

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #481  
ON DECEMBER 15, 2023

DATE OF REPORT JANUARY 12, 2024

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

The complaint is against USD 481. In the remainder of the report, USD 481 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 December 15, 2023 and the 30-day timeline ends with this the publication of this report.

### **Evidence Reviewed**

During the investigation, the Complaint Investigator, Gwen Beegle, reviewed all evidence and documentation provided by both the district and the complainant. On December 17, 2023, the mother and the mother's friend were interviewed to clarify the issues of the complaint, after which the concerns on the written complaint (a) preceding the investigation period of 12 months, (b) pertaining to a second child, (c) questioning academic grading policies, (d) accessing the student's school email, and (e) relating to retaliation by the school fall outside IDEA were excluded from the investigation. The parent was provided additional resources for their use to address concerns outside the bounds of this complaint's authority. On January 5, 2024, the following staff of USD 481 were interviewed: Darlene Griffiths (White City Schools Superintendent and Principal); Dallas Friedli (Student's Current Special Education Teacher), Casey Bell (Special Education Coordinator), Edie Bollinger (School Psychologist), Kane Hensley (White City Schools Assistant Principal), and Debbie Fairbanks (Student's Previous Special Education Teacher). The parent was interviewed a second time on January 5, 2024. Emails were exchanged between the investigator and the district through January 9, 2024.

In addition to the interview noted above, the following documentation and information were used in consideration of the issue(s):

1. Reevaluation and Eligibility Report for the student dated April 1, 2022

2. Discipline Alert Log Entries for the student with entries dated April 20, 2021 to December 8, 2023
3. IEP Conference Summary dated January 24, 2023
4. Prior Written Notice (PWN) dated February 24, 2023 for a meeting dated February 24, 2023 and signed by the parent giving consent on February 27, 2023.
5. IEP Amendment dated February 27, 2023 with parent signature agreeing to amend the IEP without a meeting on the same date
6. Notice of Meeting dated April 25, 2023 for a meeting on April 28, 2023
7. Student's IEP dated April 28, 2023 with signature page signed by the parent on the same date
8. IEP Conference Summary dated April 28, 2023
9. Prior Written Notice (PWN) dated April 28, 2023 for a meeting on April 28, 2023 for a material change in special education services, a substantial change in placement, and other additions, changes or modifications to the IEP, with parent signing to give consent on the same day
10. Email from Marion Boyd (Social Worker, St. Frances After Care Permanency Specialist) to Darlene Griffiths (Principal, White City Schools) and Mia Efaw (St. Frances After Care Staff) dated August 30, 2023 at 3:31 p.m.
11. Notice of Meeting dated August 31, 2023 for a meeting on September 7, 2023, signed by the parent acknowledging her receipt of parental rights, waiving 10 day notice and indicating her planned attendance at the meeting.
12. IEP Amendment dated September 7, 2023 with parent signature on the same date
13. Prior Written Notice (PWN) for a material change in services and substantial change in placement dated September 7, 2023 for a meeting on September 7, 2023 with parent signature giving consent on the same date
14. Email from Marion Boyd to Darlene Griffiths and Mia Efaw dated September 11, 2023 at 8:16 a.m.
15. Email from Darlene Griffiths to Marion Boyd dated September 12, 2023 at 10:28 a.m. and Marion Boyd's replay at 10:38 a.m.
16. Medical Statement to Request Meal Modification signed by C. Palmer (APRN) on September 22, 2023 with release of information signed by the parent on October 10, 2023
17. Email from Christina Allenbaugh (Head Dietitian) to Kane Hensley (White City Schools Assistant Principal), Kathy Hubka (School Nurse), Dallas Friedli (Student's Special Education Teacher), and Darlene Griffiths dated October 18, 2023 at 8:43 a.m.
18. Emailed notes of Wraparound Team Meeting from Darlene Griffiths to Ben Schierling (Music Teacher), Diana Newey (Science Teacher) Dallas Friedli, Kane Hensley, Lorri Kasten (Counselor), Kathy Hubka, Mackenzie Boltwood (Physical Education Teacher), and Vernetta Hammersmith (Title 1 Teacher) dated October 19, 2023 at 3:31 p.m.
19. Student Progress Report dated October 23, 2023

