

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #501
ON OCTOBER 13, 2023

DATE OF REPORT NOVEMBER 17, 2023

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".

The complaint is against USD #501 In the remainder of the report, USD #501 will be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on October 13, 2023, and the 30-day timeline ends on November 12, 2023. An extension was granted until November 17, 2023, due to the inclusion of new issues discovered during the investigation.

Evidence Reviewed

During the investigation, the Complaint Investigators, Ashley Niedzwiecki and Doug Tressler reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The following documentation and information were used in consideration of the issue(s):

1. Email correspondence between the parent and the district dated September 28, 2023, and September 27, 2023.
2. The student's IEP dated 10/20/2022.
3. Prior Written Notice dated for, and signed by the parent on, 10/20/2022.
4. Team meeting notes (undated)
5. Notice of Meeting dated 10/12/2022.
6. Notice of Meeting, scheduled for 10/20/2022, signed by the parent on 11/28/2022.
7. Evaluation Report dated 10/20/2022.
8. Emails correspondence between the parent and the district dated October 2, 2023, pertaining to the student's alleged elopement and subsequent vandalism.

9. Email correspondence between the parent and the district, dated October 6, 2023, pertaining to the elopement and vandalism incident sited in the above-mentioned email.
10. Interview notes from an interview with the district conducted on October 18, 2023. Participants included: Mr. Noonan, Ms. Cooney, Ms. Harrington, and Ms. Whiteman.
11. Interview notes taken during an interview with the parent on October 19, 2023.
12. Discipline records.
13. Progress Reports (9/13/2023 & 10/16/2023).
14. District calendar.

Background Information

The student is a middle school student, in attendance at USD #501. The student has been identified as a student with an exceptionality, specifically, "Other Health Impairment".

Issues Investigated

1. **ISSUE ONE**: The USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), was wrongly disciplined when given ISS or OSS. [Pg. 3]
2. **ISSUE TWO**: USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide specialized instruction. [Pg. 5]
3. **ISSUE THREE**: The USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide requested breaks to the student as required in the student's IEP. [Pg. 6]
4. **ISSUE FOUR**: The USD #501, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), materially changed the services of the student by 25% or more, and substantially changed the placement of the student by 25% or more, both without amendments to the IEP. [Pg. 8]

Issue One

The USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), was wrongly disciplined when given ISS or OSS.

Applicable Law

A student, identified as a student with an exceptionality, may be subject to disciplinary action, including in-school or out-of-school suspensions and expulsions for violations of the school's

code of conduct. However, under K.A.R. 91-40-35(b)(1)(A)–(B), a student with a disability is entitled to continue to receive special education and related services if the student has been suspended from school for more than 10 cumulative school days in a year, or more than 10 consecutive school days in a year for behavior that has been determined not to be a manifestation of the student’s disability. If a student with a disability is suspended or expelled for more than 10 days, starting on the 11th day of suspension, or any subsequent suspension, the agency must provide “special education and related services that are needed to enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child’s IEP.” (K.A.R. 91-40-35(b)(2)). Days of suspension include in-school or out-of-school suspensions.

Findings of Fact

According to the complainant, the student was “wrongfully accused/suspended” after allegedly violating the school’s code of conduct. The complainant argues, in part, that the student did not elope, but rather was denied a break when requested.

The incident in question took place on October 2, 2023. The principal sent an email to the parent, stating the student, “was in Ms. Yoder’s class and [the student] said the videos she was showing were boring and it was not his break time, so he walked out of class.” The email further discussed the incident, explaining that after the student left the classroom a “loud bang” was heard, and cameras show other students looking toward the hallway where the student had just gone. Following this, a sign was discovered damaged. The district determined the student was responsible and assigned ISS for the remainder of the day followed by a two-day out-of-school suspension “for eloping from the classroom without permission, vandalism, and trying to frame his peer.”

During interviews, the district clarified the student received multiple in-school and one (2 day) out-of-school suspensions due to eloping from class. According to the district, the student has not reached the 11th cumulative day of suspension. Discipline records confirm the student had only reached 4 days of ISS and OSS at the time of the incident. As such, the 2 days of out-of-school suspension did not constitute a change in placement and did not require the district to conduct a Manifestation Determination hearing, nor was the district required to provide services to the student.

