

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

**REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #470
ON FEBRUARY 1, 2024**

DATE OF REPORT MARCH 8, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ----- by his 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."

The complaint is against USD #470. In the remainder of the report, USD #470 will be referred to as "the district", "the local education agency (LEA)", or "the school". It is noted that Cowley County Special Services Cooperative #725 provides special education services for USD #470, Arkansas City Public Schools. In the remainder of the report, "the school," the "district", "the cooperative" and the "local education agency (LEA)" shall refer only to USD #470 "

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on February 1, 2024 and the 30-day timeline ended on March 4, 2024. An extension was granted and the date of the report is March 11, 2024.

Evidence Reviewed

During the investigation, the complaint investigator, Gwen Beegle, spoke to the parent on February 5, 2024 to clarify the concerns and issues in the complaint. The parent was interviewed on February 26, 2024 and emails were exchanged between the parent and the complaint investigator from February 5, 2024 to February 26, 2024. Emails were exchanged with the district from February 5, 2024 to March 1, 2024. The complaint investigator reviewed all evidence and documentation, which was provided by both the district and the complainant. The following documentation and information were used in consideration of the issues.

Interviews of district personnel: Dr. Ron Sarnacki (Special Education Director), Alicia Kennedy (Special Education Teacher), Janelle Burris (Speech Language Therapist), Debbi Davidson (Ark City Recreation Pool Director) and Brittany Ruiz (Paraeducator) on February 23, 2024; Tammy McDaniel (Bus Driver), Megan Robinson (Paraeducator), Jessica Robinson (Paraeducator), and Andrew Brenn (Adapted Physical Education Teacher) on February 26, 2024; Mel Seacat (Arkansas City High School Principal) on February 27, 2024 and Wendy Burton (Complex Needs

Coach) on February 28, 2024. Jennifer Vest from TASN was interviewed on February 22, 2024 and February 29, 2024.

Undated documents:

1. [Student's] pool procedure
2. [Student's] MWF schedule, 23-24
3. [Student's] TTh schedule, 23-34
4. [Student] Attendance Report 2022-23 Year
5. [Student] Attendance Report 2023-24 Year
6. [Student's] Fall PT Conference
7. [Student's] accommodations List 23-24
8. USD #470 School Calendar 2023-24
9. High school bell schedule

Dated documents

10. Multidisciplinary Team Report for Reevaluation dated February 24, 2021
11. Individualized Education Plan (IEP) for the student dated February 3, 2023
12. Prior Written Notice (PWN) for changes to the IEP dated February 3, 2023
13. IEP Amendment Form for Changes Not Requiring a Full IEP Team Meeting dated June 21, 2023
14. Prior Written Notice (PWN) for changes to the IEP not requiring consent dated June 21, 2023
15. [Student's] observational data with entries beginning August 17, 2023 and ending February 16, 2024
16. Phone Log with entries beginning August 17, 2023 and ending February 16, 2024
17. Additional data narrative dated August 21, 2023
18. Behavior data chart on time to get off the bus and time sent home with entries dated August 23, 2023 to October 13, 2023
19. [Student's] departure data with entries beginning on August 27, 2023 and ending February 16, 2024
20. Email from TASN to Alicia Kennedy (Special Education Teacher) dated August 29, 2023 at 7:39 p.m.
21. Email exchange between Jennifer Vest ((TASN-State Trainer) and Dr. Sarnacki (Special Education Director) dated September 5, 2023 beginning at 7:15 a.m. and ending at 10:34 p.m.
22. Email from TASN to Alicia Kennedy dated September 5, 2023 at 8:20 a.m.
23. TASN Technical Assistance Action Plan, with September 19, 2023 action plan date
24. Email from TASN to Alicia Kennedy dated September 19, 2023 at 12:00 a.m.

25. Email from Jennifer Vest dated September 22, 2023 at 4:12 p.m.
26. Email from TASN to Alicia Kennedy dated September 22, 2023 at 4:15 p.m.
27. Email exchange between Jennifer Vest to Wendy Burton (Complex Needs Coach) dated October 25, 2023 beginning at 7:12 a.m. and ending at 7:15 a.m.
28. Email from TASN to Alicia Kennedy dated November 1, 2023 at 4:08 p.m.
29. Email exchange between Alicia Kennedy and the parent, beginning January 17, 2024 at 3.20 p.m. and ending January 18, 2024 at 10:30 a.m.
30. Email from Alicia Kennedy to the parent dated January 19, 2024 at 4:50 a.m. with the parent reply the same date at 8:24 a.m.
31. Email from Alicia Kennedy to the parent dated January 24, 2024 at 8:55 with parent reply on same date
32. Individualized Education Plan for the student dated January 30, 2024
33. Prior Written Notice for material change of services and other changes to the IEP dated January 30, 2024 with parent signature giving consent on the same date
34. Email from Dr. Sarnack to Dr. Crista Grimwood (KSDE SETS), the complaint investigator, the parent, Ron Ballard (USD #470 Superintendent), Brian Dempsey (KSDE SETS Assistant Director), Braden Smith (USD #470 Director of Curriculum and Instruction), and Mel Seacat (Arkansas City High School Principal) dated February 5, 2024 at 12:17 a.m.
35. Email from Maria Guzman (Administrative Assistant Heartsprings Admissions) to Dr. Sarnacki, Cristina Baker (Heartsprings Admission Team) and Hayleigh Thom (Heartsprings Admission Team) dated February 8, 2024 at 4:28 p.m.
36. Heartsprings Admission Application
37. Email from TASN to Alicia Kennedy dated February 12, 2024 at 2:29 p.m.
38. IEP Progress Report dated February 15, 2024 for IEP dated February 3, 2023
39. Letter from Melissa Seacat ACHS Principal to the complaint investigator and Dr. Crista Grimwood dated February 14, 2024
40. Email from Alicia Kennedy to the parent dated February 14, 2024 at 10:10 a.m.
41. Email from Alicia Kennedy to the parent dated February 15, 2024 at 8:23 a.m.
42. Teacher absence report, 2022-23 school year

Background Information

The student is a 17 year old who attends USD #470 and qualifies for special education in the category of Intellectual Disability. The student has been in the district since he was in the REACH Infant Toddler program. When the student was 5 years old, he was aggressive toward adults when told “no” and at times refused to get off the bus. He was diagnosed with Fragile X syndrome when he was 6 years old and was medicated for seizures and to control his behavior, which included aggression on the school bus. According to the National Institutes of Child Health and Human Development, Fragile X, when severe in males, is characterized by

intellectual disability, attention problems, aggression, anxiety, sensory issues that can cause behavior problems, language processing problems and other speech and language disorders. The school team received consultation from a TASN behavior specialist at that time.

