

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #305
ON SEPTEMBER 29, 2023

DATE OF REPORT OCTOBER 26, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ----- by their parent, ----- . In the remainder of the report, ----- will be referred to as "Student A" and ----- will be referred to as "Student B." Together, they will be called, "the students." ----- will be referred to as "the parent," "the mother," or "the complainant."

The complaint is against USD 305 Salina Public Schools. In the remainder of the report, USD #305 will be referred to as "the district", "the local education agency (LEA)", or "the school."

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

Evidence Reviewed

During the investigation, the Complaint Investigator, Gwen Beegle, reviewed all evidence and documentation, which was provided by both the district and the complainant. The Complaint Investigator spoke with the parent on October 3, 2023 to clarify the complaint and interviewed the parent on October 17, 2023. These district staff persons were interviewed on October 16, 2023: Angie Dorzweiler (Principal), April Mayorga (Lead Teacher), Sydney Bacon (Special Education Teacher), Kent Trimmell (School Psychologist), Lori Thornton (Central Kansas Cooperative in Education-CKCIE) Coordinator for Oakdale Elementary), Genesis Resto-Torres (Kindergarten General Education Teacher), Brooklyn Bradley (Speech Language Pathologist), and Krista Linenberger (Elementary Director District Office).

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

1. Evaluation and Eligibility Team Report for Student A, dated May 19, 2021
2. Evaluation and Eligibility Team Report for Student B, dated May 19, 2021
3. IEP for Student A dated May 19, 2021
4. IEP for Student B dated May 19, 2021
5. Prior Written Notice for Eligibility and Initial Services for Student A dated May 19, 2021 and signed by the parent giving permission on May 19, 2021

6. Prior Written Notice for Eligibility and Initial Services for Student B dated May 19, 2021 and signed by the parent giving permission on May 19, 2021
7. Conference Summary IEP Team Considerations for Student A dated May 19, 2021
8. Conference Summary IEP Team Considerations for Student B dated May 19, 2021
9. Notice of Meeting for Student A dated October 13, 2022 for a meeting on October 11, 2022 signed by parent waiving 10 day notice on October 11, 2022
10. Notice of Meeting for Student B dated October 10, 2022 for a meeting on October 11, 2022 signed by parent waiving 10 day notice on October 11, 2022
11. IEP Amendment for Student A dated October 10, 2022
12. IEP Amendment for Student B dated October 10, 2022
13. Prior Written Notice of material change in service, change in placement and other changes to the IEP for Student A dated October 11, 2022 for a meeting on October 11, 2022 signed by the parent giving consent on October 11, 2022
14. Prior Written Notice of material change in service, change in placement and other changes to the IEP for Student B dated October 11, 2022 for a meeting on October 11, 2022 signed by the parent giving consent on October 11, 2022
15. Conference Summary IEP Team Considerations for Student A dated October 11, 2022
16. Conference Summary IEP Team Considerations for Student B dated October 11, 2022
17. IEP Amendment without a meeting for Student A dated January 9, 2023
18. Prior Written Notice for a material change in services for Student A dated January 9, 2021 and signed by the parent giving consent on January 9, 2023
19. Notice of Meeting for Student A dated March 30, 2023 for a meeting on March 30, 2023 signed by the parent waiving 10 day notice on March 30, 2023
20. Notice of Meeting for Student B dated March 30, 2023 for a meeting on March 30, 2023 signed by the parent waiving 10 day notice on March 30, 2023
21. IEP for Student A dated March 30, 2023
22. IEP for Student B dated March 30, 2023
23. Prior Written Notice for material change in services, substantial change of placement, and other changes to the IEP for Student A dated March 30, 2023 and signed by the parent giving consent on March 30, 2023
24. Prior Written Notice for material change in services, substantial change of placement, and other changes to the IEP for Student B dated March 30, 2023 and signed by the parent giving consent on March 30, 2023
25. Conference Summary IEP Team Considerations for Student A dated March 30, 2023
26. Conference Summary IEP Team Considerations for Student B dated March 30, 2023
27. IEP Amendment without a meeting for Student A dated August 22, 2023
28. IEP Amendment without a meeting for Student B dated August 22, 2023
29. Prior Written Notice for change in services and change of placement for Student A dated August 22, 2023 and signed by the parent giving consent on August 21, 2023