20. Email from the mother to Dallas Friedli dated October 27, 2023 at 9:17 a.m.
21. Email from Dallas Friedli to Vernetta Hammersmith, Diana Newey and Darlene Griffiths dated October 27, 2023 at 9:43 a.m.
22. Email from Darlene Griffiths to White City Certified Staff, White City Classified Staff and White City Special Education dated October 27, 2023 at 10:21 a.m.
23. Email exchange between Dallas Friedli, the mother and Darlene Griffiths dated October 27, 2023 beginning at 10:28 a.m. and ending at 11:06 a.m.
24. Notice of Meeting dated November 21, 2023 for a meeting on November 28, 2023, unsigned by the parent
25. IEP Conference Summary dated November 28, 2023 with parent in attendance
26. Prior Written Notice (PWN) to change the IEP dated November 28, 2023 for a meeting on November 28, 2023 and unsigned by the parent.
27. Notice of Meeting dated December 18, 2023 for a meeting on December 20, 2023 and signed by the parent on December 20, 2023
28. IEP Amendment Meeting Signature Page dated December 20, 2023 and signed by the parent on the same date
29. Prior Written Notice (PWN) to change the IEP dated December 20, 2023 for a meeting December 20, 2023 and signed by the parent giving consent on the same date
30. Diabetes Medical Management Plan for 2023-24 School Year (undated)
31. Student's Grade Report for Semester 1 of 2023-24 School Year
32. Student Progress Report dated January 5, 2024
33. Training Explanations for Special Education Staff

### **Background Information**

The student is 13 years old and in the seventh grade, attending the Pre-8 Elementary School in USD #481. In her sixth-grade year, the student had behavior problems of refusing to work, disruptiveness in school, inappropriate response to adult directions, and refusing to attend classes, particularly physical education. The student was diagnosed in the spring of 2022 with two DSM 5 diagnoses of (a) Other specified trauma and stressor-related disorder and (b) Other reactions to severe stress by a local mental health service provider. Her special education re-evaluation was conducted on April 1, 2022, determining that the student was eligible for special education in the category of Emotional Disturbance. At that time, the student had clinically significant scores in externalizing and internalizing behaviors, including hyperactivity, aggression, conduct disorder, anxiety, depression, and somatization. The evaluation determined that the student had academic delays in math, reading and written language, and her "behavior problems appear to be the primary reason for learning difficulties." She was placed in foster care from May, 2022 to March, 2023, during which time she was diagnosed with Type Two Diabetes. Her current IEP dated April 28, 2023 and amended on September 7, 2023 includes goals in reading, written language, math and social emotional development. She

receives both special education services in special education settings and special education support in general education classes.

## **Issues Investigated**

1. **ISSUE ONE:** The USD #481 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 accommodates the student's health or behavioral needs.
2. **ISSUE TWO:** The USD #481 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by implementing behavioral support or implementing health related procedures.
3. **ISSUE THREE:** The USD #481 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 (a) responding to a parent's request for an IEP meeting or scheduling the IEP meeting within a reasonable period of time (b) providing prior written notice following parental requests for changes to the IEP, (c) providing the parent a copy of the IEP.
4. **ISSUE FOUR:** The USD #481 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 One**

The USD #481 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 accommodates the student's health or behavioral needs.

### **Applicable Law**

The development of the IEP begins with the evaluation. Federal statutes and regulations at 34 CFR 300.304(c)(4) require 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.

Federal statutes and regulations at 34 CFR 300.324(a) require 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. Federal regulations at 34 CFR 300.327 and state regulations at K.S.A. 91-40-25(a)(1) and (2) require that the district allow the parents to participate in any meeting with respect to the identification, evaluation, or educational placement of the child, and that the agency take steps to ensure that the parents are present and afford the opportunity to participate in each meeting concerning their child.