The student was last evaluated on February 24, 2021. The report summarized the Wechsler Abbreviated Scale of Intelligence (WASI-II) given in 2018 which showed extremely low scores and difficulty completing the test. At the time of the 2021 evaluation, the student could count to 10, recognize some shapes, and answer what and where questions. The speech language evaluation showed significant communication deficits in his ability to interact with others and to make his wants and needs known. The student's behavior interfered with speech language therapy services at that time. No functional behavior assessment (FBA) was included with the evaluation. The parent waived re-evaluation on November 13, 2023.

Annual IEP meetings were held February 3, 2023 and January 30, 2024. According to his most recent IEP, the student was assigned to a self-contained autism classroom in the high school building. He received special transportation, full time special education, nursing services, consultative speech/language and occupational therapy, and adaptive physical education. Due to his seizure disorder, the student was not to be left unsupervised. The IEP did not include an FBA and did contain a Behavior Intervention Plan (BIP) for self injury, aggression toward others, and refusals; spitting, kicking, slapping, punching, dropping to the floor are listed as behaviors of concern. For aggressiveness or self injury, the BIP included a crisis plan which called for the student to be sent home for unsafe behavior. The student used assistive technology (IPAD for visual schedule and timers), and the IEP indicated there is no data suggesting the student needed ESY services.

Issues Investigated

1. **ISSUE ONE:** The USD #470, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP for the student that was reasonably calculated to enable the student to make progress, specifically to promote school attendance and achievement of annual IEP goals.
2. **ISSUE TWO:** The USD #470, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a full day of school for the student.

Issue One

The USD #470, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP for the student that was reasonably calculated to enable the student to make progress, specifically to promote school attendance and achievement of annual IEP goals.

Applicable Law

Federal and state statutes and regulations at 34 C.F.R 300.320 (a)(4)(i) and K.S.A. 72-3429(c)(4) require that the IEP include special education and related services based on peer reviewed research to the extent practical be provided to the child and a statement of program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals. Federal and state statutes and regulations at 34 C.F.R. 300.324(a)(1) and (2)(i) and K.S.A. 72-3429 (d) require that when developing the child's IEP, the IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of the child, the results of the initial or most recent evaluation, and the academic, developmental and functional needs of the child.

Federal regulations at 34 C.F.R 300.320(b) require that when the child turns 16 and updated annually the IEP must include (a) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate independent living schools and (b) the transition services, including course of study, needed to assist the child in reaching those goals.

The U.S. Supreme Court has held that to provide FAPE, a student's IEP must be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances (Endrew F. v. Douglas County Sch. Dist. RE-1, 69 IDELR 174 (U.S. 2017)). This FAPE standard applies regardless of the child's disability, age, or current placement. The IEP should aim to enable the student to make progress toward the student's annual IEP goals and in the general education curriculum, but there is no guarantee of progress.

Federal statutes and regulations at 34 C.F.R. 300.324(b)(1) require that each agency must review the child's IEP periodically, at least annually, to determine whether the goals for the child are being achieved, and that the agency revises the IEP as appropriate to address any lack of expected progress toward the annual goals, among other reasons.

Analysis: Findings of Fact

The parent alleges that the child has not made progress in school and that this has been going on for four years. In the formal complaint, the parent alleges that she first contacted KSDE regarding the student last year, and she believed that in June 2023 the district agreed to make changes that would lead to progress and she withdrew her complaint. The parent alleged that the student is "going backwards" and she is still waiting for progress. The parent alleged that

last year the time for the student to be sent home was 11:00 or 11:30 a.m. and this year it is 9:00 or 9:30 am. The parent alleges that the student isn't learning anything at school except bad behavior and that any progress in discipline has been lost. The parent alleged that the student has learned "absolutely nothing." From the interview, the parent alleges no new goals have been written.

The district responded that "The response to the complaint is focused on goals from the 2.3.23 IEP. Since the new IEP was written on 1.30.24, there has not been adequate time in which to monitor progress for that IEP. . . The Progress Reports from the 2.3.23 IEP show that the student did make progress toward meeting those goals as evidenced below. [The district and cooperative] do feel that the new IEP written on 1.30.24 has goals that were written to enable the student to make progress toward those goals as well." The district responded that the student made progress on four of five goals on the February 3, 2023 IEP. For the fifth goal, the district responded that "Progress Report 12.11.23 [stated] through collaboration with TASN, a plan was set into action to elongate [student's] day by 1 minute, after 3 consecutive days of reaching his target time. [Student] is currently attending school until 9:29 a.m. [Student's] day has been elongated by 7 minutes. We are exploring preferred activities in order to elongate the time [student] spends at school during the day."

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #470.

The student's most recent evaluation was conducted in 2021, and the parent's waived a reevaluation in November 2023.

The parent reported that the student is a "spitter" and that at home he does chores such as helping with the dishes and mowing the grass with support. The parent reported that with support such as walking alongside the student between him and other persons in a novel situation (hospital hallway), the student can be successful.

February 3, 2023 IEP Strengths, Needs, and Services

An annual IEP meeting was held on February 3, 2023. The February 3, 2023 PWN indicated two changes to the student's IEP were made from the previous (2022) IEP: a decrease from daily swimming to twice a week swimming due to problems leaving the pool, and a change from eating in the cafeteria to eating in the autism classroom due to having difficulty with the noise and busy-ness of the cafeteria. The PWN did not list a change to the student's goals, BIP, or other services.

The student's strengths and needs included on the February 3, 2023 IEP are summarized and grouped by domains, as follows.

- In the health and physical needs area, the student was described as strong, enjoyed being active, could throw and catch balls. His seizure disorder required him to be closely monitored and he could communicate when having a seizure. He took

medication at school and home. His health plan noted that when having a seizure, the student may gag, cry, wet himself, or become aggressive.

