom accommodations/modifications, need for any assistive technology, and participation in state-wide assessment.

However, at the beginning of the 2016-17 school year, Ms. L reported there was a computer glitch that did not allow her to print each IEP Snapshot. Ms. L reported that she met with each general education teacher individually, including Ms. T, to review the IEPs of students listed on each teacher's class roster prior to the first day of school.

Once the computer glitch was fixed, Ms. L printed and emailed copies of the IEP Snapshot to each teacher on August 31, 2016. Documentation shows an email from Ms. L to Ms. T dated August 31, 2016 which includes an attachment of the IEP Snapshot for the student.

Although Ms. T reported she was not aware of the student's accommodations and relied on the paraprofessional assigned to her classroom to provide any necessary accommodations for the student, there is evidence of procedures and practices in \_\_\_\_\_ Special Education Cooperative / USD # that were followed at the beginning of the 2016-17 school year to ensure that each teacher and provider was informed 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.

Based on the foregoing, the allegation of a violation of special education laws and regulations is not substantiated.

### **Corrective Action**

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. The violation occurred in the following area:

- 34 C.F.R. 300.17, requires that a student be provided with a free appropriate public education (FAPE). Public agencies must provide

special education and related services in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324. In this case, the \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_ did not provide special education services on December 21, 2016 during the Geometry final exam in conformity with the student's IEP in effect during the 2016-17 school year. This denial of service resulted in significantly lowering the student's grade in the Geometry class for second quarter and first semester of the 2016-17 school year. However, it is noted that once the \_\_\_\_\_ Special Education Cooperative / USD #\_\_\_ became aware of the noncompliance, efforts were made to mitigate the effect of the lack of special education services on that date.

Based on the foregoing, \_\_\_ Special Education Cooperative / USD #\_\_\_ is directed to take the following actions:

1. Within 10 calendar days of the receipt of this report, submit a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will:
  - a) Comply with 34 C.F.R. 300.17, by providing special education and related services in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324.
2. Prior to the end of second semester, review procedures and practices to ensure that special education services are provided to the student during the Geometry final exam to be held in May 2017. A summary of this review and the plan shall be provided to Early Childhood, Special Education and Title Services no later than June 1, 2017.
3. Prior to the beginning of the 2017-18 school year, provide training to Ms. T regarding her responsibilities for implementing the IEPs of students in her classroom. In addition, Ms. T must participate in technology training to address the lack of computer skills that resulted in her not being aware of the IEP Snapshot of the student at the beginning of the school year; not being able to access the student's PowerPoint presentation in Google documents; and the four month delay in correcting the final project grade in the grading system. Documentation of this training shall be submitted to Early Childhood, Special Education and Title Services no later than August 30, 2017.



4. Further, the \_\_\_\_ Special Education Cooperative / USD # \_\_\_\_ shall, within 10 calendar days of receipt of this report, submit to Early Childhood, Special Education and Title Services one of the following:
- a) a statement verifying acceptance of the corrective action or actions specified in this report;
  - b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
  - c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (f).

### **Right to Appeal**

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (c), which is attached to this report.

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Nancy Thomas

Complaint Investigator

(f) Appeals.

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

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

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

(A) The issuance of an accreditation deficiency advisement;

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

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

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

**KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION SERVICES**

REPORT OF COMPLAINT  
FILED AGAINST

\_\_\_\_\_ PUBLIC SCHOOLS #\_\_\_\_\_  
ON MAY 1, 2017

DATE OF REPORT: MAY 30, 2017

This report is in response to a complaint filed with our office on behalf of \_\_\_\_\_ by her parents, \_\_\_\_\_ and \_\_\_\_\_. \_\_\_\_\_ will be referred to as “the student” in the remainder of this report. Mr. and Mrs. \_\_\_\_\_ will be referred to as “the parents.”

**Investigation of Complaint**

Diana Durkin, Complaint Investigator, spoke by telephone with Daniel Wray, Director of the \_\_\_\_\_ Cooperative in Education (\_\_\_\_\_), on May 8, 19, and 24, 2017. On May 30, 2017, the investigator spoke by telephone with the student’s mother.

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

- Letter dated February 1, 2017 from the parents to the Superintendent of USD #\_\_\_\_\_
- Email dated February 7, 2017 from the Superintendent to the student’s mother
- Written record of phone call from the Director of the \_\_\_\_\_ to the student’s mother on February 9, 2017
- Email dated February 16, 2017 from the parents to the Superintendent
- Email dated February 16, 2017 from the Superintendent to the parents
- Letter dated February 24, 2017 from the parents to the Superintendent
- Email dated February 27, 2017 from the Director of the \_\_\_\_\_ to the parents
- Email dated April 3, 2017 from the student’s mother to the Director
- Email dated April 11, 2017 from the student’s mother to the Director
- Emails dated April 12, 2017 between the student’s mother and the Director
- Emails dated April 13, 2017 between the student’s mother and the Director
- Email dated April 14, 2017 from the Director to the student’s mother
- Emails dated April 16, 2017 between the student’s mother and the Director
- Emails dated April 17, 2017 between the student’s mother and the Director
- Emails dated April 18, 2017 between the student’s mother and the Director
- Email dated April 19, 2017 from the Director to the student’s mother
- Emails dated April 20, 2017 between the student’s mother and the Director
- Email dated April 24, 2017 from the student’s mother to the Director
- Email dated April 25, 2017 from the student’s mother to the Director
- Emails dated April 26, 2017 between the student’s mother and the Director

- Email dated May 3, 2017 from the student’s mother to the Superintendent
- Email dated May 5, 2017 from the student’s mother to the Superintendent
- Email dated May 11, 2017 from the student’s mother to the Director
- Email dated May 11, 2017 from the Superintendent to the student’s mother
- Email dated May 12, 2017 from the Director to the student’s mother
- Email dated May 15, 2017 from the student’s mother to the Superintendent
- Email dated May 15, 2017 from the Superintendent to the student’s mother
- Email dated May 19, 2017 from the student’s mother to the Director
- USD \_\_\_\_ Maintained Student Records list

### **Background Information**

This investigation involves a request to review educational records, made by the parents of a 9<sup>th</sup> grade student with Down Syndrome who is enrolled in her local high school.

On February 1, 2017, the parents sent a letter to the Superintendent of USD # \_\_\_\_ asking for **copies** of “**all of (the student’s) records since August 17, 2005**” – the date when the student was first enrolled in the district. On March 6, 2017, after the district declined to provide the requested copies and instead told the parents that records would be made available for review at a district location, the parents filed a formal complaint with the Kansas State Department of Education. During the pendency of the investigation of that complaint, the parents declined the district’s offers to make the student’s educational records available for their review.

A report of the investigation of the parents’ complaint was filed on March 28, 2017 and received in the office of the Director of the \_\_\_\_ on March 30, 2017. No violation of special education laws and regulations was substantiated through the investigation and the district was not required to take any corrective action.

The parents report that they are concerned about what they report to be a “lack of progress shown in (the student’s) reevaluations.” They have requested an Independent Educational Evaluation (IEE).

### **Issue**

In this complaint, the parents outline three issues. Their third concern alleges that some of the records maintained by the district are not accurate and need to be changed. Federal regulations, at 34 C.F.R. 300.618 through 300.621, address how this kind of issue may be resolved. Those regulations state that a parent may request that the records of their child be amended. If the district refuses to amend the records as requested, the parents must be informed of that decision and that they have a right to request a hearing. Because this is the only process authorized by law for addressing the accuracy of records, this concern was not included as a part of this investigation.

The following two issues were addressed:

### **Issue One: The parents have not been allowed to view the student's records.**

The Family Educational Rights and Privacy Act (FERPA) of 1974, as amended (2006), as well as State special education laws and regulations require schools to have reasonable policies in place to allow parents to **review and inspect** their child's educational records. "Educational record" means those records that are directly related to a student and maintained by an educational agency and may include (but are not limited to) records associated with academic work completed and level of achievement. Federal special education regulations, at 34 C.F.R. 300.613, which are identical to FERPA regulations, require that a district provide a parent, upon request, **access to** (emphasis added) the child's records. Regulations state that the district must comply with a request such as this "without unnecessary delay and before any meeting regarding an IEP...and in no case more than 45 days after the request has been made."

Records should be in a location that: (a) parents can find, (b) is maintained during normal business hours; and (c) is not physically inaccessible (such as downstairs or upstairs, with no elevator available). Upon request, someone who can interpret or explain the records should be made available to the parents.

#### **Sub-issue: General Access**

On February 1, 2017, the parents sent a letter to the Superintendent of Schools for the district requesting "**a copy** (emphasis added) of all of (the student's) records since August 17, 2005" (the date the student was first enrolled in the district as a preschool student). In that letter the parents asked for copies of the following:

"...all documents generated by both school and district personnel and outside sources, as well as all confidential, medical, psychological, regular education, special education and other documents within the district's possession. Please include all of her records *which include but are not limited to:* (the student's) cumulative file, her confidential file, and her compliance file. Please include all reports written as a result of the school's evaluations; reports of independent evaluations; medical records; summary reports of evaluation team and eligibility committee meetings; any correspondence between (the parents) and school officials, staff and those contracted by the school district; any correspondence written between school personnel regarding our daughter or us including emails; any records maintained by the school nurse, (the student's) teachers, and any member of the multidisciplinary team, student assistance team, 504 team, student services office and the director of security; recordings of meetings, notes, and letters written in connection with any planning or discussions, or other matters in connection with our daughter...or us. Please include any and all personally identifiable information that exists."

The parents requested that they be mailed a “complete copy of all personally identifiable records” and requested that “any copying fees be waived to facilitate (their) access to (the student’s) records.”

On February 7, 2017, the Superintendent sent an email to the student’s mother indicating that there would – per Board of Education policy – be a charge for the copying of the requested records and that fee would need to be paid by the parents before the copies would be processed. Additionally, the Superintendent also stated, “I can arrange, with prior notice, for you to be able to review (the student’s) records at no cost in our buildings.”

On February 9, 2017, the Director of the \_\_\_\_\_ called the student’s mother to schedule dates for the parents to come to the office to review the student’s educational records. According to a record of that phone call provided by the district, the parent told the Director that she did not want to view the record but rather wanted the district to provide her with a copy of the records.

On February 16, 2017, the parents sent an email to the Superintendent again asking for a copy of the student’s educational records. The Superintendent responded via email on February 16, 2017 telling the parents that he could “arrange for free for you to examine (the student’s) records at the high school and at the special education office...”

In a telephone call on February 17, 2017, the Director of the \_\_\_\_\_ again told the parents that the students records could be made available for their review. He repeated that offer at a re-evaluation meeting on February 22, 2017.

The parents wrote a letter to the Superintendent on February 24, 2017 stating “... we are not able to review (the student’s) Educational Records in SPED building (sic) because our home burnt down and we are just now completing our home and purchasing furniture, plus I work with my husband every day, so my time is already full.”

The Director of \_\_\_\_\_ sent an email to the parents on February 27, 2017 stating “...you are entitled to review all of (the student’s) records and we reiterate that you are welcome to review them at the \_\_\_\_\_ office...I can be available after school hours if it is more convenient for you...Please give us some dates that you would be available to review (the student’s) records so that we may schedule that at a time that is mutually agreeable...” The parents did not contact the district to suggest dates for the record review at any time during the month of March 2017.

The district received a report of the investigation of the parents’ previous complaint on March 30, 2017. On April 3, 2017, the student’s mother sent an email to the Director indicating the parents’ desire to “see all (the student’s) educational files.” The parent stated that she would be available to review records on April 5, 2017 “after 10:30 AM.” No review was scheduled for April 5<sup>th</sup>.

In a telephone call on April 6, 2017, the Director asked the student's mother to give him some dates when she and her husband would like to review the student's educational records. According to the Director, the parent stated that she would "get back to him."

At 4:26 PM on Tuesday, April 11, 2017, the student's mother sent an email to the Director of the \_\_\_\_\_ stating that she would be available the following morning to review the student's records.

The Director contacted the parent by telephone to let her know that he would not be available on April 12<sup>th</sup> but suggested that the review be conducted on April 14<sup>th</sup> beginning at 9:30 AM. The district had determined that the Director was to be the person designated to provide an explanation or interpretation of records should the parents make such a request.

At 7:38 AM on April 12, 2017, the parent sent another email to the Director requesting to see the student's "protocol for her re-evaluations...the work done in sped (programs apps or whatever is used that does not lend to showing physical release of work done in class...progress reports and view programs that are used with her..."

The Director responded to the parent at 8:09 AM on April 12, 2017 stating "because we already have a meeting scheduled for Monday the 17<sup>th</sup>, I would suggest to save time that we have the work that (the student) does ready for you to review at the conclusion of that meeting...As for the records review, it would work for you to come in at 9:30 this Friday (April 14<sup>th</sup>)."

At 8:23 AM on April 12, 2017, the student's mother sent an email to the Director stating "this Friday works but we will need more sessions than one...Also if I could come in earlier it would give me more time...Is 8:30 okay...I would still like those morning dates set aside on April 19 and 27." The Director responded at 9:18 AM writing "I will not be available until 9:00 on Friday, so that would be the earliest...I am reserving the 19<sup>th</sup> for now...I have previous engagements on the 27<sup>th</sup>...so that is not an option." At 11:29 AM, the parent wrote, "Doesn't someone just have to be there? I don't understand why I can't go those days." The Director responded by saying "our obligation is to arrive at a mutually agreeable time. Two of the days work for both of us, the third does not."

On April 13, 2017, the parent confirmed that she would come to review records on the 14<sup>th</sup> and wanted to come in on the 17<sup>th</sup> as well. The Director reiterated that he would not be available on the 17<sup>th</sup> but would be available on April 19<sup>th</sup>.

At 8:02 PM on April 13<sup>th</sup>, the parent sent an email to the Director saying she "had something move to tomorrow that I can't cancel" and would not be available for the records review on April 14<sup>th</sup>.

The parent did conduct a review of records on April 19<sup>th</sup> arriving at 8:35 AM and staying until 12:45 PM. At the conclusion of that session, another appointment was set for April 24, 2017 from 8:00 AM until noon. The parent arrived at approximately 8:55 AM. The

parent was set up with records in a conference room. The Director – who had left the building at 8:30 to attend to a personnel matter – returned at 9:03. The parent asserted that her rights had been violated because the Director was not present when she arrived and requested that 6 additional sessions be scheduled for her continued records inspection.

The parent reviewed records for a little over 3 hours on May 1, 2017 and then scheduled another appointment for May 3, 2017 from 10:00 AM until noon. The parent returned to the \_\_\_\_ office on May 4<sup>th</sup> and reviewed records for approximately 2 hours. A four-hour block for records review was scheduled for May 15<sup>th</sup>.

The parent cancelled a scheduled records review for May 15, 2017 and requested 3 additional dates. On May 11, 2017, the parent sent an email to the Director cancelling an appointment for May 16, 2017. The parent suggested three dates (May 17, 18, or 19, and the Director agreed to a records review on May 17 from 9:00 AM until noon. On May 19, 2017, the student's mother sent an email to the Director indicating she had not seen the email the Director had sent regarding the May 17<sup>th</sup> review and stated she would be "happy to review files next May 24 from 9-noon."

The student's mother reviewed records for four hours on May 26, 2017.

The parents' initial email request to "see all (the student's) educational files" was made on April 3, 2017. The Director contacted the student's mother within 3 days of her request, and records were made available at the \_\_\_\_ office for the first parental review on April 14, 2017. The parent was not able to keep that appointment but between April 19, 2017 and May 26, 2017, the student's mother spent approximately 22 hours reviewing the student's records.

In the mind of this investigator, it would be expected that a review of educational records covering a span of 12 years could not be completed in a single viewing. While not every review date proposed by the parents was accepted by the district, it appears to the investigator that the district has made a good faith effort to provide the parents with access to the student's educational records.

