

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

**REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT # 382  
ON NOVEMBER 20, 2023**

**DATE OF REPORT DECEMBER 21, 2023**

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

The complaint is against USD #382, Pratt Public Schools. USD #382 contracts with South Central Kansas Special Education Cooperative (SCKSEC) for special education services. In the remainder of the report, USD #382 and SCKSEC will be referred to as "the district".

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 November 20, 2023 and the 30-day timeline ends on December 21, 2023 with the inclusion of one day for a state holiday.

### **Evidence Reviewed**

During the investigation, the Complaint Investigator, Dr. Donna Wickham reviewed all evidence and documentation, which was provided by both the district and the complainant. The Complaint Investigator interviewed the father on December 17, 2023 and exchanged emails with the director of special education to clarify issues and evidence. Although all evidence provided was reviewed the following documentation and information were used in consideration of the issue(s):

1. Email between school psychologist, elementary teacher, director of special education, mother and father dated August 4, 2023 between 10:11 a.m. and 3:20 p.m.
2. IEP Contact log dated between August 24, 2023 and November 10, 2023.
3. Email between mother and director of special education dated November 3, 2023 between 3:12 p.m. and 4:10 p.m.
4. Email between elementary teacher and director of special education dated November 3, 2023 between 4:14 p.m. and 4:15 p.m.
5. Email from elementary teacher to father and mother dated November 3, 2023 at 5:20 p.m.
6. Screenshot of text message to father dated November 3, 2023 at 5:30 p.m.

7. United Postal Service receipts to father and mother's home addresses dated November 4, 2023 at 10:56 a.m.
8. Email from special education director to mother and father dated November 9, 2023 at 9:42 a.m.
9. Email between special education director, father and mother dated November 9, 2023 between 3:08 p.m. and 3:51 p.m.
10. Notice of Special Education Meeting dated November 10, 2023
11. Manifestation Determination Review dated November 14, 2023
12. Individualized Education Plan dated November 14, 2023
13. Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated November 14, 2023
14. Email between mother, director of special education, school psychologist, father and elementary teacher dated between November 14, 2023 and November 15, 2023 between 9:53 p.m. and 4:40 a.m.
15. Email between elementary teacher, school psychologist, director of special education, mother and father dated November 16, 2023 at 4:04 p.m.
16. Email from occupational therapist to mother and father dated November 30, 2023 at 2:01 p.m.
17. Email from elementary teacher to father and mother dated November 30, 2023 at 4:20 p.m.
18. Child Complaint Investigation Report for 24FC382-002 dated December 9, 2023

### **Background Information**

The fourth grade student attends a behavior day school administered by the special education cooperative that provides services to the students in the district. The student began receiving early childhood special education services at age three in the district. He continued to receive special education services when he transitioned to kindergarten. At the end of first grade, the student was placed in a 45 day interim alternative educational setting (IAES) at the behavior day school as a result of physical aggression towards a staff member. During second, third and fourth grades the student primarily attended the behavior day school where he received specialized instruction, speech therapy, paraeducator support, counseling, occupational therapy, and autism support services. The student has been medically diagnosed with ADHD, combined type, and Autism spectrum disorder.

The father's complaint addressed receiving discipline and behavior paperwork for his son. At the time the parent signed the complaint on November 11, 2023 the student had not missed ten days of special education services due to disciplinary actions and paperwork related to the student being sent home were not addressed by IDEA regulations. A similar complaint was investigated on behalf of the student's mother in child complaint 24FC382-002 and the finding

was that the student had not missed ten days of special education due to disciplinary actions and was a general education issue. The father's complaint was received by KSDE on November 20, 2023. Therefore, November 20, 2023 is the recorded first day of the child complaint.

Several events occurring between November 11, 2023 and November 20, 2023 impact the investigation of this complaint. A manifestation determination review and IEP were held on November 14, 2023. These special education actions are addressed by IDEA and therefore investigated.

