

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #469
ON OCTOBER 31, 2023

DATE OF REPORT DECEMBER 4, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of [the student] ----- by his mother ----- . In the remainder of the report, [the student] ----- will be referred to as “the student.” ----- will be referred to as “the complainant” or “the parent”. ----- is [the student] ----- father and will be referred to as “the father.”

The complaint is against USD #469, Lansing Public Schools. In the remainder of the report, USD 469 will be referred to as “the district”, “the local education agency (LEA)”, or “the school”.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on October 31, 2023 and the 30-day timeline ends on December 4, 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. On November 14, Mike Strand, formerly employed as the student’s special education classroom teacher, was interviewed. On November 15, four district administrators were interviewed: Ascendra Donald, Director of Student Services LaKrystal McKnight, Elementary and Intermediate Special Education Coordinator; Jennifer Kolb, Principal Lansing Elementary and Tyler Hayes, Assistant Principal Lansing Elementary. On November 15, the parent was interviewed. In addition, the investigator received emails from both the parent and district from November 3, 2023 to November 25, 2023.

While more documents were reviewed by the investigator, the following documentation and information were used in consideration of the issues:

1. Functional Behavior Assessment and Behavior Intervention Plan for the Student dated May 13, 2021
2. Professional Teaching License for Michael Strand (former special education self-contained classroom teacher): Emergency Substitute dated July 1, 2022

3. Professional Teaching Licenses for Ellie Mae Seeler (current special education self-contained classroom teacher): Emergency Substitute dated July 27, 2022; Initial License dated March 14, 2023; High Incidence Special Education dated August 2, 2023
4. Individualized Education Plan (IEP) dated March 22, 2022
5. IEP Team Meeting Notes dated March 22, 2022
6. Progress Report 2022-23 with entries dated May 24, 2022
7. Student Discipline Report, with entries dated August 22, 2022 to November 3, 2023
8. IEP amendment dated September 9, 2022
9. IEP Team Meeting Notes dated September 9, 2022
10. Consent to excuse required member of IEP team (general educator) dated September 9, 2022 and signed by the parents on the same date
11. Prior Written Notice for material change of services and substantial change of placement dated September 9, 2022 for a meeting on September 9, 2022 signed by the parent giving consent on October 2, 2022
12. Signature page for IEP amendment dated September 9, 2022 signed by the parent giving consent on October 12, 2022
13. Prior Written Notice for material change of services and substantial change of placement dated September 9, 2022 for a meeting on September 9, 2022 signed by the parent giving consent on October 20, 2022
14. Psychological evaluation for the student dated January 26, 2023 completed by Lindsay Colburn-Malousek (Licensed Clinical Psychologist, The Guidance Center).
15. Prior Written Notice for Reevaluation of the student dated February 9, 2023 and signed by the parents giving consent on the same date
16. Notice of Meeting dated March 10, 2023 for a meeting on March 21, 2023
17. Re-evaluation for the student dated March 21, 2023
18. Individualized Education Plan for the student dated March 21, 2023
19. IEP Team Meeting Notes dated March 21, 2023
20. Consent to excuse required member of IEP team (general educator) dated March 21, 2023 and signed by the parents on the same date
21. Prior Written Notice regarding eligibility, services, placement, and changes to the IEP dated March 21, 2023 for a meeting on March 21, 2023 and signed by the parents on the same date
22. Report Card 2022-23
23. Progress Report 2023-24 with entries dated May 25, 2023, June 26, 2023 and October 27, 2023
24. Professional Teaching License for Crystal Gonzales (current self-contained classroom support teacher): Emergency Substitute dated July 1, 2023
25. Paraprofessional Orientation Training Agenda (21 hours) undated
26. STAR Comprehensive Virtual Workshop Agenda (2 days) undated

27. Lansing Elementary Professional Development agenda titled "Pairing Yourself as a Reinforcer" dated August 30, 2023
28. Audio recording of meeting dated August 31, 2023
29. Student Daily Schedule, 2023-24 school year
30. Student Communication Log with entries dated beginning September 11, 2023 to November 6, 2023
31. Behavior rating data with entries from September 28, 2023 to October 31, 2023
32. Report Card 2023-24, First Quarter
33. Professional development description of session "A Deeper Look at Deescalation"
34. Email from Jennifer Kolb (Principal Lansing Elementary) to Ascendra Donald (Director of Student Service) LaKrystal McKnight (Elementary and Intermediate Special Education Coordinator) and Ellie Seeler dated October 10, 2023 at 7:53 a.m.
35. Email from LaKrystal McKnight to Ellie Seeler, Cristal Gonzales, Christina Pennington (Teacher, First Grade), Jennifer Kolb, and Tyler Hays (Assistant Principal, Lansing Elementary) dated October 11, 2023 at 3:32 p.m.
36. Email from Tyler Hays to LaKrystal McKnight, Ellie Seeler, Christina Pennington and Jennifer Kolb dated October 16, 2023 at 7:31 a.m.
37. Email from the father to Jennifer Kolb and Tyler Hayes dated October 31, 2023 at 2:54 p.m. and Jennifer Kolb's reply dated October 31, 2023 at 4:56 p.m.
38. Email from Ellie Seeler to LaKrystal McKnight dated November 3, 2023 at 1:45 p.m.
39. Email from LaKrystal McKnight to Ellie Seeler dated November 7, 2023 at 3:34 p.m. and Ellie Seeler's reply dated November 7, 2023 at 3:59 p.m.
40. Email from Ellie Seeler to LaKrystal McKnight dated November 7, 2023 at 5:04 p.m.
41. Email exchange between Ascendra Donald, Tyler Hayes, and Jennifer Kolb beginning November 6, 2023 at 7:30 a.m. to November 13, 2023 at 11:27 a.m.