Beginning 11 days after the parents' request to review the student's records, the district scheduled reviews on 9 days, and the student's mother conducted record reviews on 7 of those days. Under these circumstances, a violation of special education laws and regulations is not substantiated on this aspect of this issue.

### **Specific Sub-issues Cited by the Parent of the District's Obstruction of Access**

In their complaint, the parents cite a series of examples regarding the district's obstruction of their access to the student's educational records. It is important to note that the date the parent signed this complaint was April 28, 2017. At that time, the student's mother had completed approximately 7 hours of review of the student's educational records. Following the filing of the complaint, the parents completed 15



additional hours of file review. The following sections will address each of the specific examples cited by the parents.

### **Sub-issue: Unavailability of Some Educational Records**

According to the parents, not all of the student's educational records were available for their review at the \_\_\_\_\_ office on April 19 or 24, 2017. The parents assert that the Director "admitted" that not all files were present on site on these dates.

The district stipulates that not all of the student's educational records were being held **at the \_\_\_\_\_ office** on the dates specified by the parents. Work samples and modified curriculum materials were available for review by the parents on April 19<sup>th</sup> and 24<sup>th</sup> at the student's school.

Regulations do not require a district to move all educational records to a centralized location for review by parents. In the case of this request, some of the student's records were available at the student's school – in an accessible location that the parents could find – and were maintained there during normal business hours. A violation of special education laws and regulations is not substantiated on this aspect of this issue.

### **Sub-issue: Progress Notes Not Available in Hard Copy Format**

The parents assert that the Director did not make hard copies of IEP progress reports available for their review.

It is the position of the district that paper copies of the student's progress reports are not maintained by the district. According to the Director, a paper copy of each progress report is printed and provided to parents on a quarterly basis, but the district maintains only electronic versions of these reports.

Electronic copies of IEP progress reports covering all twelve years requested by the parent were sent to the student's mother by the Director on May 2, 2017.

In Letter to Anonymous, 15 FAB 14 (FPCO 2111), the Family Policy Compliance Office (FPCO), which oversees FERPA, stated that a district is not required to create educational records or to provide information in response to a parent request if those records or that information is not maintained by the district. In this case, the district was not required to maintain a record in hard copy format.

The parent was given access to electronic copies of all of the student's IEP Progress Reports. A violation of special education laws and regulations is not substantiated on this aspect of this issue.

### **Sub-issue: Access to Electronic Files**

According to the parents, they asked to see the electronic files maintained by the district – specifically the student’s IEPs. The parents contend that they were told that in lieu of providing access to those electronic files at the \_\_\_\_ office, hard copies of the documents would be made for the parents or the documents would be sent to them electronically.

The district stipulates that the parents were told that these records would be sent to them electronically because the documents would be easier to read in that format. The Director sent the IEPs to the parents via email on March 15, 2017.

The parents were provided electronic copies of all of the student’s IEPs. A violation of special education laws and regulations is not substantiated on this aspect of this issue.

### **Sub-issue: Health and Medical Records**

Parents assert that the student’s health and medical records were unavailable for their review at the \_\_\_\_ office on April 19 and 24, 2017.

The district contends that health and medical records were available on these dates, but the student’s mother had not completed a review of all available records before she left for the day.

The investigator cannot substantiate a violation of special education laws and regulations with regard to this aspect of this issue.

### **Sub-issue: Greenbush and Medicaid Billing Records**

The parents contend that during the record review on April 19, 2017 they asked the Director for all the Greenbush billing records related to their daughter. According to the parents, the Director told them that billing for services was done through Medicaid rather than Greenbush. On April 24, 2017, the student’s mother amended her request and asked for records of Medicaid billing.

According to the Director, the district does not maintain single student records regarding Medicaid. However, the Director asked the district Medicaid Clerk to contact Greenbush to request a copy of records related to this student. Greenbush provided those records and sent them to the district electronically. The Director then forwarded the records to the parents on April 26, 2017.

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

### **Sub-issue: Access to Coursework Completed Using Online Programs**

Parents asked to see all of the coursework the student has completed for a grade using online/computer programs. They assert that this material has not been made available to them.

It is the position of the district that the electronic version of this work is not maintained or stored online by the district. Hard copies were made of some elements of the work, and that material was made available for the parent's review.

As stated above, the district is not required to develop an educational record or to provide information in response to a parent request if those records or that information is not maintained by the district. In this case, the district did not maintain all of the coursework completed by the student over the 12 years she has been enrolled in the district. The coursework that has been maintained by the district has been made available to the parents.

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

### **Sub-issue: Test Protocols**

A psychological evaluation or assessment would be an education record under FERPA if it is "directly related" to the student and ***if it is maintained*** by the school or a party acting on behalf of the school. Generally, any record that contains any personally identifiable information, such as name, student identification number, or other information which would link the document to the individual, is an education record under FERPA. Any test protocols or test question booklets which do not contain information directly related to the student are not education records under FERPA.

The parents contend that they were not shown all test protocols from assessments used as a part of all reevaluations conducted by the district.

It is the district's position that the parent has been provided access to all protocols ***maintained*** by the district.

The parents were provided with access to evaluation reports which summarized the student's performance on a variety of assessments, but the district has not maintained the test forms (protocols) for every assessment. A violation of special education laws and regulations is not substantiated on this aspect of this issue.

### **Sub-issue: State Alternative Test Responses**

In a telephone call with the investigator on May 30, 2017, the student's mother acknowledged that she had been given access to the most recent alternate assessment results for the student. According to the parent, the district had previously told her that these results were not available.

According to the district, these assessment results were not maintained by the district. However, with assistance from the State Assessment Coordinator, the district's Assessment Coordinator was able to retrieve the results summary from the 2015-16 school year. These results were printed and added to the student's special education file which was reviewed by the student's mother on May 26, 2017.

Because the parent has been provided with access to the only record of alternate assessment results maintained by the district, a violation of special education laws and regulations is not substantiated on this aspect of this issue.

### **Sub-issue: District Delays in Providing Access to Records Due to Scheduling Issues**

The parents contend that the Director has limited their access to the student's educational records by insisting on a 5-day lead time when scheduling viewing appointments.

It is the district's position that the lead time is needed so that the Director – the individual designated by the district to interpret or explain aspects of the student's records if such a request is made by the parent – could be available.

Five-day prior notice was not required for every review date. Further, the district's request for prior notice for scheduling did not prohibit the parents from accessing the student's records, since a mutually agreeable time was established on 7 occasions, with the first within 16 days of the parents' initial request. Under these circumstances, a violation of special education laws and regulations is not substantiated on this aspect of this issue.

### **Sub-issue: Access to Teacher Work Files**

Generally, the working file and anecdotal records of a teacher or other staff member would not be considered to be part of a child's education record. FERPA regulation 34 C.F.R. 99.3(b) states that the term "education records" does not include "records of instructional, supervisory and administrative personnel, and educational personnel ancillary to those persons, that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record."

Parents report that they have been denied access to teacher work files.

According to the district, some service providers opted to make their work files available to the parents, and those documents were included among the records presented to the parents for review. Other staff members chose not to make available documents that have been kept in their sole possession and have not been shared with others.

Because the district is not compelled to provide the parents with access to the type of teacher work files described above, a violation of special education laws and regulations is not substantiated on this aspect of this issue.

### **Sub-issue: Access to Documents Created by the Previous Director**

The parents maintain that they have not been given access to records created by the previous Director of Special Education.

The district asserts that none of the previous Director's records were maintained when she left the district.

The investigator found no evidence to support the existence of such a record. A violation of special education laws and regulations is not substantiated on this aspect of this issue.

### **Sub-issue: Specific Documents Requested By the Parents**

In an email to the Director dated April 24, 2017, the student's mother provided a list of the records the parents wanted to review and asked that "these files (be) available on all scheduled visits." That list with the investigators findings following the colon, is itemized below.

- Confidential Files: These files were made available at the \_\_\_\_ office.
- Cumulative (File): These files were made available at the \_\_\_\_ office.
- Compliance File: The district does not have any "compliance file" related to this student.
- Medical and health related files including any and all records of Medicaid billing: The student's medical/health file was made available for review at the \_\_\_\_ office; Medicaid records were sent to the parents via email on April 26, 2017.
- Independent Evaluations: At the time of the parents' record review, no results of the independent educational evaluation (IEE) requested by the parent in February of 2017 had yet been received by the district. No other IEEs have been conducted.
- Summary Reports of Evaluations: Hard copies of these reports were provided to the parents in September 2016, electronic copies were sent to the parents in February, and the most recent re-evaluation report was sent to the parent on March 16, 2017.
- All written reports: These reports have been available for review at the \_\_\_\_ in the special education file.
- School evaluations: All school-based evaluations maintained by the district are in the student's Cumulative File which was made available at the \_\_\_\_ office.
- Progress Reports: These reports were sent to the parents electronically in two files on May 2, 2017.
- Eligibility Committee Meetings: The student's eligibility for special education was established at the preschool level. All subsequent re-evaluations wherein

continued eligibility was established have been available at the \_\_\_\_ office in the special education file.

- Correspondence records between us and the school: Any such correspondence maintained by the district as a part of the student's educational records have been available at the \_\_\_\_ office.
- Staff or other reports contracted by the school district: All reports maintained by the district are in the student's special education file which has been available at the \_\_\_\_ office.
- Emails regarding the student between school personnel: The district does not maintain emails as a part of a student's educational records.
- Student Service Office information: The district does not have a Student Service Office.
- Director of Security Files: The student has never been involved in any disciplinary incident involving the School Resource Officer (SRO). The district does not have a Director of Security. No such files exist.
- 504 Team Meeting information: The student has never had a 504 Accommodation Plan and has never been referred for any team meeting discussion involving Section 504.
- Records of meetings: Any such records maintained by the district have been made available at the \_\_\_\_ office.
- Notes and letters written in connection with planning and discussion: Any such correspondence maintained by the district was available for review at the \_\_\_\_ office.
- Any records of personally identifiable information that exists: All personally identifiable information related to this student that is maintained by the district has been made available to the parents.
- Working files from all who have worked with the student: Not all of the working files that have remained in the sole possession of the developer and have not been shared with others have been made available for the parents to review, as they are not a part of the student's educational records. Those that have been made available were held at the \_\_\_\_ office for the parents to review.
- All IEP Progress reports: These were sent to the parent electronically on May 2, 2017.
- View all protocols for any evaluation/testing: Any protocol maintained by the district has been available for review at the \_\_\_\_ office.
- View all electronic data on the student: The parent has been given access to Powerschool by the principal of the student's school. The parent was sent electronic copies of all Webkidss-based IEPs on March 15, 2017
- Report cards: These are kept in the student's Cumulative File and were made available for the parents' review at the \_\_\_\_ office.
- Work samples: All work samples maintained by the district were made available at the \_\_\_\_ office.

As noted in the bulleted list above, all documents requested by the parents and maintained by the district were made available for review. A violation of special education laws and regulations is not substantiated on this aspect of this issue.

**Issue Two: The district has violated federal regulations at 34 C.F.R. 300.613 (sic) because it has failed to provide the parents with a list of the types of educational records that are collected, maintained, or used by the agency.**

Federal regulations, at 34 C.F.R. 300.616 (rather than 300.613) do require that districts provide parents ***upon request*** (emphasis added) with “a list of the types and locations of educational records collected, maintained, or used by the district.”

The Office of Special Education Programs (OSEP) – which administers the *Individuals with Disabilities Education Act (IDEA)* - offers no official guidance regarding this regulation. But, in a state complaint decision in Nevada, the complaint investigator pointed out that when the regulations regarding education records apply to a specific child, they say so with language such as "education records relating to their children" or "records of the child." In 300.616, by contrast, the regulation simply says the school must provide, **upon request**, "a list of the types and locations of education records collected, maintained, or used by the agency." The hearing officer stated that this regulation was a general regulation relating to the types and locations of education records for students generally, and did not require the district to provide a list of the types and locations of education records it collected, maintained or used relating specifically to the parent's child. The case is Washoe County School District, 60 IDELR 299 (SEA NV 2013).

A complaint response from the Family Policy Compliance Office, which oversees the Family Education Rights and Privacy Act (FERP) offers guidance with regard to a parent's request for access to student records (Letter re: Scott City School District, 10 FAB 39). As stated in the letter, “If a parent makes a ‘blanket’ request for a large portion of his child's education records and the parent believes that he has not been provided certain records that were encompassed by that request, he should submit a follow-up request clarifying the additional records he believes exist.” In short, “it is the responsibility of the parent to clearly specify the records to which he or she is seeking access.”

The parents assert that the district did not provide them with a list of types and locations of educational records maintained by the district. They contend that the Director instead asked them to generate a list of the records they want to review.

It is the position of the district that the parents did not ask the district to provide a list of the types and locations of educational records collected, maintained, or used by the district until the parent sent an email to the Director on May 11, 2017 – after the complaint was filed.

The Superintendent sent an email to the parents on May 11, 2017 providing information regarding the location of each of the types of records specified in the list provided earlier

by the parents. On May 23, 2017, the Superintendent sent an amended version of his original list to the parents via email.

A formal complaint must allege that a violation of special education laws and regulations has occurred. At the time the parents filed this complaint, they had not made a request for a list of the types and locations of educational records collected, maintained, or used by the district. Subsequent to the parents' request for such a list, it was provided by the Superintendent of the district.

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

### **Corrective Action**

Information gathered in the course of this investigation has failed to substantiate noncompliance with special education laws and regulations on issues presented in this complaint. Therefore, no corrective action is directed at this time.

### **Right to Appeal**

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Early Childhood, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

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Diana Durkin, Complaint Investigator



**KANSAS STATE DEPARTMENT OF EDUCATION  
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES**

REPORT OF COMPLAINT  
FILED AGAINST  
PIPER UNIFIED SCHOOL DISTRICT # ON MAY 24, 2017

DATE OF REPORT: JUNE 18, 2017

This report is in response to a complaint filed with our office on behalf of \_\_\_\_\_ by her mother, \_\_\_\_\_. \_\_\_\_\_ will be referred to as “the student” in the remainder of this report. Ms. \_\_\_\_\_ will be referred to as “the parent.”

**Investigation of Complaint**

Diana Durkin, Complaint Investigator, spoke by telephone with \_\_\_\_\_, Director of the \_\_\_\_\_ Cooperative ( ) on May 30 and June 15, 2017. On June 9 and 18, 2017, the investigator spoke by telephone with the student’s mother.

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

- IEP for this student dated September 29, 2016
- Amended IEP for this student dated January 6, 2017
- Revised Draft IEP for this student dated April 19, 2017
- Amended IEP for this student dated April 19, 2017
- Letter from the Director of the \_\_\_\_\_ to the parent dated June 8, 2017

**Background Information**

This investigation involves a 15-year old girl who has just completed 10<sup>th</sup> grade in her local high school. The student has been diagnosed with Epilepsy, Cerebral Palsy, Autism, Hydrocephalus, Failure to Thrive, Methylenetetrahydrofolate reductase (MTHFR), and Gastric Reflux.

The student has received special education services through programs for 14 years. The parent reports that her daughter is currently the only wheelchair-bound, nonverbal student in her classroom.

## Issue

In her complaint, the parent describes four incidents involving the student that occurred while the student was either on school grounds or off-site under the supervision of special education staff.

**Incident #1:** On the third day of the 2016-17 school year, the student was grabbed and scratched by a classmate. The incident led to an escalation of inappropriate behaviors on the part of the student who was subsequently prescribed antidepressant drugs.

