

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #260
ON AUGUST 28, 2023

DATE OF REPORT SEPTEMBER 29, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of -----, by her father, ----- . 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 father." ----- will be referred to as "the mother." Together, ----- and ----- will be referred to as "the parents."

The complaint is against USD #260, Derby Public Schools. In the remainder of the report, USD #260 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 August 28, 2023 and the 30-day timeline ended on September 28, 2023. However, due to an addition to the complaint from the parent on the same issue, the complaint timeline was extended.

Evidence Reviewed

During the investigation, the complaint investigator, Gwen Beegle, reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The complaint investigator spoke with the complainant to clarify the concerns and issue for the complaint on August 28, 2023. On September 15, the following persons were interviewed: Dawn Gresham, Special Education Director, USD #260; June Henkelman, Director of Special Services for Secondary Schools, and the parent. On September 18, 2023, Sean Pearson, PBIS teacher and IEP case manager was interviewed. The complaint investigator received emails from the district from August 29, 2023 to September 22, 2023.

Due to the addition to the complaint dated September 15, 2023, the complaint investigator interviewed the following people on September 21, 2023: the parent, Dawn Gresham, and Emily Williams (History Teacher). On September 22, 2023, Sean Pearson was interviewed.

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

1. Prior Written Notice for Reevaluation and Request for Consent dated September 14, 2022 and signed by the mother giving consent on September 15, 2022.
2. Notice of Meeting dated September 11, 2022 for a meeting on October 12, 2022

3. The student's special education reevaluation dated October 12, 2022
4. Student's IEP dated October 12, 2022
5. PWN for Identification, Special Education and Related Services, Educational Placement dated October 12, 2022 for a meeting on October 12, 2022.
6. Email from Jordyn Baker (School Psychologist) to the parent, Shawn Pearson (PBIS Teacher and IEP Case Manager), Nicole Perez (Assistant Principal), Dawn Gresham (Special Education Director) , and Tonia Stoehr (School Social Worker) dated October 18, 2022 at 10:23 a.m.
7. Mentor-Mentee agenda dated November 15, 2022
8. Email from the parent to Dawn Gresham dated January 4, 2023 at 10:54 a.m.
9. Email from Shawn Pearson (PBIS Teacher - IEP Case Manager) to the student's second semester teachers dated January 4, 2023 at 7:01 (n.d.)
10. Email from Dawn Gresham to Shawn Pearson and June Henkelman (Director of Special Services for Secondary Schools) dated January 4, 2023 at 11:25 a.m.
11. Notice of meeting dated January 9, 2023 for a meeting on January 9, 2023 signed by the parent waiving 10-day notice on January 9, 2023
12. IEP amendment dated January 9, 2023, signed by the parent giving consent on January 9, 2023
13. Prior Written Notice for a material change to the IEP dated January 9, 2023 for a meeting on January 9, 2023 signed by the parent giving consent on January 9, 2023
14. IEP amendment dated March 7, 2023
15. Prior Written Notice for a material change in services and other changes to the IEP dated March 7, 2023 for a meeting on March 7, 2023 signed by the parent on March 7, 2023
16. Office referral list, last entry date April 19, 2023
17. IEP meeting notes dated April 27, 2023
18. IEP for the student with no updates dated April 27, 2023
19. IEP at a Glance for the student for October 12, 2022 IEP updated April 27, 2023
20. Para Training announcement and training agenda for August 7, 2023 8:00 am till noon.
21. Paraeducator orientation and confidentiality 2023-24 presentation
22. Email from the father to Dawn Gresham and the mother dated August 9, 2023 at 4:29 p.m.
23. Email from Shawn Pearson dated August 14, 2023 at 4:47 p.m. to Tonia Stoehr and the students teachers: Michael Moseley, Venus Bishop, Lindsay Jones, Jude Schreiner, Bill Ross, Brett Flory, Lexie Dill, Brian White, Haley Hutchinson, and Emily Williams
24. Email from the father to Shawn Pearson, the mother, Dawn Gresham and June Henkelman dated August 16, 2023 at 7:04 (n.d.)
25. Meeting Invitation dated August 16, 2023 at 3:05 p.m for a meeting on August 25, 2023 at 2:30 p.m. from Shawn Pearson to the parent, Dawn Gresham, June Henkelman, Tonia Stoehr and the student's teachers.