## **Issues Investigated**

1. **ISSUE ONE:** USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide parent notice of school discipline or student behavior actions during the 2023-2024 school year.

### **Issue One**

The USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide parent notice of school discipline or student behavior actions during the 2023-2024 school year.

### **Applicable Law**

IDEA does not specifically address providing documentation of student discipline notice to parents; that is instead guided by district practice. However, if a district is considering a suspension or an expulsion of a child with a disability, school districts must follow the requirements of K.S.A. § 72-6115 and also provide parents the required notice, under K.S.A. § 72-3433(d), of the school's decision to make a disciplinary change of placement as well as a copy of the Parent Rights document 34 C.F.R. § 300.523(a)(1).

K.S.A. § 72-6115, states a suspension may be for a short term not exceeding 10 school days, or for an extended term not exceeding 90 school days. No suspension for a short term shall be imposed upon a pupil without giving the pupil notice of the charges and affording the pupil an opportunity for a hearing thereon. The notice may be oral or written and the hearing may be held immediately after the notice is given. The hearing may be conducted informally but shall include the following procedural due process requirements: (A) The right of the pupil to be present at the hearing; (B) the right of the pupil to be informed of the charges; (C) the right of the pupil to be informed of the basis for the accusation; and (D) the right of the pupil to make statements in defense or mitigation of the charges or accusations. Refusal of a pupil to be present at the hearing will constitute a waiver of the pupil's opportunity for a hearing. A short-term suspension may be imposed upon a pupil forthwith, and without affording the pupil a hearing if the presence of the pupil endangers other persons or property or substantially disrupts, impedes, or interferes with the operation of the school. A written notice of any short-term suspension and the reason therefor shall be given to the pupil involved and to the pupil's

parent or guardian within 24 hours after the suspension has been imposed and, in the event the pupil has not been afforded a hearing prior to any short-term suspension, an opportunity for an informal hearing shall be afforded the pupil as soon thereafter as practicable but in no event later than 72 hours after such short-term suspension has been imposed. Any notice of the imposition of a short-term suspension that provides an opportunity for an informal hearing after such suspension has been imposed shall state that failure of the pupil to attend the hearing will result in a waiver of the pupil's opportunity for the hearing. No suspension for an extended term and no expulsion shall be imposed upon a pupil until an opportunity for a formal hearing thereon is afforded the pupil. A written notice of any proposal to suspend for an extended term or to expel from school, and the charges upon which the proposal is based shall be given to the pupil proposed to be suspended or expelled from school, and to the pupil's parent or guardian. Any notice of a proposal to suspend for an extended term or to expel from school shall state the time, date, and place that the pupil will be afforded an opportunity for a formal hearing, and that failure of the pupil and the pupil's parent or guardian to attend the hearing will result in a waiver of the pupil's opportunity for the hearing. The hearing shall be held not later than 10 days after the date of the notice. The notice shall be accompanied by a copy of this act and the regulations of the board of education adopted under K.S.A. 72-6116, and amendments thereto. Whenever any written notice is required under this act to be given to a pupil or to a pupil's parent or guardian, it shall be sufficient if the notice is mailed to the address on file in the school records of the pupil. In lieu of mailing the written notice, the notice may be personally delivered. A formal hearing on a suspension or expulsion may be conducted by any person or committee of persons authorized by the board of education to conduct the hearing.

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

The father alleged that he learned of behavior incidents that resulted in the student being sent home from school from the student's mother. He stated as the student's father he should have received those notifications as well. Instead, after hearing of the instance in which the police were called about his son, he had to call the school to learn about it. He stated that until the November 14, 2023 IEP and manifestation determination meeting the only paperwork, he received from the school are the student's IEPs.

The district responded that they sent notice of school discipline and discipline referrals located in the ESI/Incident Report Folder home to the parents of the student in paper form. They additionally state that the father has been provided the same documentation about special education actions as the mother during the 2023-2024 school year. In regard to incidents in which the mother alleged that the student was sent home for behavior the district responded that the mother requested that she be notified when the student was having a behavior problem and then the mother would come to the school and proceed to take the student

home. "When [mother] has chosen to take [student] home, without being suspended, those days are not counted as OSS [out of school suspension]."