### **Analysis: Findings of Fact**

The claimant alleged that the district failed to address all the student's needs in her IEP, as evidenced by the health problems the student experienced due to her Type 2 Diabetes. The parent alleged that the district failed to meet the student's behavioral needs at school and that the student was stealing food and self-harming due to dislike of therapy sessions and lack of supervision. The parent alleged that she wanted the school to assign a one to one paraprofessional to prevent food theft and self harm and the school refused to include it in the IEP. The parent alleged that the school denied her request to have the student sent to a special day school that would meet her needs. The parent alleged that the student was advanced to Grade 7 despite excessive absences during Grade 6.

The district responded: "U.S.D. 481 denies this allegation. Prior to the beginning of the 2023-2024 school year, [the principal] requested that [the student] be moved from [the former special education teacher's] elementary special education caseload to [the current special education teacher's] junior high and high school special education caseload. As you can see from [the student]'s student discipline report from the previous years, [the student] was refusing to do her work and refusing to go to class prior to this school year. [The principal] was hopeful that a change in special education teacher would help [the student] be more successful at school. This change has been very positive for [the student]. She has good grades, attends classes without refusal, and has been awarded 6 positive office referrals since August 2023. [The student] does not have any discipline referrals this school year. The district is following her IEP and what they are doing is working well for [the student]." The district also responded that the IEP team, with required members, has met at least annually and additionally to address parental concerns and requests.

Findings based on a review of the documentation showed the following:

The student was reevaluated April 1, 2022 during the second semester of her fifth grade year. The parent participated as one of the assessment raters and attended the evaluation meeting. The evaluation included social-emotional assessment to assist the team in developing a behavioral intervention plan. The student was receiving mental health services from the local mental health center. The evaluation noted the student's vision and hearing testing results and stated that "no other educationally relevant medical conditions are reported." No new cognitive testing was conducted and the previous 2019 testing was reviewed. No concerns were noted in motor skills or communication. Reading, math, written language and social emotional

assessments were conducted and summarized. The evaluation included interviews with the student and with the special education teacher along with a forced choice reinforcer survey and a summary of daily data taken by the teacher on peer interactions, mood, adult interactions, somatic complaints and office referrals. The greatest focus in the evaluation was on the student's social emotional status. The student's evaluation by the mental health provider was considered and the BASC-3 test scores were reviewed. The student was found to have clinically significant scores in externalizing (hyperactivity, aggression, conduct problems), internalizing (anxiety, depression, somatization), and behavioral symptoms (atypicality and withdrawal). She was rated as either at risk or clinically significant for school problems (attention and learning problems). At risk or clinically significant scores were found for adaptability, social skills, study skills, and leadership. She was found eligible for special education in the category of Emotional Disturbance. Her learning problems were considered a result of environmental reasons, cultural differences, or emotional disturbance. The evaluation stated that it was hand delivered to the parent on April 1, 2022, the day of the conference.

When asked why the student's diabetes was not included in the April 1, 2022 evaluation, the school psychologist reported that the student's condition was not diagnosed until sometime between May, 2022 and March, 2023 when the student was in foster care. The school psychologist reported that, at the time of the evaluation, the student had numerous health complaints and sought the nurse's office frequently, avoiding classes.

According to the district, the student returned to USD 481 from foster placement on March 27, 2023. The district provided a notice of meeting dated April 25, 2023 for the student's annual IEP meeting. Her annual IEP was held on April 28, 2023, and the IEP team reviewed assessment and observational data in order to determine that the student had needs in reading, math, written language, and social emotional development. The IEP included 90 minutes of special education services in a special education setting that included 45 minutes of special education mathematics each day, and special education support in general education classes for social studies, ELA, science, FACS, and keyboarding. Social work services were dropped but the IEP noted that the student could visit the social worker as needed. Four IEP goals were written: improve reading comprehension, improve mathematical computation, improve spelling, and decrease her refusals to complete tasks. A behavior intervention plan (BIP) was included in the IEP, noting that the student's defensive language with peers and adults impeded her learning at school. The BIP listed: (a) Preventive interventions were to avoid power struggles, to use a token economy, and to provide praise and reinforcements from the reinforcement survey. (b) Replacement skills were to complete her school work and to communicate more respectfully. (c) Interventions were to teach coping strategies, leave the room to self-calm, complete unfinished work, and follow the school's code of conduct. The IEP included 6 accommodations relating to academic work, such as the use of a calculator, reducing the number of test or assignment items, and other accommodations on tests and assignments. The parent signed that she participated and that she received a copy of the parent rights document on the day of