26. Notice of canceled meeting dated August 17, 2023 for a meeting scheduled for August 25, 2023
27. Notice of meeting dated August 17, 2023 for a meeting on August 24, 2023 at 2:30 p.m.
28. Email from the father to Shawn Pearson, the mother, Dawn Gresham and June Henkelman dated August 17, 2023 at 8:23 a.m. with Shawn Pearson's reply to the group at 9:01 a.m.
29. Email from Dawn Gresham to Shawn Pearson, June Henkelman, Gretchen Pontious (Derby High School Principal) and Cheryl Parks (Derby High School Assistant Principal) dated August 17, 2023 at 11:41 a.m.
30. Email from the father to Shawn Pearson, Dawn Gresham and the mother, dated August 17, 2023 at 2:51 p.m. and Dawn Gresham's reply to the group August 17, 2023 at 3:09 p.m.
31. Email from Tonia Stoehr to the father, the mother, Shawn Pearson and Dawn Gresham dated August 18, 2023 at 1:29 p.m.
32. Email from Shawn Pearson to Tyler Morris dated August 21, 2023 at 10:26 a.m.
33. Message from Venus Bishop (Special Education Math Teacher) to the parent dated August 23, 2023 at 3:06 a.m.
34. Email from the parent to Shawn Pearson, the mother, Dawn Gresham, and June Henkelman dated August 23, 2023 at 8:01 am and Shawn Pearson's reply to the group dated August 23, 2023 at 9:01 a.m.
35. Email from Shawn Pearson to the parents, the student, Tonia Stoehr, and Cheryl Parks, dated August 23, 2023 at 2:41 p.m.
36. Email from Emily Williams to Shawn Pearson dated August 24, 2023 at 1:04 p.m.
37. Meeting Invitation from Shawn Pearson for a meeting on August 24, 2023 at 2:30 p.m. dated August 23, 2023 at 9:05 p.m. to the parent, Dawn Gresham, June Henkelman, Tonia Stoher and the student's teachers.
38. IEP amendment dated August 24, 2023
39. Prior Written Notice for changes to the IEP dated August 24, 2023
40. Email from Shawn Pearson to Tonia Stoehr, Michael Moseley, Venus Bishop, Lindsay Jones, Jude Schreiner, Bill Ross, Brett Flory, Lexie Dill, Haley Hutchinson, Jennifer Morris, Emily Williams, Cheryl Parks, June Henkelman, Amber Chapman, Heather Brooks dated August 25, 2023 at 1:22 p.m.
41. Email from Venus Bishop to Gretchen Pontius, Dawn Gresham, Shawn Pearson, Charles Gladfelter (Teacher) on August 27, 2023 at 1:23 p.m.
42. Email from Dawn Gresham to the mother, the father, Gretchen Pontious and June Henkelman dated August 28, 2023 at 3:30 p.m.
43. Email from the father to Dawn Gresham and the mother dated August 29, 2023 at 9:21 a.m.
44. Email from Shawn Pearson to the mother, the father, and Tonia Stoehr on August 29, 2023 at 11:04 p.m.

45. Email from Shawn Pearson to Sam Pinkerton dated August 29, 2023 at 12:14 p.m. and Sam Pinkerton's reply at 12:25 p.m.
46. Email from Shawn Pearson to Dawn Gresham and June Henkelman dated August 29, 2023 at 12:33
47. Email from Shawn Pearson to Charles Reed, Dawn Gresham, June Henkelman and Cheryl Parks dated August 30, 2023 at 12:08 p.m.
48. The student's schedule, dated September 6, 2023
49. District Response to the Allegations, dated September 12, 2023
50. Email from Emily Williams to Shawn Pearson dated September 14, 2023 at 7:55 a.m.
51. Text exchange between Emily Williams and Shawn Pearson dated September 15, 2023 at 8:44-8:47 a.m.
52. 2022-23 Progress Report for the student dated September 15, 2023
53. Grades for the student Fall 2023 dated September 15, 2023
54. IEP Expectations slide presentation undated
55. Text exchange between Emily Williams and Shawn Pearson dated September 19, 2023 at 8:23-8:33 and 9:51-9:52 a.m.
56. Email from Emily Williams to the parent and Shawn Williams dated September 19, 2023 at 8:51 a.m.