**Incident #2:** On February 21, 2017 while on a field trip to IKEA, the student was left unattended by staff. The student's Community Developmental Disabilities Organization (CDDO) Case Manager was present and reported to the parent that the student had been left in her wheelchair, pushed up against a wall along with a shopping cart while the teacher, two paraeducators and other students went into another room. The parent states that the Case Manager reported that she did not observe special education staff engaging the student in any activities while at IKEA.

**Incident #3:** On April 7, 2017 while a bus was waiting to pick up students who were on their way to attend a Job Olympics event in another city, the parent observed a peer pushing the student to the bus in her wheelchair. No special education staff members were present, and the parent noted that the peer was struggling to push the student onto the bus ramp. The bus driver instructed the peer on the proper way to push the student onto the ramp, but the special education teacher who was nearby provided no assistance.

**Incident #4:** on May 17, 2017, a fellow student bit the student on her shoulder. The parent was notified of the incident when she picked the student up from school. According to the parent, there were 5 adults in the room when the student was bitten – the student's special education teacher, three paraeducators, and the mother of the other student – but none of these individuals was working directly with the student. The parent filed a police report.

The parent alleges that each of these incidents reflects a lack of concern regarding the needs and safety of the student. The parent asserts that the district has failed to provide one-to-one paraeducator support as called for in the student's IEP.

### **Applicable Regulations**

Federal regulations, at 34 C.F.R. 300.101, require public schools to make a free appropriate public education (FAPE) available to children with disabilities and, under 34 C.F.R. 300.17, define FAPE in part as special education and related services provided in conformity with an IEP. The IEP is intended to describe and guide services for each child on an individual basis.

### **Relevant IEP Components**

Services to this student have been provided under an IEP that was developed by an IEP Team on September 29, 2016. The “Modifications/ Accommodations/ Supplementary Aids” section of that IEP includes the following accommodation/modification:

“Adult support will provide support to (the student) while attending academic instruction and electives which are in the essential elements standards (alternate curriculum)”

This accommodation/modification was to be provided to the student “when (she) needs assistance in special and general education classes and CBI (Curriculum Based Instruction) trips...for the duration of the task, class, project, or field trips until the end of the 2016-17 school year.”

The student’s September 2016 IEP was amended by the IEP Team on January 6, 2017, but no change was made to the above accommodation/modification statement at that time.

The student’s IEP Team again amended her September 2016 IEP on April 19, 2017. On this occasion, the IEP Team deleted the above accommodation/modification and added the following statements:

- “one to one para support ((the student) will not be left unattended)... throughout the entire school day when participating in instruction, transitions, personal care activities, community based and school activities and socialization... for the length of all structured or unstructured activities during the school day”
- “one to one para support will initiate communication and engagement...during the school day as well as during community based activities, field trips and socialization...for the length of the school day, activity, community based instruction or field trip”

## District Response

The district does not dispute that the incidents described by the parent occurred. It is the contention of the district that their staff to student ratio allowed for adult support to be provided to the student at the time of all incidents. However, the district does not dispute that the student was not actively engaged with peers at all times during the IKEA field trip. The district also does not dispute the parent's allegation that none of the classroom staff was working one on one with the student at the time she was bitten on April 17, 2017.

The Director of the spoke with the parent by telephone on June 8, 2017 and collaboratively developed a plan to address the parent's concerns. The Director sent a follow-up letter to the parent on June 8, 2017, outlining that plan as shown below:

- "A one-on-one paraprofessional will be assigned to work with (the student)
- Clear written expectations for the appropriate supervision of (the student) will be established with the staff who work with (the student)
- The principal at (the student's high school) will follow (the USD) Personnel policies and procedures if the supervision expectations are not met
- Staff will be trained in August regarding the appropriate support and supervision of (the student)
- The (high school) Principal and the staff who work with (the student) will meet with (the parent) in August to listen to (her) concerns and set a plan of action to address (those) concerns
- (The student's) schedule will be set to avoid any interactions with the student who bit her
- Clear communication procedures to call (the parent) when incidents such as an accident or a seizure occur will be established
- Incident reports will be completed when (the student) is involved in an accident in which she is injured or harmed; a copy of the incident report will be provided to the parent
- A communication notebook that delineates the daily activities that (the student) has engaged in and the progress she has made on her goals at least weekly will be utilized
- The communication notebook will also indicate any health concerns, such as bloating or bowel movements that are out of the ordinary
- IEP Meetings will be scheduled once a quarter to discuss (the student's) progress on her IEP goals and discuss any concerns of any of the team members (of course, IEP Meetings can be called at any time by any team member)
- The Special Education Director will be in attendance at (the student's) IEP Meetings during the 2017-18 school year"

## Findings

The student was not provided with one-to-one paraeducator support as required by her amended April 19, 2017 IEP at the time of the May 17<sup>th</sup> incident. Therefore, a violation of special education laws and regulations is established.

## Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Specifically, a violation has occurred with regard to 34 C.F.R. 300.101 and 34 C.F.R. 300.17 which require districts to provide FAPE to students in conformity with an IEP which describes and guides services to exceptional students on an individual basis.

Therefore, USD #203 and the \_\_\_\_\_ Special Education Cooperative are required to take the following actions:

- 1) Submit, within 10 days of the receipt of this report, a written statement of assurance to Early Childhood, Special Education and Title Services stating that the district will comply with 34 C.F.R. 300.101 and 34 C.F.R. 300.17 by ensuring that one-to-one support is provided to the student as outlined in the IEP for the student amended on April 19, 2017.
- 2) Submit to Early Childhood, Special Education and Title Services, within 10 days of the receipt of this report, a written statement of assurance that the district and the will implement the action plan developed by the parent and the Director of the \_\_\_\_\_ Special Education Cooperative on June 8, 2017.
- 3) Within 10 calendar days after the August 2017 staff training specified in the action plan mentioned above in Item 2, submit to Early Childhood, Special Education and Title Services a summative report regarding that training including a list of all participants.
- 4) Within 10 calendar days of the August 2017 meeting of the parent and school staff specified in the action plan mentioned above in Item 2, submit to Early Childhood, Special Education and Title Services a summative report of that meeting including a list of all participants.
- 5) No later than October 31, 2017, the Director of the \_\_\_\_\_ Special Education Cooperative will submit to Early Childhood, Special Education and Title Services a statement verifying that each of the provisions in the action plan have been initiated. If any provision in the action plan has not been initiated by October, 31, 2017, the statement will include the reason

for not initiating the provision and a detailed plan for initiation of the provision(s).

Further, USD #203 and the shall, within 10 calendar days of the date of this report, submit to Early Childhood, Special Education and Title Services one of the following:

- a) A statement verifying acceptance of the corrective action or actions specified in this report;
- b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
- c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (c).

### **Right to Appeal**

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Early Childhood, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

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Diana Durkin, Complaint Investigator

(f) Appeals.

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

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

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

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

**KANSAS STATE DEPARTMENT OF EDUCATION  
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES**

REPORT OF COMPLAINT  
FILED AGAINST  
\_\_\_\_\_ UNIFIED SCHOOL DISTRICT # \_\_\_\_\_  
ON JUNE 1, 2017

DATE OF REPORT: JUNE 27, 2017

This report is in response to a complaint filed with our office on behalf of \_\_\_\_\_ by her mother, \_\_\_\_\_. \_\_\_\_\_ will be referred to as “the student” in the remainder of this report. Ms. \_\_\_\_\_ will be referred to as “the parent.”

**Investigation of Complaint**

Diana Durkin, Complaint Investigator, spoke by telephone with \_\_\_\_\_, Director of the \_\_\_\_\_ Kansas Special Education Cooperative (\_\_\_\_\_) on June 15, 19, 21, and 23, 2017. On June 23, 2017, the investigator spoke by telephone with the student’s mother.

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

- Notice of Meeting dated February 13, 2017
- IEP for this student dated February 23, 2017
- Prior Written Notice for Identification, Initial Services, Educational Placement, Change in Services, Change of Placement, and Request for Consent dated February 23, 2017

**Background Information**

This investigation involves a 3-year old girl who began receiving Early Childhood Special Education Preschool services on March 6, 2017. The University of Kansas diagnosed the student with Autism in June of 2016. She has received support through Kansas Infant Toddler Services Birth to Three since July of 2016 and has been seen by a private Speech/Language Pathologist employed by the parents.

**Issues**

The parent asserts that the student has been denied a Free Appropriate Public Education (FAPE) because



- 1) No one on the student's IEP Team Explained or offered extended school services for the summer months,
- 2) the student's preschool teacher ignored the parent's request for a letter of recommendation for the student to participate in extended school services, and
- 3) the Director of the \_\_\_ declined to allow the student to participate in summer 2017 extended school year services because the need for these services was not established when the student's IEP was developed.

### Extended School Year Services

Federal regulations, at 34 C.F.R. 300.101, require public schools to make a free appropriate public education (FAPE) available to children with disabilities and, under 34 C.F.R. 300.17, define FAPE in part as special education and related services provided in conformity with an IEP. The IEP is intended to describe and guide services for each child on an individual basis.

The Kansas Special Education Process Handbook produced by the Kansas State Department of Education recommends that when developing an IEP for a student with a disability, the IEP Team should consider – among other things – the student's need for extended school year (ESY) services.

Extended school year services means special education and related services that are provided to a child with a disability under the following conditions:

- 1) Beyond the school term provided to nondisabled children;
- 2) in accordance with the child's IEP; and
- 3) at no cost to the parents of the child (K.A.R. 91-40-1(x)).

ESY services are provided to ensure the provision of FAPE so that a student can make progress toward the goals specified on his/her IEP and to prevent regression, which would impede such progress. Unlike other services a district may offer to students during periods outside the standard school year, ESY services are only available to special education students and only to those special education students whose needs cannot be met **unless** the services are provided.

Each district must ensure that extended school year services are available as necessary to provide FAPE to a child with a disability. A district is required to provide extended school year services to a student **only** if the student's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child. A district may not limit extended school year services to particular categories of disability nor unilaterally limit the type, amount, or duration of those services (K.A.R. 91-40-3(e)).

Only the student's IEP Team can make decisions regarding a student's need for

ESY services. The Process Handbook states that the IEP Team could use the following methods to decide if a student with a disability needs ESY services. Note that each is not mutually exclusive and consideration of all of these factors may be warranted. These reasons are not all-inclusive.

- 1) Is a significant regression anticipated if ESY services are not provided? ***The school is not required to provide ESY services merely because the student will benefit from them.*** Instead, the IEP Team should determine if the regression experienced by the student would significantly affect his/her maintenance of skills and behaviors.
- 2) What is the nature and severity of the disability(ies)? Each student's needs must be considered individually.
- 3) Are instructional areas or related services needed that are crucial in moving toward self-sufficiency and independence? Particular consideration for ESY services should be given to students who need instruction in such self-help skills as dressing or eating, or who need continued structure to develop behavioral control.
- 4) The IEP Team could use the following information and data in determining the need for ESY services:
  - a. Teacher assessment of the student's success with various instructional interventions;
  - b. Criterion-referenced and standardized test data;
  - c. Health and health-related factors, including physical and social/emotional functioning;
  - d. Past educational history, as appropriate, including any ESY services;
  - e. Direct observation of the student's classroom performance;
  - f. IEP goals and objectives;
  - g. Student performance (pretest and posttest data);
  - h. Behavior checklists; and
  - i. Parent interviews and student interviews where appropriate.

It is important for the IEP Team to address the educational needs of each student and how they might be addressed, such as:

- The scope of the special education instructional services including the duration and content of the program;
- which current goals and objectives will be addressed to maintain present skills and behaviors;
- the implementer(s) of the ESY services; and
- what related services will be made available.

If ESY is determined to be ***necessary*** to enable the student to make progress in his or her education, then the type and amount of special education services to be provided, including frequency, location and duration, are documented in the IEP.

## Parental Request for Services

Prior Written Notice must be provided when the school refuses a parent's request to initiate or change the identification, evaluation, or educational placement of the child, ***or to make a change to the provision of special education and related services to the child*** (K.S.A. 72-988(b)(2); 34 C.F.R. 300.503(a)). There is no other option available to school districts when a parent makes a request related to any of these topics.

A letter or telephone call from the district informing the parents of the district's refusal of a request for a change in the provision of services for a student does not constitute notice to the parents regarding the decision because it does not provide the parents with the information required in every Prior Written Notice. Although the statute requires that the school district provide Prior Written Notice of its proposals or its refusals of parental proposals, it does not specify the time in which the school district must provide such notice to the parents.

The Kansas State Department of Education (KSDE) has determined that unless there is some unusual circumstance 15 ***school days*** is a reasonable time for providing parents with a Prior Written Notice of the district's refusal (KSDE Memo, "Reasonable Time" to respond to parent request for a change to the provision of services for their child - January 8, 2002). This KSDE interpretation also appears in Section D of Chapter 1 of the Kansas Special Education Process Handbook. Neither the Memo nor the Handbook provides any example of what would constitute an unusual circumstance. However, it appears clearly unreasonable to apply a "school day" timeline for responding to a parent's request for ESY made on May 26 because that kind of time delay would effectively allow a school district to do the impermissible, to refuse the request for summer ESY services without providing the parent with a Prior Written Notice. Yet, that is exactly what happened in this case. Accordingly, this investigator finds that when this parent made a request for ESY services on May 26, 2017, an unusual circumstance was created. That unusual circumstance did not allow the district to use a "school day" approach to responding to the parent's request. Instead, it is the finding of this investigator that a reasonable time to respond to the May 26 request for ESY services was 15 calendar days.

## Parent's Position

It is the parent's contention that no one in attendance at the student's February 23, 2017 IEP Team meeting explained or offered extended school year services. The parent reports that on May 2, 2017, an educator from a neighboring district told her about ESY services and indicated that a letter of recommendation from the student's preschool teacher would be needed if the student were to participate in ESY.

The parent states that in a one-to-one conversation with the student's preschool teacher on May 3, 2017, she made a request for a letter of recommendation for ESY. It is the parent's position that the teacher acknowledged that the student needed ESY service and agreed to write a letter of recommendation. However, no letter was forthcoming.

According to the parent, she learned on May 24, 2017 that a classmate of the student would be participating in ESY and began researching options for summer services for the student. The parent sent an email to TASN (Technical Assistance Support Network) asking for help in finding resources for the student. The parent reports that on May 25, 2017 she received a call from a TASN representative who explained that the student qualified for ESY services and that discussion of those services should have been a part of the student's February 2017 IEP Team meeting. The TASN representative suggested that the parent should contact the Director of the \_\_\_\_\_.

The parent states that on May 26, 2017 she contacted the Director and was told that a discussion of ESY services should have been a part of the February 2017 IEP Team meeting. According to the parent, she was told that because ESY services were not recommended in that meeting and the school year had ended, the student could not participate in ESY services during the summer of 2017.

The parent asserts that district staff should in a timely manner make parents aware of all services available to their children. She contends that the student should immediately be allowed to participate in ESY services.

### **District Response**

It is the district's position that the IEP Team had no reason to believe that the student was in need of ESY services at the time her IEP was developed in February. The district contends that while the student was deemed eligible for and in need of special education services, there was no indication that ESY services would be **necessary** in order for the student to maintain skills and behavior. Therefore, ESY was not included in the IEP Team discussion.

According to the district, the parent did ask the preschool teacher about ESY services in May. It is the recollection of the preschool teacher that there was a brief discussion regarding the parent's plans to have the student participate in a community-sponsored summer program. The preschool teacher has no recollection of any other mention by the parent of ESY services.

The Director of the \_\_\_\_\_ acknowledges that the parent contacted him by telephone on May 26, 2017 to discuss the student's eligibility for ESY services. According to the Director, he told the parent because the school year had ended with no recommendation for ESY services in place, the student would not be able to receive ESY services for the summer of 2017.