the conference, April 28, 2023. The district provided a PWN dated April 28, 2023 for the material changes in services, substantial change in placement, and other changes to the IEP, which the parent signed giving her consent on April 28, 2023.

When asked about the student's theft of food, the district stated and the discipline report showed that in May 2023 the student took food from a staff person's desk one time. The district reported that there has been no incident of food theft during the current school year.

The district reported in its response that the special education teacher was changed from the elementary to the junior high caseload at the beginning of the school year due to the number of students on the caseload and to make a better match with the student. The district provided notice of meeting on August 31, 2023 for a meeting on September 7, 2023. At this meeting, the IEP was changed to increase special education services in the special education setting, adding Study Skills and Life Skills and dropping keyboarding and "FACS" to give more behavioral and academic support to the student. The district provided PWN for the changes dated September 7, 2023 and the parent signed giving her consent on the same date.

Documentation from emails (September 11 and 12, 2023) showed that the school discussed the student's dietary concerns with the student's After Care Permanency Specialist, showing that the school had requested but not received medical documentation about the student's medical needs from the parent. The district reported that the student's team was notified prior to September 12, 2023 that the student had diabetes and should not receive candy at school. The district provided a copy of a medical release showing a health professional's signature on September 22, 2023 and parental consent for exchange of medical records dated October 10, 2023 for the student's diet. The district reported that the head dietitian provided accommodated meals for the student within a few days of receiving the medical orders in mid-October, 2023. Email evidence showed that the meal plan was in place on or before October 18, 2023.

According to the district, the school received information from a behavior day school that the parent had visited approximately on November 21, 2023. At that time, the school confirmed that the parent was requesting an IEP meeting to discuss placement in that school. The district provided notice on November 21, 2023 and held a meeting on November 28, 2023 at which the student's behavior problems at home were discussed; the parent shared that the student had treatment through the local mental health center and the parents were on the waiting list for family services, according to the IEP conference summary of the meeting. According to the IEP conference summary dated November 28, 2023 the district explained and provided school data that showed that the student was not having problems at school that would require a separate day school placement. The district provided prior written notice (PWN) dated November 28, 2023 for its refusal of the parent request for change of placement. On the PWN, the district documented that they sent the PWN home with the student on November 28, 2023 and subsequently emailed it on December 15, 2023 at the time of the complaint.

The district reported they initiated a meeting following the receipt of an email from the parent to the assistant principal on December 15, 2023 which stated that the parent had previously requested a one to one paraeducator and that the school was not addressing the student's dietary restrictions. At an IEP meeting dated December 20, 2023, documents showed that the parent's request for a one to one paraeducator and a health care plan were addressed. The district provided a copy of the Diabetes Medical Management Plan put into place on December 20, 2023. The parent attended the meeting and signed the IEP Amendment dated December 20, 2023. The district provided PWN dated December 20, 2023 signed by the parent on the same day, which stated that the health plan would be placed in the nurse's office, that the team discussed the diet and restriction being followed at school, and that the district refused the parent's request for a one to one paraeducator due to the student's appropriate behavior at school. In the PWN, the district also agreed that the student would return to the resource room after therapy to address the parent's concerns regarding self harming although the PWN and interviews with school personnel noted that the district saw no evidence that the student was reluctant to attend or disturbed by therapy periods at school.