Background Information

The student is a 16-year-old who attends 11th grade at Derby High School in USD #260. The student was reevaluated in October 2022, and she continued to be eligible for special education services as a student with learning disability. Her special education services include pull out special education services for homeroom and math classes, special education support for English, science and social studies classes, and social work services once per week. The student is on track to graduate with a general education diploma in May 2025.

The student does not have a Behavior Intervention Plan; however, many accommodations/ supplementary aids and services and special considerations are written in her IEP to support her behavior as well as her academic learning. Her goals include socially appropriate coping skills and strategies, accurately completing reading and written language assignments in English classes, and accurately completing math assignments. Her IEP case manager is on the PBIS team in the building.

Issue Investigated

ISSUE ONE: The USD #260 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP, specifically the behavior intervention plan, thereby denying the student a free appropriate public education (FAPE).

Issue One

The USD #260 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP, specifically the behavior intervention plan, thereby denying the student a free appropriate public education (FAPE).

Applicable Law

Federal statutes at C.F.R. 300.320 (a)(4) and state statutes require that a student's IEP include a statement of the special education and related services and supplementary aids and services 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 to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general curriculum, and to be educated and participate with children with disabilities and without disabilities. Supplementary aids and services are defined at C.F.R. 300.42 and at K.A.R. 91-40-1(ttt) as aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate. Additionally, federal regulations at C.F.R.300.324 (a)(2)(i) require that in the case of a child whose behavior impedes the child's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

Finally, federal regulations at 34 C.F.R. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

Analysis: Findings of Fact

The complainant alleged that the student's IEP was not followed. Specifically, the student's IEP stipulated that the father should be called when the student refuses to use the accommodations in her IEP or when she is causing trouble in class. The complainant alleged that, within a few days of the beginning of the 2023-24 school year, a teacher called him after an incident with the student in class rather than at the time of the incident. The complainant alleged that the teacher had not read the student's IEP and that she was unaware of and did not follow the student's accommodations and special considerations with regard to her behavior. The parent asserted that the parent must be called at the time of a behavioral problem with the student before other actions are taken by the district, such as to send the student to the PBIS room.

In an addition to this investigation, the complainant alleged that another teacher had failed to follow the IEP by failing to call him when the student was using her cell phone before the student was sent to the PBIS room. The complainant alleged that failing to follow the IEP was a

systemic and cultural problem in the district because the district did not provide information and training to the teachers on following the IEP.

The district responded that the parent wants what is best for his daughter and that the district works hard to accommodate the parent's wishes and to communicate with him. This includes having multiple meetings during the school year at his request, as well as the annual IEP meeting. The meetings included: (a) August 15, 2022 to discuss the IEP with the scheduled teaching staff for the fall semester of the 2022-2023 school year, (b) October 12, 2022 to review the triennial reevaluation and conduct the annual IEP, (c) January 9, 2023 to discuss the student's IEP with second semester staff, (d) March 7, 2023 for an IEP amendment to address the student's behavior, (e) April 27, 2023 to address parental concerns in extracurricular activities, and (f) August 24, 2023 to discuss a trial change of the student's behavioral escort plan. The district further replied that the student's teachers were emailed informing them of the student's IEP and accommodations prior to the Fall 2022, Spring 2023 and Fall 2023 semesters. The district responded that paraeducators were trained in August, 2023 on IEP accommodations and specifically provided with information on the accommodations, goals and services of students they support. The district also responded that the teacher involved in the first (August, 2023) incident was no longer with the district and that the replacement teachers have been informed of the student's IEP and accommodations. The district offered a plan to resolve the complaint issues with the parent.

With regard to the specific behavioral issue in the first complaint, the district responded: "[The father] stated in the complaint that the student was sent to the PBIS room from class. One of our accommodations in the IEP is that the student has a PBIS Fast Break Pass (agreed-upon service). We were following the IEP when the student was allowed to leave the classroom and go to the PBIS room."