Further, students identified as students with a disability are subject to discipline following code of conduct violations the same as their nondisabled peers. Discipline records do not indicate that the student requested a break, however the district did admit that “it was not his break time.” We will not determine whether the student was “wrongly accused” because that is outside the scope of our investigation. Regardless, we find the district did not violate state or federal special education laws by assigning 2 days of OSS to the student. The denial of a break allegation will be addressed further in Issue Three.

Conclusion - Issue One

Based on the foregoing, a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically that the student was “wrongly disciplined” when given ISS or OSS following the student’s violation of the district’s code of conduct *is not substantiated*.

Issue Two

The USD #501, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide specialized instruction.

Applicable Law

Federal and state statutes and regulations require a district to provide specially designed instruction, as appropriate, to meet the needs of an eligible child. This means adapting the content, methodology, or delivery of instruction in order to address the unique needs of the child that result from the child’s disability, and to ensure access to the general education curriculum, so that the child can meet educational standards. (K.A.R. 90-40-1(III); 34 C.F.R. 300.39(3)).

Findings of Fact

An IEP meeting was held on October 20, 2022, in which the district, with participation from the parent, drafted an IEP the team felt would best address the student’s needs. The parent signed consent for the IEP that day. The IEP states the student is to receive services in ELA, math, electives, science and social studies in a progressively reduced manner to “reintegrate” the student from a more restrictive environment to a less restrictive environment over the course of the year. Additionally, the student receives accommodations of extended time on work, reminders of assigned tasks, preferential seating, an electronic reader, and BASR breaks. Progress reports indicate the student was working toward goals.

Therefore, we find that the district was providing specially designed instruction as appropriate to meet the needs of the student. Implementation of the IEP will be further addressed under Issue Four.

Conclusion - Issue Two

Based on the foregoing, it *is not substantiated* that USD #501 failed to provide specialized instruction to the student.

Issue Three

The USD #501, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide requested breaks to the student as required in the student's IEP.

Applicable Law

Under federal and state law, specific accommodations, modifications, and supports must be provided to the student in accordance with the student's IEP. (K.A.R. 91-40-16; 34 C.F.R. 300.323).

Findings of Fact

According to the Complainant, the student did not receive breaks as directed in the student's IEP, specifically, the student was being denied breaks upon request.

The student's IEP includes a Behavior Intervention Plan (BIP), and the BIP includes a proactive strategy, "allowing [the student] to take breaks when requested". Additionally, the IEP provides breaks "when the teacher recognizes that [the student] is having difficulty maintaining appropriate interactions with adults or peers OR when [the student] requests a break." These breaks are the length in time for [the student] to "refocus and be able to work in an academic setting." The IEP also includes 30 minutes of breaks in the Behavior & Academic Support room (BASR), 5 days a week. The district states, "we were breaking that 30 minutes up into 3 scheduled 10-minute breaks. One in math and two in ELA [for the 2023-2024 school year]."

The district provided emails and affidavits, showing that a scheduled break system was initiated at the beginning of the 2023-2024 school year due to the student's frequent request for breaks. In their response, the district's Special Education Consulting and Behavior Intervention teacher states, "we do grant breaks that [the student] requests, we just don't grant every single break that he requests due to the high frequency of requests that are more for work avoidance and not for regulating emotions or avoiding classroom disruption." Further, in an email titled "eloping", sent to the parent, the principal states, "we would really appreciate it if you would talk to [the student] about waiting to take a break until his designated time", and continues, "Mr. Noonan does have scheduled breaks built in for [the student] and the times he is walking out have not been to take those breaks."

A review of the student's discipline records, shows the student was denied a break upon request on at least one occasion within the past 12 months. According to discipline records, on September 27, 2023, a teacher states, "I was made aware that [the student] had lost the opportunity for an afternoon break in BASR. After asking my para multiple times if he could go to BASR he became frustrated and walked out of class." As noted in the student's IEP, the student is permitted breaks "as requested". District records indicate the student asked, "multiple times if he could go to BASR", only to be denied due to the "lost opportunity for an

afternoon break." The IEP does not provide the student was to have only scheduled breaks or that breaks could be removed for any reason.

