

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #231
ON FEBRUARY 2, 2024

DATE OF REPORT MARCH 12, 2024

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

The complaint is against USD #231, Gardner Public Schools. In the remainder of the report, USD #231 will be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on February 2, 2024, and the 30-day timeline ends on March 2, 2024. Due to the complaint investigator's illness an extension was granted through March 12, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham interviewed the complainant on February 5, 2024 and again on March 4, 2024. Additionally, the complaint investigator interviewed the executive director of special education and the special education coordinator on March 5, 2024. She reviewed all evidence and documentation which was provided by both the district and the complainant. The following documentation and information were used in consideration of the issue(s):

Parent evidence

1. Parent notes of communications with school dated between August 16, 2023 and February 6, 2024.
2. IEP dated September 27, 2023.
3. List of accommodations requested for dates September 30, 2023 through May 24, 2024.
4. Email among case manager, mother, and special education coordinator between October 2, 2023 at 1:26 p.m. and October 3, 2023 at 9:21 a.m.
5. Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated October 6, 2023.

6. Email between case manager and mother between October 9, 2023 at 2:03 p.m. and October 10, 2023 at 10:48 a.m.
7. Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated October 10, 2023.
8. Text of email sent to school regarding seeing changes in student dated October 17, 2023.
9. Notice of Meeting dated October 19, 2023 for October 27, 2023 meeting.
10. Email between case manager and mother between October 20, 2023 at 1:26 p.m. and 2:41p.m.
11. IEP Meeting – Review Concerns regarding Services and Previously Proposed IEP dated October 27, 2023 and meeting notes.
12. Parent notes dated December 7, 2023, January 25, 2024, January 29, 2024, and February 6, 2024.
13. Course progress for English Language Arts, Mathematics, Science and Social Studies, accessed on February 5, 2024
14. Screen shot of narrative from Psychological Report, undated.
15. Service Summary, undated.

District evidence

1. Progress Report dated March 7, 2023 and September 22, 2023.
2. Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated May 18, 2023 signed by mother on May 18, 2023
3. IEP Team Meeting Notes for May 18, 2023 meeting.
4. Teacher notes, Behavior Data/Home-School Communication and Target Behavior Sheets related to behavior IEP goals dated between August 23, 2023 through February 6, 2024.
5. IEP dated September 26, 2023 including meeting notes.
6. IEP dated October 6, 2022
7. Teacher notes dated October 16, 2023 through December 12, 2023 regarding attendance.
8. Email from mother to principal dated October 17, 2023 at 6:03 p.m.
9. Email from executive director of special education to mother dated October 18, 2023 at 7:05 a.m.
10. Email between mother and executive director of special education dated October 19, 2023 between 1:44 p.m. and 2:02 p.m.
11. Email from mother to executive director of special education dated October 20, 2023 at 1:52 p.m.
12. IEP Meeting – Review Concerns regarding Services and Previously Proposed IEP dated October 27, 2023 and meeting notes.

13. Email among special education coordinator to mother, stepfather and father dated November 17, 2023 between 11:21 a.m. and 11:55 a.m.
14. Email from principal to executive director of secondary education and special education coordinator dated November 21, 2023 at 12:41 p.m.
15. Email from executive director of special education to special education coordinator, stepfather, school psychologist, special education teacher, father, mother, and behavior specialist dated November 21, 2023 at 3:49 p.m.
16. Email from stepfather to executive director of special education dated November 27, 2023 at 11:05 a.m.
17. Email between 8th grade math teacher and mother dated November 28, 2023 at 5:06 p.m. and 5:26 p.m.
18. Incident Details report including dates of November 30, 2023, 8:59 a.m., 1:02 p.m.; December 7, 2023, 9:05 a.m.; January 25, 2024, 1:05 p.m.; January 29, 2024, 11:13 a.m.; February 6, 2024 at 10:00 a.m.
19. Evaluation Team Report dated December 6, 2023 with Reevaluation Report
20. Audio recording of December 6, 2023 IEP meeting
21. Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated December 6, 2023 signed by parent on December 6, 2023
22. Email among the executive director of secondary education to behavior specialist, executive director of special education, special education coordinator, and special education teacher dated December 11, 2023 between 10:01 a.m. through 11:53 a.m.
23. Email from principal to case manager dated December 12, 2023 at 8:48 a.m.
24. Email between principal to executive director of special education dated December 12, 2023 between 8:48 a.m. and 8:55 a.m.
25. Email from stepfather to principal dated December 13, 2023 at 7:46 p.m.
26. Email from principal to executive director of special education, case manager, special education coordinator and assistant principal dated December 14, 2023 at 7:39 a.m.
27. Email between stepfather and principal dated between January 2, 2024 at 7:07 p.m. in response to email sent on December 13, 2024 at 7:46 p.m. through January 3, 2023 at 7:38 a.m.
28. Emails among special education coordinator, executive director of special education, assistant principal and principal dated between January 2, 2024 at 8:20 p.m. and January 3, 2024 at 7:16 a.m.
29. Email from special education coordinator to parents dated January 3, 2024 at 3:42 p.m.
30. Email from principal to special education coordinator and executive director of secondary education dated January 4, 2024 at 9:14 a.m.
31. Email from principal to special education coordinator, executive director of secondary education and special education teacher dated January 4, 2024 at 11:30 a.m.