- Occupational therapy described sensory tools that had been used over the years but were not currently being used. A weighted vest had been attempted and abandoned. The student liked using the paper shredder with consistent cues and strategies, and he required sensory walks to regulate him despite the focus on calm in the classroom.
- Social emotional strengths included interacting with preferred peers and adults and responding to structure, consistency, attention, and praise. Social emotional needs included being overwhelmed by unfamiliar people or settings or changes in routines, leading to aggression toward staff and peers and self injury. Unpreferred tasks led to dropping to the floor and refusing to transition to the activity, followed by aggression toward staff.
- General intelligence and cognitive performance showed that his intelligence testing has not been updated since 2018. The IEP stated that the student liked routine and structure, communicated through words, phrases, gestures, imitations and noises, recognized his first name in print, could name family and staff members, could sort, match and put functionally appropriate puzzles together. Cognitive needs included providing answers to questions to express his feelings, wants or needs or providing answers in conversation. Nor could the student adjust his behavior to different settings or unscheduled events or people. He required 1:1 assistance for daily living skills and did not understand personal safety.
- In reading, the student could recognize his first name and match letters to it, recognize family member names, recognize words in familiar social stories and follow social story steps. He was working on recognizing environmental signs and safety icons. The staff was developing social stories for his curriculum.
- In math, the student could: count to 10, recognize some shapes, match shapes, sort, match numbers, and respond to a few cues for time. The IEP stated that more math activities were being developed for his IEP. In functional and adaptive needs, the IEP stated he was capable of following his schedule to know what will come next but needed one to one assistance for toileting, hygiene, life skills, navigating through the building, and transitions.
- In communication, the IEP noted that the student could communicate in words and short phrases, communicate how he felt with the help of icons and prompts, and answer simple yes and no questions. “[The student] had difficulty adequately expressing his needs, wants, opinions and ideas. When he is not understood, he becomes frustrated which can lead to self-injurious behaviors and aggression toward staff.”

The IEP added, in the impact of his exceptionality, that he was unable to participate in the general education curriculum, working several grade levels below peers in all areas, and that he followed a visual schedule through his day with support. The impact of disability reiterated that he preferred interaction with trusted adults, became overwhelmed by unfamiliar people,

demonstrated self injury and aggression toward staff, required a consistent schedule, could not be left unsupervised, and required 1:1 support for behavior, academic tasks, life skills, navigating the building, toileting, and transitions. Additionally, it stated that he would be transported home “when [the student’s] aggressive behaviors become unsafe for himself, staff, and peers.”

At the time of his February 3, 2023 IEP, the student was placed in the self-contained autism classroom and he did not participate in the general education curriculum or extended school year (ESY, no data on regression having been collected).

According to the February 3, 2024 IEP, the student received special transportation from home, 20 minutes round trip. The IEP included a behavior intervention plan (BIP) and a crisis plan for self injurious or aggressive behaviors, noting that he would be transported home if his behavior at school became unsafe. The special education and related services included: special education in the special education classroom, up to 416 minutes per day, special education support for lunch in the autism classroom, 1:1 para support for when the student is in school, twice weekly swimming with 1:1 support in the pool and 2:1 support for transition back to the classroom, consultative occupational therapy (OT) 10 minutes once a week, consultative speech language therapy 10 minutes once a week, adapted PE (APE) services 15 minutes once a week, nursing services 15 minutes once a week. The IEP stated he had no supplementary aids and services, and that the staff were to receive support for yearly seizure medication training, positive behavior supports (4-7 hours in-district), and for modified Willbarger brushing technique (45 minutes). His health plan described student specific seizure symptoms, non-urgent treatment care and emergency procedures, and it stated that the student was not to be unsupervised due to his seizure disorder.

The February 3, 2023 IEP’s assistive technology section stated that the student used an IPAD and timers for a visual schedule and transitions throughout the day. Documents and interviews showed that the student did not use the IPAD as a communication device.

The February 3, 2023 IEP’s transition assessment did not list specific transition instruments. Narrative information stated that the Post Secondary Interest Interview indicated that the student liked attention from preferred adults, responded to positive praise, and could communicate most of his wants and needs verbally and through gestures and icons. He would live at home with his parents. Narrative information for the Interest Interview and Parent Report stated he had strengths in sorting, classifying, puzzles, paper shredding, and knew the concept of “one more to be finished.” To be successful in the workplace, the student would need to follow directions, work on self regulation, social, math, and functional reading skills. The Student Interview reported that he recognized his first name and matched the letters; recognized his address, birthday, phone number, some safety signs, some letter sounds, and some words in favorite books; could identify activities in his visual schedule; and could count to

10. His needs included to recognize more safety signs, work on cleaning up after himself when asked, and work on ending a preferred task to go to a less preferred one independently.

Desired post school outcomes were to live at home with his parents and spend time with his sister; the student would pursue on the job training and employment at an organization for adults with developmental needs. The course of study listed 20.25 completed credits of 26 needed to graduate. The IEP stated that he did not require transition services in “education/training, employment, independent/daily living, related services, or community services experiences that were not already provided through the general curriculum.” The IEP stated that he required 1:1 assistance for completing academic tasks, navigating the school building, hygiene, daily living skills, bathroom needs, and transitions for behavioral support and assistance for staying on task. There were no transition goals.

The February 3, 2023 IEP stated that KRS was notified at the date of the IEP. The IEP stated “primary provider has reached out to the organization to verify” that the student is on the list for CDDO services.

The February 3, 2023 IEP stated that “it was anticipated that this student will graduate with a high school diploma” and listed his graduation date as May, 2024. The IEP also stated that the student would complete his educational program at the end of the school year when the student became 21 years of age. In an interview, the teacher stated she expected the student to attend school till he was 21 years old. In an interview, the parent reported that she made the decision recently to have the student graduate at 18 because he was not attending or benefiting from school. An interview with the special education instructional coach stated that discussion at the most recent IEP meeting on January 30, 2024 informed the parent that the student could “bank” his diploma to continue to attend school through the age of 21.

February 3, 2023 IEP Goals and Progress

The February 3, 2023 IEP goals and baselines for each goal are presented in the table below.