The father stated in an interview on December 17, 2023 that he received a copy of his student's IEP at the beginning of the 2023-2024 school year. He stated that he heard about behavior instances at school from the student's mother, but he was not called, nor received notification through email or mail.

An email from the school psychologist scheduled a meeting on August 8, 2023 with the student's mother. The elementary teacher later that day emailed the school psychologist that the father had not been included in the meeting. The school psychologist then added the father to the meeting invite.

An email from the mother to the director of special education dated November 3, 2023 at 3:12 p.m. stated,

*After yesterday's conversation, you guys determine that [student] was being kicked out for the rest of the day of 11/2/23. Then I received a (sic) phone call at 3:06 p.m. that I miss you left a brief voice-mail where I called back at 3:07 and was informed that [student] for sure is kicked out for 11/3/23 and you weren't sure about next week for you were at a conference. Where I inform you that is fine but we needed to set up an iep meeting because [student] has been kicked out for more than 10 days. Where you told me he has not but we can set up an iep meeting and you'll get with [school psychologist]. I received a phone call today 11/3/23 at 2:01 p.m. informing me that [student] was kicked out of school till November 14th where we will have an iep meeting and a manifestation meeting at 2:15pm that day. That [elementary teacher] was getting the paperwork done up to get to me. Am I understanding this correctly?*

*Also it is my understanding Charles was not contacted either day or at all besides by me and I have asked multiple times that he been contacted because we have joint custody and by law he has to know these things rather it be by email or phone call or mail. He has not received any seclusion or anything from you guys and I have signed them up with registration.*

An email dated November 3, 2023 at 3:39 p.m. from the special education director to the mother stated,

*After reviewing the incident and having a staff member with severe bodily harm sent to the hospital, we have decided to move forward with OSS until November 14th when we will reconvene and meet as a team. We will also conduct a MDR then since we will be near the 10 days of OSS at that time. I am contacting [student's] dad as well today...He will be notified of the meeting as well. We have been documenting the OSS days. You have requested previously that we contact you to let you know when [student] is having a crisis. Then you have been coming to the school and picking him up without OSS being assigned. The formal letters that you have received are the documented OSS days that we have. Any day that you have come to pick him up on your own without us giving him OSS is not OSS as we did not ask you to*

*come or take him. We are just following your request to be notified of his meltdown. I hope this helps with understanding.*

An email from the elementary teacher to the special education director on November 3, 2023 at 4:14 p.m. stated, "I have an email and phone number for his father. I will send the meeting notice via email since we have electronic consent and will text also as you directed for his mother."

An email dated November 3, 2023 at 5:20 p.m. from the elementary teacher to the mother and father stated, "Attached you will find a notice of meeting for an IEP (sic) meeting and manifestation determination review to be held on November 14, 2023 at 2:15 p.m. at [school's] Principal's office. A Google Meet Link will also be provided via email. A copy of your parent rights are also attached."

A text message from the elementary teacher to the father dated November 3, 2023 at 5:30 p.m. stated, "This is [elementary teacher] at [school]. I have sent an email including a meeting notice for an IEP and manifestation determination review for [student] November 14, 2023 at 2:15 p.m. at [school]. A separate email contains a calendar invitation and Google meet link to attend virtually. Please confirm receipt of the email meeting notice and parent rights. Thank you."

An email sent to the father on November 9, 2023 at 9:42 a.m. stated, "This is a friendly reminder that we will be meeting to hold an IEP and MDR meeting for [student] next week on Tuesday, November 14, 2023 at 2:15 p.m.