### **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 district conducted an evaluation in April, 2022 preceding the student's diagnosis with diabetes that assessed the student in known areas of need (reading, written language, math and social emotional development) and developed an IEP and BIP reasonably designed to meet the student's needs. The district reported that it changed the special education teacher in an effort to make the student's educational program more successful in the fall, 2023. The district held IEP meetings with the participation of the parent, to develop the IEP (April 28, 2023), to consider placement at the behavioral day school (November 28, 2023) and to consider one to one para educator and school health plan (December 20, 2023). The parent agreed to change the IEP without a meeting on September 7, 2023. Thus, it is found that the IEP was developed appropriately with the parent's participation and after the student's evaluation in all areas of the suspected disability, with tools and strategies to provide relevant information.

When the student returned to the district from foster care in spring, 2023, she had been diagnosed with Type 2 Diabetes. Upon the mother's request, the school notified all personnel not to provide candy or sugared treats to the student. Upon acquiring consent for medical release of information from the parent (signed October 10, 2023) the school provided accommodated meals and directed staff not to provide candy to the student at school. The district did not see the student's health condition as affecting her performance at school during the end of the 2023 spring semester or during the fall of the 2023-24 school year.

While the health care plan was not formalized until December 20, 2023 nor placed within the student's IEP, the student's diet was accommodated through direction to the dietary and teaching staff at the school.

Based on the foregoing, *it is not substantiated* that USD #481 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 accommodates the student's health or behavioral needs.

## **Issue Two**

The USD #481 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by implementing behavioral support or implementing health related procedures.

## **Applicable Law**

Federal statutes and regulations at 34 CFR 300.39 define special education as specially designed instruction at no cost to the parent to meet the unique needs of a child with a disability. Further 34 CFR 300.320(a)(4) requires that the IEP include "a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child: (i) To advance appropriately toward attaining the annual goals; (ii) To be involved in and make progress in the general education curriculum. . . and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and nondisabled children."

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 complainant alleged that the district was failing to implement the student's IEP, specifically her behavior support plan. The parent alleged that the student was eating improperly and self-harming at school and that the school failed to prevent or acknowledge these and other behavior problems. The parent alleged that the district failed to accommodate the student's dietary needs at school.

The district responded: "U.S.D. 481 denies this allegation. [The student] has a BIP in her IEP and it is addressed through a behavior goal." The district response stated that the student's educational program has been effective as demonstrated by her grades, daily behavior records, and the office referral data. The district further responded that it had requested the doctor's order from the parent and notified staff of the student's health concerns prior to September 12, 2023. The district responded that the meal modification plan was put into place upon receipt of the doctor's orders. The district stated that in a wraparound meeting dated October 19, 2023, district "staff were again informed about [the student's] diabetes, her testing, the location of her glucose monitor, and the requirement not to provide candy to her." The district stated that on October 27, 2023 all staff were sent an email informing them that they were not to give the student candy; the student's teachers were reminded on December 14, 2023 after a parent notification that she believed the student was getting candy at school. Finally, the district responded that on December 20, 2023 "A health plan for [the student's] Type 2 Diabetes was developed at a meeting, per the parent's request."

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.

Included in the student's April 28, 2023 IEP, the student's BIP listed: (a) Preventive interventions - to avoid power struggles, to use a token economy, and to provide praise and reinforcements from the reinforcement survey. (b) Replacement skills - to complete her school work and to communicate more respectfully. (c) Interventions - to teach coping strategies, to leave the room to self-calm, to complete unfinished work, and to follow the school's code of conduct

According to documentation provided during the 2023-24 school year, the student's teachers rated her behavior three times per class period or about every 15 minutes on: (a) completion of student work (star) (b) redirections given (c) wandering, (d) eloping, and (f) refusals to work. The student's behavior was rated in both special education settings (math, study hall, life skills), special education supported general education classes (science, social studies, language arts) and general education settings without special education support (lunch and physical education). In addition, each day the student self-reported on her mood, feelings, and self-evaluation of her behavior.