30. Prior Written Notice for change in services and change of placement for Student B dated August 22, 2023 and signed by the parent giving consent on August 21, 2023
31. Kindergarten Transition Notes, undated personal notes
32. Progress Reports, Student A, with entries dated from October, 2022-October, 2023
33. Progress Reports, Student B, with entries dated from October, 2022-October, 2023
34. Daily Schedule, Students A and B, 2023-24 School Year
35. Kindergarten Schedule, 2023-24 School Year
36. Special Class Schedule, 2023-24 School Year
37. Teacher Observations of Student A and Student B, with entries dated September 20, 2023 to October 5, 2023
38. Notes from Principal and Lead Teacher with entries dated August 29, 2023 to October 11, 2023
39. Elementary School Family Profile, 2023-24 School Year
40. KELPA Screener Student Report, Student A, dated August 28, 2023
41. KELPA Screener Student Report, Student B, dated August 28, 2023
42. IEP Meeting Notes dated October 19, 2023

Background Information

The students are 5-year-old twin boys, who currently attend a self-contained special education elementary classroom for their kindergarten year at Oakdale Elementary school in USD #305. The students have other siblings who attended the same elementary school in prior years. The family speaks Spanish in the home, and the mother speaks Spanish to the students and relies on their siblings to speak English to the students in the home. The records indicated that both English and Spanish are spoken in the home, according to the parents. The parents have interacted with the school in English, and the family informed the school that they regularly travel to Mexico for extended times over school breaks.

The students were born at 29 weeks gestation and had low birth weight, and both had complicating health conditions at birth, which are now resolved. Both students received speech language services through Part C. Evaluated for Part B special education prior to their third birthday, the students were found eligible in the developmental delay category. Their IEPs specified that speech language therapy would occur both as pull out and within general education in an early education preschool (Head Start) program which they attended as three- and four- year-olds. On March 30, 2023, both students' IEPs were held, anticipating entering the elementary school program in August, 2023. The students' IEPs contain four goals on communication, three goals on pre-academics, and two goals on social emotional skills. During the remainder of the preschool year, Student A's IEP called for 75 minutes of pull out special education or related (speech language) services weekly; Student B's IEP was similar, with 60 minutes of pull out special education or related (speech language) services weekly. Other than

the times they were removed for these services, they remained with their same age peers in the preschool program.

However, at the beginning of the 2023-24 school year, both students' services changed to special education in the self-contained special education classroom for all academics, with special education support in general education during meals and special classes. For both students, pull-out speech language therapy continued for 15 minutes three times a week.

Issues Investigated

1. **ISSUE ONE:** The USD #305 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop the students' IEPs, specifically by designing IEPs that would meet the students' needs, thereby denying them FAPE (page 6).
2. **ISSUE TWO:** The USD #305, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide FAPE by implementing the students' IEPs, including the goals, services, supplementary aids and services, access to the general curriculum, and the placement in the least restrictive environment during the 2023-24 school year (page 13).
3. **ISSUE THREE:** The USD #305, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to afford procedural safeguards to the students' parent, specifically by providing the parent with Prior Written Notice when changing the students' IEP services or placement (page 18).

Issue One

The USD #305 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop the students' IEPs, specifically by designing IEPs that would meet the students' needs, thereby denying them FAPE.