Goal	Baseline	Progress Reports
Goal 1: When given a verbal prompt and a model, the student will clean up his area after a snack or a meal 1 out of 4 opportunities.	Baseline: With a verbal prompt and a model, the student is cleaning up 1 out of 4 items in his area after a snack or a meal.	Goal 1 Progress Reports: March 6, 2023: “Yes” 1 of 4 opportunities May 1, 2023: “Yes” 1 of 4 opportunities October 10, 2023: “No” No opportunities December 11, 2023; “No” No opportunities

Goal	Baseline	Progress Reports
Goal 2: The student will be able to identify 15 out of 20 environmental/ safety icons by matching with verbal prompts.	Baseline: The student can identify 7 out of 15 environmental/safety icons by matching with verbal prompts	Goal 2 Progress Reports: March 6, 2023: "Yes" 8/20 icons with verbal prompts May 1, 2023: "Yes" 9/20 icons with verbal prompts October 10, 2023: "No" No opportunities December 11, 2023: "Yes" 9/20 icons with verbal prompts
Goal 3: The student will complete the transition from pool to the classroom with 2:1 assistance without dropping/refusal, 4 out of 5 opportunities.	Baseline: "Previously the student was transitioning from the pool with 1:1 support, Due to unsafe/aggressive behaviors, 2:1 support is currently needed. Currently the student is transitioning from the pool to the classroom with 2:1 support 1 out of 4 opportunities.	Goal 3 Progress Reports March 6, 2023: "Yes" 1/5 opportunities May 1, 2023: "Yes" 0/5 opportunities October 10, 2023: "Yes" 2/5 opportunities December 11, 2023: "Yes" 2/5 opportunities
Goal 4: APE: The student will demonstrate an average of 65% for locomotor and object control skills.	Baseline: Currently the student is demonstrating 60% for locomotor and object control skills.	Goal 4 Progress Reports April 14, 2023: "Yes" at 62% October 15, 2023: "Yes" at 63% December 15, 2023: "Yes" at 64% January 30, 2024: "Yes" at 65%

In an interview, the APE teacher reported that he had a good relationship with the student and that the progress measures were estimates based on participation.

June 26, 2023 IEP Amendment, Goal and Progress

The parent reported that she filed and subsequently withdrew a formal complaint in June, 2023. The district reported that the team met in June, 2023. An IEP amendment dated June 26, 2023 with parent signature on the same date added Goal 5 to the IEP: "By the end of the annual IEP cycle, the student will attend school for an average of ½ day, each school day." Additional paraeducator support was added to the classroom, and the para was to be experienced working with students with high needs. The amendment stated: "At a future date, a goal for speech/language will be added. Speech services will be in person with an SLP who used to work with the student and has a good relationship with him."

The PWN for other changes to the IEP not involving services or placement dated June 26, 2023 stated the same changes as listed above. The PWN stated the changes were in response to the parent's concern about the length of time the student is staying at school, and that the school staff wanted to support him to do so. The PWN did not list changes to the student's BIP, length of school day, or other services. The parent signed giving consent on the same day.

The speech language therapist reported in an interview that the student's behavior in or prior to her evaluation prevented adding direct service to the student's daily schedule as indicated in the June 26, 2023 amendment. She continued to provide the consultation services to the teacher during the fall, 2023 semester.

The IEP Progress Report for Goal 5 reported two benchmarks: October 10, 2023 with "no" progress, stating that the student was attending school till 9:22 a.m. on average, and December 12, 2023 with "yes" progress rating, stating that the student was attending school till 9:29 a.m.

Behavior Intervention Plan Summary and TASN Consultation for February 3, 2023 IEP

According to the February 3, 2023 IEP, the student's BIP stated that his target behavior was "spitting, slapping, punching, kicking, and dropping to the floor" and his replacement behavior was self-regulation and impulse control. The baseline stated that the student exhibited aggression toward staff when frustrated, overwhelmed, during transitions and when avoiding non preferred tasks. The BIP listed seven instructional methods for instruction (anger management, decision making, direct instruction, modeling, providing cues, social skills training, and stress management); nine for prevention (avoid physical contact, provide clear directions, frequent breaks, reminders/prompts, assignment modifications, predictable routine/schedule, structured environment, review rules/expectations, and provide independent area or space); and seven for intervention (redirect, provide prompts/cues, repeat expectations, use visuals, offer a break, give physical space and other).

The step by step directions in the student's BIP directed staff to, upon a refusal or spit, ask "is [student] ready?" and present the ready icon; if the student again refused, say "[student] is not ready" and present the not ready icon and withhold attention for two minutes. After this, the staff were directed to have the student check his visual schedule and start the process again, repeating as necessary. The step by step directions were the same for aggression toward staff, with the addition for staff to rotate, stay a safe distance, and transport the student home if he became unsafe. Instructional method consequences were verbal praise and offer breaks, or alternatively to withhold attention for misbehavior and to transport home for unsafe behavior. Behavior was to be charted weekly.

Document review showed the behavior graphed from August 23, 2023 to October 18, 2023 and narrative behavior summaries through February 15, 2024 when the district submitted evidence for the complaint.

The district reported ongoing TASN consultation on the student's program. The district and TASN consultant agreed that consultation began on or shortly before May 2, 2023 and that TASN gave recommendations for the school team on May 2, 2023. At that time, TASN reported that they suggested that the district revise the BIP with the district's school psychologist. Document review showed no changes to the student's BIP at that time. TASN and the district

agreed that TASN observed the student in August, September, and October of 2023 and that TASN consultants made suggestions. TASN and the district agree that the student began to get off the bus and come into the building more reliably during the fall of 2023.

The district reported that the parent and TASN received the student's daily behavior data. The parent reported that she compared her observation of when the student got on the bus to the written data and she believed the narrative data added negative emphasis to the student's actions. TASN reported that they reviewed the data before visiting on site and answered the teacher's questions between or after their consultation visits. TASN reported that they did not author the student's BIP and their role is to make suggestions to the IEP team and provide training to staff, if the district accepted it. TASN reported that the district took some but not all of their suggestions regarding the student's behavior and instructional plan during their consultation period (May, 2023 through October, 2023).

The parent reported that all previous discipline progress the student made in school had been lost during the past 4 years. The district reported that the progress to get the student to get off the school bus and into the building and to add 7 minutes to the student's school day was substantial because of the student's extremely aggressive behavior. Document review showed that the student's target times for attendance were adjusted (a) on November 14, 2023 from 9:26 a.m. to 9:27 a.m., (b) on November 27, 2023 to 9:28 a.m., and on December 1, 2023 to 9:29 a.m.

When asked if the target time determined when the student went home from school, the teacher said no, the student always went home due to unsafe behavior.

The highschool bell schedule stated that the school day started at 7:55 a.m. and ended at 3:21 p.m. The highschool bell schedule showed that the high school used four 90-minute blocks per day with 5 minute passing periods, plus a daily 35 minute advisory period in this pattern: Block 1, Advisory, Block 2, Block 3, Block 4. A review of the student's attendance record for the twelve months before the complaint was filed showed the following absences by period, 57 partial days and 8 total days.