Additionally, accommodations listed in an IEP are not privileges that can be removed due to bad behavior, they are required services offered to the student as determined appropriate by the IEP team. Not only did the district remove the student's ability to request breaks, but the district acknowledged the student lost his BASR scheduled break. Both types of breaks are listed in the students' IEP and therefore neither may be removed unilaterally. We find the district violated federal and state special education laws by failing to implement the student's IEP by denying the student breaks as requested and removing scheduled breaks as a punitive measure.

Conclusion - Issue Three

Based on the foregoing, a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically that the student was denied breaks upon request, as specified in the IEP, *is substantiated*.

Issue Four

The USD #501, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), materially changed the services of the student by 25% or more, and substantially changed the placement of the student by 25% or more, both without amendments to the IEP.

Applicable Law

K.A.R. 91-40-1(sss) provides a "substantial change in placement" means the movement of an exceptional child, for more than 25 percent of the child's school day, from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment. K.A.R. 91-40-1(mm) provides a "Material change in service" means an increase or decrease of 25 percent or more of the duration or frequency of a special education service, related service, or supplementary aid or service specified on the IEP of an exceptional child. A material change in service or a substantial change in placement requires parental consent, even if the parent verbally agreed to the change. Under state and federal law, a parent must agree in writing to the action for which his or her consent is sought. (K.A.R. 91-40-27(a); 34 C.F.R. 300.300).

Findings of Fact

In interviews, the district revealed that during the 2022-2023 school year the student's day was abbreviated (removed from electives) and he was enrolled in a virtual program for ELA. This change took effect on March 22, 2023. Conversations with the parent confirm that in the Spring of 2023, the parent voluntarily removed the student from ELA, and enrolled him in the

virtual course, as well as verbally consented to removing the student from electives. Additionally, both parties agree that neither the IEP team met to discuss the change, nor did the district offer a Prior Written Notice to the parent.

According to the IEP, during the final quarter of 2022-2023, the student would receive 90 minutes of special education in the Gen Ed setting (5 days a week, in Math, ELA, and Science or Social Studies (depending on the block schedule)), 30 minutes of BASR breaks (5 days a week), and 20 minutes of social work services (1 day a week, every other week).

1. Gen Ed Inclusion services:

Interviews with the district, and a review of the current IEP, confirm the 90 minutes of Gen Ed inclusion must be provided as “support in the general education setting as 30 minutes in each class math, ELA, science and/or social studies depending on the block schedules.”

According to the district, the student’s enrollment in the virtual school for ELA “did not result in any reduction in the services he received under his current IEP.” The district further explained “the student’s IEP was not amended or changed at the end of last school year [2022-2023] as the district staff were still meeting the 90 minutes of inclusion through math and science/social studies, as well as the daily BASR and biweekly social work minutes.” As confirmed by the district, “we did not meet nor do an amendment when [the student] went virtual.”

A. Material change in services:

A "material change in service" means an increase or decrease of 25 percent or more of the duration or frequency of a special education service, related service, or supplementary aid or service specified on the IEP of an exceptional child. (K.A.R. 91-40-1(mm)). While it may be true that the district was providing the student a total of 90 minutes of Gen Ed support 5 days a week, the district is mistaken about their ability to apply those minutes in a manner that is inconsistent with the IEP team’s decision. Additionally, according to the Kansas Process Handbook, adding a new service or deleting a service completely “is a material change in services because it is a 100% change of both frequency and duration of that service.”

In this case, when the student moved to a virtual ELA setting, the district unilaterally increased the number of minutes provided in math and science/social studies and removed support completely in ELA. However, the IEP provides for 90 minutes of inclusion divided between math, ELA, and science/social studies. According to the district this was done in 30-minute increments in each listed class/block. Regardless of whether the student was attending ELA virtually or in-person, the IEP team had determined that the student required support in each

subject listed, and as such, the district is required to provide that support in accordance with the IEP.