With regard to the addition to the complaint, the district replied that it provided training and mentoring to all new teachers that included implementation of students' IEPs. The district replied that the student's teachers were aware of the student's IEP, and made every effort to follow it. The district responded that communication with the parent regarding the student's behavioral issues and use of accommodations happened as quickly as possible during the school day schedule.

Findings of the investigation upon review of the evidence and conducting the interviews listed above are:

- The student's IEP dated October 12, 2022 and amended on January 9, 2023, March 7, 2023, April 27, 2023 and August 24, 2023 presently includes 19 accommodations/supplementary aids and services. Accommodations relevant to this complaint include:
 - The student is allowed to listen to music with one earbud when working independently during independent practice not during lecture or when a para or teacher is helping her with her assignments or assessment

- The student has access to her earbuds during independent work time. That does not include group work, lectures or assessments
 - PBIS Fast Break Pass when the student is stressed, anxious, or angry or when the teacher notices she needs a break; the student may return directly to the PBIS classroom
 - Redirect rather than reprimand when getting distracted; the redirection will always be given in private. Watch tone and approach to ensure not threatening or loud enough so that others hear, when redirection is needed do it privately and verbalized as a redirection with a therapeutic approach and tone (never threatening)
 - Set clearly defined expectations and classroom protocols as positive behavior supports, and
 - Full escort during the school day.
- The complainant reported that he believes that the IEP states that he is to be called immediately upon a disruption in the classroom.
 - Prior to August 23, 2023, two references were made to phone calls to the parent in the special considerations section of the IEP: (a) "Update 10-12-22. If [the student] refuses to use an accommodation, please call her dad who will require her to use the accommodation" and (b) "If [the student] is refusing an accommodation or misbehaving in class, please call her dad" as an update on April 8, 2022, which was carried forward from the 2021-22 school year.
 - The district reported and provided documentation that the student had no discipline referrals during the 2023-24 school year and had met her behavioral goal during the last two quarters of the 2022-23 school year. The district reported and provided documentation that the student met her academic goals during the last three quarters of the 2022-23 school year and was making satisfactory grades in her classes.
 - The district provided paraeducator training on August 7, 2023, during which each para was provided a binder containing the "IEP at a glance" (the accommodations - supplementary aids and services, special considerations, special education services, and goals in the student's IEP) for each student they support. The district reported that it is the practice of the PBIS case manager to do a binder update and check with each paraeducator monthly. The district reported and provided documentation of their new teacher mentoring and training about IEPs and accommodations in the general education classroom.
 - The district reported and provided documentation that, on August 14, 2023 two days before the start of the 2023-24 school year, each of the student's 2023-24 teachers received an email informing them of the student's IEP, attaching a copy of the student's "IEP at a glance" (accommodations - supplementary aids and services, special considerations, special education services, and goals in the student's IEP). The district reported that each teacher replied that they received the email. The district reported and

provided documentation that additional teachers were provided the same email when the student's schedule changed and when long term substitute teachers changed.