Applicable Law

Federal regulations at 34 C.F.R. 300.501(b) require that parents be given the opportunity to participate in meetings with respect to the identification, evaluation, and placement of their children, and the provision of FAPE to their children. Districts must ensure that parents are part of any group that makes decisions on educational placement of the parent's child according to 34 C.F.R. 300.501(c) including receiving notice of meetings. Additionally, federal regulations at 34 CFR 300.322(e) require that the public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents whose native language is other than English. Finally, 34 CFR 300.9(a) requires that the parent has been fully informed of all information relevant to the activity for which consent is sought in his or her native language.

With regard to evaluation for special education, federal regulations at 34 C.F.R. 300.304(c)(1)(ii) require that assessments are provided and administered in the child's native language and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally.

Analysis: Findings of Fact

The parent alleged that she learned that the students were kept in the special education classroom for the entire school day when she visited them at their elementary school during the first weeks of the 2023-24 school year. In the complaint and the interview, the mother alleged that she did not agree to have them isolated in this way at the IEP meeting, and that her children had language delays and could not learn if they were not around the other children in kindergarten. The parent alleged that the special classroom placement was not meeting their needs to learn and that they should not be in the self-contained special education classroom. The parent alleged in the Child Complaint and during the interview that the children could do more than what the school said; they just could not talk. The complainant alleged: "They have them in a special education classroom all day and not in a regular classroom just because they cannot speak."

The district responded that "U.S.D. 305 denies this allegation. The team went through the proper procedures for developing the IEPs for both [the students]. On May 19, 2021, both twins were found eligible for special education under the category of Developmental Delay. . . [the parent] signed the consent for the initial evaluations on March 22, 2021. . . Likewise, she signed consent for the IEP on May 19, 2021. . . Although [the parent] claims that the boys only have a speech delay and should be in the general education classroom, the initial evaluation reports clearly demonstrate that both are significantly cognitively delayed, in addition to their significant speech delays. Since the initial IEPs, there have been multiple amendments for both boys. Each time, the parent signed consent for the changes to the IEP."

The complaint investigation proceeded to determine (a) parent participation in the IEP process, including native language interpretation, (b) proper evaluation to include native language assessments and (c) proper development of the students' IEPs. The findings below will be organized into these categories.

Findings of the investigation based upon the evidence listed above include the following:

Parent participation

- During the interview, the parent reported that the change of placement was not explained to her and that she did not agree to have the children contained all day. The parent reported that she was not informed during the March 30, 2023 IEP meeting about the nature of the elementary classroom that the children were going to be assigned to attend, or that they would be there on a full-time basis. The parent and district agree that the parent strongly expressed her disagreement with the students'

placement in the special education classroom full time within a few weeks of the beginning of the 2023-24 school year, when she visited the students at school.

- Both parent and district agree that no Spanish language interpretation was provided for the parent at the evaluation or the March 30, 2023 IEP meeting. The district reported and provided documentation that the elementary school's parent database shows the family's home language is English.
- The parent signed her consent to waive 10 day notice of the meeting on March 30, 2023 and she signed consent to the Prior Written Notice (PWN) for a material change of services, substantial change placement, and other changes to the IEP for both students on March 30, 2023. The PWN signature statement indicated that the parent had received or had been offered parental rights in her native language. However, the parent and the school agreed that meetings were held only in English.
- Conference Summary IEP Team Considerations for both students dated March 30, 2023 show that the parent expressed concern about the students' transition to the school program. The conference notes state that the mother was concerned about the change of teacher and speech language therapist at the new school. The meeting notes said a discussion was held to ask the kindergarten team to let the boys come to school, meet the new teachers, and see the classroom. However, the district did not report this was done.
- The district reported and provided notes from a kindergarten transition meeting between the special educator, the lead teacher, and the parent where the placement in special education for reading, written language, math, and social skills was listed as a discussed topic, subsequent to the IEP's development. The kindergarten transition meeting notes indicated that the family trips to Mexico over school breaks may cause absences from school. The parent reported that she did not know the students were going to be in the self-contained special education program for the whole day.