No. of Periods Absent	Total	Dates
5 (full day)	8	February 8, 14*, 20, 24; April 5, 18*, 24*; May 16
3 blocks +advisory	9	March 20, 29; April 3, 5, 19; May 1, 2, 15, 16
3 blocks	13	February 3, 13; March 10, 22, 24, 27; April 4, 17, 21; May 10, 11, 12, 17
2 blocks	27	February 1, 2, 7, 10, 15, 21, 23, 27; March 2, 3, 6, 7, 8, 9, 21, 30, 31; April 11, 14, 20, 25, 26; May 3, 4, 5*, 8, 9
1	8	February 6, 9, 22, 28; March 23; April 12, 13, 27

*Text messages from the parent showed that the student was sent home due to seizures on May 5, 2023.

*The parent reported and provided text evidence showing that she was asked to keep the student home due to staff absences on the following dates: February 14, 2023; April 18, 2023; April 24, 2023. The total of early dismissals due to behavior problems is 56 partial days and the total number of days confirmed as district request to have the student stay home is three for the period from February 1 through May 16, 2023.

Annual IEP January 30, 2024

An IEP meeting was held on January 30, 2024, which updated the student's IEP. No new assessments were listed. The strengths and needs were similar to those in the prior IEP, with some additions, as follows:

- In the health and physical needs area, the January 30, 2024 IEP added that he was incredibly strong and staff precautions should be taken when he acted aggressively.
- In occupational therapy, the January 30, 2024 IEP added that his needs were more behavioral than sensory.
- Social emotional needs were unchanged in the January 30, 2024 IEP.
- General intelligence and cognitive performance unchanged in January 30, 2024 IEP.
- In reading, the IEP added that the student could follow steps in social stories and identify activities on his visual schedule that he used during the day. He required one to one assistance for reading tasks and could sort envelopes with familiar names on them.
- In math, the IEP added that he enjoyed puzzles and new puzzles were being added to his curriculum and that he could understand concepts of time as it related to his schedule.
- In functional and adaptive needs, the IEP added that he could eat and drink independently but continued to need extensive support for academic tasks, toileting, hygiene, life skills, navigating through the building, transitions and getting out of the pool. His aggressive behaviors continued.
- In communication, the January 30, 2024 IEP added that the student repeated requests to go home and became aggressive if staff did not comply.
- The impact of the student's disability statement is unchanged on the January 30, 2024 IEP.

When asked if new assessments had been conducted in order to develop goals for the new IEP, the teacher replied that only classroom data had been collected. The IEP retained similar goals to the prior IEP, which are presented in the following table along with the baselines. No quarterly progress had yet been recorded, and no benchmarks were listed on the IEP.

Goal	Baseline
Goal 1: When given a verbal prompt, the student will clean up his area before moving to another area 4 out of 4 opportunities.	Baseline: Currently with a verbal prompt and a model, the student is cleaning up 0 out of 4 items in his area.

Goal	Baseline
Goal 2: The student will be able to identify 15 out of 20 environmental/ safety icons by recognition with verbal prompts.	Baseline: The student can identify 9 out of 20 environmental/safety icons by recognition with verbal prompts.
Goal 3: The student will complete the transition from pool to the classroom with 2:1 assistance without dropping/refusal, 4 out of 5 opportunities.	Baseline Currently the student is transitioning from the pool to the classroom with 2:1 support, 2 out of 4 opportunities.
Goal 4: The student will attend school for and average of ½ day (12:00 p.m.) each school day	Baseline: The student's target time is 9:29 a.m. The student's day has been elongated by 7 minutes.
Goal 5: The student will demonstrate an average of 70% for locomotor and object control skills.	Baseline: Currently the student is demonstrating 65% for locomotor and object control skills.

The January 30, 2024 IEP retained the special education and related services from the prior IEP, with a few changes noted in the following list of services: special education in the special education classroom *up to 240 minutes per day (reduced from "up to 418" minutes on the prior IEP)*, consultative occupational therapy (OT) 10 minutes once a week, consultative speech language therapy 10 minutes once a week, adapted PE (APE) services 15 minutes once a week, nursing services 15 minutes once a week, and special education support for lunch in the autism classroom. One to one para support for when the student is in school was *removed* as a service. Twice weekly swimming with 1:1 support in the pool and 2:1 support for transition back to the classroom was *removed* as a service although the goal was retained. Support for personnel remained similar to the prior year, with the following yearly training; unspecified medical training (1 hour), BIP implementation (1 hour), Positive Behavior Supports (4-7 hours), and IPAD/timer training (1 hour).

The January 30, 2024 BIP stated the behavior of concern was "aggression toward staff including spitting, slapping, punching, shoving, kicking, charging at them, and dropping to the floor. Self injurious behaviors including slapping and punching himself in the face." The baseline stated he struggled with transitions, unfamiliar activities or persons, and schedule changes; he exhibited aggression toward staff, and he repeatedly asked to go home, becoming upset if staff did not comply. The replacement behavior was to complete transitions and tasks without aggression or self injury, along with self regulation and impulse control. The instructional methods for instruction, prevention intervention and consequences remained the same as for the prior BIP. Added descriptions of methods were: (a) for instruction, to model calming breathing techniques and to offer breaks at any sign of aggression, (b) for prevention, to recognize when the student needs a break and present an icon and verbal prompt at first sign of distress, along with calming breathing and modified workspace, (c) for intervention the same "ready/not ready" steps described previously, (d) and for consequences, celebrations for

completed activities, offered breaks, and IPAD reinforcement activities, or alternatively, to not be given attention and to transport home if unsafe.

The transition plan added no new assessments or changes to his performance. The desired post school outcomes were updated to specify “sorting or shredding” training and employment in an organization for adults with developmental needs. The transition plan listed no services and that the student had been referred to KRS the previous year.

The PWN dated January 30, 2024 stated that changes to the IEP included a material (more than 25%) change of service which required parental consent. The January 30, 2024 PWN listed the following changes to the student’s IEP: adjusted direct service times, updating the student’s goals, add TASN collaboration [to the direct special education services], remove the Modified Willbarger Brushing Technique, update the student’s health plan because he no longer receives medication at school, and to adjust the student’s services to eliminate swimming.

The district and the parent agreed that the district has pursued the possibility of out-of-district placement, exchanging information with the special therapeutic day and residential school after acquiring parental permission in February, 2024.