- The parent reported that, within the first week of school on an unspecified date before August 23, 2023, the special education math teacher called him to report that the student was disruptive in her class. The parent reported and the district agreed that the paraeducator had left the room for a bathroom break when the disruptive incident occurred. The district and the parent agreed that the student went to the PBIS classroom briefly as a result of this incident and then the student returned to the class with no additional behavioral consequence. The parent and the district agreed that there was no discipline referral for the incident.
- The district reported that the PBIS classroom staff, who did not witness the interactions in the math class, believed that the student had used the "PBIS Fast Break Pass," which allowed the student to go to the PBIS room whenever the student feels "stressed, anxious, angry or when the teacher notices [the student] needs a break." The district reported and the parent agreed that it is the district's practice for the PBIS teacher - IEP case manager to contact the parent as quickly as possible when the student declines to use an accommodation in her IEP.
- The parent reported and provided a forwarded message from the special education math teacher dated August 23, 2023 which included a list of classroom expectations and stated: ". . . The IEP summary I received did not have the behavior plan attached. I will get a copy of that. I will touch her desk with one finger without drawing attention to her, then I will call you as directed in our phone call. Just please, let me know if you want to make changes to this." In an email to the district dated August 23, 2023, the parent asserted that the teacher's message indicated that she had not received IEP training from the district.
- The district reported and provided documentation that the special education math teacher had been sent an email with the student's IEP at a glance attached on August 14, 2023 at 4:47 p.m. The district reported that the teacher correctly stated that there was no behavior plan attached for the student because the IEP summary included the student's behavioral supports as accommodations/ supplementary aids and services. The district reported that the special education math teacher was a special education teacher who had retired from the district in 2021 and who had been hired as a long-term substitute for the student's math class. The district reported and provided documentation that the special education math teacher resigned the position on August 27, 2023.
- The district reported and provided documentation that an IEP meeting for the student was held on August 24, 2023 to update the accommodations to allow a trial change of the student's escort during lunch period. Following that meeting, the PBIS teacher - IEP case manager, in an email dated August 25, 2023 at 1:22 p.m., alerted the student's teachers to her updated accommodations list that included, "if she is being non-compliant or refusing to work (get off her phone), we are to call [the parent]." The email

also announced the scheduling of additional training for the student's accommodations. No other changes were made to the IEP at that time.

- The history teacher did not attend the IEP conference on August 24, 2023 but she provided an emailed statement to the PBIS teacher - IEP case manager stating that the student had been late to class, missed a few assignments, and that "I would also like to see her keep her cell phone put away during instruction. If she is doing independent work, I do not mind her listening to music, but when I'm instructing or she is working with peers on an activity, it needs to be put away."
- On September 14, 2023, the history teacher notified the PBIS teacher - IEP case manager of her concern that the student's cell phone use during class had begun to affect her history grade. In a text conversation with the history teacher on September 15, 2023, the PBIS teacher - IEP case manager affirmed that the history teacher should contact the parent. The history teacher telephoned the parent on September 15, 2023 to discuss the student's cell phone use in class, leaving a message.
- On September 19, 2023 during the first period (8:00-9:24 a.m.), the teacher sent the parent an email at 8:51 a.m. which stated: "The purpose of this email is to follow-up on my phone call of Friday, September 15 in which I left you a voicemail regarding inappropriate cell phone behavior during class. While I have no problem letting [the student] listen to music on her phone whenever she is working independently on an assignment, I ask that she (and all students) keep her phone put away and earbuds out of her ears when I am instructing, lecturing, having students work collaboratively, or showing historical films to the class." The teacher reported that email was sent during the student's history class when the student was using her cell phone during history instruction, which was watching a film while taking notes on a provided worksheet with peer discussions interjected at points during the film. The history teacher reported that she asked all the students to put away their cellphones during instruction. The teacher reported that she could not call the parent during the class due to being responsible for all the students in the class. The history teacher reported, documentation showed, and the parent agreed that she called and spoke to the parent by phone during the second period and before 9:51 a.m. on September 19, 2023. The PBIS teacher-IEP case manager reported and documentation showed that the parent called the PBIS teacher-IEP case manager in response to the history teacher's email prior to 9:51 a.m. on September 19, 2023.

In this case, the IEP team met frequently during the year to design positive behavior supports in response to the student's behavioral and academic needs as required by federal regulations at C.F.R.300.324 (a)(2)(i). These were not considered a separate behavior intervention plan (BIP) but were conceived as supplementary aids and services or accommodations provided in the special and general education classrooms as required by C.F.R. 300.320 (a)(4) and defined at C.F.R. 300.42 and at K.A.R. 91- 40-1(ttt). As noted in the findings, as many as 19 supplementary aids and services were included in the student's IEP during the investigation period. Further, the IEP team added additional instructions in the student's IEP related to the supplementary aids and

service, such as the student's passing times for her escorts between classes, and related to this complaint, a reference to making a call to the parent when the student is disruptive in class or declines to use an accommodation. Evidence showed that the district provided the student's IEP accommodations, services and goals to each of the student's teachers prior to Spring 2023 and Fall 2023 semesters, and the district updated the student's teachers following the August 24, 2023 IEP meeting and offered future training for the student's accommodations. Additionally, the district provided evidence that it routinely provides training to new teachers on following student's IEPs and how it specifically prepares its paraeducators to be aware of and to implement student's IEPs.