## Findings and Conclusions

The IEP Team did not consider ESY services for the student at the February 23, 2017 IEP Team meeting. The Director refused the parent's later request for a change to the student's services (specifically, the addition of ESY) but did not convene an IEP Team meeting to discuss that request. This is a violation of law. Under federal regulation 34 C.F.R. 300.320(a), only the student's IEP Team has the legal authority to determine whether or not the student needs ESY services. Further, the Director did not provide the parent with appropriate prior written notice of the district's refusal to provide ESY within a reasonable time, as required by 34 C.F.R. 300.503(a). This is also a violation of law. Under these circumstances, a violation of special education laws and regulations is substantiated.

## Additional Comments

To be clear, only the IEP Team – not this investigator – can make a determination as to whether or not ESY services are needed for this student. ESY services are not made available as a choice among a list of options from which the parent can select a summer activity for the student. ESY services for this student would be provided ***only*** if the IEP Team determines that she must have these services in order to make adequate progress toward the attainment of her annual goals. Nothing in this report should be construed as requiring the district to provide ESY services ***unless*** the student's IEP Team determines that the student requires these services.

## Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Specifically, a violation has occurred with regard to 34 C.F.R. 300.320, which requires that decisions regarding the development, review, or revision of an IEP be made by the IEP team (as opposed to administrative personnel), and 34 C.F.R. 300.503(a) which requires districts to respond within a reasonable time to a parent's request for a change in services for their child.

Therefore, USD #\_\_\_ and the \_\_\_ Kansas Special Education Cooperative are required to take the following actions:

- 1) Submit, within 10 calendar days of the receipt of this report, a written statement of assurance to Early Childhood, Special Education and Title Services stating that in the future the district will comply with 34 C.F.R. 300.503(a) by ensuring that they will respond with a Prior Written Notice within a reasonable time to a parent's request for a change in services for their child, including a consideration of unusual circumstances, and that only the child's IEP team will make decisions regarding whether or not services requested by a parent will be provided.

- 2) Within 15 calendar days after receiving this report, schedule an IEP Team meeting for the purpose of discussing this student's need for ESY services. The 15-day period allows the district to provide 10-day prior written notice of the meeting to the parent; the parent may waive her 10-day prior written notice if she so chooses and a meeting may be scheduled within less than 10 days if both parties agree. The District must provide to Early Childhood, Special Education and Title Services a copy of the written notice of this meeting.
- 3) Within 5 calendar days of the meeting discussed above under Item 2, the parent shall be provided with either
  - a. Prior Written Notice of the district's intent to change the student's IEP to reflect ESY services and a copy of an amended IEP for the student, or
  - b. Prior Written Notice of the district's refusal to provide ESY services, and
  - c. A copy of the relevant Prior Written Notice form shall be provided to Early Childhood, Special Education and Title Services within 5 calendar days of the time the district presents the form to the parent.
- 4) ***If*** the IEP Team determines that the student ***does*** require ESY services for the summer of 2017, the district shall within no less than 5 calendar days of the meeting mentioned above under Item 2, provide the parent with a proposal for the delivery of ESY services that takes into account any opportunity for services the student may have missed as a result of the district's failure to respond to the parent's previous request in a timely manner. (Note: This proposal may be presented to the parent at the time of the IEP Meeting referenced above under Item 2.) In addition:
  - a. The district shall within 5 calendar days of the presentation to the parent of the proposal for services mentioned above under Item 4, provide Early Childhood, Special Education and Title Services with a copy of the proposed plan and a copy of an amended IEP reflecting the addition of ESY services, and
  - b. Notify Early Childhood, Special Education and Title Services when all ESY services in the proposal have been completed.

Further, USD # \_\_\_ and the \_\_\_\_\_ shall, within 10 calendar days of the date of this report, submit to Early Childhood, Special Education and Title Services one of the following:

- a) A statement verifying acceptance of the corrective action or actions specified in this report;
- b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
- c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (c).

### **Right to Appeal**

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Early Childhood, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

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Diana Durkin, Complaint Investigator

(f) Appeals.

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

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

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

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

**KANSAS STATE DEPARTMENT OF EDUCATION  
EARLYCHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES**

REPORT OF COMPLAINT  
FILED AGAINST  
\_\_\_\_\_ SCHOOL DISTRICT # \_\_\_\_\_  
ON JUNE 15, 2017  
DATE OF REPORT: JUNE 30, 2017

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

**Investigation of Complaint**

Mark Ward, Complaint Investigator, spoke by telephone with \_\_\_\_\_, Assistant Director of the \_\_\_\_\_ Interlocal # \_\_\_\_\_ on June 22, 2017, and corresponded by e-mail with Ms. \_\_\_\_\_ on June 28, 2017.

The investigator spoke by telephone with the student's mother on June 28, 2017.

In completing this investigation the complaint investigator reviewed all pertinent material, including, but not limited to the "stay put" IEP, the IEP proposed for the beginning of the 2017-2018 school year, the Prior Written Notices (PWN) for those IEPs, and the district's written response to the complaint.

**Background Information**

This investigation involves a 9 year-old girl with an intellectual disability. She will be entering the third grade in the coming school year. In March of 2016, the student's mother and father requested a due process hearing. That request for a due process hearing alleged that the school district: (1) made a substantial change in placement without consent; (2) removed the student from the least restrictive environment (LRE); (3) failed to implement parts of the Individualized Educational Program (IEP); and (4) retaliated against the parents for their refusal to consent. With the filing of this request for due process, the "stay put" provision, which requires school districts to maintain the child's current educational placement, came into effect. The IEP that was actually in force and being implemented in March of 2016 was an amended IEP, signified with an IEP date of 04/24/2015a, and an initiation date of 02/01/2016. On May 2, 2017, the hearing officer issued the decision in the due process hearing, and found for the district and the cooperative on all issues. On May 30, 2017, the Kansas State Department of Education received a written notice of appeal from the parents, and it selected Larry Rute to conduct the appeal. That appeal is still pending.



Pursuant to federal regulations, unless there is an agreement between the parents and either the state or the local school district, the child must remain in his or her current educational placement during the pendency of any administrative or judicial proceeding. Accordingly, the amended IEP dated 04/24//2015a continues to operate as this student's current IEP, and that IEP will be referred to as the student's "stay put IEP" in the remainder of the report.

### **Issues**

In her complaint, the parent presented one issue:

**Issue : The district and the special education cooperative are not maintaining the "stay put" placement.**

Two incidents occurred that the parents believe to be a violation of the "stay put" provision, and prompted the parent to file this complaint.

First, a letter (actually two letters because the original letter contained an error) was sent to the parent in June, 2017, advising the parent that the district was changing: (a) the attendance center (the elementary school) where the student would attend for the 2017-2018 school year and (b) that the student would be in a "Functional Applied Academics" program at the new school instead of the interrelated classroom the student had been in during the 2016-2017 school year.

Second, after a series of IEP meetings in April and May of 2017, the district sent the parent a Prior Written Notice proposing to make a number of changes to the student's IEP.

I

With regard to the first incident, the parent alleges that the letter she received, advising her of a change in the attendance center and a change in the type of special education classroom where the student will be attending in the 2017-2018 school year, is a violation of the "stay put" requirement.

The pertinent regulation is 34 C.F.R. 300.518(a). It says that during the pendency of any administrative or judicial proceeding regarding special education, unless the state or school district and the parent agree otherwise, the child involved in the proceeding must "remain in his or her current educational placement." However, this regulation does not define the term "current educational placement." Therefore, it is necessary to look beyond the regulations for guidance on the meaning of this term. Kansas is in the Tenth Circuit so the United States Circuit Court of Appeals for the Tenth Circuit is the most authoritative source on this topic (except for the United States Supreme

Court, which has not provided guidance on this topic). In Erickson v. Albuquerque Public Schools, 199 F.3d 1116 (10<sup>th</sup> Cir. 1999), the Tenth Circuit said, for "stay put" purposes, an educational placement is changed when a fundamental change in, or elimination of, a basic element of the educational program has occurred. That means the "stay put" requirement applies not only to what is commonly referred to as "placement," but also applies to the services a student is receiving. However, the court also added that school districts still have some flexibility under "stay put." The court said that to be a violation of the "stay put" provision, the fundamental change in, or elimination of, a basic element of the educational program must also contravene the IEP. In this Tenth Circuit case, the student's IEP specified that the student was to receive two hours of Occupational Therapy (OT). Although the IEP said the student would receive OT, one of those hours consisted of hippotherapy (an occupational therapy involving horses). At some point, the IEP team proposed eliminating one hour of OT, specifically the hour in which the student received hippotherapy. The parents agreed to the elimination of one hour of OT, but wanted to keep the hippotherapy. The district eliminated the hippotherapy and supplied the one remaining hour of OT with traditional methods of OT. The student's parents requested a due process hearing, and argued that the school was obligated by the "stay put" provision to continue with hippotherapy (the kind of therapy actually being provided when the parents requested due process) until the end of the litigation. The Tenth Circuit ruled that the school was not required by the "stay put" provision to continue providing hippotherapy because, although it was the type of OT the student was receiving at the time of the parent's request for due process, it was not a change to the IEP. The IEP said the student was to receive OT. The change from hippotherapy to traditional OT was merely a change in the methodology, or modality, of the OT. It was not a failure to provide the OT specified in the IEP.

The point the Tenth Circuit was making in this case, is that "stay put" means the IEP operating at the time a due process hearing is requested must continue to operate throughout the litigation. However, changes that do not contravene the IEP may be made without violating the "stay put" requirement. Therefore, the key to determining what is "stay put" for a student is to identify what is actually in the IEP operating at the time the request for due process is made.

The "stay put" IEP for this student does not specify a particular type of classroom. Where it says the student will be in a general education setting, it simply says the student will receive services "in a regular education classroom," and where it says the student will be in a special education setting, it simply says services will be provided in "a special education classroom." A special education classroom includes both an interrelated room and a functional applied academics classroom. Nothing in this student's IEP indicates that the student needs to be educated in an interrelated classroom. Therefore, the move from an interrelated room to a functional applied academics classroom is a change only in the type of special education room. Instructional methodology will likely change as a result

of the move to a different type of room, but the student will continue to receive the same amount of special education services and will work toward attaining the same goals. In other words, there may well be a change in educational modality, but that change does not contravene, in any manner, the content of this student's IEP. Accordingly, this change from an interrelated classroom to a functional applied academic classroom is not a violation of the "stay put" requirement.

With regard to the change of attendance center where the student is assigned to attend school next year (the new attendance center is a general education school), that is not a change of placement. Nor, for that matter, is the change from an interrelated classroom to a functional applied academics classroom a change in placement. A change in placement does not refer to the physical location where services are provided. In a guidance letter from the Office of Special Education Programs (OSEP), which is the office in the United States Department of Education that writes the federal regulations for special education, OSEP offered this succinct explanation of the difference between the terms "placement" and "location":

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. Letter to Trigg, 50 IDELR 48 (OSEP 2007)

What OSEP meant by saying that placement refers to points along the continuum of placement options is that the term placement refers to the extent to which a child with a disability is educated in an environment with children who do not have a disability. Thus, the least restrictive environment (or placement) is a general education classroom where children with disabilities are fully integrated with children who do not have disabilities. The next option on the continuum of placement options is the special education classroom, regardless of the type of classroom, or the name it is given. Children with disabilities in a variety of special education classrooms have the same access to children who do not have disabilities, through attending some general education classrooms, or association with general education students at lunch, recess, etc. The continuum of placement options to which OSEP referred is specified in federal regulations at 34 C.F.R. 300.115, and includes "regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions. Each of these points along the continuum become more restrictive placements because each affords fewer opportunities for the student to be with the general education population. There could be other points along the continuum if a school fashions a more restrictive setting. An example would be a self-contained room, where a student does not leave the room during the school day. However, in this complaint, this student still has the same access to general education students in the functional applied academics classroom as she had in the interrelated room. She will continue to be in a general education setting for opening, music, physical

education, adapted physical education, recess, lunch, library, field trips, assemblies, centers/guided reading and independent reading work. She is on exactly the same point along the continuum of placement options in either setting,

In Letter to Trig, OSEP summed up the issue of a district's authority to change a student's "location" as opposed to "placement" by stating:

a public agency may have two or more equally appropriate locations that meet the child's special education and related services needs and school administrators should have the flexibility to assign the child to a particular school or classroom, provided that determination is consistent with the decision of the group determining placement.

This is exactly what the school district did in this case. The change of attendance center, and the change to a different type of special education classroom, was not made by this student's IEP team, and did not change this student's IEP. Rather, these were administrative decisions, and were made to assign this student to a building and to a classroom where the school district had the resources to implement the student's IEP. School administration has this authority. Neither change was a change of placement and neither change contravened the student's "stay put" IEP. The investigator noted that the front page of the "stay put" IEP shows the attendance center as "\_\_\_\_\_ Central Elementary." However, this is just an information page. It is not the result of the work of the IEP team. The IEP team did not determine that this student would attend \_\_\_\_\_ Central Elementary School any more than it determined any of the other information on this page, such as the name of the student, name of the parent, or the phone numbers or e-mail addresses listed on this page. If, in the services section of this student's IEP, there had been a statement that the student would receive the specified services in an interrelated classroom and would receive those services at \_\_\_\_\_ Central Elementary School, the outcome of this complaint investigation would have been different.

The investigator concludes that the allegation of a violation of law based on this first incident is not substantiated.

## II

The second incident that the parent alleges to be a violation of special education requirements occurred after a series of IEP meetings in April and May of 2017, when the district sent the parent a Prior Written Notice proposing to make a number of changes to the student's IEP. In its written response to this complaint, the district acknowledged that it was required to continue to implement the "stay put" IEP. However, the district also acknowledged that an on-going due process hearing, along with its "stay put" provision, does not relieve the district of its obligation to conduct an annual review of the IEP. In accordance with that

obligation, the district conducted a series of IEP meetings and produced a Prior Written Notice (PWN) and request for consent, dated 5/22/17, which it sent to the parent. The district was then required to give the parent a reasonable time to consider whether to provide that consent. And, in this case, the district had to give that same reasonable time to the student's father, who does not live with the student's mother. The changes proposed in this PWN were, if the parents agreed, to begin on 8/15/2017. The parent filed this complaint on 6/15/2017. As of that date, the changes specified in the PWN were only proposals. No changes to the student's IEP had actually been made.

This investigator finds that the district did have an on-going obligation to conduct an annual IEP meeting, even though "stay put" was in place. In Letter to Watson, 48 IDELR 284 (OSEP 2007), OSEP confirmed this duty, stating that the annual IEP review must be conducted even when due process proceedings are pending and the student's placement is in "stay put." "Stay put" is, after all, subject to the exception that changes to the "stay put" IEP may be made if both sides agree to the change. The district cannot know if there will be some agreement to change the IEP if it does not conduct the annual review. The investigator also finds that none of the proposed changes have been implemented, and the district does not intend to implement any of the proposed changes unless the parent agrees by providing written consent. To assure that no changes are made to the "stay put" IEP, the district has printed on the front page of the "stay put" IEP, in capital letters: "STAY PUT IEP." In addition, the district has put the same statement in its electronic version of the "stay put" IEP in WebKIDSS, and has added a statement that the "IEP has been locked." Accordingly, the investigator concludes that the allegation of a violation of law based on this second incident is not substantiated.

NOTE REGARDING THE PWN DATED 5/22/17: At some reasonable point, as determined by school district officials, if the parents elect to not agree to any of the changes proposed in the PWN dated 5/22/17, the school district should provide the parents with another PWN stating that none of the proposed changes will be made and the "stay put" IEP will continue to operate until the end of litigation or until there is some agreement.