The district provided no evidence the IEP team met to determine how ELA services could be provided in the virtual setting. Rather, the district discontinued support in ELA completely, a class which, by the district's own admission, the student was significantly struggling in. This is evidenced by the fact that the district scheduled 2 of the student's 10-minute BASR breaks for ELA, and stated the student missed "a lot" of ELA, and often "sat with his head down and did not engage."

Ultimately, the district's decision to remove ELA support reduced the student's GenEd service minutes by 33% overall, and a 100% reduction of ELA minutes. Since this is a material change in service of more than 25%, an IEP team meeting, PWN, and parental consent was required. Additionally, the district states that they added minutes to math and science/social studies in lieu of the ELA minutes. This too is a material change in placement because adding 15 minutes to each of those classes increased the number of minutes in the subjects by 50%, also requiring an IEP team meeting, PWN, and parental consent. (Even if consent isn't required, the district must still provide parents with a PWN notifying them of the change in service).

Here, the student was in a virtual setting for ELA from 3/22/2023 until the end of the school year on 5/24/2023 (43 school days), during which time the district missed a total of 1,290 minutes of services in ELA and increased the total minutes in math by 645 minutes and science/social studies by 645 minutes. Removing any service by 100% requires parental consent. Also, while providing additional minutes in math and science/social studies may have been helpful, that was for the IEP team to decide not a unilateral district decision. Therefore, both actions required an IEP team meeting, PWN, and parental consent.

Therefore, because the district unilaterally removed a service, and unilaterally increased service minutes, both in amounts greater than 25%, creating a material change in services that required an IEP team meeting and parental consent, a violation of state and federal law *is substantiated*.

B. Substantial change in placement:

A substantial change in placement occurs when there is movement of an exceptional child, for more than 25 percent of the child's school day, from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment. (K.A.R. 91-40-1(sss)).

Here, the district claims "it was the parent's decision to transition the student to virtual English class for the fourth quarter last year due to multiple missed classes."

While this may be true, a parent's choice does not excuse a district's obligation to convene an IEP team meeting to discuss the possible effect on the student's services, and possibly amend the student's IEP, or gain parental consent if necessary.

The district acknowledges as much when discussing the student's possible removal from ELA again this year with investigators. In our discussion with the district, Dr. Harrington asks the principal, Ms. Cooney, if the student has "services in language arts", to which the principal responds "he has inclusion services, yeah." Following this Dr. Harrington offers, "so then if we did make a change, we would need to do the amendment [and] put it in the IEP for a change of placement."

Despite this acknowledgment, the district failed to hold a meeting, send a PWN, or amend the IEP when the student was removed from electives and switched to a virtual setting for ELA at the end of the 2022-2023 school year. In explanation, the district offered the change was "the parent's decision" and therefore was "not an IEP team discussion."

According to the district, the student's schedule last year consisted of "8 class periods, each one was 42 minutes and a 9th hour non-academic seminar for 20 minutes." The district provided the following regarding the student's attendance changes beginning March 22, 2023, through May 24, 2023:

"Attendance changed from hours 1-9 being available to hours 3-6 being available. *Language Arts was during periods 1 & 2 and started showing * * on 3/22/2023 [virtual]; Math was periods 3 & 4; History was period 5*

*Science was period 6; 2 electives were periods 7 & 8 and started showing * * on 3/22/2023 [not attending]; Seminar was period 9 (non-academic) and stated showing * on 3/22/2023 [not attending]"*

In this case, the parent exercised her right to voluntarily place the student in a virtual setting and remove the student from electives. the district did not unilaterally, substantially change the student's placement. However, while this is the parent's right, the district should convene an IEP team meeting to discuss the effect this change may have on the delivery of services to the student, amend the IEP as needed, issue a PWN to the parent, and obtain parental consent, if required. A failure to do so requires the district to implement the IEP as written.

Therefore, because the parent exercised her right to move the student to a virtual ELA setting, and remove the student from electives, a finding that the district violated state and federal law by unilaterally, substantially changing the placement of the student *is not substantiated*.