Background Information

The student is a 6 year-old first grader in a multi-age self-contained special education classroom in a K-3 elementary school in the student's district. The student is eligible for special education and related services as a student with developmental delays. He was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD) by the local guidance center during his kindergarten year. In the past year, he was diagnosed with Post Traumatic Stress Disorder (PTSD) by the guidance center. The student was removed from his biological parents due to neglect, and he was placed in foster care at 20 months of age with the parents who later adopted him.

The student received infant and toddler services just before his third birthday and transitioned to the current school district upon his third birthday in 2020, when he was evaluated and found eligible for special education in the disability category of developmental delay in the areas of communication and social emotional development. He was evaluated on February 5,

2021 and qualified for articulation services in addition to language and special education services he was already receiving in an integrated preschool. On May 13, 2021 a Functional Behavior Assessment (FBA) was conducted and a behavior intervention plan initiated, when the student was 4 years one month old. On January 14, 2022, he was evaluated by the district and it was found that he did not meet eligibility requirements for autism. On March 22, 2022 he was re-evaluated to determine continued eligibility for speech language services and dismissed from both language and articulation services.

For the period of the past twelve months, the student had an IEP in effect dated March 21, 2022 and amended on September 9, 2022. His IEP included the FBA conducted on May 13, 2021 and continued the behavior management plan first initiated on the same date. The student's triennial evaluation was conducted in concert with his current IEP on March 21, 2023. He continued to be eligible and receive special education services as a student with developmental delay in the area of social emotional development.

Issues Investigated

ISSUE ONE: The USD #469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop the student's IEP, specifically by designing an IEP that would address the students' needs in light of his disabilities.

ISSUE TWO: The USD #469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, 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 #469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide staff who are properly trained to implement the student's IEP.

ISSUE FOUR: The USD #469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the parent procedural safeguards, specifically by responding to a parent's request for an IEP meeting and scheduling the IEP meeting within a reasonable period of time.

Issue One

The USD #469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop the student's IEP, specifically by designing an IEP that would address the students' needs in light of his disabilities.

Applicable Law

The development of the IEP begins with the evaluation. Federal statutes and regulations at 34 CFR 300.304(b)(2) require that the evaluation does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate IEP for the child. Additionally, 34 CFR 300.304(c)(4) requires that the child be assessed in all areas related to the suspected disability, and 34 CFR 300.304(c)(6) and (7) require that the evaluation be sufficiently comprehensive to identify all the child's special education and related services needs and that tools and strategies provide relevant information to directly assist in determining the educational needs of the child are used.

K.S.A. 72-3429(d) requires that in developing the child's IEP, the IEP team shall consider the following: the strengths of the child, the concerns of the parents, the results of the child's evaluation, the academic and functional needs of the child, the use of positive behavior interventions and supports if the child's behavior impedes learning, the need for braille or the impact of limited English proficiency, the child's communication needs, and the need for assistive technology. K.S.A. 72-3429(e) requires that the general education teacher, as appropriate, shall participate in the development of the IEP of the child, including determining positive behavior intervention supports and other strategies, supplementary aids and services, support for personnel, and the review and revision of the child's IEP.

Federal statutes and regulation at 34 CFR 300.321(e)(1) states that a required member of an IEP team is not required to attend an IEP meeting if the parent and the district agree that their attendance is not necessary because the member's area of the curriculum or related service is not being modified or discussed in the meeting.

Analysis: Findings of Fact

The parent expressed a concern that the school was not knowledgeable about her son's disabilities and therefore did not properly address them in his educational program. The parent alleged that the school did not take these disabilities into account when interacting with her son, specifically that his PTSD and ODD indicate that there are specific ways to make requests successfully and to get the child to attend his general education special classes, such as physical education. The parent alleged that the child's behavior intervention plan contained elements that did not conform with knowledge of the student's disability and behavior. The parent alleged that, during the IEP meeting, they expressed that their child needed social development and interaction with peers, which was not considered when developing the student's IEP.

The district responded that: "[the student]'s current IEP was written on 3/21/23 to address social-emotional needs. Parent concerns noted during this meeting included wanting to see an increase in his social skills and opportunities to use them; they were concerned that he was not getting much socialization with peers. Present levels included on this IEP reported his

participation in special classes (PE, art, STEM, music and library). Identified needs included: elopement, refusal to enter the general education classroom setting, physical aggression, and cursing; he continues to struggle when he goes into the general education classroom setting for approximately 20 minutes before behavior begins to increase and he needs to return to the self-contained setting. Additionally, he continues to struggle with choosing appropriate wording with peers and adults. One goal was written during this IEP meeting: By March 20, 2024, across all environments in school, [the student] will decrease his physical and verbal aggression towards both peers and adults from 5 days per week, 60% of the day to 3 days per week 30% of the day on 5 out of 5 data collection days."

The district response continued: "Additionally, a functional behavior assessment had been completed in May of 2021 and was included within this IEP with a Positive Behavior Intervention Plan. Undesired behaviors noted on the FBA included: [the student] will hit, kick, punch, squeeze, lay on top of a peer; he will roll up into a "turtle" position, and/or use profane language . . . He will hit adults as well as peers. The hypothesis indicates: During unstructured activities such as centers, recess, or transitions; [the student] may hit, kick, punch, squeeze, or lay on top of a peer; he will roll up into a "turtle" position, and/or use profane language . . . in order to obtain or retain a toy or to get a reaction from an adult; therefore the primary function of [the student]'s behavior is to obtain/hold on to a preferred object/activity, and the secondary function is to gain an adult's attention. To assist [the student] with making progress, the BIP included prevention strategies (preferential seating, priming for transitions, visual timers, and visual aids, fidgets, and token economy/break system), replacement behaviors to be taught (sharing and following directions), and staff reactions to behavior (positive praise, if/then language, providing choices, access to more restrictive environment), as well as provisions for home coordination (daily behavior chart). The most recent progress report dated 10/27/23 indicates that [the student] is making progress towards his goals. [The student] has decreased his physical and verbal aggression towards both peers and adults 79% of the time."