32. Email from principal to special education coordinator, executive director of secondary education and special education teacher dated January 4, 2024 at 1:59 p.m.
33. Email from case manager to principal dated January 25, 2024 at 11:57 a.m. with reply to case manager and special education teacher at 1:01 p.m.
34. Email from principal to special education coordinator, executive director of secondary education and special education teacher dated January 25, 2024 at 1:21 p.m.
35. Behavior Intervention Plan dated January 2024
36. Email from mother to special education coordinator dated February 1, 2024 at 1:50 p.m.
37. Email exchanges between executive director of special education and MIS data clerk dated February 1, 2024 between 1:50 p.m. and 3:08 p.m.
38. Email exchange between special education coordinator and executive director of special education dated February 1, 2024 between 2:04 through 2:08 p.m.
39. Email from stepfather to mother and special education coordinator dated February 1, 2024 at 2:32 p.m.
40. Email from special education coordinator to stepfather dated February 2, 2024 at 8:04 a.m. with responses between mother, stepfather and special education coordinator dated through February 6, 2024 at 12:48 p.m.
41. Email from principal to parents, case manager, special education teacher, and special education coordinator dated February 5, 2024 at 11:51 a.m.
42. Email from principal to parents, case manager, special education teacher, and special education coordinator dated February 5, 2024 at 1:37 p.m.
43. Email from principal to parents, case manager, executive director of secondary education, special education coordinator, and executive director of special education dated February 6, 2024 at 11:19 a.m.
44. IEP Meeting – Review Data dated February 9, 2024
45. Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated February 9, 2024
46. Audio recording of February 9, 2023 IEP meeting
47. Response to Formal Complaint dated February 16, 2024
48. Email from executive director of special education to complaint investigator dated February 29, 2024 at 1:15 p.m.
49. Staff schedules for the 2023-2024 school year showing assignment to student.
50. IEP Preparation Timeline
51. MIS Minute newsletter dated October 2023
52. DocuSign printout of February 9, 2024 Meeting Documents

Background Information

The student is an eighth grader at a district middle school who is eligible for special education services as a student with autism. He additionally has a medical diagnosis of Attention Deficit

Hyperactivity Disorder – Combined Type. In the district the student's IEP special education services are implemented in the regular education classroom with paraeducator support and in a Communications program. This program emphasizes instruction and support for students with delays in communication, social awareness, emotional reciprocity, and possible cognitive delays at the home middle school. It focuses on providing highly structured learning, intensive behavioral support and intense social skills and communication support to develop foundational skills to increase inclusion in the general education setting. The student's case manager was changed during the school year as the student appeared to have greater trust with this teacher and the student is choosing to spend more time in the special education setting than the general education classrooms for content instruction this school year.

The student transferred at the beginning of the 2022-2023 from a nearby district with an IEP. Upon transfer the student's IEP was implemented in RISE, a program for students with significant externalizing and internalizing behavior. It provided a structured environment and inclusion support specifically designed to increase a student's ability to self-regulate emotions and behavior and to promote self-advocacy. This program was considered to most closely match the program from the previous district. At the end of the 2022-2023 school year the IEP team met to receive services in the Communications program as it was a better fit with his strengths and needs. Since the beginning of the 2023-2024 school year the student has had issues with elopement (leaving class) and not participating in class.