2. BASR Break services:

According to the district, the 30 minutes of BASR breaks noted in the student's IEP is divided into three 10-minute breaks (These minutes are in addition to the breaks the student is permitted upon request or teacher initiated). Interviews with the district and affidavits from teachers indicate this change occurred at the beginning of the 2023-2024 school year to address the student's frequent requests for breaks. According to the district, during an August 16, 2023, conversation with the parent it was agreed the 30-minute BASR break minutes would be given as one 10-minute break in math and two 10-minute breaks in ELA. The district acknowledges there was no amendment to the IEP to reflect the scheduling/limiting of the BASR break minutes to certain classes. The district also states no "supports have been reduced", regarding the 2023-2024 school year, and confirms the student is permitted "additional breaks when he requests them, or staff sees that he needs them."

The student's IEP does not specify when BASR breaks are to be given, for how long, or whether they may be given upon request or scheduled. The only parameter seems to be that the student receives 30 minutes each day. As such, we find scheduling the breaks for certain classes may be acceptable. However, scheduling breaks does not permit the district to deny the student any amount of the 30 minutes for any reason.

On closer inspection of the student's disciplinary records (as discussed under Issue Three), the district denied the student a scheduled break on at least one occasion (when the student requested a break but "lost" his afternoon break). This is the only confirmed occurrence of the student not receiving all 30 minutes of his scheduled BASR break minutes.

Therefore, because there is only one confirmed occurrence of BASR breaks being denied, a substantial change in placement or a material change in services, *is not substantiated*.

3. Social Work services:

Finally, in interviews with the district, staff shared the student was not receiving social work minutes "due to the student coming to school late on numerous occasions." The district stated that "six social work sessions in the last school year, 2022-2023 [were missed]. These sessions were missed due to student absences. The student has missed 7 sessions so far this school year (2023-24 school year)." The district further explained that the Social Worker documented multiple attempts to see the child throughout the days "but due to absences /being late to school she has not been able to meet with him." Attendance records, dated 8/9/2023 to 10/5/2023 (approximately 41 school days), confirm the student came to school late on 18 occasions (typically arriving between

9:15 am and 10 am), left early on 2 occasions, was unexcused all-day on 4 occasions, and was excused all-day on 4 occasions.

It is relevant that the student missed scheduled service minutes due to absences and tardiness, however, it is equally important that a school address such behavior when a pattern is recognized. In this case, the district acknowledged that student attendance interferes with delivery of services. Additionally, progress reports on the student's annual goal of "Emotional Regulation" show a decrease from a 30% ability to regulate emotions on 9/13/2023 to a 28% ability to regulate emotions on 10/16/2023, further highlighting the need for the service. Finally, school administrators state the student is most often at school between the hours of 10 am and 2 pm. In this case, the district is aware of the student's pattern of tardiness and absenteeism, and his lack of progress on annual goals. When a district is presented with such a situation, they may have a duty to address the issues in an IEP team meeting.

In Letter to Clark, OSEP addressed when a district has the obligation to "make-up" sessions when a child misses services due to either the student not being in school or because the provider is not in school. OSEP stated,

States and local educational agencies (LEAs) are required to ensure that all children with disabilities have available to them FAPE, consistent with the child's individualized education program (IEP) (see 34 C.F.R. 300.101). We encourage public agencies to **consider the impact of a provider's absence or a child's absence on the child's progress and performance** and determine how to ensure the continued provision of FAPE in order for the child to continue to progress and meet the annual goals in his or her IEP. **Whether an interruption in services constitutes a denial of FAPE is an individual determination that must be made on a case-by-case basis. (emphasis added).**

Here, the district acknowledges the student missed 7 social work sessions this school year [2023-2024] and 6 sessions last year [2022-2023]. As of November 9, 2023, school had been in session for 14 weeks, requiring the student to have received 7 social work sessions thus far. Therefore, the student has missed 100% of his minutes this year.

Additionally, there is no evidence that the district has attempted to address the student's absences or tardiness as a possible barrier to the student receiving services. The district does provide an unsigned draft IEP that was completed after the investigation began (10/25/2023). While typically an unsigned IEP would not be relevant, it is noteworthy, in this case, that the only reference to missing classes is a concern from the father. No where else in the draft IEP is absences or tardiness mentioned or considered. Therefore, we find the missed social work services for 2023-2023 is a material change in services.