Using the documents provided by the parent and the district along with interviews of the parent and district personnel, the findings of fact are found in the paragraphs below. There are two IEPs relevant to the investigation period. First, the March 22, 2022 IEP when a Speech-Language evaluation was conducted and the student was dismissed from Speech-Language therapy services. The student's two IEP goals were that he "transition with confidence" with one verbal prompt 80% of the time, and that he transition to different tasks and activities while maintaining self-regulation. Upon entering kindergarten on August 17, 2022, the student's IEP required for him to be in general education with special education support for recess, specials, lunch, "triage" (5 minutes), the hallway, and behavior management class (90 minutes, 5 days a week), with the remainder of his time in the special education classroom. This IEP was amended on September 9, 2022 to increase the student's special education services in special education to all areas except recess and specials. The current March 21, 2023 IEP coincided

with the student's triennial evaluation of the same date. A health care plan stating that the student will take medication at school is included in the IEP. The district reported that the current functional behavior assessment was conducted on May 13, 2021; this was included on both IEPs, along with a behavior intervention plan.

Reevaluation

The parents had the student evaluated (January 26, 2023) at The Guidance Center by a licensed clinical psychologist for the purpose of "diagnostic clarity related to cognitive, social, and overall adaptive functioning with treatment recommendations."

The district provided a PWN for reevaluation dated February 9, 2023 for the student's triennial evaluation, at 5 years 11 months of age, stating that its purpose was to determine whether the child continues to be a child with an exceptionality, the education needs of the child, the present levels of academic and developmental needs of the child, whether the child continues to need special education, and whether any changes are needed to the IEP services or placement in order to participate in the general education curriculum. The PWN for reevaluation stated that existing and new data would be reviewed in the social emotional area only, stating that "no additional information is needed" to make the determinations listed above. No other existing data were reviewed, according to the PWN dated March 21, 2023 at the time of the evaluation meeting.

The March 21, 2023 re-evaluation listed his most recent 2022 vision and hearing screening results, including failing hearing screenings in his left ear. The parents reported, and review of district documents showed that the student's ear, nose, and throat problems regularly affected his ability to hear in the classroom and at home. No cognitive, health/motor, communication, academic, or outside reports were considered. In the social emotional area, the Behavior Assessment System for Children Third Edition (BASC-3) found that the student was at risk in the following subscales: externalizing, aggression, behavioral, atypicality, withdrawal, adaptive, adaptability, and social skills. No behaviors were listed as clinically significant. Behavior data using a monthly summary of 0-1-2-3 rating system were presented, indicating that the student was generally meeting his IEP goal "easily" the majority of the time. The evaluation states: "[The student] continues to qualify for Special Education services under the exceptionality of Developmentally Delayed in the area of Social Emotional skills. [The student] will continue to be included in the General Education classroom as his behavior data indicates he is successful with appropriate inclusion support." Assurances were given that the student was assessed in all areas related to the suspected disability "as deemed appropriate" by a qualified group of individuals, and that "in accordance with State and Federal guidelines, no single test or score will determine a student's eligibility."

The prior self-contained classroom teacher (an emergency substitute, who was dismissed by the district early in the 2023-24 school year) reported that his input on the student's classroom and behavior performance was not considered by the lead special educator in preparing the

draft IEP or evaluation report. He reported that the behavioral data in the reports were not reliable. He reported that the student's reading was an area of need based on a low reading FastBridge assessment.

The March 21, 2023 triennial reevaluation lists "medical diagnosis: ADHD and ODD from the Guidance Center" with medication for ADHD symptoms being given daily at home and at school. The parent reported that the ADHD and ODD diagnoses were given to the district during the student's kindergarten year (2022-23) with a later diagnosis of PTSD and anxiety made in April, 2023. Documentation showed that a diagnostic evaluation and treatment plan conducted by a local guidance center dated April 15, 2021 was provided to the district by fax April 4, 2023. The parent reported giving a hard copy of the student's full psychological evaluation conducted by the guidance center, dated January 26, 2023 to the district at the time of the March 21, 2023 reevaluation meeting. However, the district did not share this report with the investigator, and it is unknown when or if the district was aware of this report. Neither of the guidance center reports were reviewed or listed as resources for the district's March 21, 2023 reevaluation.

FBA, Behavior Intervention Plan and the IEP

The district reported that the current functional behavior assessment (FBA) was conducted on May 13, 2021 when the student was 4 years and one month old. Similar to the March 22, 2022 IEP, the March 21, 2023 IEP made no changes to the student's FBA and no changes to the behavior intervention plan initiated with the FBA. That is, there was no change to the description of the behavior, the hypothesis, the prevention or reaction strategies, the stated desired behavior, or the review methods or review schedule.

The March 21, 2023 IEP states: "As of 3/1/22, [the student]'s physical aggression will last an average of 15 seconds. This behavior happens 2 out of four times a day. 80% of incidents were during transitions from classroom to recess/gym or back to the classroom after recess. His behavior during a transition time when he is refusing to follow a direction lasts an average of 8-10 minutes. Observations indicated that the antecedent was often to gain adult attention or to gain/keep desired objects in an inappropriate way (e.g. eloping, hiding under a table)." The March 22, 2022 IEP includes the same statement. Both IEPs include the following statement: "The behavior plan will be updated at a minimum of an annual basis. Data collected will be used to evaluate the effectiveness of the plan."