Conclusion

In this case, the parent claimed that the student is not making progress in school and that the district has not written new goals or effective plans leading to progress for an extended period of time. The district has responded by citing incremental goal progress, highlighting the safety concerns the student’s aggression causes to staff and the student himself.

The evidence cited above shows that the district failed to create and implement an effective instructional program for the student in a number of ways, described in the next paragraphs.

It is noted that the district sought outside assistance through a TASN consultation. It is noted that the student exhibited chronic challenging behavior and severe disabilities and that the district has sought special school placement.

During the 2022-23 school year, despite evidence that the student was routinely being dismissed from school early due to his problem behavior, the district did not ask for an IEP meeting as required by 34 C.F.R. 320.324 (b)(1)(ii)(A) until the parent filed a formal complaint in June, 2023. At that time, an amendment added a fifth IEP goal that the student would attend school half time and receive direct speech language services at some time in the future. The full IEP team did not meet then, nor at the beginning of the subsequent school year. The June 26, 2023 PWN did not change the number of service minutes to correspond to the half day goal, and it did not change the BIP or other services that might lead to more successful achievement of the half day attendance or other IEP goals. Further, the PWN promised future direct speech language services that did not occur at any time.

The student's February 3, 2023 IEP stated that the impact of his disability meant that, in addition to his behavioral challenges, the student could not be unsupervised, and required one to one support for behavior, academic tasks, life skills, navigating the building, toileting, hygiene, and transitions. At the time written, this IEP included 4 goals which, if achieved, would have resulted in the student learning to match 7 of 15 environmental icons or safety signs, clean up 1 of 4 items from his snack area, improve 5% in his locomotor skills, and get out of the pool 4 out of 5 times with 2 person support.

Comparison of the goals in the 2023 and 2024 IEP shows minor wording changes in the goals and infinitesimal progress toward achieving the annual goals. Baseline performance from the 2023 to 2024 IEPs showed decreased performance on one goal and an increased amount of support in another from the 2022 levels. Growth in the APE goal at one percent per quarter was called a participation estimation by the teacher. Growth in recognizing environmental signs was from matching 7 of 15 with verbal prompts to recognizing 9 of 20 signs with verbal prompts. Looking to the previous year's goals, the February PWN indicated that there were no changes to the student's IEP goals at the time of the February 3, 2023 IEP, indicating that the goals were the same for the prior IEP in 2022.

At the same time, services were decreased on the 2024 IEP. The decreased amount of time in school acknowledged the extant failure of the special education program to predictably provide a full instructional day. The reduction of the one to one paraeducator support occurs on the same IEP that enumerates the need for one to one supervision in every aspect of the student's maintenance and education. The annual goal to get out of the pool could not be achieved when the PWN removed swimming from the student's program.

Neither the 2023 or 2024 IEP provided transition goals or services as required by 34 C.F.R 300.320(b). The expected outcomes for the student were to live at home and to receive adult services in an adult service center.

The student's school attendance report for the past twelve months, across two school years, showed a pattern to use of the BIP to remove the student from school and thus, from educational opportunity and services. It is noted that the student exhibited chronic and difficult behavior management problems for the school staff. However, neither the student's behavior nor his school attendance was improved as a result of the student's placement in the autism classroom, his IEP and BIP, or other behavior techniques utilized by the district's staff. The crisis plan operated as the standard removal of the student from special education services needed for the student to make educational progress. As the parent claimed, the student's time at school decreased from the 2022-23 to the 2023-24 school year.

In summary, the district had evidence during the past twelve months that the student's BIP was not effective and that the student's IEP annual goals were not being met. It is found that the district did not meet its responsibility to convene the IEP team to address the lack of progress as required by 34 C.F.R. 320.324 (b)(1)(ii)(A). It is found that the district did not create

meaningful goals to address the numerous student needs or appreciably change the goals from year to year in light of the failed instructional approach, and it is found that the district did not provide services appropriate to the student's disability, strengths and needs over the past twelve months as required by 34 C.F.R 300.320 (a)(4)(i), K.S.A 72-3429(c)(4), 34 C.F.R. 300.324(a)(1) and (2)(i) and K.S.A. 72-3429 (d). It is found that the extent of these violations resulted in deprivation of educational benefit and rise to the level of the denial of FAPE to the student (34 C.F.R. 300.513(a)(2)(iii).

Based on the foregoing, *it is substantiated* that USD #470, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP for the student that was reasonably calculated to enable the student to make progress, specifically to promote school attendance and achievement of annual IEP goals.

Issue Two

The USD #470, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a full day of school for the student.

Applicable Law

Free appropriate public education is provided for children with disabilities and defined as special education and related service, provided at the public expense and under public supervision that meet the standards of the state board, include appropriate preschool, elementary or secondary school education and provided in conformity with an individualized education program (KAR 91-40-1). 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. According to 34 C.F.R. 300.101, FAPE must be available to all children between the ages of 3 and 21, including children with disabilities who have been suspended or expelled from school as provided for in 300.530(d). However, those who graduate with a high school diploma are no longer eligible for services at that point (K.A.R. 91-40-2(f)).

The Kansas special education statutes (K.S.A. 72-3403 to-3439) require parents to see that their child with a disability attends school so that their child can receive the special education and related services on the child's IEP. This means that for a child with a disability who has an IEP compulsory attendance may begin as early as age 3 (K.S.A. 72-3421) and continues through high school graduation or when the student ages out of special education.

The IEP Team of a child with a disability has authority to reduce the school day of the child when that is necessary in order to provide a free appropriate public education, see, Sierra Vista (AZ) Unified School District, 54 IDELR 35 (OCR 2009), That was a case where the Office for Civil Rights (OCR) said shorting the school day of a child with a disability administratively, instead of

using a decision by an IEP team, was improper because it was not made on an individual basis with regard to whether the shortened school day was appropriate for the student with a disability. The message from OCR in this case was that when an IEP team determines, on individual basis, that a shortened school day is appropriate for a student, the IEP team may change the IEP to specify the extent to which the school day will be shortened. In Kansas, even if an IEP team makes such a decision it must also obtain written parental consent if the shortened school day constitutes a material change in services. In this complaint, the decision to shorten the school day of this student was not made by the IEP team at an IEP meeting and no parent consent was obtained for what constituted a material change in services. Accordingly, shortening the school day of this student, based on the student's behavior, must be viewed through the authority of the school district to remove a student for disciplinary reasons.