An email from the director of special education to the mother and father dated November 9, 2023 at 3:51 p.m. stated,

*The team can discuss various options, but one option on the table for moving forward with his education could include a 45 day change in placement or alternative education setting due to the severe bodily harm he inflicted on our staff member. The staff member also has the right to file criminal charges with the law against the student if they choose to do so from a personal standpoint due to the significant nature of the injury. I have seen situations where students are sent to juvenile detention centers in cases similar to this due to the applicable laws on the criminal side. That decision would not be up to his IEP team if that happened. That decision would come through the judge. If a 45 day change in placement for education occurs or an alternative education setting is determined, it would typically come directly through the hearing officer. Typically, I am the hearing officer as I function similar to the superintendent would at a school district. We will also be including the [home district] superintendent and [school] principal since he is enrolled as a [district] student.*

The Notice of Meeting dated November 10, 2023 proposed meeting for November 14, 2023 at 2:15 p.m. is addressed to father and included the Parent Rights document.

The father stated during an interview on December 17, 2023 that he received a copy of the Notice of Meeting for the November 14, 2023 meeting.

The father stated during an interview on December 17, 2023 that he attended the November 14, 2023 meeting.

The Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated November 14, 2023 stated, "Following the Manifestation Determination Review, held on 11/14/2023, [student] was placed in a 45 School Day Interim Alternative Educational Setting (this is not a parent consent item), due to serious bodily injury, and the team determined [student] will receive the following services and supports throughout this 45 School Day Interim Alternative Educational Setting. The team will reconvene, prior to the end of the 45 School Day Interim Alternative Educational Setting, to determine [student's] educational services and placement, upon the expiration of the 45 School Day Interim Alternative Educational Setting."

The PWN dated 11/14/23 showed the father was emailed a copy of the PWN on December 11, 2023.

The IEP dated 11/14/2023 and initiated 11/15/2023 recorded input by the father.

The parent communication log showed that a Google Calendar invite was sent to both parents for the IEP meeting on November 3, 2023 via email.

The parent communication log showed the Notice of Meeting and parent rights were sent to both parents via email in Webkids and by mail.

An email from the mother to the director of special education, the school psychologist, father and elementary teacher sent on November 14, 2023 at 9:53 p.m. stated, "I understand he has to be under a remote learning environment, I understand I have 3 days to appeal, you will have our determination by Thursday 11/16/23 by 5pm of which of 3 options you have given us. Which are [different school program] where he will still get provided ot, speech, etc through you guys, or zoom through [school], or you sending information and me being his para.

On November 16, 2023 at 4:04 p.m. the mother emailed the elementary teacher, the director of special education, the school psychologist, and father stating, "The decision that has been made is [student] will continue to what we are doing for now with [school] while I'll look into other options and speak with his doctor." As more information comes up with his doctor I will keep you guys informed.

Documentation showed that on November 30, 2023 the Occupational Therapist and elementary teacher checked on student progress with the mother and father.

## **Conclusion**

K.S.A. 72-3433(d)(1) states that on the date the decision is made to make a removal that constitutes a change of placement of a child with a disability the school must notify the parents of that decision, and provide the parents with a copy of the Parent Rights notice. The email exchanges between the district and the family show that the district notified the family of the student's suspension, provided the parents their procedural rights and arranged for a meeting on November 14, 2023 to conduct a manifestation determination. At this meeting, the decision was documented on a PWN that the behavior was not a manifestation of the student's disability, and the student received a 45 day interim alternative education setting through virtual instruction. Additionally, a schedule was determined for the student to continue to receive special education services during those 45 days.

In the case if parents are divorced, regardless of which parent has primary custody, the school must provide Prior Written Notice of any special education action to both parents. It is found in this case that the district provided prior written notice to both parents and both parents attended the November 14, 2023 meeting.

Based on the foregoing, *it is not substantiated* through IDEA that USD #382 failed to provide parent notice of school discipline or student behavior actions during the 2023-2024 school year.

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

1. **ISSUE ONE:** A violation of K.S.A. § 72-6115, K.S.A. § 72-3433(d), 34 C.F.R. § 300.523(a)(1) was not found, based on review of IDEA regulation and documentation. Corrective action is not required.



## **Right to Appeal**

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

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

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

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

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

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

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