Issues Investigated

1. **ISSUE ONE:** USD #231, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to review and revise the student's IEP due to any lack of expected progress toward the annual goals and in the general education curriculum when the student was not progressing during the 2023-2024 school year.
2. **ISSUE TWO:** USD #231, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP during the 2022-2023 school year, specifically services, service minutes, providing an alternative lunch setting, providing 1:1 educational support, providing the testing and instructional accommodations.
3. **ISSUE THREE:** USD #231, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent a copy of the student's IEP in a timely fashion during the 2023-2024 school year.
4. **ISSUE FOUR:** USD #231, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a prior written notice to parents following a substantial change in placement during the past 12 months when moving the student from the RISE program to another program.

Issue One

USD #231, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to review and revise the student's IEP due to any lack of expected progress toward the annual goals and in the general education curriculum when the student was not progressing during the 2023-2024 school year.

Applicable Law

According to federal regulations at 34 C.F.R. §300.324(b) and K.S.A. §72-3429 each agency shall ensure that the IEP team: (1) Reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and (2) revises the IEP, as appropriate, to address: (A) Any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate; (B) the results of any reevaluation conducted under this section; (C) information about the child provided by the parents; (D) the child's anticipated needs; or (E) other matters.

Analysis: Findings of Fact

The complainant alleged that the student is not doing well in the Communications class and wants to go back to the RISE program. They complain that there are not enough staff to support the student and that he is leaving classes and putting down his head when the environment is overstimulating.

The district responded that the student showed academic progress academically, however, did not progress with his self-management goal addressing compliance with non-preferred activities. The district stated the IEP team met four times so far during the 2023-2024 school year to address the student's refusals. In addition, the district conducted a reevaluation during the fall of 2023 which included a functional behavior assessment.

Documentation shows the IEP team met on September 26, 2023 to review and complete the student's annual IEP. Agreement was not reached for the plan and services during this meeting, so the previous IEP of October 6, 2022 with a May 17, 2023 amendment was the IEP of record. The IEP team met again on October 27, 2023 to review concerns regarding service minutes and complete the September 26, 2023 draft IEP. During the meeting, the decision was made to conduct a reevaluation that included a functional behavior assessment (FBA), discuss shortening the school day to decrease the student being overwhelmed, attending class, refusals, elopements, use of personal tablet, teacher prompts and supports. Decisions included conducting the reevaluation with the FBA, providing family daily data sheets about behaviors of concern. The October 6, 2022, with a May 17, 2023 amendment continued to be the IEP of record. The IEP team met again on December 6, 2023 to review the reevaluation report and subsequently changed service minutes based on the reevaluation report. The parent signed consent for this change and the September 26, 2023 IEP with changes made on

October 27, 2023 and December 6, 2023 was adopted. On February 9, 2024, the IEP team met to review data collected for the student and discuss moving the student to the RISE program, have a new case manager assigned due to the relationship of respect between the teacher and student, shortened school days, lunch support/supervision and tablet use. Decisions made during this meeting included, rejecting the move to the RISE program, reassigning the case manager, providing an agreed upon area for lunch and support, shortening the student's day and tablet use. That PWN is not yet signed for the material change of services.

Conclusion

The IEP team met four times to review data and discuss changes to the student's IEP based on mutual concerns of the student being overwhelmed, attending class, refusals, elopements, use of personal tablet, teacher prompts and supports. At each meeting, the team identified the issues, reviewed new data, and discussed changes to the IEP. In some cases, the impetus for the meeting was based on the parent's concern about progress (October 17, 2023) and in other cases it was based on the district's concerns. These decisions are documented in prior written notices or IEP team meeting notes. These decisions and the need to address lack of progress are referred to in email exchanges between IEP team members and family members along with planning to meet to discuss IEP changes. Based on the foregoing, *it is not substantiated* that USD #231 failed to review and revise the student's IEP due to any lack of expected progress toward the annual goals and in the general education curriculum when the student was not progressing during the 2023-2024 school year.

Issue Two

USD #231, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP during the 2022-2023 school year, specifically services, service minutes, providing an alternative lunch setting, providing 1:1 educational support, providing the testing and instructional accommodations.