School officials have the authority to remove students with disabilities from school for code of conduct violations and to determine if a disciplinary change of placement has occurred. Children with disabilities can be removed for short term suspensions for up to 10 days in a school year, or more if the behavior is not determined to be a manifestation of the child's disability (34 C.F.R. 300.530 (c)) or a disciplinary change of placement (34 C.F.R. 300.530(b)(1)).

At the 11th day and every day of suspension after that in a school year, special education and related services that are needed to enable the child participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP must be provided (34 C.F.R. 300.530(b)(2)). Additionally, school officials must determine if a pattern has developed by considering whether a disciplinary change of placement has occurred. To determine if a disciplinary change of placement occurred, school officials examine whether the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals and other factors such as: the length of each removal; the total amount of time the child has been removed; the proximity of the removals to one another; and any other unique circumstances on a case-by-case basis (34 C.F.R. 300.536(a) and (b); K.A.R. 91-40-33).

The *Kansas Special Education Process Handbook* includes a flow chart that states when a removal that cumulates to more than 10 school days, and shows a pattern of removal constituting a change of placement (34 C.F.R. 300.536(a)(1)(2) and 34 C.F.R. 300.530(c)), an IEP meeting is required to (1) make a manifestation determination (Notice of action and Parent Rights immediately, and meeting within 10 school days. 34 C.F.R. 300.530(e), (h); and (2) If the behavior is a manifestation of the disability, (a) develop a FBA and BIP, or review existing BIP, and make any changes needed to address behavior (34 C.F.R. 300.530(f)).

Federal/state statutes and regulations at 34 C.F.R. 300.11(c) and K.A.R. 91-40-1(eee) state that a school day under IDEA means any day, including a partial day, that children are in attendance at school for instructional purposes. School day has the same meaning for all children in

school, including children with and without disabilities. Given this definition, if a child is suspended for part of a school day, the partial day counts as a full day for purposes of determining if a change of placement has occurred, or if educational services are required during the period of suspension. Early dismissals for behavioral violations of the code of conduct are partial days of attendance.

Analysis: Findings of Fact

The parent alleged that the school was keeping the student at school for shorter and shorter periods of time. The parent alleged that last year, the student had been at school till about 11:00 or 11:30 and currently it was till 9:00 or 9:30, with school beginning at 8 a.m. The parent alleged that the district had promised to do better in June, 2023 but that no progress had been made despite those promises.

The district responded that the district had attempted to and made progress toward providing a full day of school for the student as seen in Goal 5 of his IEP. The district further stated that the student had significant behavior problems getting off the school bus and getting into the school building. "During the prior school year (i.e., the 22.23 school year), [the student] refused to get off of the USD 470 vehicle. This refusal to get off the vehicle and into the building lasted up to three hours in length. During this refusal, [the student] spit, shoved, slapped, and threw objects at school personnel (i.e., teachers, para educators, driver) who were attempting to assist in getting him off of the vehicle and into the building. Consultants from KSDE TASN were brought in to assist and to provide guidance and recommendations. The refusal to get off the vehicle and into the building was never resolved. School personnel dealt with this situation on a regular basis." The district responded that these problems continued into the 2023-24 school year. The district responded that the student's aggressive behavior was also evident after he entered the classroom and referred to the student's daily observational behavior report as evidence.

The district responded that the parent had withdrawn a formal complaint filed in June, 2023 based on the district's meeting with her to write a new goal for the student to stay at school for half of the school day. The district responded that the student had been aggressive on the school bus toward a peer, necessitating a special bussing arrangement. The district responded that on January 31, 2024, the student had injured the teacher requiring medical care and time away from the classroom as a result of the injury.

Finally, the district responded that at the beginning of the 2023-24 school year, and again at the time of the complaint, the district had approached a therapeutic residential and day school provider for student placement. The district reported that the day school provider had agreed to accept the student's application for review in February, 2024.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #470.

The findings of Issue One are incorporated herein by reference.

When asked for the disciplinary record of the student, the district reported that due to the child’s disability, the district replied that the student had not been referred to the school administration for disciplinary purposes: “Based on his developmental needs, we never felt it to be appropriate to use the same disciplinary procedures with him as we would with other students, rather a behavior support plan was developed and put into place within his IEP.”

Interviews of district staff and the parent confirmed that the student did not receive services in the home.

The student’s observational data showed daily reports of target behaviors identified in the student’s BIP. Documentation that the staff implemented the step by step procedure was at times included. An example of this documentation is: “Staff followed [student’s] BIP with the 3 minute timer and withholding attention during refusal. Reminding him with his visual schedule and verbally when the time went off that it was time for Shredding.”

The student observational data report showed three full days of school (August 17, August 18, and August 23, 2023) and the following 89 days of early dismissal times due to student behavior during the 2023-24 school year.

Date	Time	Date	Time	Date	Time	Date	Time	Date	Time	Date	Time
8.21*	1:22	9.19	9:53	10.12	9:20	11.7	9:28	12.5	9:29	1.18	9:29
8.23	9:46	9.20	9:38	10.13	9:31	11.8	8:40	12.6	8:45	1.19	9:19
8.24	1:59	9.21	9:13	10.16	9:13	11.9	9:26	12.7	9:29	1.23	9:27
8.30	11:35	9.22	10:00	10.17	9:08	11.13	9:27	12.8	9:29	1.24	9:29
8.31	10:57	9.25	9:09	10.18	9:15	11.14	9:27	12.11	8:58	1.25	9:29
9.05	9:38	9.26	10:14	10.19	10:00	11.15	9:01	12.12	9:29	1.26	9:04
9.06	8:39	9.27	9:02	10.20	9:21	11.16	9:27	12.13	9:18	1.29	9:07
9.07	9:42	9.28	9:36	10.23	9:45	11.17	8:33	12:14	9:29	1.30	9:29
9.08	8:40	9.29	8:36	10.24	9:34	11.20	9:27	12:15	8:40	1.31	9:05
9.11	9:16	10.2	9:14	10.25	8:43	11.21	9:27	1.04	9:24	2.08	9:00
9.12	9:40	10.3	9:16	10.30	8:55	11.27	9:27	1.08	9:29	2.09	8:55
9.13	9:17	10.4	9:16	11.1	9:12	11.28	9:30	1.10	8:43	2.13	9:02
9.14	9:18	10.9	9:00	11.2	9:26	11.29	9:28	1.11	9:22	2.14	8:08
9.15	9:26	10.10	9:07	11.3	8:58	12.1	9:28	1.12	8:47	2.15	9:19
9.18	8:59	10.11	9:30	11.6	9:01	12.4	9:29	1.17	9:10		

*due to staff appointment.