NOTE REGARDING IEP GOALS: In her complaint, the parent stated that the school included in progress reports, information about goals that had been removed from the IEP. This was not presented as an issue itself, but because it was included, the investigator only notes that it is not illegal for a district to provide more information in a progress report than it is required to include. Thus, providing comments in a progress report regarding how a student is performing with regard to previous IEP goals is not a violation of any special education law or regulation.

NOTE REGARDING LEGAL REPRESENTATION: The parent who filed this

complaint is represented by counsel in the due process hearing, but stated during the investigation that her attorney is not representing her in this complaint, at this time.


### **Corrective Action**

Information gathered in the course of this investigation has failed to substantiate noncompliance with special education laws and regulations on issues presented in this complaint. Therefore, no corrective action is required.

### **Right to Appeal**

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Early Childhood, Special Education, and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

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	<p><b>Mark Ward</b> Attorney II Early Childhood, Special Education and Title Services (785) 296-7454 mward@ksde.org <a href="http://www.ksde.org">www.ksde.org</a> <b>Kansas State Department of Education</b> <small>LONDON STATE OFFICE BUILDING, 900 SW JACKSON STREET, SUITE XXX, TOPEKA, KS 66612</small></p>
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(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. \_\_\_\_, \_\_\_\_\_ Public  
Schools

## DECISION OF THE APPEAL COMMITTEE

### BACKGROUND

This matter commenced with the filing of a complaint on June 15, 2017, by \_\_\_\_\_ on behalf of her daughter, \_\_\_\_\_. An investigation of the complaint was undertaken by a complaint investigator on behalf of the Early Childhood, Special Education and Title Programs team at the Kansas State Department of Education.

Following the investigation, an Initial Report, addressing the allegations, was issued on June 30, 2017. That report concluded that there were no violations of special education laws and regulations. Ms. \_\_\_\_\_ will be referred to as the parent and \_\_\_\_\_ will be referred to as the student in the remainder of this decision.

Thereafter, on July 10, 2017, the parent filed an appeal of the Initial Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the report, the parent's notice of appeal, the district's written response, and information contained in the complaint file at the Kansas State Department of Education (KSDE). The Appeal Committee has reviewed the information provided in connection with this matter and now issues this final report.

### DISCUSSION OF ISSUES ON APPEAL

ISSUE: The district and the special education cooperative are not maintaining the "stay put" placement during the current litigation.

There is no dispute between the parties regarding the facts of this case. The parent initiated a due process hearing in March of 2016. On May 2, 2017 the hearing officer issued a decision and on May 30, 2017, the Kansas State Department of Education (KSDE) received a notice of appeal of the due process decision from the parent. The IEP that was actually in force and being implemented when the request for due process was initially made was an amended IEP, with an IEP date of 04/24/2015a and an initiation date of 02/01/2016. This is the "stay put" IEP. Because the litigation continues, the "stay put" requirement continues. That is, the requirement in 34 C.F.R. 300.518, that the student remain in her current educational placement for the duration of litigation, continues to apply to this student.

A letter (actually two letters because the original letter contained an error) was sent to the parent in June, 2017, advising the parent that the district was changing: (a) the attendance center (the elementary school) where the student would attend for the 2017-2018 school year and (b) that the student would be in a "Functional Applied Academics" program at the new school instead of the interrelated classroom the student had been in during the 2016-2017 school year. In addition, after a series of IEP meetings in April and May of 2017, the district sent the parent a Prior Written Notice (PWN) proposing to make a number of changes to the student's IEP.



In the Initial Report, with regard to both the letter announcing a change of attendance center and change in classrooms, and the PWN proposing changes to the IEP, the complaint investigator concluded that there was insufficient evidence to substantiate the allegation that the district is not maintaining the "stay put" placement. In her appeal, the parent states that she is challenging the decision in its entirety. The decision included a conclusion with regard to three separate actions by the district: (1) the announcement that the student would attend a different school during the 2017-2018 school year; (2) the student's special education instruction would no longer be provided in an interrelated classroom as it had been during the 2016-2017 school year, but would, instead, be provided in a Functional Applied Academics classroom; and (3) the IEP team conducted a series of meetings in April and May of 2017, and sent the parent a PWN proposing to make a number of changes to the student's IEP. The appeal committee will address each of these conclusions separately.

1.

With regard to the announcement that the student would attend a different school during the 2017-2018 school year, the parent references, in her appeal, the regulatory requirement that a child with a disability be educated in the school that he or she would attend if nondisabled (34 C.F.R. 300.116(c)). In Murray v. Montrose County School District, 51 F.3d 921, 22 IDELR 558 (10th Cir. 1995), the 10th Circuit Court of Appeals rejected that interpretation. The 10th Circuit said it saw the requirement in the regulations, but not in statute. The 10th Circuit said "This interpretation strains the plain meaning of the statute. The statute clearly addresses the removal of disabled children from classes or schools with nondisabled children. It simply says nothing, expressly or by implication, about removal of disabled children from neighborhood schools. In other words, while it clearly commands schools to include or mainstream disabled children as much as possible, it says nothing about where, within a school district, that inclusion shall take place." Later the court added: "We again reject this argument as simply insufficiently persuasive to overcome the plain meaning of the statute, and the absence therein of any reference to neighborhood schools. Accordingly, we hold that there is no presumption of neighborhood schooling, either in the IDEA or its implementing regulations." The court added that "a school district is not obligated to fully explore supplementary aids and services before removing a child from a neighborhood school. It is only so obligated before removing a child from a regular classroom with nondisabled children.

Moreover, on page 5 of the complaint report, the investigator correctly cites the OSEP Letter to Trigg for authority of school officials to change the physical location of services, and that such changes do not constitute a change of placement.

The Committee affirms the investigator's conclusion on this issue.

2.

With regard to the announcement that the student's special education instruction would no longer be provided in an Interrelated classroom as it had been during the 2016-2017 school year, but would, instead, be provided in a Functional Applied Academics classroom, the parent's letter of appeal states: "Educational placement refers to the educational environment for the provision of special education and related services. Educational placement is the 'overall instructional setting' in which the student receives her education." The parent then presents the argument that the instructional setting between an Interrelated classroom and a Functionally

Applied Academic classroom is significantly different because the Functionally Applied Academic classroom will use an alternative curriculum.

The difficulty with this position is that the term Educational Placement, although not specifically defined in the Individuals with Disabilities Education Act (IDEA), or in its implementing regulations, historically has not been associated with either the curriculum or instructional methodology being used with a student. The investigator cited Erickson v. Albuquerque Public Schools, 199 F.3d 1116 (10th Cir. 1999) for its holding that a change in instructional methodology is not a change in services or placement as long as it does not require a change to the IEP. More importantly, for this analysis, the court said a change in instructional methodology is not a violation of the "stay put" requirement. For this student, the change from an Interrelated classroom to a Functionally Applied Academic classroom may result in differing instructional methods, but the evidence indicates that none of the anticipated changes in instructional methods would contravene the IEP. Rather, the evidence shows the IEP has not been changed in any manner. All services specified in the IEP remain exactly as written and all IEP goals remain exactly as written. In the section of this student's IEP that addresses participation of the student with non-disabled students in the general education environment, the IEP simply says the student "requires modifications and adaptations to be successful with academics." This statement does not require any specified medication or adaptation, nor does it require any particular classroom for the needed modifications or adaptations. Because Kansas is in the 10th Circuit, the decisions of the 10th Circuit are law, and have binding precedence in Kansas. The Committee cannot disregard the decisions of the 10th Circuit. The parent's citation to decisions of lesser courts and other Circuits is not persuasive in this context. Accordingly, the Committee finds that the change in classrooms is not a change in services. In addition, the committee concurs with the investigator's description of the term Educational Placement. Citing guidance from the Office of Special Education Programs (OSEP) the investigator explained:

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.

Letter to Trigg, 50 IDELR 48 (OSEP 2007)

What OSEP meant by saying that placement refers to points along the continuum of placement options is that the term placement refers to the extent to which a child with a disability is educated in an environment with children who do not have a disability. Thus, the least restrictive environment (or placement) is a general education classroom where children with disabilities are fully integrated with children who do not have disabilities. The next option on the continuum of placement options is the special education classroom, regardless of the type of classroom, or the name it is given. Children with disabilities in a variety of special education classrooms have the same access to children who do not have disabilities, through attending some general education classrooms, or association with general education students at lunch, recess, etc. The continuum of placement options to which OSEP referred is specified in federal regulations at 34 C.F.R. 300.115, and includes "regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions. Each of these points along the continuum become more restrictive placements because each affords fewer opportunities for the student to be with the general education population.

The committee agrees with the analysis provided by the complaint investigator. The evidence presented shows that the student will have the same access to regular education students in the Functionally Applied Academics classroom as she had in the Interrelated classroom. Accordingly, she remains at the same point on the continuum of alternative educational settings in either classrooms. The change to the Functionally Applied Academics classroom is not a change of placement.

3.

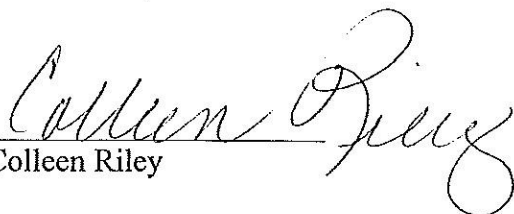
With regard to the IEP team conducting a series of meetings in April and May of 2017, and sending the parent a P WN proposing to make a number of changes to the student's IEP, the Committee agrees with the investigator. The investigator correctly cited the OSEP Letter to Watson, 48 IDELR 284 (OSEP 2007), which stated that an annual IEP review must be conducted even when due process proceedings are pending and the student is in a "stay put" placement. Conducting these IEP meetings and presenting the parent with a P WN of proposed changes was a requirement of law, not a violation.

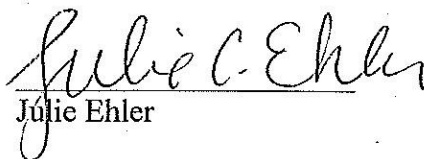
#### CONCLUSION


The investigator's findings and conclusions are sustained. This is the final decision on this matter, there is no further appeal.

This Final Report is issued this 25th day of July, 2017.

#### APPEAL COMMITTEE:

  
Colleen Riley

  
Julie Ehler

  
Laura Jurgensen

**KANSAS STATE DEPARTMENT OF EDUCATION  
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES**

REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #\_\_\_\_  
ON May 30, 2017

DATE OF REPORT: JUNE 30, 2017

This report is in response to a complaint filed with our office by \_\_\_\_ and \_\_\_\_ on behalf of their son, [student] during the past 12 months. In the remainder of this report, \_\_\_\_\_ will be referred to as "the student" while \_\_\_\_ and \_\_\_\_ will be referred to as the "father" or "the mother" respectively, or "the parents."

**Investigation of Complaint**

Nancy Thomas, Complaint Investigator, spoke with \_\_\_\_\_ Kansas Inter-local #\_\_\_\_ / USD #\_\_\_\_ by telephone on June 7, June 13, and June 20, 2017. The \_\_\_\_\_ Kansas Inter-local #\_\_\_\_ / USD #\_\_\_\_ made the following staff persons available to be interviewed:

- Mr. D., Director of \_\_\_\_\_ Kansas Inter-local #\_\_\_\_
- Mr. K, Associate Director of \_\_\_\_\_ Kansas Inter-local #\_\_\_\_
- Ms. L, Special Education Teacher at \_\_\_\_\_ High School and Case Manager
- Mr. C., Special Education Teacher for the autism program at \_\_\_\_\_ Middle School and Case Manager
- Ms. G, Gifted Facilitator
- Ms. H., Assistant Principal at \_\_\_\_\_ High School
- Mr. B., Principal at \_\_\_\_\_ High School
- Ms. F1, Assistant Superintendent for USD #\_\_\_\_
- Ms. F2, School Psychologist at \_\_\_\_\_ High School

In addition, the Complaint Investigator and the \_\_\_\_\_ Kansas Inter-local #\_\_\_\_ / USD #\_\_\_\_ staff exchanged emails regarding the investigation on June 7, June 14, and June 20, 2017. \_\_\_\_\_ Kansas Inter-local #\_\_\_\_ / USD #\_\_\_\_ also mailed hard copies of documentation which was received on June 15, 2017.

The Complaint Investigator spoke to the complainant by telephone on June 6, June 21, and June 22, 2017. The following persons were interviewed:

- Parents

In addition, the Complaint Investigator and the parents exchanged emails regarding the investigation on June 6, June 7, June 14, June 21, June 22, June 23, and June 26, 2017.

In completing this investigation, the complaint investigator reviewed the following material provided by the parent and the \_\_\_\_ Kansas Inter-local # \_\_\_\_ / USD # \_\_\_\_:

- Timeline of Special Education IEP Meetings or Amendments provided by LEA
- Timeline of Other Relevant Communications/Events provided by LEA
- Individualized Education Plan (IEP) dated October 15, 2015
- Notice of Meeting dated August 19, 2016 scheduling an IEP meeting for September 1, 2016
- Annual IEP dated September 1, 2016
- Re-Evaluation Not Needed Agreement Form dated September 1, 2016; parent and school representative signatures obtained on September 1, 2016
- Prior Written Notice (PWN) dated September 1, 2016; parent consent obtained on September 1, 2016
- IEP at a Glance based on the September 1, 2016 IEP
- IEP Amendment Between Annual IEP Meetings dated February 1, 2017
- PWN dated February 1, 2017; parent consent obtained February 1, 2017
- IEP Amendment Between Annual IEP Meetings based on February 9, 2017
- PWN dated February 8, 2017; parent consent obtained on February 9, 2017
- PWN dated February 14, 2017; parent consent obtained on February 14, 2017 and parent permission granted for an evaluation timeline extension until May 25, 2017
- IEP Amendment Between Annual IEP Meetings dated March 8, 2017
- PWN dated March 8, 2017; parent consent obtained on March 8, 2017
- Notice of Meeting dated March 8, 2017 scheduling an IEP meeting for March 16, 2016
- Annual IEP dated March 16, 2017
- PWN dated March 16, 2017; parent consent obtained on March 16, 2017
- Notice of Meeting dated April 24, 2017 scheduling an IEP team meeting for April 25, 2017
- PWN dated April 25, 2017; no parent consent obtained
- Notice of Meeting dated May 8, 2017 scheduling an IEP team meeting for May 18, 2017
- Second Notice of Meeting dated May 18, 2017 scheduling an IEP team meeting for May 25, 2017
- Evaluation/Eligibility Report Summary of Meeting dated May 25, 2017
- Copy of the proposed Amended IEP dated May 25, 2017

- PWN proposing to add 5 minutes per week of consult speech/language services dated May 25, 2017; no parent consent obtained
- The 2016-17 School Calendar for USD #\_\_\_\_
- First semester class schedule and grade card for the student
- Email from Ms. L and the school staff dated August 24, 2016 describing strategies to be used with the student in the general education classroom setting
- Email exchange between Ms. L and Mr. K, dated September 2, 2016 regarding hiring a paraprofessional
- Email exchange between Ms. L and mother dated September 26, 2016 regarding the new paraprofessional
- 2016-17 Paraprofessional Training Logs A, B, and C for Ms. B
- Behavior Log for the student dated September 11, 2009 through May 4, 2017
- Email from Mr. S to Mr. \_\_\_\_\_ dated November 9, 2016 regarding grades and attendance in class
- Email from Ms. F2 to the parents dated January 27, 2017 describing a proposed change in services and placement to address increase in aggressive behavior at school
- Emergency Safety Intervention (ESI) Documentation Form dated February 2, 2017
- Daily Behavior Tracking Charts for February 2 through February 15, 2017
- Email from the mother to Mr. C., Ms.F2, and Ms. S dated February 2, 2017 regarding the behavioral incident at school on that date
- Email from Mr. K to Ms. F2 dated February 3, 2017 regarding the need to reconvene the school team to discuss issues
- Email from the father to the school team dated February 13, 2017 regarding the student's perceptions of the concerns
- Email from the mother to Ms. H. and Ms. F1 dated February 24, 2017 documenting a scheduled meeting to discuss CPS and the Assessment of Lagging Skills and Unsolved Problems (ALSUP)
- A copy of the ALSUP protocol completed by school staff dated March 3, March 6, and March 8, 2017
- Daily Behavior Tracking Charts for March 27 through April 3, 2017
- School Contact Log showing dates between September 1, 2016 and May 25, 2017
- Multiple emails between Ms. F2 and the parents dated April 11 through April 14, 2017 trying to arrange a meeting
- Team Meeting Notes kept by school dated April 20, 2017
- Team Meeting Notes kept by school dated April 25, 2017

## Background Information

This investigation involves a fourteen year-old student who was enrolled in the eighth grade at \_\_\_\_ Middle School during the 2015-16 school year and in the ninth grade at \_\_\_\_ High School during the 2016-17 school year in USD #\_\_\_\_ and \_\_\_\_ Kansas Inter-local #\_\_\_\_.