Daily behavior ratings from August 18, 2023 to December 19, 2023 indicate that the student frequently self-reported positive affect and positive attitude toward school ("I am happy to be at school today"). Teachers' behavioral ratings were predominantly positive completion of work with needing redirection in one or two class periods on eight (8) days and needing redirection and refusing to follow a direction on three (3) days. The student completed work and avoided the problematic behaviors on all other days, in each rating period. The district reported that the student reviewed the report daily during the last period and that the stars for completed work earned time for a game. The special education teacher reported that the student

frequently chose to complete her homework rather than play a game. The school stated and the parent agreed that the student's daily behavior ratings are regularly brought home by the student.

The student's grade report for Semester 1 of the 2023-2024 school year showed that the student received 4 A's (Physical Education, Life Skills, Instructional Music, and Study Hall), 3 B's (Social Studies, Language Arts, and Science) and one C (Math). The student's progress monitoring report showed that the student made adequate progress to meet her goals on each of her four IEP goals for the October 13, 2023 reporting period and on one of the goals for the prior May 15, 2023 period. The student's progress report for December 20, 2023 showed continued progress in each of her four goals. Notably, the student is starting the 5.0 grade reading passages. Her refusals have decreased dramatically from the April, 2023 baseline average of 21 refusals (13 refusals/8 somatic refusals) per day to a current level of zero for December, 2023.

Discipline records show no reports of food theft or self harm for the 2023-24 school year. There are no discipline incidents in the student's discipline report for the 2023-24 school year except for two incidents originating with the parent. There was one incident of food theft in May, 2023, according to the discipline report. In interviews, the teachers and administrators reported that the student's previous year's (2022-23) behavior problems (failing to complete work, refusing to follow adult directions, refusing to attend classes) have not been in evidence during this school year. The district reported that she had six positive office commendations. In addition, the principal reported the student was named "star pupil" for the middle grades, a school wide positive acknowledgment, during the fall, 2023.

The district reported and documentation showed that the district (a) requested medical records on or before September 12, 2023 in order to accommodate the student's diet for school lunches, (b) notified the student's teachers on or before September 12, 2023 of the parent's wish for the student not to have sugared candy, (c) accommodated the student's school meals following receipt of medical records on October 10, 2023, through direction to the dietary staff (d) met with a wraparound team and notified the student's teachers of the student's condition and monitoring requirements, October 19, 2023 and (e) notified all classified, certified and special education staff that the student was to have no candy at all on October 27, 2023. The district reported and documentation showed that at the parent's request, the district put into place a health plan Diabetes Medical Management Plan in the nurse's office on December 20, 2023 following the filing of the formal complaint.

The special education teacher stated that if the student felt ill during classes, she was taken to the nurse's office to monitor her blood sugar. The parent reported that the student should not be permitted to say when she needs monitoring; rather the adults should direct her. The parent reported that she believed that food theft and other behavior problems occurred at school this year.

When asked why the district used a separate health plan rather than placing the information in the student's IEP, the district replied that the student's health condition did not affect her learning in the classroom. Thus, they provided the accommodations needed but did not include the health plan within the student's IEP.

### **Conclusion**

Daily behavioral data, student grades and progress reports, school personnel interviews and office referral documentation show the student's program has been followed and effective at meeting the student's identified academic and behavioral needs. Similarly, the school has accommodated the student's health needs at school; the student has not been hindered academically or behaviorally at school by her medical condition. It is noted that the school could have amended the IEP to include the student's health condition rather than a separate school health plan.

At school, there is no evidence of the behavioral problems associated with the complaint. The parent's assertion of concern for the appropriate treatment of her child is noted. However, there is reason to believe that the student's educational program is in place and effective at this time.

Based on the foregoing, *it is not substantiated* that USD #481 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by implementing behavioral support or implementing health related procedures.

### **Issue Three**

The USD #481 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 (a) responding to a parent's request for an IEP meeting or scheduling the IEP meeting within a reasonable period of time (b) providing prior written notice following parental requests for changes to the IEP, (c) providing the parent a copy of the IEP.