Applicable Law

Federal regulations at 34 C.F.R. §300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

The complainant alleged that the student's IEP was not being implemented in several areas including the services, service minutes, providing an alternative lunch setting, providing 1:1

educational support and providing testing and instructional accommodations. The parent stated that the RISE program was more appropriate for the student’s services and service minutes as he was having increases in behavior in the Communications program. She stated he could not eat in the lunchroom as it was too overstimulating and when he sought out a quieter lunch area, he was constantly asked to move resulting in him missing lunch. She stated he was not getting enough testing and instructional support or accommodations were provided to the student in the general education classroom and in the Communications program.

The district replied that they implemented the IEP as written. They state that the student used his accommodations throughout the school day and received direct instruction to address skill gaps. They state the IEP did not provide 1:1 educational support, however the student’s individual learning needs and need for frequent breaks necessitated 1:1 educational support. Although there was no alternative lunch accommodation in the IEP at the beginning of the school year the student was permitted to eat in a classroom because it was preferred. Services and this alternative lunch location are recorded in the current IEP.

The findings of Issue one are incorporated herein by reference.

The student had two IEPs in effect during the 2023-2024 school year, The IEP dated October 6, 2022 (amended on May 17, 2023) and the IEP dated September 26, 2023, initiated on October 27, 2023.

According to these two IEPs and amendments made during the four IEP team meetings the student’s special education services in a regular education classroom and outside of a regular classroom are displayed below. Additionally, the student has 35 minutes of non-instructional paraeducator support 6 days every week during the lunch period.

Dates	special education direct services in a regular education classroom	special education direct services outside a regular education classroom
8/16/23 – 10/5/2023	180 minutes 5 days every week	215 minutes 5 days every week
9/26/2023 – 12/15/2023	180 minutes 5 days every week	215 minutes 5 days every week
1/4/2024 – 5/24/2024	297 minutes 5 days every week	70 minutes 5 days every week

Neither of the student’s IEP indicate 1:1 instructional support for the student during academic instruction. The staff schedules for semester one of the 2023-2024 school year show one staff assigned to the student all class periods but 7th hour. She was with the student during Art, Science, Mathematics, Social Skills, and Seminar. A different staff was with the student during ELA. During the second semester one staff was assigned to oversee the student during Science, Math, Social Skills, and another staff was assigned to the student during ELA and Seminar.

The student progress notes show that progress was reported on the student’s 3 IEP goals on a quarterly basis. The student had one ELA goal, one Mathematics goal and one Self-Management goal. Daily behavior sheets dated between August 23, 2023 and February 6, 2024 show that data were collected for the self-management goal and were used in the development of the Behavior Intervention Plan.

The IEP with a meeting date of 9/26/2023 included 35 service minutes, 5 days every week for the student’s lunch at the school. The IEP prior did not include an alternative lunch accommodation, but the district reported he was permitted to eat lunch in a teacher’s classroom because he preferred that.

	8/16/23 – 10/5/2023	9/26/2023 - current
Read aloud for assignments and assessments	x	x
Extended time for assignments	x	x- clarified for 1 extra class session
Shorten assignment	x	x
Allow frequent breaks	x	x
Contingency Map		x
Separate Setting for assessment		x
Tablet to access curriculum		x
Clozed Notes		x
Text to speech audio to read test items for district assessment	ELA, Mathematics and Social Studies	ELA, Mathematics (8th grade does not assess Social Studies)

Email exchanges specifically on September 21, 2023 document that the accommodations are being provided in class.

The parent provided a list of accommodations including thirteen accommodations and one supplemental aid for training staff to use the BIP. The parent stated during the interview on March 4, 2024 that she provided these to the IEP team explaining that they were clearer for the staff to follow and wanted to replace the current accommodations with these. Review of the IEPs and notes do not show these were adopted or replaced those on the IEP. She stated that the staff did not listen to them.

Teacher notes and emails show that the first four accommodations were implemented regularly with the student. The final four accommodations were added during the February 9, 2024 IEP meeting and documentation is not available to determine the level of implementation.