Assessments in native language

- According to the Evaluation and Eligibility Team Reports for Students A and B dated May 19, 2021, the students were evaluated at 2 years 9 months of age and both were found eligible for special education in the category of developmental delay due to "significant delays in overall development in communication, cognitive, social-emotional and pre-academic skills." The evaluator urged caution in interpreting the cognitive testing due to the children's young age. The evaluator stated for each child: "[the student] presents with delayed speech and language skills that impact his ability to effectively communicate his wants and needs and to demonstrate his knowledge and skills he may have. Speech-language therapy is recommended at this time."
- The district reported during the interview and the May 19, 2021 evaluation social history for both students showed that the parent reported that both Spanish and

English were used in the home, with the mother speaking Spanish to the students and siblings speaking English.

- The students' evaluations dated May 19, 2021 did not indicate that any Spanish language testing or dual language testing was conducted. When questioned during the interview on October 16, 2023, the district confirmed that there was no Spanish language assessment included in the evaluation report. The district reported and documentation showed that play based assessments were conducted.
- Both students' IEPs dated March 30, 2023 stated that the students do not have limited English Proficiency. Both students' IEPs included this statement: "[The student] is a dual language learner. Though he is not strong in either Spanish or English, both languages were considered when developing his IEP." No dual language assessments or observations were further provided in either student's IEP.
- Both students were screened as English Learners (EL) upon their entry into the elementary program (August 28, 2023). Both students were assessed as "not proficient" and received ESOL services in the special education classroom.

IEP development

- Both students have current IEPs dated March 30, 2023. In the early education preschool setting (March 30, 2023 to May 18, 2023), Student A received special education 15 minutes three times a week in the special education setting for speech language services; Student B received special education 15 minutes two times a week in the special education setting and 15 additional minutes in the general education setting for speech language services. Each student also received special education 15 minutes two times a week in the special education setting and 15 minutes one time a week in the general education setting. The remainder of their educational program was in the preschool classroom with their same-age peers, with minimal special education support (15 minutes for Student A; 30 minutes for Student B).
- Beginning August 16, 2023, their IEPs dated March 30, 2023 changed the students' placements to a self-contained special education placement for "the duration of reading, math, written language and social skills instruction. [They] will receive special education services in the general education setting for breakfast, lunch, and special classes (music, PE, library, social studies, counseling, science)." No special education service minutes were specified on the IEP. No school member of the students' current elementary IEP team attended the March 30, 2023 IEP meeting.
- Both students' IEPs dated March 30, 2023 specify that upon entering the elementary program for the 2023-24 school year, 15 minutes of related (speech language) services in the special education setting would be provided three times a week.
- The district reported that speech language therapy is conducted in English, using physical objects and visual prompts. When questioned during the interview on October

16, 2021, the district confirmed that the students' speech language services no longer included dual language support as they had on a previous IEP.

Recent developments

- The parent and the district agreed that the parent requested an IEP meeting on October 12, 2023 and the district agreed to hold an IEP meeting on October 19, 2023. At this meeting, the notes provided by the district show that both parents attended. According to the notes, the mother stated that another person attending at the parent's request and the father were adequate for translation. The notes state that the students will be in the regular classroom an additional 15 minutes each day, by going to alternate halves of the creative play period.
- According to the October 19, 2023 IEP meeting notes, the district suggested conducting a reevaluation and the parents gave verbal permission to the request.
- In this case, the complaint and the initial interview appeared to center on whether the students' IEPs were appropriately developed, as the parent stated that they did not meet the student's needs because of the self-contained placement. During the interview, the parent asserted that there were two problems with the special education placement in the self-contained special education class. First, she was not informed that the children were going to be placed in a self-contained classroom and in her words "prevented" from going to the regular classroom where they could learn from other children. She did not believe the IEPs meant that the students would be all day in the special education classroom, as she found them upon visiting the school. Secondly, she claimed that the students were more capable than the school assumed, based on her belief that they were smart but could not speak. Accordingly, both these allegations were investigated as part of Issue One, the development of an appropriate IEP that was based on parental participation and understanding of the proceedings and decisions being made and the proper evaluation of the students to determine their placement in the elementary special education classroom for most of the school day.