Similarly, the district acknowledges the student missed 6 sessions last year. During the 2022-2023 school year, the student should have received social work services a total of 19 times, for a total of 380 minutes (approx. 39 weeks of school, including all half weeks, divided in half = 19.5 sessions). Of those 19 weeks the student missed 6 sessions (120 minutes), or a total of 31.5% of his services. Again, this is a material change in service.

It is important to note that generally, a student missing services, by their own accord, would not require an IEP team meeting, however, as stated above, when the student's absences and tardiness are interfering with the delivery of services, it is in the student's best interest to hold an IEP team meeting in order to address any possible impact on the student's progress.

Therefore, the district *violated state and federal law* by materially changing the services of the student for both the 2022-2023 school year and the 2023-2024 school year resulting in 260 minutes of missed social work minutes (13 weeks x 20 minutes).

Conclusion - Issue Four

Based on the foregoing, *it is substantiated* that USD #501:

1. Violated state and federal law when by unilaterally deleting a service completely (denying the student 1,290 ELA service minutes) and unilaterally adding service minutes (math and science/social studies), therein materially changing a service without an IEP meeting, PWN, or parental consent.
2. Violated state and federal law by materially changing the service of the student for both the 2022-2023 school year (6 sessions) and the 2023-2024 school year (7 sessions) by not providing social work minutes for a total of 13 sessions (a total of 260 minutes).

Based on the foregoing, *is not substantiated* that USD #501:

1. Violated state and federal law by substantially changing the placement of the student because the student's placement in a virtual setting, and removal from electives, was the parent's decision.
2. Violated state and federal law, resulting in a substantial change in placement or a material change in service, due to a denial of BASR break minutes on one occasion.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically that the student was “wrongly disciplined” when given ISS or OSS following the student’s violation of the district’s code of conduct, is not substantiated.
 - a. No corrective action required.
2. **ISSUE TWO:** A violation of state and federal regulations implementing the Individuals with Disabilities Act (IDEA), specifically that USD #501 failed to provide specialized instruction is not substantiated.
 - a. No corrective action required.
3. **ISSUE THREE:** A violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically that the student was denied breaks upon request, as specified in the IEP, is substantiated.
 - a. **CORRECTIVE ACTION:**
 - i. Training to staff on implementing breaks as specified in the IEP.
 1. **Date due: December 31, 2023**
 - ii. Provide a letter to KDSE confirming the training was completed.
 1. **Date due: December 31, 2023**
4. **ISSUE FOUR:**
 - a. A violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically when the district unilaterally deleted a service completely (1,290 ELA service minutes) and unilaterally added service minutes (math and science/social studies), therein materially changing a service without an IEP meeting, PWN, or parental consent is substantiated.
 - i. **CORRECTIVE ACTION:**
 1. Draft a proposal to the parent offering 1,290 minutes of compensatory services in ELA. The parent may accept, some, all, or none of the minutes.
 - a. **Date due: December 31, 2023**
 2. Provide copy of the offer to KSDE along with the parent’s response.
 - a. **Date due: December 31, 2023**
 3. Training to staff on what constitutes a material change in service and the procedures to follow when it does occur.
 - a. **Date due: December 31, 2023**
 4. Provide a letter to KDSE confirming the training was completed.
 - a. **Date due: December 31, 2023**

- b. A violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically by materially changing the service of the student for both the 2022-2023 school year (6 sessions) and the 2023-2024 school year (7 sessions) for a total of 260 social work minutes is substantiated.
 - i. **CORRECTIVE ACTION:**
 1. Draft a proposal to the parent offering 260 social work minutes. The parent may accept some, all, or none of the minutes.
 - a. **Date due: December 31, 2023**
 2. Provide a copy of the offer to KSDE along with the parent's response.
 - a. **Date due: December 31, 2023**

Investigators

Ashley Niedzwiecki

Doug Tressler

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)