### **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 three weeks, or 15 school days.

According to federal regulations at 34 CFR § 300.503(a)(2) and state regulations at K.S.A 72-3430(b)(2) a procedural safeguard afforded to parents is the Prior Written Notice for certain proposed special education actions. The Prior Written Notice documents a description of the action proposed or refused by the district. It is required when the district proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or provision of FAPE to a child. This requirement is triggered regardless of whether it is the school or the parent who is initiating the request.

According to state regulations at KAR 91-40-18 (d) a copy of the IEP is to be given to parents at no extra cost. According to KAR 91-40-25 (a) the agency shall allow parents an opportunity to inspect and review all educational records and participate in any meeting concerning their child with respect to the special education placement or provision of services to their child.

### **Analysis: Findings of Fact**

The complainant alleged that she had asked three times for a one to one paraeducator due to her safety concerns for the student. The parent alleged that the district was not providing her with copies of the IEPs, prior written notice, or parent rights document. The complainant alleged that she had asked for IEP meetings which had not been scheduled.

The district responded: "U.S.D. 481 denies this allegation. (a) The District is aware of two separate instances where [the mother] asked for an IEP meeting. The first one was to discuss sending [the student] to Opportunity Now, a special day school. [The mother] called [Name omitted] the Principal at Opportunity Now, on November 21, 2023, requesting that [the student] attend that school. [The Principal of Opportunity Now] passed the information onto White City School personnel. A meeting was held on November 28, 2023, at 10:30 am, to discuss [the parent's] request for [the student] to attend Opportunity Now. The team did not find data that would warrant sending [the student] to Opportunity Now. The second request was received via email on December 15, 2023, at 8:11 am for a one-on-one para for [the student]. A meeting was held to discuss this on December 20, 2023, at 9 am. The team did not find evidence to support the request for a one-on-one para for [the student]. (b) Meeting notices were provided for both meetings. Likewise, PWNs were provided following both meetings. (c) For each IEP team meeting, the parent was provided the option of a paper copy of the IEP or an electronic copy that is sent via email."

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.

In an interview and in an email to the assistant principal dated December 15, 2023, the parent reported that she had three times previously asked the school to institute a one to one para and that the school continued to fail to accommodate the student's diet. When asked, the parent could not provide documentation, dates or the person given the paraeducator

requests. The school acknowledged receipt of the parent’s written emailed request on December 15, 2023 and scheduled an IEP meeting on December 20, 2023 to address the parent’s request for a one to one para and to address the parent’s concerns regarding the student’s diet at school.

Documentation showed that each of the listed IEP meetings and IEP changes were held with the participation of the parent. Notes on documents show delivery as shown on the following chart. Prior written notice (PWN) was provided to the parent in each instance as noted:

IEP Team	Document and Purpose	Document delivery	PWN
April 28, 2023	Reevaluation, eligibility and annual IEP	Not listed	Dated April 28, 2023 Signed April 28, 2023
September 7, 2023	IEP amendment without a meeting to change schedule) (IEP amendment and PWN)	Hand Delivered September 7, 2023	Dated September 7, 2023 Signed September 7, 2023
November 28, 2023	Parent requested behavior day school and at home behavior (PWN)	Sent with student November 28, 2023 Emailed December 15, 2023	Dated November 28, 2023 Unsigned
December 20, 2023	Parent requested one to one paraeducator and health plan (PWN)	Hand Delivered December 20, 2023	Dated December 20, 2023 Signed December 20, 2023

The IEP dated April 28, 2023 did not have a document delivery note nor did the PWN of the same date. When asked about the practices of providing parents copies, the district reported that its practice is for parents to be provided a marked up or corrected copy at the time of the meeting. When interviewed and asked about her recollection of delivering a copy of the IEP, the special educator indicated that to the best of her recall she provided a copy of the IEP at the time.