While the parent asserted that she did not understand what the elementary school placement would be, she was provided with documentation of this change by the district, which she signed giving her consent. She attended the March 30, 2023 IEPs for Students A and B. However, no native language interpretation occurred at that meeting and the parent immediately protested the placements upon visiting the elementary school in August, 2023 at the outset of the 2023-24 school year.

Federal regulations at 34 CFR 300.322(e) require that the public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents whose native language is other than English, and federal regulations at 34 CFR 300.9(a) require that the parent has been fully informed of all information relevant to the activity for which consent is sought in his or her

native language. Given the parent's clear reaction when she learned that her children were in the K-1 self-contained special education classroom, it is likely that she did not understand the change of placement when the IEP meeting was held and upon signing the PWN.

Therefore, it is found that there was a violation of regulations for failing to take the actions necessary to fully inform the parent of all the information relevant to the placement decision for the students, for which her consent was sought, including native language translation of documents and participation in meetings (34 CFR 300.322(3); 34 CFR 300.9(a)). It is noted that the district and parents held an IEP meeting on October 19, 2023 at which native language translation was available and the topic of the students' placements was discussed.

Her second concern was her belief that the students were more capable than the school assumed, stating that the students were smart but only could not speak. The social history of the students' special education eligibility evaluations dated May 18, 2021 stated that the mother spoke Spanish to the students and that siblings in the home spoke English to them. At the time of the evaluation and subsequent IEPs, the district did not label the students as Limited English Proficient. However, the district did not provide any measure within or subsequent to the special education evaluation that their Spanish language delay was equal to their English language delay. With regard to evaluation for special education, federal regulations at 34 C.F.R. 300.304(c)(1)(ii) require that assessments are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally. Native language, according to 300.29(a)(1), is the language spoken by the parent, in the case of limited English proficiency. The district, by August 28, 2023, had determined that the children should be screened using the Kansas English Language Proficiency Assessment (KELPA) and found them to be "not proficient."

Therefore, it is found that there was a violation of 34 C.F.R. 300.304(c)(1)(ii) in failing to include assessments in the students' native language. It is noted that the district and parents held an IEP meeting on October 19, 2023 at which the students' re-evaluation was discussed and the parents gave verbal permission to the district's suggestion to begin the reevaluation at the present time.

Conclusion

Based on the foregoing, *it is substantiated* that USD #305 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop the students' IEPs, specifically by designing IEPs with parental participation that would meet the students' needs, thereby denying them FAPE.

Issue Two

The USD #305, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide FAPE by implementing the students' IEPs, including the goals, services, supplementary aids and services, access to the general curriculum, and the placement in the least restrictive environment during the 2023-24 school year

Applicable Law

According to federal regulations at 34 C.F.R. 300.320 (a)(4), the IEP developed for the student is to include a statement of the special education, related, and supplementary aids and services or modifications to be provided to the student to enable the child to advance toward their annual goals, to make progress in the general curriculum, to be educated and participate with other children with disabilities and nondisabled children, and an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and activities. Additionally, 34 C.F.R. 300.320 (a)(7) adds that the IEP must include the projected date for the beginning of the special education and related services along with the anticipated frequency, location, and duration of services and modifications. Federal regulations at 34 C.F.R. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

Analysis: Findings of Fact

The complainant alleged that the students' IEPs were not followed, and that the students were not being allowed out of the self-contained classroom during the day. She alleged: "[My children] are being prevented from going into a regular classroom and getting the education they need." In the interview, the complainant alleged that she found that the children were having lunch in the self-contained classroom and that the kindergarten children were unfamiliar with the students when she visited the school to have lunch with them in the lunchroom. The complainant alleged that she witnessed the students' efforts at communication being ignored by the special classroom staff. The complainant alleged that the students were isolated away from the other children in the school. The complainant alleged that isolation increases the children's vulnerability to mistreatment and that the children needed to be around other children without disabilities in order to learn what they needed.