An Evaluation/Eligibility Report Summary of Meeting dated May 25, 2017 show the student continues to be eligible for special education and related services under the primary disability category of Autism as well as qualifies for gifted education services. The parents note the student has always attended USD #\_\_\_\_ and \_\_\_\_ Kansas Inter-local #\_\_\_\_. The parents report the student did not attend kindergarten but was initially placed into the first grade at the recommendation of USD #\_\_\_\_ and the student was provided paraprofessional support in the first through eighth grades to address academic and behavioral issues related to his autism. The student was identified as gifted in the second grade and had a gifted class daily in third grade. In fifth grade, the student was provided two gifted classes daily. In sixth and seventh grade, the student participated in a gifted class once each week as well as had a daily class with the autism specialist. In eighth grade, the student had paraprofessional support in all core classes plus a special education class daily and a gifted class once each week. Overall, the parents report the student was successful in the school setting with these services and supports.

Documentation shows three IEPs and two amended IEPs in effect for the student during the ninth grade. The most current agreed upon IEP appears to be the annual IEP dated March 16, 2017 as the parents signed consent for the material change of services and substantial change of placement described in the PWN dated March 16, 2017.

## Issues and Findings of Fact

Ten issues raised by the Complainant were investigated based upon the finding of facts established through a review of written documentation and interviews. It is noted that interviews and documentation were often not aligned.

### Findings of Fact:

The parents reported that the transition between the Elementary School and the Middle School was very difficult for the student. In order to prevent this same situation with the transition from the middle school to the high school, the parents and school staff from both \_\_\_\_ Middle School and \_\_\_\_ High School met in May 2016 to discuss the program available at the high school level. No written conference notes were provided by either party of this meeting. The parents' understanding from that meeting was that individual student paraprofessional support was not an option available at \_\_\_\_ High School. School staff reported that the student's high school schedule would include three core classes (Algebra, English, and Physical Science), Freshman Foundations, and other elective classes.

The IEP in effect at the beginning of the 2016-17 school year was dated October 15, 2015 and required special education support in all general education core classes for 250 minutes per day; 50 minutes per day of special education tutorial in the special education setting; 25 minutes of gifted instruction one day per week; and 5 minutes per week of occupational therapy (OT) consultation related to sensory processing. The IEP requires the accommodations of extended time to complete assignments and read aloud all core class assignments and tests. The IEP also includes a Behavior Intervention Plan (BIP) requiring staff to problem solve with the student if he becomes frustrated. If that does not work, the student can "debrief" in the special education classroom using "Plan B" conversations based on the Collaborative Problem Solving (CPS) model. In addition, the student is to begin and end the school day by meeting with staff to plan and summarize the day. The parents report a paraprofessional was with the student the majority of the school day during eighth grade although the IEP does not document this support.

The student began school at \_\_\_\_ High School as a freshman on August 18, 2016. He was provided paraprofessional support in the general education English class by Pennie Grotheer and in the general education Algebra class by Tina Jones. No paraprofessional support was provided in the Physical Science



class but the special education teacher, Ms. L, was available to provide support in the resource room when needed. The student was also enrolled in the general education Band, Study Hall, two Physical Education classes, and Dragan Den.

The parents were provided with a Notice of Meeting dated August 19, 2016 scheduling an IEP meeting for September 1, 2016 for the purpose of discussing possible changes in the IEP; conducting an annual review of the IEP; and developing postsecondary goals and transition services.

Behavior Logs document the student was given detention on August 23, 2016 for cursing and being disruptive in the Physical Science classroom.

Ms. L sent an email on August 24, 2016 to all of the student's classroom teachers describing strategies to use with the student in the classroom when he gets anxious and detailing the steps to follow in the "debrief" process. The email informs teachers that the student does not do well with competition and if/then strategies do not work with the student. The email explains that the student is a year younger than peers and socially and emotionally immature but ahead of peers cognitively. Ms. L states the student needs directions "in black and white" and that he does not do well with inferences, drawing conclusions, and "you know what I mean" statements. The email also informs school staff of the IEP team meeting scheduled for September 1, 2016. Ms. L also indicated that she provided the student's teachers with a copy of an "IEP at a Glance" during the teacher workshops days prior to the first day of classes. Documentation shows the "IEP at a Glance" includes the academic present levels, IEP goals, services, accommodations/modifications, and the BIP.

On August 26, 2016, Linda Barberich, the general education English class teacher, documented "difficulties" on the Behavior Log noting "*Student arrived tardy. Earlier this week he was 15 minutes late to class. A plan was put in place that he would check in with me first then ask to use the restroom. He arrived at 1:04 today. I visited privately with him reminding him of his plan. Mrs. Grotheer had already taken a small group into the library for oral reading of a short shorty and discussion questions. The student chose to go there versus read silently in my room. He threw a ball of paper (the questions) in Mrs. Grotheer's face. The other students even said that he needed to leave. I talked to him about reading the story. He told me he thought he had already read it, I said that was fine; he could review it to answer questions. I had to redirect him twice. He was distracting other students. His book was closed. He wasn't doing anything. On the third redirect I sent him to Mrs. L to 'debrief.'* We are struggling. Student has

*had an issue every day this week. This is not a productive use of time for any of us as the situation stands.*

The IEP team met on September 1, 2016. The services listed on this IEP document 20 minutes of gifted instruction for three days per week; 100 minutes per day of special education support in the general education setting; and 50 minutes of specialized instruction in English in the resource room for two days per week. In addition, the PLAAFP stated *“As student has achieved all past OT goals, and currently presents with no new needs, OT services are no longer warranted and will be dismissed at this time.”* The IEP included the same accommodations for extended time and read aloud as in the previous IEP. The BIP included in the IEP emphasize being proactive and not reactive with the student. The BIP describes the Plan B and Plan C strategies used in the CPS model as the intervention strategies to be implemented with the student in the classroom.

The parents report requesting paraprofessional support for the student throughout the school day as this had been successful in supporting the student in the past. The parents’ understanding from school staff was that “one to one paraprofessionals” were not available for students at the high school level.

The parents were provided with a PWN stating *“Student will receive 20 minutes per week of specialized instruction in a resource room for gifted enrichment and/or communication assistance and 100 minutes of special education services in the general education classroom . . . Student will receive 50 minutes of specialized instruction in English with modified curriculum in the resource room.”* The parents signed consent for these material changes in services and substantial changes in placement on September 1, 2016.

Documentation shows the parents also signed an agreement indicating that the required three year reevaluation of the student was not needed on September 1, 2016. The parents report they do not recall any discussion regarding the required three year reevaluation at this IEP team meeting.

School staff indicated and the student’s class schedule shows the student was supported by a paraprofessional in the general education Algebra class and was allowed to go to the resource room with Ms. L for extra help during Physical Science class. English was taught in the resource room by Ms. L and the student attended the Study Hall class with the gifted teacher, Ms. G. The two

Physical Education classes, Band, and Dragon Den were general education classes.

Ms. L reported the student was leaving the general education setting and had been coming to the special education classroom for support for three to five hours per day since the beginning of the school year. Ms. L indicated that she requested a paraprofessional be hired to work with the student to implement his BIP. An email from Ms. L to Mr. K dated September 2, 2016 stated "*I am filling out a request for a new para today. Please help me speed a long this process. I am over my head if we do not get this person soon.*" Mr. K replied via email that same day indicating for Ms. L to proceed with the paraprofessional hiring process.

On September 7, 2016, Ms. L. provided the student's teachers with copies of the IEP at a Glance based upon the September 1, 2016 IEP.

The Behavior Log documents two incidents in the Physical Education class when the student was sent to Ms.L. 's special education classroom to "debrief." The first occurred on September 22, 2016 and involved inappropriate language directed at a peer; the second occurred on September 23, 2016 and involved attempting to hit a peer with a tennis racket and refusing to follow teacher directions to stop dragging a water bottle cap across the floor.

A September 26, 2016 email exchange between Ms. L. and the mother document that "*I hired a para to help the student learn skills he is missing. I will be taking all day on Thursday to train her on Dr. Greene's philosophy, how to be proactive with the student, what his triggers look like in each class. I am hoping to keep him independent in Band and Weights classes. He needs some help to get organized in the mornings so that he can do the weather and get to band as quickly as possible.*" This paraprofessional worked with the student between September 29 and October 13, 2016. These additional paraprofessional support services were not documented in the IEP.

The Physical Science teacher, Mr. S, sent the following email to the father on November 9, 2016 in response to a question about grades and extended time to complete assignments. That email stated "*I feel that some of the reason student's grade isn't what it needs to be is because he hasn't been attending class. He missed four days last week and a day and a half so far this week. Some days he goes to Mrs. L.'s room, other days I see him in the halls throughout the day but he has never shown up for class. Overall this semester*

*he has missed 20 or more days of instruction. I want \_\_\_\_ in class, but his disruptions have only escalated and his choice of attending has not been good. Not sure if this type of classroom setting will allow student to be successful. There have been several times this semester that student has had to leave the room due to cursing and acting out. There was even one occasion that I saw him shove the para that was working with him. And that para quit about three weeks ago. He was doing better when he had a one on one para with him to help him stay on task and focused. . . When student is in class, I may spend 5-10 minutes of class time to get student on track or calmed down. As I said before, student hasn't spent an entire class period in my room for several weeks, usually at his request to leave, if he shows up at all. I do feel I have gone above and beyond to accommodate student's needs. Such as, extra time on assignments/tests, letting him "vent" when he needs to, and going to a quiet place to work on assignments/tests. I've often tried to keep him in class to settle him down. Often times at the detriment of the other 23 other students in his class. I have recommended to the special ed teachers and the administration that student needs one on one support that can focus just on him so that he will be able to function in a classroom setting and be successful like we all want him to be."*

On or about November 28, 2016, another paraprofessional was hired to work with the student. Documentation of orientation and training show Ms. B was provided with 20 hours of training by Ms. L. between November 28 and December 5, 2016 on topics including confidentiality, team concepts, building orientation, legal issues/rules/regulations, classroom procedures/management, duties of a para educator, documentation responsibilities, student behavior plans, adaptation of student work, emergency plan for the classroom, first aid supplies, medical procedures for the classroom, and issues specific to class responsibilities. In addition, between December 5 and December 19, 2016, Ms. Bingham was provided an additional four hours of training on the topics of blood borne pathogens, emergency safety intervention, mandated reporting, and suicide watch. There is no documentation that Ms. Bingham was trained to use the Plan B conversations in the CPS model.

The student's first semester grade card documents the following grades were earned:

Band:	A (100%)
Study Hall (gifted instruction):	P (85%)
Physical Education:	C (78%)
Physical Science:	D (65%)
English (specialized instruction):	B (88%)

Dragon Den:	B (84%)
Physical Education (Weights):	A (94%)
Algebra (para support)	B (85%)

The Behavior Log documents that on January 12, 2017, the mother was asked to take the student home early from school due to aggressive behavior towards Ms. B. and refusal to attend class.

On January 19, 2017, the Behavior Log documents the student became upset in Ms.L.'s special education classroom when asked to go to his general education classroom. The student broke a computer keyboard and threw a laptop computer onto the floor. In addition, the student refused to go to the band class, tried to close the fire doors in the hallway, and hit the paraprofessional.

On January 23, 2017, the Behavior Log notes that the student took an item from Ms.L.'s office and then refused to return the item. He became very upset when the item was taken from him and he ran away from Ms.L. The student refused to go to the Physical Education (weights) class and threw a smart board eraser at Ms.L.

On January 24, 2017, the Behavior Log indicates the student's paraprofessional was absent and he refused to go to class. Ms. L. tried setting a timer and having the student go to attend 15 minutes of class and then he could return to the special education resource room. The student refused and instead went to his locker and was watching videos on his phone when Ms. L. found him. School staff walked with the student and talked for the next hour in an effort to calm him down. The student ran away from school staff and ran back to the special education resource room where he became even more upset, grabbed Ms.L., and pounded on the window in front of a class full of students. The Behavior Log notes from Ms. S., School Counselor, for this date state *"had to help teacher & others w/ student when he began to refuse classes and became aggressive with school psych & SPED instructor. Called his dad to come get him from school."*

An email dated Friday, January 27, 2017 from Ms. F2 to the parents describes a proposed change to the student's schedule and special education services to address the increase in inappropriate and aggressive behaviors displayed at the High School and provided the parent with a PWN for their consideration. The plan was described as *"he will begin his day at \_\_\_\_ High School at 8:10am. He will complete the weather and attend Band. After 1<sup>st</sup> hour he will be transported with Ms. B to the middle school, a staff member will be transporting them*

*together in a school vehicle. Student will earn weather broadcast by completing his routine each day, going willing to band and to the middle school. . . The rest of his day initially will be at the Middle School, but his schedule will be the same as the high school meaning that he will have his current classes at the approximate time and for that length. He will need to be picked up between 2:40 and 2:45 pm from the Southwest door at the Middle School.”*

The email indicates his goal for transition back to the High School will be 85% achievement, for two consecutive days, for the three skills of aggression, destruction of property, and maintaining his schedule. The student will need to stay after school to finish any school work not completed that day. The email indicates Mr. C. and the Middle School staff will need approximately 4 weeks to learn the student’s plan. School staff would like to start this new plan on Monday, January 30, 2017 and plan to explain the plan to the student that morning when he arrives at school. For this to happen, the parents would need to consent to these changes as described in the PWN attached to the email.

An email dated Sunday, January 29, 2017 from the father to Ms. F2 indicates concerns with the plan related to using a reward/punishment system with the student. The email states that the IEP at a Glance that Ms. L. provided to all his teachers states “*no if / then’s to be used for the student.*” The father indicates that this is a “*huge trigger for him and will not work.*” The father requests to visit Mr. C.’s classroom prior to agreeing with the plan. He also indicates he believes the student should be involved in developing the plan and proposes only having the student attend school on Monday to do the weather and attend Band.