Two behavioral issues and the district's communication with the parent around them are the subject of this complaint. The first happened within the first week of school, on or before August 23, 2023 with a special education math teacher in the student's special education math class. The second occurred within the first month of school in the student's general education history class; her related communication occurred between September 14, 2023 and September 19, 2023.

The first behavioral issue that occurred in the special education math classroom was not witnessed by current district staff. The email and interview evidence indicate that the special education math teacher both called and emailed the parent regarding the student's behavior in class. In the email message, the special education math teacher relayed how she intended to implement two of the positive behavior support strategies listed as supplementary aids and services in the student's IEP: (a) that she posted behavioral expectations in the classroom [*Set clearly defined expectations and classroom protocols as positive behavior supports*], and (b) that she would provide a private non-verbal gesture (touch the student's desk) as a cue to redirect the student [*Redirect rather than reprimand when getting distracted; the redirection will always be given in private. Watch tone and approach to ensure not threatening or loud enough so that others hear*].

The parent reported that the special education math teacher told him that she did not read the student's IEP. While it cannot be determined if the teacher did or did not read the IEP summary that she received, it is clear that the district provided the student's accommodations to this teacher. Additionally, the teacher's message to the parent indicated that the teacher understood how to implement two of the supplementary aids and services. The special education math teacher was a retired special educator from the district who had experience in following the IEP requirements of students in the district.

The second behavioral issue occurred in the student's first period history class and concerned whether the student was using an accommodation or if the student was using her cell phone during history instruction. The IEP states: "The student is allowed to listen to music with one earbud when working independently during independent practice not during lecture or when a para or teacher is helping her with her assignments or assessment." The parent was especially concerned about prompt communication with him surrounding the student's behavior and the use of her accommodations.

Records of the history teacher's communication with the PBIS teacher-IEP case manager and the parent show that she was aware and implementing the student's IEP accommodations while expressing her concerns for the student's behavior and academic performance. She did this in three ways: (a) an emailed statement for input into the student's IEP team meeting on August 24, 2023; (b) communication with the IEP case manager to consult on the student's emerging behavioral and academic issues surrounding cell phone use during instruction and the parental communication required, and (c) communication with the parent by email and telephone as the problem was emerging over time and then during and after a class period during which the problem occurred. To the parent and the IEP case manager, she clearly communicated the distinction between using the cellphone for the accommodation during independent work and using it inappropriately during instruction. When the history teacher relayed her concern to the parent about inappropriate cell phone use, she also stated that she was willingly following the student's accommodation to use her phone and earbud during independent work. To the parent, she also defined the activities that comprised history instruction ("instructing, lecturing, collaborating with peers or showing historical films during class"). Further, to address the parent's concern regarding prompt communication, she emailed at the time of the student's class and telephoned immediately following it.

The evidence reviewed in this investigation shows that the district implemented the accommodations of the IEP, including the special consideration to call the parent when the student misbehaves in class. The district provided each teacher a copy of the IEP at a glance and evidence shows that the history teacher consulted with the PBIS teacher - IEP case manager to clarify the requirements of the IEP as she sought to implement them. Therefore, it is found that the district complied with 34 C.F.R. 300.323(c)(2) to implement the special education and related services, including the supplementary aids and services in the student's IEP.

Conclusion

Based on the foregoing, it is not substantiated that the USD #260 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP, specifically the behavior intervention plan, thereby denying the student a free appropriate public education (FAPE)

Summary of Conclusions/Corrective Action

ISSUE ONE: A violation of federal regulations at C.F.R. 300.320 (a)(4) (supplementary aids and services), C.F.R. 300.324 (a)(2)(i) (positive behavior intervention support) and C.F.R. 300.323(c)(2) (implement the IEP) was not found based on the facts above. Corrective action is not required.

CORRECTIVE ACTION: Not Required

Right to Appeal

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

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

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

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

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

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

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