The district responded: "U.S.D. 305 denies this allegation. Rather, the IEP team placed both boys in accordance with their needs, as determined during the initial evaluation and as continues to be clear through the provision of services. Both boys have significant delays in their overall development, including the areas of cognitive, speech, social/emotional, and pre-academic/academic skills; however, [Student B] is somewhat more delayed than [Student A] . . . This is not unexpected, given the circumstances surrounding their premature birth and the

additional problems [Student B] experienced after birth. While to [the parent] it may appear that the boys simply do not speak but are otherwise normal, the testing data says otherwise. Unfortunately, these are not disabilities that the boys are likely to overcome. They will need significant special education support throughout their school career based upon their level of functioning. Furthermore. . . the parent has given consent to the initial evaluation and IEP, as well as the subsequent changes that have been made. It is understandable that the parents may wish for this to be simply a speech issue that could be overcome with speech therapy, but it is simply not true.”

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #305. The findings of Issue One are incorporated herein by reference.

- The students’ IEPs dated March 30, 2023 indicate their special education placement for “the duration of reading, math, written language and social skills instruction. [They] will receive special education services in the general education setting for breakfast, lunch, and special classes (music, PE, library, social studies, counseling, science).” No minutes of special education service are included on the IEP.
- The parent reported that the children were not attending lunch in the lunchroom with the other children when she visited the school at the beginning of the year. The parent reported that the lunchroom staff told her that the students received lunch in the special education classroom. When interviewed on October 16, 2023, the general education teacher stated that the students had lately been attending lunch and sitting with the kindergarten class, as well as attending indoor and outdoor recess with them. The kindergarten schedule shows that the afternoon recess but not the morning recess occurred at the same time as the students scheduled recesses.
- On October 12, 2023, the district provided a schedule for the students as follows:
 - 8:00-8:45 Breakfast, Morning Routine
 - 8:30-8:45 Related Services
 - 8:45-9:20 Tasks and Choice, Special Education Classroom
 - 9:20-9:40 Recess
 - 9:40-11:00 Tasks and Choice, Special Education Classroom
 - 11:00-11:30 Lunch
 - 11:30 -12:20 Tasks and Choice, Special Education Classroom
 - 12:20-1:20 Specials [25 minutes each]
 - 1. Music/Library
 - 2. PE/Science
 - 3. Music/Library
 - 4. PE/Science
 - 5. Music/Library
 - 6. PE/Science
 - 1:20-1:40 Recess

- 1:40-2:40 Tasks and Choice, Special Education Classroom
- 2:40-3:15 Creative Play, Listening Center
- 3:15-3:25 Dismiss
- The kindergarten schedule provided by the district shows:
 - 8:15-8:20 Attendance
 - 8:20-8:45 Breakfast
 - 8:45-9:20 Whole Group Math
 - 9:20-10:30 Small Group Reading
 - 10:30-10:45 Recess
 - 10:45-11:00 Writers Workshop
 - 11:00-11:30 Lunch
 - 11:30-12:20 Whole Group Reading
 - 12:20-1:10 Specials
 - 1:10-1:25 Writers Workshop
 - 1:25-1:45 Recess
 - 1:45-2:35 Small Group Math
 - 2:35-3:05 Creative Play
 - 3:05-3:15 Daily News
- The schedules above show the students' and kindergarten schedules overlap for 25 minutes at breakfast, 30 minutes at lunch, 15 minutes at afternoon recess, and 50 minutes for special classes, for a total of 120 minutes each day. The district reported that the students attended breakfast with the kindergarten classroom.
- The district reported that the students were attending the 25-minute special class periods with a paraeducator at the rate their behavior permitted. According to the teacher's notes, the students attended the following specials during the period of September 20, 2023 to October 9, 2023. Social studies is held one time every 6 days; no data reporting that the students attended social studies was provided. Special class rotations show that music and library occur on the same day, as do science and PE.