An IEP Amendment Between Annual IEP Meetings dated February 1, 2017 was made to address the increase in aggressive behaviors at the high school building. A PWN dated February 1, 2017 proposed adding 180 minutes per day of special education support in the general education setting plus 50 minutes per day of special education in the resource room for English at the High School building; 105 minutes per day of special education in self-contained setting plus 5 minutes per week of gifted instruction at the Middle School building; and 10 minutes per day of transportation between the school buildings. The explanation for these changes is shown as “*The action is proposed to support the student in the education environment. The team determined that significant changes in his placement were needed to address the student’s educational needs.*” The PWN documents that “*current school records, behavior information, parent and teacher report*” are the basis for these actions. The parent signed consent for these

material changes in services and substantial change of placement on February 1, 2017

The Behavior Logs for February 1, 2017 show that the student hit a peer in the hallway near the Band classroom when he was angry. Ms. L. also noted that when she told the student he was no longer allowed to use the computers in the special education classroom, he became physically and emotionally upset, kicked a plastic trash can which then struck the paraprofessional. The student continued to stomp on the trash can and everyone else was evacuated from the classroom. The student hit himself in the head several times and attempted to hit his paraprofessional. Ms. L. reported that the student then threw ink pens and picked up a computer monitor and dropped it down on the table and that *“others joined me in the classroom and we talked about the student using his phone instead of a computer. He finally calmed down, got his phone and left with his para to go to the counseling office.”*

An Emergency Safety Intervention Documentation Form and the Daily Behavior Tracking Sheet, both dated February 2, 2017, and an email dated February 2, 2017 from the mother to Mr. C, Ms. F2, and Ms. S, all reflect an incident that occurred at the Middle School where the student became upset over a geography assignment which escalated to his attempting to destroy a computer and ultimately to his being restrained. The Daily Behavior Log documents this incident lasted approximately 50 minutes. The mother requested a team meeting to discuss using the Assessment of Lagging Skills and Unsolved Problems (ALSUP), implementing the CPS model with fidelity as a behavioral intervention, and reviewing the triggers for the aggressive behavior as a basis for developing an appropriate IEP.

The Behavior Log for February 3, 2017 documents the student refusing to attend class / band, running into the bathroom and then hiding in the main office closet. Ms. F2 was able to convince him to come out of the closet and move to the conference room for his safety but the student escalated again and punched himself in the head several times before threatening to throw a pen holder and climbing on the table. The student hit his para in the arm and made the comment that *“he wanted to break the window on the door and that he wanted to kill himself and die.”*

An email from Mr. K to Ms. F2 dated February 3, 2017 indicates *“I believe it is imperative to get the whole team on board with a direction and communicate that direction to the parents.”* Mr. K delineates five areas of concern with the situation

as follows: 1) too many people communicating with the parents and parents not understanding the intensity/frequency of behavior issues, 2) the data collection method and the data seemingly only being shared with the parents through team members' oral reporting, 3) the need to use antecedent/behavior/consequence (ABC) data collection methodology, 4) whether team members are applying interventions consistently, and 5) it appears that "*key players are talking at each other rather than to each other.*" Mr. K indicates that it appears the parents and school team has "common themes" although there is a difference in the vocabulary used.

On February 9, 2017, the parent consented to material changes in services and a substantial change of placement described in the PWN and IEP Amendment between Annual IEP Meetings. The IEP amendment required 300 minutes per day of special education services in a self-contained environment with 5 minutes per week of consult gifted services and daily transportation between the High and Middle Schools.

The Daily Behavior Tracking Sheet dated February 9, 2017 shows the student engaged in name calling, threats, and attempting to destroy his work area for approximately 45 minutes due to becoming upset over the slow loading computer and questions the student described as "too hard."

The Daily Behavior Tracking Sheet dated February 10, 2017 shows three separate incidents with the student. The first incident involved eloping from the classroom at 9:12 a.m. and lasted approximately 30 minutes because of a mistake on a map assignment and a delay in receiving a material reward. The second incident occurred at 11:15 a.m. because the student wanted to be in the hallway by himself to go to the restroom. The student displayed aggression and elopement for approximately 15 minutes. The third incident began at 12:42 p.m. when the student was required to transition from a high preference task to deskwork using the computer and lasted approximately 25 minutes. This incident involved refusal, name calling, crying/yelling, aggression, and attempts to break the computer.

An email from the father to the school team dated February 13, 2017 acknowledged an IEP team meeting was being scheduled for February 14, 2017. The email also indicated that the student would only be attending school to provide the weather report on this date because of concerns with the middle school placement. The father described a conversation he had with the student and indicated the student's concerns were as follows:



1. *"I am being treated like a younger child with people going with me to the bathroom."*
2. "The adults carried me into the blank room because I was not calm."
3. "I do my weather report, then off to the middle school I go. I don't like that."
4. "I want to delete the plan." (referring to the middle school)
5. "I'm fined money for running in the hallway."
6. "I'm being forced to do things I don't want to, 6 English stories on Moby Max, I hate that software."
7. "It is like prison."

The parents and school staff report the IEP team met on February 14, 2017 and discussed the parent request for conducting a reevaluation in the area of communication skills using the ALSUP. The PWN dated February 14, 2017 documents that current data exists in the areas of health/motor ability, vision, hearing, social/emotional/behavioral status, general intelligence, academic performance, and transition skills. The PWN only proposed a reevaluation in the area of communication skills. Parent consent for this reevaluation was obtained on February 14, 2017 and parent permission was also granted for an extension to the evaluation timeline until May 25, 2017.

The Daily Behavior Tracking Sheet dated February 15, 2017 shows two separate incidents with the student. The first incident involved refusal, dropping to the floor, threats, property destruction, crying, yelling, aggression towards others, spitting and threats of self-harm at 9:41 a.m. and lasted approximately 30 minutes because of an adult demand to move to a non-preferred activity. The second incident occurred at 12:51p.m. when the student returned back to the Middle School from having lunch at the High School. The student displayed refusal, threats, name calling, property destruction, crying/yelling, aggression and spitting and lasted approximately 60 minutes, ultimately resulting in the student being restrained.

The parents and school staff report the student did not attend school beginning on February 17, 2017 per parent decision.

An email from the mother to Ms. H. and Ms. F1 dated February 24, 2017 documents that a meeting was arranged for school staff to be provided information about the CPS model and the ALSUP.

Documentation shows the ALSUP was completed by school staff in consultation with the parents on March 3, March 6, and March 8, 2017. Staff identified multiple lagging skills and provided examples such as difficulty going to his different classes, difficulty completing assignments independently, difficulty keeping hands to himself, etc.

Documentation shows an IEP Amendment Between Annual IEP Meetings dated March 8, 2017 was developed without an IEP team meeting proposing 30 minutes per week of homebound services. A PWN was provided to the parents and consent was obtained on that date. A Notice of Meeting was also provided to the parents on March 8, 2017 scheduling an annual IEP team meeting for March 16, 2016.

At the March 16, 2017 IEP team meeting, it was determined that the student would only attend school for a partial day in a self-contained special education classroom located in the High School. The student would use an online curriculum for academic instruction. The accommodations continued to be extended time and read aloud but scribing for lectures was added. The BIP was changed to address three specific behaviors: being flexible when schedule changes; waiting to speak in conversations; and learning to accept losing at a game by responding appropriately without aggression. The BIP defined each of the inappropriate behaviors displayed by the student and refers to “sympathetic” and “collaborative” conversations as intervention strategies.

The parents were provided with a PWN proposing changing services to 140 minutes per day of specialized instruction in the special education setting with consult gifted services and transportation provided to accommodate the shortened school day. The parents signed consent for these changes to services and placement on March 16, 2017. Due to spring break, this new IEP would be implemented beginning on March 27, 2017.

The Daily Behavior Tracking Sheet dated March 27, 2017 shows three separate incidents with the student occurring between approximately 8:30 and 9:15 a.m. These incidents involved refusal to complete school work, threats to break the computer, and yelling because of task demands and teacher direction to comply.

The Daily Behavior Tracking Sheet dated March 28, 2017 shows two separate incidents with the student. These incidents involved refusal to complete school work. The student did return to task after about two minutes following the first incident at 8:15 a.m. However, the student removed himself to the seclusion

area and indicated he was “done with school” at 9:15 a.m. The student refused to return to task and his school day ended at 10:35 a.m.

The Daily Behavior Tracking Sheet dated March 29, 2017 shows four separate incidents with the student. The first incident occurred at 8:05 a.m. when the student arrived at school and refused to go to the special education room. The second incident occurred at 8:43 a.m. when the student became angry over the amount of time the computer was taking to load the program to work on his Algebra assignment. The student pounded on the computer and threatened to smash it. The third incident occurred between 9:14 through 9:31 a.m. when the student became frustrated when asked to transition to a low preference activity. The behavior displayed included refusal, dropping to the floor, crying, yelling, and aggression towards staff. The student was given the opportunity to process the situation and attempts were made to hold a collaborative conversation; however, the student was uncooperative and eloped from the classroom. The student was returned to the classroom where he again became aggressive and was restrained. The student then spent 16 minutes in the seclusion area before becoming calm and returning to the daily schedule of activities. The fourth incident occurred at 9:52 a.m. and lasted until 10:20 a.m. The student refused to complete desk work by ignoring staff and avoiding/delaying doing the assignment.

The Daily Behavior Tracking Sheet dated March 30, 2017 show four separate incidents with the student. The first incident occurred at 8:30 – 8:37 a.m. when the student refused to follow directions for the assigned activity. Behaviors displayed included refusal and yelling. The student expressed that “he was going to explode” and through a collaborative conversation requested to take a break. At 8:50 a.m. the student again became frustrated when asked to work and he knocked his book off of the table. The third and fourth incidents occurred at 10:15 through the end of his shortened school day. The student refused to work and removed himself to the seclusion area. He was returned to the work area but continued to refuse to work. The student used his fist to repeatedly bang on the Geography textbook until he left school. It was noted that the speech pathologist conducted an evaluation of the student on this date.

The Daily Behavior Tracking Sheet dated March 31, 2017 showed only one incident but this incident lasted from 8:17 through 10:26 a.m. The student came to class refusing to work. The student refused to participate in collaborative conversations with staff and removed himself to the seclusion area where he began to use his phone. At approximately 8:40 a.m., the student eloped from the

classroom to walk up/down the hallway. At 8:51 a.m., the student went to the seclusion room on his own. Staff checked on the student at 9:15 and again at 9:40 a.m. to make sure he was safe in the seclusion room. At 9:58 a.m., the student used the restroom and then returned to the seclusion room until the bus came to pick him up at the end of his school day.

The Daily Behavior Tracking Sheet dated April 3, 2017 shows two separate incidents with the student. The first incident occurred at 8:07 a.m. when the student arrived at school. He “wandered down the hallway of the office, looking into rooms.” After completing the weather, the student voiced that he did not want to go to the separate classroom in the High School and stated “Not 609 again, I so sick of this junk.” The second incident began at 9:33 and continued till 10:15 a.m. The student once again refused to work and the following behaviors were noted: “laughter, wringing of hands, increase in facial twitches, high-pitched tone of voice, increased volume of videos, and lightly pounding on the Chromebook.”

The School Contact Log shows that Lee Stickle, Director of the Autism and Tertiary Supports Team for the Kansa Technical Assistance Network (TASN), observed the student at school request on April 4, 2017. On April 6, 2017, Dr. Ryan Speelman, Board Certified Behavior Analyst (BCBA) from Pittsburg State University, observed the student at parent request.

On April 6, 2017, the parent requested to extend the school day. Mr. C. responded that data supported continuing with the current IEP services and placement.

Multiple Email communications between parents and Ms. F2 dated April 11 through April 14, 2017 document attempts to arrange a meeting.

Meeting notes from a meeting held on April 20, 2017 document that Ms.F1; Ms. H; Ms.F2; Mr. C.; Beth Geiger, Speech/Language Pathologist; Ms. S; Mr. M., Substitute Teacher hired to work with Mr. C. to support the student; Dr. Speelman; and the father met to discuss the situation. It is unclear what the purpose of this meeting was and if this was an IEP team meeting as a copy of a Meeting Notice was not provided.

The meeting notes reflect the speech evaluation results were discussed and showed the student “has lots of language skills and is very bright.” Ms. Gieger indicated she would like to work with the student on expressing his emotions

when frustrated. The student was determined eligible for language services and these would start as soon as the team determines what the student's school day will look like and needs to be flexible "to fit" the student.

The data was reviewed regarding the current placement in a self-contained classroom at the high school for a shortened school day. Mr. M. shared that the student has shown positive behaviors such as asking appropriately, holding the doors open for people, greeting people in the halls, etc. However, Mr. Cumming reported the data shows the self-contained classroom at the High School is not working for the student. Ms. F.1 explained to the parents that the team "feels as a school that we aren't able to meet the student's academic needs at this time." Ms. F1 indicated that the team believed the student should return to the original placement in the "autistic program at the middle school."

The father indicated he did not believe he would be able to get the student to go back to the Middle School and requested the Mr. C. and Mr. M. use Plan B conversations to discuss the Middle School placement with the student. Mr. C. indicated that the student usually refused to have a Plan B conversation with his teachers and then spent the rest of the time in class thinking about what he would like to do. Ms. F.1 suggested that mental health resources in the community might be able to assist the family with getting the student to school and possibly respite care.

Dr. Speelman offered to share a BIP that he had developed for the student that could be used to reintegrate the student back to classes at the High School. Ms. F2 indicated that this plan had already been tried and had been unsuccessful. The father asked why the autism program could not be provided at the High School building and the notes state *"Ronda explained that Rob is housed at PCMS & that we can't continue to pull Rob to PHS and away from his other students. Ronda also explained that Rob is an interlocal employee and that she cannot make decisions about Rob's placement."*

The father asked about other options for schooling and Ms. F.1 provided information about home schooling. The father indicated this was not a good option as the student would miss his peers. Ms. F.1 also shared Vocational Rehabilitation as a service that might benefit the student. She encouraged the father to contact Mr. K at the Inter-local if he had questions.

A Notice of Meeting dated April 24, 2017 documents an IEP team meeting was scheduled for April 25, 2017 for the purpose of reviewing/revising the IEP,

developing postsecondary goals and services, reviewing data from the current placement, an outside professional's behavior plan, and discussing placement options for the student.

Team meeting notes dated April 25, 2017 show Ms.F.1; Ms. H; Ms.F2; Mr. C.; Mr. B, High School math teacher; the parents; and Dr. Speelman met to discuss options for the student's education. The BIP developed by Dr. Speelman was reviewed and discussed. School staff indicated "they did have him in classrooms and things "spiraled out of control." The notes reflect the parents feel like things fell apart when Ms. B was hired and that the parents requested trying Dr. Speelman's plan because the student "was not going to the middle school. The parents also requested consultations with Dr. Ross Greene, developer of the CPS model. The school suggested mediation might be beneficial through the Kansas Department of Education to help resolve the issues. The parents were provided with a PWN proposing 400 minutes of special education in a highly structured self-contained setting at the \_\_\_\_ Middle School and separated from non-identified student and consult services for speech. Documentation shows the parents did not consent to these material changes in services or substantial change of placement.

The Behavior Log entry dated May 4, 2017 documents that Mr. M. attempted to start covering the material the student had missed but the student refused because he believed that he had already done the test. Mr. M. and the student then transitioned to going to Mr. B's for Math class at the high school and this is when the eloping resurfaced and continued until the student was picked up from school by the father. Mr. M. noted *"During this time we attempted numerous Plan B conversations about returning to 609, which is part of the safety plan that we agreed upon. The student chose not to collaborate with us by quickly running away and yelling loudly in the halls and disrupting classes."* When school administrators told the student to return to room 609, the student became aggressive by swinging at staff two different times. At this point the parents were called to pick him up from school as the student had demonstrated it was unsafe for him to be at school. After this date, the parents did not send the student back to school for the remainder of the school year.

A Notice of Meeting dated May 8, 2017 documents an IEP team meeting was scheduled for May 18, 2017 to develop postsecondary goals and services and to add the results of the speech evaluation to the IEP. A second Notice of Meeting dated May 18, 2017 documents and IEP team meeting was scheduled for May 25, 2017 for the same purposes.

Documentation shows the March 16, 2017 IEP was reviewed and revised at the May 25, 2017 IEP team meeting. The services and accommodations remained the same as did the BIP. The only change was to add five minutes per week of consult speech services. A PWN for this change was provided to the parents on May 25, 2017 documenting the addition of the speech consult services. It is noted that the parent did not consent for this change in services.