The district reported that the classroom team collected data and reviewed it weekly at the classroom level, but that no changes were made to the behavior intervention plan in the IEP. Recently, the type of data being collected has changed to include antecedent-behavior-consequence data.

According to the March 21, 2023 IEP, the parents were satisfied with the student's academic achievement but they "expressed they would like to see an increase in his social skills and

opportunities to use them. They are concerned that he is not getting much socialization with peers." In an interview by the investigator, the parent reported that she believed the self-contained classroom, and the additional more restrictive room used for the behavior intervention plan, constituted "seclusion" with only two additional students in the classroom. The parent and the district agree on the number of students in the self-contained classroom (three).

Notes of the March 21, 2023 meeting showed that the parents twice reiterated their concern for increased socialization and asked for an IEP goal in social skills; the district told the parents they would work toward gradually increasing time in general education with trial of allowing the student to participate with other special education students in a small group setting for behavior management and social skills classes and a trial at lunch.

The March 22, 2022 IEP had two goals addressing transitions; the IEP team changed the March 21, 2023 IEP to have only one goal, that the student would "decrease his physical and verbal aggression towards both peers and adults from 5 days per week, 60% of the day to 3 days per week 30% of the day on 5 out of 5 data collection days." In addition, the March 21, 2023 IEP eliminated two of the four accommodations: (a) visuals and social stories to help make decisions for transitions and calm down options and (b) visual timer to warn of transition times, accommodated with multiple prompts and reminders for transition preparation. Two accommodations were retained: (a) "access to a more restrictive environment either child directed or teacher directed whenever [the student] is escalated and unable to control his emotions and behaviors for the duration of the stressor" and (b) "access to a more restrictive environment during lunch."

Required team members and IEP development

The district provided a Notice of Meeting (NOM) dated March 10, 2023 for the March 21, 2023 IEP and re-evaluation meeting, which the parents attended. Also attending were the school psychologist, the LEA representative [special education coordinator] and two special educators, one a long-term substitute (emergency substitute license) who was the self-contained classroom teacher. Similar to the prior IEP amendment meeting on September 9, 2022, no general education teacher was present; the parents and district signed a form indicating that the presence of the required IEP member (general education teacher) was not needed because their area of expertise would not be discussed in the meeting. In addition, no member of the current IEP team attended the March 21, 2023 IEP meeting because all staff have changed.

The district reported that it is their practice for general education teachers to attend IEP meetings when the school routinely provides substitutes on specific days of the week for this purpose. The district reported that the student's current academic program is planned by the general education first grade teacher and delivered to the student in the self-contained classroom by staff members there. The previous teacher (emergency substitute dismissed by

the district) reported that he sought out academic resources during the previous year to teach the student reading.

The student's report cards showed that he was average in most areas rated in the current school year and average or above average in most areas rated in the 2022-23 school year.

Conclusion

The development of the IEP begins with the evaluation which should be sufficiently comprehensive to identify all the child's special education and related services needs and use tools and strategies that provide relevant information to directly assist in determining the educational needs of the child. In this case, the triennial reevaluation was conducted with the child at 5 years, 11 months of age. This reevaluation used only one formalized assessment in one area, reviewed existing data in that same area only, and failed to review existing data available at the time pertaining to the student's psychological conditions as reported by the parent, available from the parent through their January 26, 2023 thorough psychological evaluation by a licensed clinical psychologist, or the previous evaluations conducted by the district itself.

Additionally, the district relied upon an FBA conducted when the child was 4 years old without meaningfully updating that assessment or the analysis upon which the child's behavior intervention plan and single IEP goal were founded. Further, the goal of the IEP did not address the parental concern for improved social skills or opportunities to practice socialization with other children although this concern aligned with the results of the single standardized assessment conducted during the reevaluation. As a secondary concern, the reevaluation notes that the student failed his two most recent hearing screenings, a repeated issue based on parent report and document review, but the team does not further address the educational implications of this health concern on the student's ability to focus or his behavior in school.

The reevaluation included the statement that "[The student] will continue to be included in the General Education classroom as his behavior data indicates he is successful with appropriate inclusion support." The team reported that the student could spend 20 minutes in general education at the time but no further tool or evaluation strategy offered to determine the student's needs in that setting. The IEP did not include a goal, accommodations or supplementary aids and services aimed at supporting the student to extend his time in general education settings to the degree already required by the IEP. Accommodations specified only removal to "more restrictive" settings. It is noted that a paraeducator accompanied the student to the general education settings.

The district provided documentation that the general educator was excused from the March 21, 2023 IEP meeting signed by both the district and the parent, the document stated that their absence was allowable because the student's academic program would not be discussed

in the IEP meeting. Therefore, it is reasonable to conclude that the student's academic program was not discussed or seen as critical to the IEP/reevaluation meeting's purpose. It is noted that the current administration reported that the general educator is responsible for planning the student's academic lessons to be delivered by the special education staff in the self-contained classroom. It is noted that the student's current academic progress is rated as average in most areas.

For these reasons, it is found that the evaluation was not sufficiently comprehensive in order to identify all the student's special education and related services needs whether or not commonly linked to the disability category. It is found that the evaluation relied predominantly on a single standardized assessment and failed to use tools and strategies to provide relevant information to directly assist in determining the educational needs of the child. It is further found that the behavior intervention plan was not updated annually as required by the student's IEP. Because of these limitations, the IEP was not properly developed.