Conclusion

Based on the foregoing, *it is not substantiated* that USD #231 failed to implement the student's IEP during the 2022-2023 school year, specifically services, service minutes, providing an alternative lunch setting, providing 1:1 educational support, providing the testing and instructional accommodations. Meetings discussions focused on multiple solutions for the student and in many cases discussion and decision making was carried from one meeting to the next. The disjointedness may have contributed to a misunderstanding of decisions made and the services, service minutes, student supports and accommodations being implemented.

Issue Three

USD #231, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent a copy of the student's IEP in a timely fashion during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.322(f) and state regulations at K.A.R. §91-40-18(d) state that parents are provided a copy of the child's IEP at no cost to the parent. Further, 34 C.F.R. §300.501(a) states that the parents of a child with a disability must be afforded, in accordance with the procedures of §§300.613 through 300.621, an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child.

Analysis: Findings of Fact

The parent alleged that during the 2023-2024 school year that she has requested in writing and verbally for a copy of the student's IEPs and still has not gotten a copy of them.

The district responded that the parent was provided a copy of the IEP during each of the four IEP meetings. They further responded that when the complaint was filed the district learned that the parent was indicating she did not have a copy of the student's current IEP and immediately provided an electronic copy via email.

The findings of Issues one and two are incorporated herein by reference.

The district reported in their response that the IEP team has met four times during the 2023-2024 school year, September 26, 2023, October 27, 2023, December 6, 2023, and February 9, 2024. An IEP dated September 26, 2023 included the IEP team members present and the parent is signed for attendance. The meeting minute notes from this September 26, 2023 IEP recorded that the parents requested that any information be shared with the family prior to the meeting so the family would have time to review and prepare for the meetings.

A meeting note dated October 27, 2023 documents, "School sent out IEP 9/28/23 for IEP meeting 9/30; Parent signature was not given on PWN. The team is currently working from the

expired (sic) IEP, since we have not obtained (sic) a signature for the new PWN at this time. Parent stated that she would never consent (sic) to the new IEP behavior as the (sic) BIP Box wasn't checked. School want to add BIP (sic) that was in place before moving to [district]." A PWN dated December 6, 2023 documents IEP team decisions and the parent signed agreement to decisions made. An email on February 1, 2024 at 1:50 p.m. from mother to the special education coordinator stated, "I got your message and I have requested multiple times that we communicate through email so that we can have a paper trail. Since the beginning of this year we have had several IEP meetings (sic) and we have never received a copy of the reports from the IEP. We have requested them and still have not received them." An email from the special education coordinator to the parents dated February 2, 2024 documented, "I apologize for the lack of communication regarding these documents. I wasn't aware you didn't have them in your possession. I have attached the documents from [student's] special education file from the 23-24 school year. Please let me know if you have any questions. Notice of Meeting and Notes from the meeting held on 10/27/2023; Evaluation Report from the meeting held on 12/6/2023; IEP and PWN from the meeting held on 12/6/2023.

On February 2, 2024 at 8:04 a.m. the special education coordinator emailed the stepfather Notice of Meeting and meeting notes from the October 27, 2023 meetings, the December 6, 2023 Evaluation Report and the December 6, 2023 IEP and Prior Written Notice. The parent confirmed she was in receipt of these documents during an interview on March 4, 2024.

An IEP team sign in sheets shows the participants and a PWN documented decisions made during the February 9, 2024 IEP meeting. The parent stated during the March 4, 2024 interview with the complaint investigator that she did not receive a copy of the PWN. A DocuSign printout of the February 9, 2024 meeting documents shows that the envelope containing the documents regarding the February meeting, including the PWN to be signed were sent on February 9, 2024 and resent on February 20, 2024 and February 28, 2024. It showed that the parent viewed the documents on February 21, 2024 at 8:52:36 a.m. and viewed the documents on the same day at 8:53:09 a.m.

The IEP preparation timeline used in the district states the following steps for each case manager to follow in regard to providing parents special education documentation. Ten days prior to the IEP scheduled date send home a draft of the IEP for review. Three to five days prior notify parents to get additional information and answer preliminary questions. On the day of the meeting send parents home with a copy of everything they signed, and a copy of the IEP and the changes made during the meeting. After the meeting send a finalized copy of the IEP home to the parents.

The MIS minute newsletter for October 2023 featured an article, "I held an IEP meeting – what is next?" In that article it states, "After the meeting is held, documents are signed, parents have a copy, you have a copy for the working file, you have reviewed PowerSchool for the last time then the packet should be finalized."