The district reported that the parent requested copies of all the student’s special education documents at the time of the December 20, 2023 meeting and that all (paper) copies were provided to her at that time.

### **Conclusion**

In this case, the parent participated in each of the IEP meetings and IEP amendments without a meeting held since the student returned to the district. Twice the district held meetings at the parent’s request to discuss issues of concern. The district promptly scheduled meetings from the time at which they were clearly made aware of the parent’s wish, either in writing or as a follow up to another agency’s alert. It is noted that the parent may have intended oral

communication to mean that she wished to have an IEP meeting but that it was not received as a request by the district.

Additionally, the parent participated in the IEP meetings and signed three of four PWNs associated with IEP meetings or an amendment without a meeting. The district hand delivered three of four of the PWNs. The district's practice is to make a copy and hand deliver to the parent and it is likely this also occurred at the time of the April 28, 2023 IEP. When the parent requested paper copies of all the special education documents, she was provided them December 20, 2023.

Based on the foregoing, *it is not substantiated* that USD #481 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 (a) responding to a parent's request for an IEP meeting or scheduling the IEP meeting within a reasonable period of time (b) providing prior written notice following parental requests for changes to the IEP, (c) providing the parent a copy of the IEP.

### **Issue Four**

The USD #481 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.

According to the 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.

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 (PD) annually

### **Analysis: Findings of Fact**

The parent alleged that the student needed the separate behavior day school placement because the staff at the district did not have the necessary training to deal with the student's behavior problems.

The district responded "U.S.D. 481 denies this allegation. All staff working with [the student] are trained professionals with licenses through the Kansas State Department of Education or paraprofessionals trained through CKCIE."

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 in the following paragraphs.

Three paraprofessionals are assigned or substitute in the student's daily schedule.

Para CD has a high school diploma and has completed 8 hours of professional development during the 2023-24 school year. They have 1.5 years experience with the district and will be expected to have 20 hours of PD by the end of the school year. PD topics include: classroom management, CPR training, and student specific behavior plans.

Para CW has a high school diploma and has completed 12 hours of professional development during the 2023-24 school year. They have 1 year experience with the district and will be expected to have 20 hours of PD by the end of the year. PD topics include: classroom management, CPR training, student specific behavior plans and Mandt training recertification.

Para AC has a high school diploma and has completed 6 hours professional development during the 2023-24 school year. They have 1 year of experience with the district and will be expected to have 20 hours of PD by the end of the year. PD topics within orientation include de-escalation, supporting student needs, safety precautions, managing student behavior, dealing with difficult behavior, top 10 para "need to knows".

The student's special education teacher's current professional license is dated 2022-2027, with licensure in Adaptive Special Education (PreK-12) and Early-Late Childhood Generalist (K-6). She has had recent professional development in the following topics: recent topics in special education, Mandt training (de-escalation), neurodiversity, self and co-regulation, autism supports. In 2020-21 she had professional development in Collaborative Problem Solving.

### **Conclusion**

In this case, three paraeducators work with the student on a regular or substitute basis. Each of these individuals have been provided professional development during the school year

appropriate to their position. The special education teacher is fully certified and licensed to teach adaptive special education at the student's grade and has current professional development related to her position.

Based on the foregoing, *it is not substantiated* that USD #481 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.

### **Summary of Conclusions/Corrective Action**

1. **ISSUE ONE:** A violation of 34 CFR 300.324(a) was not found, based on the facts of proper development of the IEP above. Corrective action is not required.
2. **ISSUE TWO:** A violation of 34 C.F.R. 300.323(c)(2) was not found, based on the facts of implementation listed above. Corrective action is not required.
3. **ISSUE THREE:** A violation of CFR 300.324(b)(1)(ii)(c), 34 CFR 300.503(a)(2), KAR 91-40-18, and KAR 91-40-25 (a) was not found, based on facts above. Corrective action is not required.
4. **ISSUE FOUR:** A violation of 34 C.F.R. 300.156(a) was not found, based on facts above. Corrective action is not required.

### **Right to Appeal**

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