Based on the foregoing, *it is substantiated* that USD # 469 failed to properly develop the student's IEP, specifically by designing an IEP that would address the students' needs in light of his disabilities.

Issue Two

The USD #469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, 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

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. Unless they exit from special education, special education and related services in the IEP are to be available to all children residing in the State between the ages of 3 and 21 according to 34 C.F.R. 300.101(a).

Analysis: Findings of Fact

The parent alleged that the student's IEP was not being followed, including that he was no longer able to attend his general education classes because the staff failed to take his disability into account when taking him to classes. The parent alleged that the behavior intervention plan was not being followed and that parts of it did not take into account the student's disability or the classroom setting. The parent alleged that the student's classroom setting was a "seclusion room" with padding on the walls and his interaction was limited to 2 other students with disabilities also in the classroom.

The district responded: "During the 2023-2024 school year, [the student] has received services within a self-contained special education classroom setting in his neighborhood school as written in his current IEP. Additional general education inclusion services include: Transitions (10 minutes daily), Electives/Specials (50 minutes daily), Reading (30 minutes daily), Math (30 minutes daily), Recess (30 minutes daily), Medication/Nursing (10 minutes daily)- 140 total general education inclusion minutes per day (minus the 20 for medication management and transitions). He also receives transportation services."

The district further responded: "The daily communication logs are shared with the classroom teacher, administration, and parents to share the details of [the student]'s day each week. It also includes a space for parents to include input and provide feedback. Inclusion opportunities are noted on the log as well. [The special education teacher] described inclusion opportunities are provided for specials, but he refuses to participate at times. The recorded behavior data related to his IEP provides additional details. The goal in the current IEP is related to the social-emotional needs identified in the present levels section, and are relevant to the current behavior data. During the previous annual review meeting, since behavior data the team considered the least restrictive environment for [the student] to receive special education services and to continue to make progress towards his goal(s). He continues to access the general education curriculum from the current placement."

The findings of Issue One are incorporated by reference. Based on the documents provided by the parent and the district, and interviews of the parent and district staff, additional findings are listed in the following paragraphs.

For the 2023-24 school year, the March 21, 2023 IEP included the following special education services in the special education classroom for all subject areas (205 minutes 5 days a week), social skills (30 minutes 2 days a week) and behavior management (30 minutes 2 times a week). It stated that the student will attend general education specials for 50 minutes 5 days a week and general education intervention in reading and math for 30 minutes each 5 days a week with special education support. The IEP required the student to have attendant care in the hallway during transitions (10 minutes daily), during lunch in the special education classroom (30 minutes daily), and during general education recess 30 minutes daily). The IEP listed five minutes daily of "triage" in the special education classroom and to see the nurse for medications at noon each day.

The district reported that the student did not regularly attend his general education classes because he refused to attend. The assistant principal, in an email dated November 13, 2023 at 11:27 a.m. reported that the special educator gave this report on the student's general education attendance: "He goes to recess with class but often does not want to go. He goes to specials when he wants to: he will go when it is STEM and PE. He has not been to his class for reading and math. I have encouraged him to be with his class but he chooses not to. He gets scared/shy when he walks in and everyone looks at him. For example, I try to get there before

his class goes so not all eyes are on him. Do you want me to try to make him go to his class for reading and math. I worry he is going to escalate.”

The district reported that the parent was not open to more time in general education; the parent reported that the parents asked for more time out of the self-contained room.

The parent and district agreed and the student’s discipline report showed that the student had fewer discipline reports during the 2022-23 school year. The student’s previous teacher (emergency substitute released by the district early in the current school year) reported that he seldom used the tools and strategies in the behavior intervention plan because the student was appropriately behaved with him. He reported, and the parent agreed, that the student’s behavior improved over the course of his kindergarten year (2022-23).

The parent and district also agreed that the student’s behavior deteriorated during the 2023-24 school year, necessitating 17 discipline reports from the school office for physical aggression, disorderly conduct and leave without permission from August 25, 2023 to November 3, 2023. The student had 3 days of out of school suspension, 1 day of in school suspension served in his own classroom, and 11 assignments of alternative placement. Alternative placement meant that the student was placed in the SBS3 classroom, according to the district response to an emailed question.

The behavior intervention plan and the accommodations in the student’s IEP referred to “access to more restrictive environments, either student directed or adult directed.”

Questioning of the district personnel indicated that the current special education classroom consisted of three spaces named SBS1, SBS2, and SBS3. SBS3 was the most restrictive space, a room (11 ft by 22 ft) with padding on the walls. The student’s “home base” was SBS2 as the self-contained classroom location; the district reported that the home base had been SBS3 but was moved to SBS2 due to the parent’s concerns with the SBS3 room. If the student became dysregulated, the space designated as “more restrictive” was the SBS3 room. When other students from SBS1 became dysregulated, the SBS2 room was “more restrictive” as the self-contained classroom. The three spaces were close in proximity; the district reported that the spaces were evacuated if any student’s dysregulation becomes disruptive.

The district reported that the student was not troubled by using the SBS3 room and that he requests to work in the room. The district reported they were using the SBS3 room less due to parental concerns. Since decreasing the use of the SBS3 room, the district reported that the student’s problem behavior increased because he was more often in the presence of other students with dysregulated or problem behavior.

According to the district, as part of the self-contained special education program located in SBS2 the student received direct instruction, preferential seating, breaks, timers, visuals, preventive strategies, choices in his day to allow autonomy and control, systematic reinforcement through tokens and rewards throughout the day. The district reported that the

program used the following: calming strategies for de-escalation, moving to a more restrictive space, teaching zones of regulation strategies and uses the general social emotional Boys Town approach. These strategies listed in the student's behavior intervention plan were summarized by the district response as: " the BIP included prevention strategies (preferential seating, priming for transitions, visual timers, and visual aids, fidgets, and token economy/break system), replacement behaviors to be taught (sharing and following directions), and staff reactions to behavior (positive praise, if/then language, providing choices, access to more restrictive environment), as well as provisions for home coordination (daily behavior chart."