### ISSUES:

Based upon the findings of facts the following analysis and conclusions are made as to each of the ten issues investigated:

**ISSUE ONE:** The \_\_\_\_ Kansas Inter-local #\_\_\_\_ / USD #\_\_\_\_, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP of [student] \_\_\_\_\_, specifically by not providing paraprofessional support as required during the 2016-17 school year.

Federal regulations, at 34 C.F.R. 300.17, require that a student be provided with a free appropriate public education (FAPE). Public agencies must provide special education and related services in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324.

In this case, the student was not provided with the paraprofessional support required by the October 19, 2016 IEP at the beginning of the 2016-17 school year. To complicate the situation, the IEP was never amended or revised during the 2016-17 school year to reflect the actual amount of paraprofessional support the \_\_\_\_ Kansas Inter-local #\_\_\_\_ / USD #\_\_\_\_ believed was required as documented in emails dated September 2, 2016. Documentation shows this paraprofessional support was provided to the student between September 29 and October 13, 2016, and again beginning on November 28, 2016 through the end of the school year. Based on the foregoing, the allegation of a violation of special education laws and regulations is substantiated.

**ISSUE TWO:** The \_\_\_\_ Kansas Inter-local #\_\_\_\_ / USD #\_\_\_\_, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to ensure that each teacher and provider were informed of his or her responsibilities related to

implementing the IEP of [student] at the beginning of the 2016-17 school year.

Federal regulations, at 34 C.F.R. 300.323(d), require the public agency to ensure that the 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. Each teacher and provider must be informed 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.

In this case, the special education case manager, Ms. L, reported she provided a copy of the IEP at a Glance to school staff prior to the beginning of the 2016–17 school year. She followed-up this information with an email to all of the student's teachers on August 24, 2016 describing strategies that work and don't work with the student. Once the IEP was reviewed and revised on September 1, 2016, documentation shows she provided another copy of the IEP at a Glance to the student's teachers on September 7, 2016. Based on the foregoing, the allegation of a violation of special education laws and regulations is not substantiated.

**ISSUE THREE:** The \_\_\_\_ Kansas Inter-local #\_\_\_ / USD #\_\_\_, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop a post-secondary transition plan for [student] during the 2016-17 school year.

Federal regulations, at 34 C.F.R. 300.320 and state regulations at K.S.A. 72-987 require that, beginning at age 14 and updated annually, the IEP must contain appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training/education, employment and where appropriate, independent living skills; and the transition services, including appropriate courses of study, needed to assist the child in reaching the stated postsecondary goals. Beginning at age 16, or younger, if determined appropriate by the IEP team, the IEP must also contain a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages.

In this case, the student turned age 14 on February 21, 2017. The IEP developed on September 1, 2016 included a postsecondary transition plan as did the IEP developed on March 16, 2017. Based on the foregoing, the allegation of a violation of special education laws and regulations is not substantiated.



**ISSUE FOUR:** The \_\_\_\_ Kansas Inter-local #\_\_\_ / USD #\_\_\_, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to appropriately consider supplementary aids and services for [student] at the September 1, 2016 IEP team meeting.

Federal regulations, at 34 C.F.R. 300.320, require the IEP to include a statement of the special education and related services and supplementary aids and services the IEP team determines must 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; 3) participate in extracurricular and other nonacademic activities; and, 4) be educated and participate with other children with disabilities and nondisabled children.

The IDEA and K.A.R. 91-40-1(ttt) 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.

In this case, the parents made the school staff aware of their request for the student to have paraprofessional support throughout the day in the high school setting at the May transition planning meeting as well as at the IEP team meeting held on September 1, 2016. In addition, the general education English teacher had provided input that the current level of support was not working for the student in that setting.

It is obvious that the IEP team considered input from both the parents and the general education teacher at the IEP team meeting in regards to special education services and supplementary aids and services. First, the student’s schedule was changed for the English class to be taught in the special education classroom and the IEP was revised to reflect these services. Second, the special education teacher requested to hire a full time paraprofessional to work with the student the day following this IEP team meeting and a person was eventually hired to provide this support to the student. Based on the foregoing, the allegation of a violation of special education laws and regulations is not substantiated.

**ISSUE FIVE:** The \_\_\_\_ Kansas Inter-local # \_\_\_\_ / USD # \_\_\_\_, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide special education and related services in the least restrictive setting, specifically by placement in the Middle School and away from typical peers during the 2016-17 school year.

Federal regulations, at 34 C.F.R. 300.114 require to ensure that to the maximum extent appropriate, children with disabilities are educated in the least restrictive environment with children who are nondisabled, and that special classes, separate schooling, or other removal of children from the general educational environment occurs 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 cannot be achieved satisfactorily. Federal regulations, 34 C.F.R. 300.116, require that the educational placement of students with disabilities be determined annually based upon the needs of the student as described in the IEP and be in the least restrictive environment. State regulations, at K.A.R. 91-40-1(t), states that educational placement refers to the educational environment for the provision of special education and related services rather than a specific place, such as a specific classroom or school.

In this case, the autism program for students in middle and high school through the \_\_\_\_ Kansas Inter-local # \_\_\_\_ is located at \_\_\_\_ Middle School. The student's IEP required services that were to be provided in the autism program regardless of the building where the program is housed. Based on the foregoing, the allegation of a violation of special education laws and regulations is not substantiated.

**ISSUE SIX:** The \_\_\_\_ Kansas Inter-local # \_\_\_\_ / USD # \_\_\_\_, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide special education services by appropriately credentialed and trained personnel during the 2016-17 school year.

Federal regulations, at 34 C.F.R. 300.156 and 34 C.F.R 300.207 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. School districts must

take steps to actively recruit, hire, train, and retain qualified personnel to provide special education and related services to children with disabilities.

In this case, the student's IEP included a BIP that required the use of a specific model of intervention using "Plan B" conversations as described in the CPS model developed. There is no evidence that the paraprofessionals working with the student in the Algebra and English general education classes or the general education teachers were trained on using CPS strategies at the beginning of the 2016-17 school year. There is evidence that efforts were made to train the staff in the autism program who would be working with the student on CPS strategies. There is evidence that the first paraprofessional was trained in CPS strategies; however, there is no evidence to show the second paraprofessional, Ms. Bingham, was trained on the CPS model and implementation. Based on the foregoing, the allegation of a violation of special education laws and regulations is substantiated.

**ISSUE SEVEN:** The \_\_\_\_ Kansas Inter-local #\_\_\_\_ / USD #\_\_\_\_, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to appropriately consider parent input at the March 16, 2017 IEP team meeting.

Federal regulations, at 34 C.F.R. 300.322 require school districts to take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including notifying the parents of the meeting early enough to ensure 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. 300.320, require the IEP to consider the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the child; and, the academic, developmental, and functional needs of the child.

In this case, there is evidence to show that the parents were provided the opportunity to participate in the March 16, 2017 IEP team meeting, and in fact, attended and participated in the meeting on that date. There is also evidence to support the school district obtained parent input regarding their concerns with communication skills in preparation for this IEP meeting through the completion of the ALSUP on March 3, March 6, and March 8 and those findings were used in the development of the IEP on March 16, 2017. Based on the foregoing, the allegation of a violation of special education laws and regulations is not substantiated.

**ISSUE EIGHT:** The \_\_\_\_ Kansas Inter-local # \_\_\_\_ / USD # \_\_\_\_, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parents of [student] with appropriate prior written notice of changes in special education services and placement during the past 12 months.

Federal regulations, at 34 C.F.R. 300.503, require that written notice must be given to parents a reasonable time before the responsible public agency initiates or changes the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student. The written notice sent to parents by the responsible public agency must contain a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the action.

Kansas regulation, at K.A.R. 91-40-27(a)(3), requires parent consent before making a material change in services and/or a substantial change in placement. K.S.A. 72-988 describes a material change in services as an increase or decrease of 25% or more of any one service and describes a substantial change of placement as movement to a less or a more restrictive environment for 25% or more of student's day.

In this case, the parents were not provided with appropriate PWN for changes in services and placement that occurred at the beginning of the 2016-17 school year between August 18 and September 1, 2016. While the parents were provided with PWN following the September 1, 2016 IEP team meeting, the PWN does not accurately describe the services listed in the IEP or the services actually provided to the student based on the student schedule and interviews. In addition, this PWN does not address the deletion of OT services from the IEP. The PWN dated February 1, 2017 failed to adequately indicate the rationale or basis for reducing the gifted services to just 5 minutes of consult weekly. Appropriate PWN was provided and consent obtained for IEP amendments on February 9, and March 16, 2017. The school district provided the parent with a PWN proposing changes in services and placement on April 25, 2017 but did not implement those changes as parent consent was not obtained. However, following the April 25, 2017 IEP team meeting the student began attending the general education math class at the high school which is a material change in services and substantial change of placement from the March 16, 2017 IEP. No PWN was provided to the parent for these changes. Based on the foregoing, the

allegation of a violation of special education laws and regulations is substantiated.

**ISSUE NINE:** The \_\_\_\_ Kansas Inter-local #\_\_\_ / USD #\_\_\_, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an appropriate IEP for [student], specifically special education and related services to address his exceptionalities of autism and giftedness during the 2016-17 school year.

Federal regulations, at 34 C.F.R. 300.320, require school districts to develop an IEP describing the special education and related services needed to address the unique needs of students with disabilities 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; 3) participate in extracurricular and other nonacademic activities; and, 4) be educated and participate with other children with disabilities and nondisabled children. Kansas state law, at K.S.A. 72-987, includes giftedness as an exceptionality requiring an IEP.

In this case, multiple IEPs were developed for the student during the 2016-17 school year that include special education to address the disability category of autism. However, the IEP developed on September 1, 2016 and amended on February 1, 2017 does not reflect the addition of full-time paraprofessional support to implement the BIP for the student. While it is clear the IEP team did consider and add this service based upon the district's actions following the IEP team meeting, the IEP document does not accurately reflect this IEP team decision and thus the IEP dated September 1, 2016 and amended on February 1, 2017 does not address all of the special education and related services needed to address the unique needs of this student.

The IEP developed on September 1, 2016 does provide for gifted education services and the student's schedule reflects daily gifted education. However, beginning with the IEP developed on February 1, 2017, the student has received only five minutes per week of consult for gifted services and subsequent IEPs have not addressed the impact of the student's giftedness on the educational program or possible influence of his giftedness on the increase in behavioral issues. Based on the foregoing, the allegation of a violation of special education laws and regulations is substantiated.

**ISSUE TEN:** The \_\_\_\_ Kansas Inter-local #\_\_\_ / USD #\_\_\_, in violation of state and federal regulations implementing the Individuals with

Disabilities Education Act (IDEA), failed to follow appropriate procedures to conduct a three year reevaluation of [student] during the 2016-17 school year.

Federal regulations, at 34 C.F.R. 300.303, require public agencies to ensure that a reevaluation of each child with a disability is conducted 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 may occur not more than once a year, unless the parent and the public agency agree otherwise. A reevaluation must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary.

In this case, documentation shows the three year reevaluation for the student was to be conducted no later than October 23, 2016. There is evidence that the school district had the parent sign a form indicating that they were in agreement that no reevaluation was necessary for the child on September 1, 2016. While the parents do not recall discussing the need for a reevaluation at this IEP team meeting, they simply need to request a reevaluation if they believe one needs to be conducted. Based on the foregoing, the allegation of a violation of special education laws and regulations is not substantiated.

### **Corrective Action**

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. The violation occurred in the following areas:

- 34 C.F.R. 300.17, requires that a student be provided with a free appropriate public education (FAPE). Public agencies must provide special education and related services in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324. In this case, the student was not provided with the paraprofessional support required by the October 19, 2016 IEP at the beginning of the 2016-17 school year. To complicate the situation, the IEP was never amended or revised during the 2016-17 school year to reflect the actual amount of paraprofessional support the \_\_\_\_ Kansas Inter-local # \_\_\_\_ / USD # \_\_\_\_ believed was required as documented in emails dated September 2, 2017.

- Federal regulations, at 34 C.F.R. 300.156 and 34 C.F.R. 300.207 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. School districts must take steps to actively recruit, hire, train, and retain qualified personnel to provide special education and related services to children with disabilities. In this case, while there is some evidence to support that school staff were trained in the specific intervention model required by the BIP, it is not clear that all staff working with the student were provided this training which would enable the BIP to be implemented with fidelity.
- Federal regulations, at 34 C.F.R. 300.503, require that written notice must be given to parents a reasonable time before the responsible public agency initiates or changes the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student. The written notice sent to parents by the responsible public agency must contain a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the action. Kansas regulation, at K.A.R. 91-40-27(a)(3), requires parent consent before making a material change in services and/or a substantial change in placement. K.S.A. 72-988 describes a material change in services as an increase or decrease of 25% or more of any one service and describes a substantial change of placement as movement to a less or a more restrictive environment for 25% or more of student's day. In this case there is evidence that the parents were not provided with appropriate prior written notice for these types of changes on numerous occasions during the 2016-17 school year.
- Federal regulations, at 34 C.F.R. 300.320, require school districts to develop an IEP describing the special education services needed to address the unique needs of students with disabilities 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; 3) participate in extracurricular and other nonacademic activities; and, 4) be

educated and participate with other children with disabilities and nondisabled children. Kansas state law, at K.S.A. 72-987, includes giftedness as an exceptionality requiring an IEP. In this case, the IEPs developed for the student included a BIP to address behaviors associated with autism and there is evidence to show the parents and school staff believed the student required full time paraprofessional support to implement the BIP following the September 1, 2016 IEP team meeting and the February 1, 2017 IEP amendment; however, this support was never documented on the IEP. In addition, there is evidence to support that the student's exceptionality of giftedness was not considered when developing the IEPs beginning in February 2017.

Based on the foregoing, \_\_\_\_ Kansas Inter-local # \_\_\_\_ / USD # \_\_\_\_ are directed to take the following actions:

1. Within 10 calendar days of the receipt of this report, submit a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will comply with each of the federal and state laws and regulations determined to be not in compliance as described above.
2. Prior to the beginning of the 2017-18 school year, seek consent to conduct a comprehensive reevaluation of the student following appropriate policy and procedures. This evaluation must include, at a minimum, a functional behavioral assessment, a language evaluation for receptive, expressive and pragmatic skills, an occupational therapy evaluation for sensory integration, an academic assessment, and assessments in the areas of social/emotional/behavioral. Once this evaluation is completed, the IEP team will reconvene to consider the results of this evaluation and develop an IEP that accurately reflects the special education and related services and supplementary aids and services required to be provided to the student to address the exceptionalities of both autism and giftedness. If the IEP includes a BIP requiring a specific behavior intervention model, the IEP will reflect, and the district will ensure, that appropriate school staff members are trained in this intervention model. Appropriate PWN will then be provided to the parent. Documentation of these actions shall be submitted to Early Childhood, Special Education and Title Services no later than August 30, 2017.
3. In addition, training will be provided to appropriate staff regarding the IEP process including development and implementation of the IEP, making



amendments to the IEP and PWN. The presenter must be approved by the Early Childhood, Special Education and Title Services. Documentation of this training and who attended shall be submitted to Early Childhood, Special Education and Title Services no later than August 30, 2017.

4. Further, the \_\_\_\_ Kansas Inter-local # \_\_\_ / USD # \_\_\_ shall, within 10 calendar days of receipt of this report, submit to Early Childhood, Special Education and Title Services one of the following:
  - a) a statement verifying acceptance of the corrective action or actions specified in this report;
  - b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
  - c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (f).

### **Right to Appeal**

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (c), which is attached to this report.

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Nancy Thomas  
Complaint Investigator

#### (f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10

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

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

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

(A) The issuance of an accreditation deficiency advisement;

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

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

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