○ Date	Music	Library	Science	PE
○ Sept 20	AB	½ AB		
○ Sept 21	No	½ AB		
○ Sept 22	AB	½ AB		
○ Sept 25	No	½ AB		
○ Sept 26	AB	½ AB		
○ Sept 27	No	5 mins. AB		
○ Sept 28 (no data provided)				
○ Sept 29 (ill and appointments, no data provided)				
○ Oct 2	AB	½ AB		
○ Oct 3	No	5 mins. AB		

- Oct 4 A 5 mins AB
- Oct 5 (no data provided)
- Oct 6 A A
 - 5 mins B 5 mins B
- Oct 9 7 mins AB AB

According to this chart from the teacher's notes, Students A and B attended music regularly, attended half of library most days, attended a fraction of PE on some occasions, and attended science once for a few minutes. When asked, the school did not report any additional programming to enable the students to remain in special classes with their peers.

- No data was provided for the period August 16, 2023 to September 19, 2023.
- Creative play is part of the kindergarten daily schedule, for 40 minutes each day. The district reported that it is reading and math reinforcement in a play-based model. The students were not in the kindergarten class during this period prior to the October 19, 2023 IEP meeting.
- On October 19, 2023 the parents and the district had an IEP meeting at which the IEP team added 15 minutes of creative play time to each student's schedule. The students would not attend the same half of the creative play period. A new schedule was provided to the investigator on October 23, 2023 showing that the students go to breakfast in the gym but do not overlap with the kindergarten class's schedule at breakfast. According to the new schedule, the students spend 305 minutes in special education, have breakfast in the general education setting for 15 minutes, and have 110 minutes with the kindergarten class for lunch, special classes, most of the afternoon recess, and 15 minutes of creative play. According to this information, the students are scheduled to be in the self-contained special education classroom about 70% of their day and with the kindergarten class about 25% of their day.
- At the October 19, 2023 IEP meeting, the notes recorded that the mother wanted the students removed from the special class and that the mother "doesn't feel that staff was supporting them, only expecting them to do it [be successful in the kindergarten classes]. [The principal] explained that there was a staff member assisting them during the time." The notes state that the mother asked why the students didn't attend kindergarten yoga, and the notes report that she was told that speech language therapy pull-out time conflicts with it.

In this case, the student's IEPs required that they would have special education services in special education settings for reading, math, written language and social skills and that they would not be removed from their general education peers for other times of the day (breakfast, lunch, and special classes). However, the students did not attend special classes as specified in the IEP despite being given a paraeducator to accompany them, and there is some evidence that the students did not attend lunch for some time at the beginning of the school

year. Therefore, it is found that a violation of 34 C.F.R. 300.323(c)(2) occurred. It is noted that there was an IEP meeting on October 18, 2023 at which these topics were discussed and the district clarified that the students would attend half of the creative play time in addition to lunch and special classes.

Conclusion

Based on the foregoing, *it is substantiated* the USD #305, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide FAPE by implementing the students' IEPs, including the goals, services, supplementary aids and services, access to the general curriculum, and the placement in the least restrictive environment during the 2023-24 school year.

Issue Three

The USD #305, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to afford procedural safeguards to the students' parent, specifically by providing the parent with Prior Written Notice when changing the students' IEP services or placement.

Applicable Law

Federal regulations at 34 C.F.R. 300.503(a) require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability.

State regulations at K.A.R. 91-40-27(a)(3) require school districts to obtain parent consent before making a material change in services or a substantial change in placement. "Material change in services" is defined at K.A.R. 91-40-1(mm) as an increase or decrease of 25% or more of the frequency or duration of a special education service, related service, or supplementary aid or service specified in the child's IEP. "Substantial change in placement" is defined at K.A.R. 91-40-1(sss) as the movement of an exceptional child for more than 25% of the child's school day from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment.