Conclusion

In this case, the student's IEP services require special education support in the general education classroom for recess, special classes, and general education instruction in reading and math. The student's recent evaluation stated: "[The student] will continue to be included in the General Education classroom as his behavior data indicates he is successful with appropriate inclusion support." However, the district has failed to implement the student's participation in the general education classroom or activities due to the student's reluctance to attend them.

In addition, the student's behavior intervention plan, including what consists of his removal to, calming within, and return from a "more restrictive setting" appears to be unclear and inconsistently implemented during the past twelve months. This may have been emphasized by the change of the student's classroom location at the start of the 2023-24 school year, when the student's classroom was changed from a more traditional classroom setting to the current three SBS1, SBS2, and SBS3 locations. It is noted that the district has made wholesale changes to classroom staff in order to provide for a more reliably consistent special education program, including ensuring that there are grade level academic materials available to the student and academic lessons planned by the general education teacher.

Based on the foregoing, *it is substantiated* that USD 469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, 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 #469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide staff who are properly trained to implement the student's IEP.

Applicable Law

Federal regulations, at 34 C.F.R. 300.156(a), require public agencies to ensure that children with disabilities are provided special education and related services by appropriately and adequately prepared and trained personnel who have the content knowledge and skills to serve children with disabilities.

Federal regulations, at 34 C.F.R. 300.156(c), require that each special education teacher providing special education services has obtained full State certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, and holds at least a bachelor's degree.

State statutes and regulations at K.A.R § 91-31-34 (4) state: "If a substitute teacher holding a valid Kansas substitute teaching license is not available, the education system shall use a person who holds a baccalaureate degree and an emergency substitute teaching license or certificate. An education system shall not allow a person who holds a baccalaureate degree and an emergency substitute teaching license or certificate to teach for more than 45 days in the same assignment."

According to the 2022-23 Kansas Special Education Reimbursement Guide for State Categorical Aid, the minimum requirements to be employed as a special education paraprofessional include being a high school graduate or holding a General Equivalency Degree (GED) certificate, and completing an orientation session addressing confidentiality, the services to be provided, and the policies and procedures of the local education agency concerning special education.

In addition, there is a tiered paraprofessional in-service requirement that describes the number of hours of professional development that must be provided to persons employed as paraprofessionals based on the number of years of experience working as a paraprofessional. Paraprofessionals with three or fewer years of experience must have a minimum of 20 hours annually while paraprofessionals with more than three years of experience must have 10 hours of professional development annually.

Analysis: Findings of Fact

The parent alleges that the district staff are not trained to appropriately respond to the student's behavior due to his disabilities of ADHD, ODD and PTSD. The parent alleges the district staff are not capable of appropriately interacting with the student.

The district responded that "The current teacher in the classroom is [name of student's current teacher]; she is currently licensed as a K-6 High Incidence Special Education Teacher. Additionally, we have a long-term emergency substitute, [name of current emergency substitute], who also supports the classroom. The former staff member who the parents preferred was also a long-term emergency substitute, [name of former emergency substitute]. [The former emergency substitute] was the primary teacher until he was no longer employed with the district, then [the current teacher] became [the student]'s primary teacher.

Additionally, there are 3 support staff paraprofessionals in the classroom. Each person who works in this classroom received certification in the MANDT system, the district's ESI intervention and technical restraining skills program. Specific behavior programming professional development that has been provided throughout this school year for staff and includes: STAR Autism Curriculum Resource (8/3/23), BIST (8/9/23 and 9/6/23), Relationship Building/Pairing Reinforcement (8/31/23 and 9/7/23), A Deeper Look at De-escalation ([the current classroom teacher] attended in October), and Strategies for De-Escalation ABCs-Antecedents, Behavior and Consequences (11/1/23).

Additionally, new paraprofessionals participate in onboarding activities to prepare them for the position. Our district contracts with a BCBA agency, Beyond the Individual for ongoing behavioral intervention support, management of behavior intervention plans, functional behavior assessments, professional development among other behavioral services. Training has been provided by building administrators [principal, assistant principal and special education coordinator] related to data collection and classroom management on an informal basis. On the IEP dated 3/21/23 the Supports for School Personnel section indicates "No" additional training is needed for staff to properly implement his current IEP. However, professional development for staff within the self-contained behavior program is relevant to their assignment to meet the needs of the students they serve."

The findings of Issue One and Issue Two are incorporated by reference. Based on the documents provided by the parent and the district, and interviews of the parent and district staff, additional findings are listed in the following paragraphs.

The district provided the following qualifications for the classroom teachers, emergency substitutes, and paraeducators in the student's classroom during the past twelve months.

- The current classroom teacher has a Bachelor of Science in Education with a Concentration of Special Education from Kansas State University. She graduated December, 2022; she was a substitute January, 2022 through May, 2023. She is in her

first year as a certified teacher in her current position. She holds three current licenses in the state of Kansas: Emergency Substitute, High Incidence Special Education and Initial Teaching License in Elementary Education.

- The current emergency substitute who assists the classroom teacher in the SBS programs, has a current Kansas license as an Emergency Substitute. She holds a Bachelor's of Science in Business Administration and a Master of Health Administration. She is in her first year as a substitute in this classroom.
- According to the district, the district provided classroom and student related professional development (PD) this year (as listed above). In addition, the current classroom teacher attended "A Deeper Look at De-escalation" in October, 2023.
- The formerly employed emergency substitute was the classroom teacher as a long-term substitute during the 2022-23 school year and until September 6, 2023 of the current school year. He holds an Emergency Substitute license and a Bachelor of Arts degree in History and a minor in Sociology.