Interview data showed that the student had an independent bus route due to his problem behavior related to the bus. The student absence report cross referenced with daily observational data showed absences on three days (August 25, 27 and 28) due to “transition

safety concerns” and “safety meeting” following an incident of aggression toward a peer on the bus.

The parent reported and provided text evidence showing that she was asked to keep the student home due to staff absences on the following dates: February 14, 2023; April 18, 2023; April 24, 2023; October 31, 2023; November 30, 2023; and January 5, 2024. Teacher absence data cross referenced with the teacher absence report showed a common date on February 14, 2023. October 31, 2023, November 30, 2023, January 5, 2024 and February 12, 2024 were listed as absences due to staff shortage in the student’s observational data report. Text evidence and student observational data report showed an early dismissal due to a teacher appointment on August 21, 2023 at 1:22 p.m. In total, one partial and seven full days can be documented as additional missed days due to staffing issues from these sources.

The district acknowledged that the parent was asked to keep the student home from school following a staff injury and the subsequent arrangement for a substitute on February 1, 2, 5, 6, and 7, 2024, for five additional days of absence due to staffing issues. In its response to the complaint, the district reported that services resumed for the student on February 8, 2024.

In total, 15 full days and one early dismissal can be documented as missed due to administrative or staffing reasons during the past twelve months.

Conclusion

In summary, that the student did not regularly attend school for a full day during the past twelve months is without dispute. The district provided ample evidence that the student’s aggression toward staff, self injury and refusals by dropping to the ground are frequent occurrences in the school and transportation settings, and that these behavior problems have proven unworkable for staff to manage using the existing behavioral intervention measures, even with the use of consultation services from recognized statewide providers. The district reported that these aggressive and other behaviors required them to remove the student from school because his behavior became unsafe for staff or for himself, and removal was written into the student’s IEP through his BIP.

However, KSDE has advised districts that “IEP teams should take caution when including a removal from school as part of a BIP. If a child is removed from school without educational services this would be counted as a day of suspension” (p.208, Kansas Special Education Process Handbook). Therefore, it is found that the district has used repeated short term suspensions by early dismissal cumulating to 56 days in the 2023-24 school year and 89 days during the 2023-24 school year, to the date the case evidence was submitted. Of these 145 days, the district is permitted to use 10 per school year as short term suspensions.

Due to the number of days involved in the short term suspensions, the district had an obligation to provide services for the student on the 11th day (34 C.F.R..300.530(b)(2)) and to determine if a disciplinary change of placement had occurred (34 C.F.R. 300.536(a) and (b));

K.A.R. 91-40-33). It is noted that KSDE also advises districts to consider conducting an FBA before reaching the 11th day of short term suspensions and that in this case, despite the extensive documentation of serious behavior problems involving injury to self and others, the district did not conduct an FBA to guide the student's BIP.

Additionally, it is found that the district failed to implement the student's IEP for staffing or administrative reasons for 15 days during the past 12 months, when it asked the parent to keep the child home on a regular school day. In total, the student's IEP services were not implemented for 125 partial days and 15 full days, in violation of federal regulations at 34 C.F.R. 300.323(c)(2) which 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.

Further, it is found that the extent of these violations resulted in deprivation of educational benefit and rise to the level of the denial of FAPE to the student (34 C.F.R. 300.513(a)(2)(iii)).

Based on the foregoing, *it is substantiated* that USD #470, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a full day of school for the student.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: Violations of 34 C.F.R 300.320 (a)(4)(i), K.S.A 72-3429(c)(4), 34 C.F.R. 300.324(a)(1) and (2)(i), K.S.A. 72-3429 (d) and 34 C.F.R 300.320(b) were found, based on the facts listed above. Corrective action is required (as follows):
 - a. CORRECTIVE ACTION:
 - i. Within 20 days of this report, USD #470 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with:
 1. Federal and state regulations at 34 C.F.R 300.320 (a)(4)(i) and KSA 72-3429(c)(4) which require that the IEP include special education and related services based on peer reviewed research to the extent practical be provided to the child and a statement of program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals;
 2. Federal and state statutes and regulations at 34 C.F.R. 300.324(a)(1) and (2)(i) and K.S.A. 72-3429(d) which require that when developing the child's IEP, the IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of the child, the results of the initial or most recent evaluation, and the academic, developmental and functional needs of the child; and

2. Federal regulations at (34 C.F.R..300.530(b)(2)), which require districts to provide services to the student on the 11th day of cumulative short term suspensions
 3. Federal and state regulations at 34 C.F.R. 300.536(a) and (b); K.A.R. 91-40-33) which require districts to determine if a disciplinary change of placement occurred.
- ii. The district shall immediately, within 20 days of the date of this report, take steps to ensure that the special education and related services in the student's IEP are provided to the student.
 - iii. The district shall immediately, within 30 days of the date of this report, calculate the days of missed special education to date and offer compensatory education to the parent, who may accept none, some, or all of the offered services. The district shall provide a copy of the offer to SETS as evidence of its completion. The offer shall be no less than 39,683 minutes based on the student dismissal data and student absence reports calculated in the following ways.
 1. For the 46 partial day absences occurring after the first 10 partial day absences in the 2022-23 school year, using the student absence report: 6 absences for one 90 minute period; 20 absences for 2 periods plus a passing period between; 11 absences for 3 periods and two passing periods; 9 absences for 3 periods, advisory, and three passing periods. Total: 10,209 minutes.
 2. For 79 partial day absences occurring after the first 10 partial day absences in the 2023-24 school year, the number of minutes provided to the student, as documented by the early dismissal time when the student went to the bus, was subtracted from 446 minutes (bell to bell minutes in the school day) and then summed. Total: 22,784 minutes.
 3. For 15 days administratively directed absences (15 days at 446 minutes). Total 6,690 minutes.
 - iv. The parent shall have 15 days to accept none, some, or all of the compensatory education offer. The district will provide PWN to the parents resulting from the parents' response to the compensatory education offer. The district shall submit the PWN to SETS as evidence of its completion 50 days after the date of this report.
 - v. **Dates due: (a)(i and ii) March 28, 2024; (iii) April 8, 2024; (iv) April 27, 2024.**

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)