Conclusion

It is found that the federal and state statutes and regulations specify that a copy of the IEP be provided to the family free of charge and that families be provided requested documents, however timelines for timely response are not defined. The district has written procedures in place for when documentation must be provided, and it is found that those were followed in this case based on interviews with the parent reviewing and comparing documentation. Based on the foregoing, *it is not substantiated* that USD #231 failed to provide the parent a copy of the student's IEP in a timely fashion during the 2023-2024 school year based on the district's practice.

Issue Four

USD #231, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a prior written notice to parents following a substantial change in placement during the past 12 months when moving the student from the RISE program to another program.

Applicable Law

According to federal regulations at 34 CFR §300.503(a)(2) and Kansas state statute at K.S.A. §72-3430(b)(2), the parents of exceptional children shall have the right to written prior notice in accordance with K.S.A. 72-3432, and amendments thereto, whenever an agency either proposes to initiate or change; or refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

Analysis: Findings of Fact

The parent alleged that the student was originally assigned to the RISE program when moving in from out of district. At the end of his first year in the district the IEP team met and moved the student to the Communication program stating it was a better fit with the student's strengths and needs. The parent states that this change should be considered a substantial change of placement and a PWN should have been provided to the parent.

The district responded that the student was reassigned from the original RISE program to the Communications program in May 2023, effective at the beginning of the 2023-2024 school year. The district states that this reassignment to another program did not constitute a substantial change of placement. The IEP service minutes, goals, accommodations and modifications remained the same. The program did not result in a change in access to nondisabled peers. As such a prior written notice, nor parent consent was needed. Even so, the class change was discussed with the parents during the May 18, 2023 IEP meeting and the parents agreed and signed consent for the actions during that meeting.

The findings of Issues one, two, and are incorporated herein by reference.

The PWN dated May 18, 2023 indicated that a meeting was held with the IEP team to discuss IEP services and to discuss placement. The PWN indicates a substantial change in placement (25% movement of your child's school day to or from less or more restrictive environment to a less or more restrictive environment) and material change in services (25% or more of the duration or frequency of a special education service, related service or supplementary aid specified in the IEP changed). An email from the district to the complaint investigator clarified that it is the district's practice to obtain parental consent when a student is moved from one specialized program to another.

It is documented that, "[student] will receive the following services through Communications case management. (180 minutes of special education services in the general education setting, 5 days per week. 215 minutes of special education services in the special education setting, 5 days per week. The explanation for the change, "[Student] had displayed significant social concerns that significantly impact his ability to maintain within the classroom and the RISE special education classroom setting. The team feels that [student] may benefit from specific social and communications supports to access his education." Options considered included, "...to continue case management through RISE, however it was rejected because [student's] needs require more specific intervention that are not offered within the RISE setting. It was considered to increase services, but it was rejected because the current minutes are sufficient to adequately meeting [student's] needs. The parent signed consent on May 18, 2023.

Conclusion

Based on the foregoing, *it is not substantiated* that USD #231 failed to provide a prior written notice to parents following a substantial change in placement during the past 12 months when moving the student from the RISE program to another program.

Although the district claimed that the change from RISE to the Communications program was not a substantial change of placement the PWN was marked that it would be considered during the meeting. In sum, however, the parent signed their consent for the change of placement from the RISE to the Communications program so no procedural error was found.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE**: A violation of 34 C.F.R. §300.324(b) and K.S.A. §72-3429 was not found, based on review of student data, interview, IEP meeting minutes and email exchanges Corrective action is not required.
2. **ISSUE TWO**: A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was not found, based on review of student data, interview, IEP meeting minutes and email exchanges Corrective action is not required.

3. **ISSUE THREE:** A violation of 34 C.F.R. §300.322(f), K.A.R. §91-40-18(d), and 34 C.F.R. §300.501(a) was not found, based on interview, review of district policy and procedures, and DocuSign receipts. Corrective action is not required.
4. **ISSUE FOUR:** A violation of 34 CFR § 300.503(a)(2) and § 72-3430(b)(2), was not found, based on the PWN with parent consent. Corrective action is not required.

Right to Appeal

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

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

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

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

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

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

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