In the district, paraeducators are required to have a high school diploma and new hires complete the orientation, 21 hours of required training that includes MANDT training. Paraeducators are required to complete 10 or 20 hours of PD depending on their length of time of service.

Paraprofessionals currently in the classroom are listed below, with their date of hire and hours of training completed. Orientation training was completed on-line for those hired after the beginning of the year.

- Para AP started on 4/11/18 and she completed 10 hours of PD.
- Para IH started on 10/9/23 and she completed 20 hours of PD.
- Para SW started on 11/6/23 and he completed 20 hours of PD.

One paraeducator supported the program this year but is not regularly assigned there is listed below with her date of hire and hours of training completed.

- Para DC started on 10/8/19 and she completed 10 hours of PD.

Each of three paraeducators who worked in the program but who are no longer employed by the district completed 20 hours of PD.

Conclusion

In this case, the special education teacher working with the student holds a bachelor's degree and holds current licenses by the state of Kansas that qualify her to teach elementary education and high incidence special education during the 2022-23 school year. As such, she meets the requirements to be assigned as a special education teacher.

Also, the district has used emergency substitutes in the classroom to serve as classroom teachers. Kansas state regulations at K.A.R. 91-31-34 allow districts to staff classrooms with emergency substitutes if more qualified persons are not available. An emergency substitute

with a baccalaureate degree can serve no longer than 45 days in the same assignment. In this case, last year the classroom teacher was an emergency substitute who served longer than 45 days. This is not in compliance with the state regulations governing school administration, but it is out of the authority of this investigation to issue a finding on this matter. The staff member was qualified to serve in the special education classroom with an emergency substitute license.

The paraeducators hired in the district meet the minimum standards for education, orientation, and professional development required in the state of Kansas and are therefore qualified to serve in the classroom.

The district has provided recent, relevant professional development aimed at improving the behavioral and relationship building skills of the classroom professional and paraeducator employees. The student's IEP did not require professional development for classroom staff specific to the student's disability.

Based on the foregoing, *it is not substantiated* that USD #469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide staff who are properly trained to implement the student's IEP.

Issue Four

The USD #469 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the parent procedural safeguards, specifically by responding to a parent's request for an IEP meeting and scheduling the IEP meeting within a reasonable period of time.

Applicable Law

Federal and state statutes and regulations at CFR 300.324(b)(1)(ii)(c) and KSA 72-3429(f) require that the IEP team meets at least annually and that it revises the IEP as appropriate to respond to a parent's request for an IEP meeting to address a lack of progress, evaluation, the child's anticipated needs, information provided to or by the parents, or other matters. In Kansas, a reasonable time to respond to parental requests such as the request for an evaluation or for an IEP meeting is 15 school days.

Analysis: Findings of Fact

The parent alleges that she alerted the staff to the need for an IEP meeting in a meeting on August 31, 2023 with the principal and assistant special education director. She further asserts that at the time of the parent teacher conference on October 11, 2023 the assistant principal indicated his belief that an IEP meeting was in the process of being scheduled. The parent alleges that the district did not contact her to schedule the meeting until November 7, 2023 and the meeting was scheduled on November 21, 2023.

The district responded: “[the student]’s annual IEP review is due by March 20, 2024. The district responded that on two occasions when the parents interacted with the principal or assistant principal, the meeting was not mentioned. The district responded that when October conferences were held, the district offered to hold the meeting sooner than November if the parents wanted to do so. The district responded that the notes of the meeting showed the parents in agreement to this plan and that the special education self-contained classroom teacher emailed the parents to schedule the meeting.

The findings of Issue One, Issue Two and Issue Three are incorporated by reference. Based on the documents provided by the parent and the district, and interviews of the parent and district staff, additional findings are listed below.

The parent reported that a meeting was discussed first on August 31, 2023 when the parents met with the principal and special education coordinator on the change of classroom. The parent audio-recorded the meeting and provided it to the investigator. The audio recording was not clear that an IEP meeting was being discussed.

An email from the principal to the special education coordinator, special education director, and special education classroom teacher dated October 10, 2023 relayed that she had spoken to the parent that day and the parent was “looking forward to an IEP meeting.” The parent reported that the parents met with the assistant principal on October 11, 2023 during parent teacher conferences. Notes of the meeting sent by the assistant principal to the principal, special education classroom teacher, and special education coordinator in an October 16, 2023 email stated: “The beginning of November works for parents to have an IEP meeting.”

The special education classroom teacher sent an email to the parents on November 7, 2023, offering three dates for a meeting.

The district reported that when parents request a meeting, it is the practice to respond and schedule a meeting. The district reported that they do not have a specific policy on time to respond to a parent’s request for a meeting.

Conclusion

In this case, the request for a meeting was known by the district at least by October 10, 2023. The district responded to schedule the meeting by November 7, 2023, when 19 school days had elapsed.