Analysis: Findings of Fact

The parent alleged that classroom staff told her they could make small changes in the students' daily schedules when she questioned the school staff as to why the students were not following the expected schedule, specifically attending lunch with the kindergarten students. She alleged that the students' IEPs did not require them to eat lunch away from the kindergarten class and that the classroom staff did not have the authority to change their schedules in this way outside the IEP process.

The district responded that they denied this allegation, providing the parent with the parent rights/procedural safeguard document at least one time each year and providing prior written notice for each change of IEP service or placement.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #305. The findings of Issue One and Issue Two are incorporated herein by reference.

- The parent was provided Prior Written Notice dated March 30, 2023 for a material change of services, substantial change placement, and other changes to the IEP for both students on March 30, 2023, which she signed giving her consent on the same date. The PWN signature statement indicated that the parent had received or had been offered parental rights in her native language.
- The parent was provided Prior Written Notice dated August 22, 2023 for change in services and change of placement for both students, which she signed giving her consent on the same date.
- The district reported no knowledge of any staff persons stating that the students' schedules could be changed from that stated in the IEP. The district reported that school schedules can be inexact and some daily variability is typical. The parent could not specify what person had made this statement.

In this case, the district documented that they provided or offered a copy of the parent rights - procedural safeguard document to the parent on March 30, 2023 at the time of the students' annual IEPs. The district provided Prior Written Notice (PWN) at the time of the IEP meeting and for an IEP amendment. The district denied any knowledge of a staff person stating that the student's IEP schedules could be changed by the classroom staff without an IEP meeting. However, the finding in Issue Two is that the district did not follow the student's IEP schedules as specified in the IEP. The district did not provide PWN for this change in the students' IEPs. For this reason, it is found that a violation of 34 C.F.R. 300.503(a) occurred.

Conclusion

Based on the foregoing, *it is substantiated* that USD #305, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to afford procedural safeguards to the students' parent, specifically by providing the parent with Prior Written Notice when changing the students' IEP services or placement.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of 34 CFR 300.322(e), 34 CFR 300.9 and 34 C.F.R. 300.304(c)(1)(ii) was found, based on facts listed above. Corrective actions are required (as follows):
 - a. **CORRECTIVE ACTION for 34 CFR 300.322(e), 34 CFR 300.9:**

- i. Within 20 days of this report, USD #305 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations at 34 CFR 300.323(c)(2) which require the district to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.
 - ii. Within 20 days of the date of this Investigation Report, the district must provide training to the students' classroom staff on (a)the students' IEP services, including attending general education classes with special education support when not being removed to provide the special education services in special education settings as specified in the students' IEP, and (b) the necessity of and how to provide special education support in the general education settings so that the students can adhere to their IEPs' provisions for their participation in general education with their same age peers. The district will provide the training meeting agenda, content, and meeting participants and training providers to SETS upon completion.
 - iii. **Date due:** November 15, 2023
3. **ISSUE THREE:** A violation of 34 C.F.R. 300.503(a) was found, based on facts above. Corrective actions are required (as follows):
 - a. **CORRECTIVE ACTION:**
 - i. Within 20 days of this report, USD #305 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations at C.F.R. 300.503 which require that Prior Written Notice is provided to parents when a change of special education services or placement is made by the district. Upon the completion of the IEP meeting to re-determine placement (Issue One, a (i) above), the district will provide Prior Written Notice as required by 34 CFR 300.503.
 - ii. Upon the completion of the IEP meeting in corrective action 1 (a) (ii), the district will provide Prior Written Notice with oral language translation of the changes in the students' IEPs.
 - iii. **Date due:** November 15, 2023

Right to Appeal

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

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

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

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

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

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

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