Based on the foregoing, *it is substantiated* that USD 469, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the parent procedural safeguards, specifically by responding to a parent’s request for an IEP meeting within a reasonable period of time.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of 34 CFR 300.304(b)(2), 34 CFR 300.304(c)(6) and (7) and 34 CFR 300.304(c)(4) was found based on the evidence summarized above. Corrective action is required (as follows):
 - a. **CORRECTIVE ACTION**
 - i. USD #469 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations implementing the IDEA at 34 CFR 300.304(b)(2), 34 CFR 300.304(c)(4) and 34 CFR 300.304(c)(6) and (7) which require that evaluation does not use a single measure, that the evaluation include all areas related to the suspected disability, that the evaluation is sufficiently comprehensive to identify all special education and related services, and that tools and strategies are used to determine the educational needs of the child.
 - ii. USD #469 shall request permission of the parents to reevaluate the student and the IEP team shall convene after the parents have given permission to conduct the evaluation to determine a comprehensive evaluation plan.
 1. After the evaluation plan is determined, the comprehensive evaluation shall be expedited and conducted within no more than 45 days following the IEP team's determination of the evaluation plan. The district shall ensure that tools and strategies are used to provide relevant information to directly assist in determining the educational needs of the student to include his needs to participate in the general education classroom.
 2. In addition to the areas determined by the current evaluation team, the reevaluation shall include the review of the student's January 26, 2023 psychological report by the Guidance Center, the student's academic performance as rated by the general education teacher, general education classroom academic assessments including but not limited to the areas of reading and mathematics, and social skills development and interaction with typically developing peers.
 3. The evaluation team shall discard the 2021 FBA and determine if a new FBA is needed to write an appropriate behavior plan for the student. If a new FBA is needed, the evaluation team shall question whether the student's reluctance to attend general education settings and to elope from stressful situations is motivated by escape and avoidance.

4. The evaluation, team meeting notes, PWN-E, NOMs, and PWN shall be submitted to SETS as evidence of completion of these requirements within 75 days of the date of this report.
 - iii. The district shall, in concert with the re-evaluation, write a new IEP, to include goals, services, and accommodations in all the areas of concern for the student. The IEP Team shall include the participation of a general education teacher. The team shall consider goals in areas such as: coping and self-calming skills, social development, social interaction with typically developing peers, academics, and extending attendance in the general classroom for academics or in other general education settings. Accommodations and supplementary aids and services in the general education classroom shall be considered. If the IEP team writes, in concert with a new FBA, a new behavior intervention plan that specifies removing the student from a general or special education setting, specific and clear procedures for removing, calming, and returning the child shall be written and the use of removal will be monitored. The new IEP, BIP, PWN, and team meeting notes shall be submitted to SETS as evidence of completion within 75 days of this report.
 - b. **Date due** for 1(a)(i) is 21 days from the date of this report: **December 21, 2023.**
 - c. **Date due** for 1(a) (ii) and (iii) is 75 days from the date of the report excluding winter break and days when staff is not on duty: **February 29, 2024.**
2. **ISSUE TWO:** A violation of 34 C.F.R. 300.323(c)(2) was found based on the failure of the district to implement the student's IEP, specifically to attend general education classes and to implement the student's behavior intervention plan. Corrective action is required (as follows):
 - a. **CORRECTIVE ACTIONS**
 - iv. USD #469 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations implementing the IDEA at 34 C.F.R. 300.323(c)(2) which require the district to implement the IEP within 21 days of the date of this report.
 - v. The district will immediately clarify the procedures associated with the student's behavior plan and provide training to classroom staff to assure that the behavior plan is followed, within 21 days of this report. The district will provide the procedures and training agenda and participants to SETS as evidence of this clarification and training.
 - vi. The district will immediately seek an expert review of the behavior plan, including the procedures associated with the removal of the student to SBS3 or similar space, from a person in the TASN network or other person approved by SETS. The district will provide evidence of the

- technical assistance agreement to SETS as evidence of the agreement to review the plan within 21 days of this report.
- vii. Subsequent to the corrective actions in 1(a)(ii), the district will clarify and provide training for all IEP team members including the paraeducators on *any behavioral program* that involves removal to a “more restrictive” environment, including specifying the conditions that necessitate his removal, how the student will be supported in becoming calm and how he will be returned to the same setting from which he was removed. The procedures will be explained and provided to the parents. The district will submit evidence of this training to include training agenda, training participants and the specific content of the training to SETS within 90 days from the date of the report.
 - viii. Training will be provided for all IEP team members including the paraeducators and measurement methods put into place by administrators to ensure that the student’s IEP and BIP (or other behavior plan determined by the IEP team) are implemented with fidelity as evidenced by submitting training agenda, training participants, and administrative oversight methods to SETS within 90 days from the date of the report.
- b. **Dates due:**
- i. **Date due** for 2(a)(i), (ii), and (iii) is 21 days from the date of the report: **December 21, 2023.**
 - ii. **Date due** for 2(a)(iv) and (v) is 90 days from the date of the report excluding winter break and other days when staff is not on duty: **March 18, 2024**
3. **ISSUE THREE:** A violation of at 34 C.F.R. 300.156(a), was not found, based on facts listed above. Corrective action is not required.
4. **ISSUE FOUR:** A violation of Federal and state statutes and regulations at CFR 300.324(b)(1)(ii)(c) and KSA 72-3429(f) was found based on the facts summarized above. Corrective action is required (as follows):
- a. **CORRECTIVE ACTION**
 - i. USD #469 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations implementing the IDEA at CFR 300.324(b)(1)(ii)(c) and state regulations at KSA 72-3429(f) which require that the IEP team meet to respond to a parent’s request for an IEP meeting to address a lack of progress, evaluation, the child’s anticipated needs, information provided to or by the parents, or other matters.
 - ii. The district will review and revise their current policy on responding to parental requests for IEP meetings in a timely way to SETTS. The district will disseminate the policy to all administrative and special

education teaching staff responsible for receiving or scheduling IEP meetings. The district will provide the policy and documentation showing the dissemination of the policy to SETS within 21 days of the date of this report.

- b. **Date due** for 4(a)(i) and (ii) is 21 days from the date of the report: **December 21, 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)