

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #259  
ON APRIL 13, 2024

DATE OF REPORT MAY 14, 2024

This report is in response to a complaint filed with our office by -----, on behalf of her daughter, ----- . For the remainder of this report, ----- will be referred to as "the student." ---- will be referred to as "the student's mother" or "the parent." USD #259 will be referred to as "the district."

### **Investigation of Complaint**

The investigator spoke with the Erica Shores, Mediation and Due Process Supervisor for the district, on April 19, 24, and 2 and May 13, 2024. On April 30, 2024, the investigator spoke by telephone with the parent.

In completing this investigation, the complaint investigator reviewed the following materials:

- IEP for the student dated April 25, 2023
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated May 17, 2023
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated August 28, 2023
- Email exchange dated August 29 - 30, 2023 between the parent and a Families Together advocate
- Notice of Meeting dated September 1, 2023
- IEP and 504 Team Meeting Notes dated September 13, 2023
- IEP Amendment Form dated September 13, 2023 and accepted by the parent on October 9, 2023
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated September 13, 2023 and accepted by the parent on October 9, 2023
- Notice of Meeting dated October 24, 2023
- Multidisciplinary Team Report dated November 14, 2023
- Signature page for multidisciplinary team meeting of November 14, 2023
- IEP for the student dated November 14, 2023
- IEP & 504 Team Meeting Notes dated November 14, 2023

- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated November 14, 2023
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated November 15, 2023
- Notice of Meeting dated February 22, 2024
- Functional Behavior Assessment (FBA) dated March 5, 2024
- IEP for the student dated March 6, 2024
- IEP & 504 Team Meeting Notes dated March 6, 2024
- Signature page for March 6, 2024 IEP team meeting
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent dated March 25, 2024
- Letter dated March 25, 2024 from the principal to the parent
- Email exchange dated March 27 - 28, 2024 between the parent and the student's case manager/special education teacher
- On-line calendar for the district for the 2023-24 school year
- General education student contact log covering the period of August 13, 2021 to April 29, 2024
- Email dated April 19, 2024 from the parent to the art teacher for the student's school
- Special education student contact log
- USD 259 Attendance Reporting Procedures for Inexcusable Absences
- District Truancy Brochure including USD 259 Board Policy 1461 Reporting Process - Pupils Not Attending School And Inexcusably Absent Pupils (Truant)
- Screenshot of amended Discipline Profile for the student

### **Background Information**

This investigation involves an 8-year old girl who is completing the 2nd grade in one of the district's magnet schools. According to the parent, the student has been given a diagnosis of Level 3 Autism Spectrum Disorder (ASD), the most severe form of the disorder. ASD level 3 is characterized by severe challenges in social communication as well as extremely inflexible behavior and difficulty coping with changes in routine. Changing focus from one activity to another may be very difficult and cause significant distress. Children with level 3 autism are generally nonverbal or have the use of only a few words of intelligible speech. Initiation of social interaction is typically very limited.

An evaluation conducted by a private children's hospital in May of 2019 determined that the student met criteria for a diagnosis of global developmental delay with delays in cognitive, receptive, and expressive language.

According to the parent, the student also struggles with sleep regression problems and has been diagnosed with Anxiety.

The student did not attend preschool. In August of 2021, the parent requested that a special education evaluation of the student be conducted. At the time, the student was receiving outside speech and occupational therapy

During the 2022-23 school year, the student was enrolled in a Mixed Abilities classroom where the majority of the students had been diagnosed with autism. At the beginning of the 2023-24 school year, following a relocation of the family, the student transferred to her current school where she initially enrolled in a general education classroom but shortly thereafter moved to a Mixed Abilities classroom. The student also receives services from a speech/language pathologist, an occupational therapist, and an adapted PE teacher.

## **Issues**

In her complaint, the parent alleges multiple violations of FAPE (the provision of a free appropriate public education).

### **Issue One**

The district was unprepared to meet the needs of the student at the start of the 2023-24 school year which resulted in the student missing three days of special education services. Additionally, the district altered and falsified attendance records to show that the student had been suspended from school for these three days.

#### **Parent's Position**

The parent asserts that she was asked by the building principal to keep the student out of school because staff was unprepared to meet the student's needs. According to the parent, these days were incorrectly coded in the student's attendance report as "suspensions" even though the parent had been assured that the student had in fact not been suspended. It is the position of the parent that the student's attendance records were altered to inaccurately reflect that the student's behavior resulted in a disciplinary consequence that led to her absence.

#### **District's Position**

The district stipulates that required special education services were not provided on the student's first two days of attendance during the 2023-24 school year.

#### **Applicable Statutes and Regulations**

Federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. Federal

regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special education and related services provided in conformity with an Individualized Education Program (IEP).

The Family Educational Rights and Privacy Act (FERPA) gives a parent the right to request that a school change educational records regarding their child which the parent believes to be inaccurate or misleading. If the school decides not to amend the record, the parent has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent has the right to place a statement with the record setting forth his or her view about the contested information.

### **Investigative Findings**

Both the parent and the district confirm that the parent visited the student's current school on August 16, 2023, one day following the start of the district's academic year. The parent told the principal that the student would be coming to the school, and the principal provided the parent with a tour of the building. According to the principal, the parent was shown a third grade classroom, a resource room, and the Mixed Abilities classroom. The parent asked when the student could start school and was told that the student could start on August 17, 2023.

Staff at the school was initially unaware of the student's need for a special education placement. When the student arrived at school on August 17, 2023 she was placed in a general education 2nd grade classroom, but staff quickly determined that the student was non-verbal and needed the support of the Mixed Abilities classroom. Throughout the morning, the student was running from the building, onto the playground and into the parking lot. The principal contacted the parent around noon explaining that the school needed time to review the student's IEP and put a plan in place to keep the student safe. The principal told the parent that the student could return to school on Monday, August 21, 2023. The parent asked whether the student was being suspended and was assured that she was not, that the school needed more time to put the student's IEP in place.

The district subsequently determined that the two days when the student did not attend school at the request of the principal should not be coded as excused absences. This was because the district wanted to ensure that those two days would count toward the 10-day maximum the district could remove a student with a disability from school before a manifestation determination hearing would be required and special education services would have to be provided during the period of the student's removal. The school subsequently changed the reporting code for these two days as out-of-school suspensions.

On August 29, 2023, the student arrived at school but would not go to her classroom. Instead, she laid down on the floor of the office. Both the student's mother and her father (who lives out of state) were contacted to try to solicit their help in moving the student. After being unable to reach the student's mother, the principal sent staff to the student's home. The parent then came to the school and took the student home.

The district acknowledges that the coding change related to the student's August 17, 18, and 29, 2023 absences was not reported to or explained to the parent at the time the change was made. A screenshot provided by the district on May 13, 2024 shows that the district has amended the Daily Attendance record for the three August dates. The record includes an "Attendance Note" which reads

*"Principal approval - requested parent keep student home on August 17 and 18 because the school needed additional time to prepare to serve the student appropriately. Principal-excused absence for August 29 removal."*

The student's educational records previously included a "Student Discipline Profile" documenting incidents on August 17 and 18, 2023 and another for August 29, 2023. As shown in a screenshot provided by the district to the investigator on May 13, 2023, these incidents have been deleted from the student's profile.

In an effort to resolve this complaint, the district offered a proposal to the parent to provide the student with 3 days of compensatory service to address the lapses in service for August 17, 18, and 29, 2023. As of the writing of this report, the parent had not agreed to the district's proposal. An IEP team meeting is scheduled for May 22, 2024 at which time the parent will be provided with a formal offer of compensatory services.

### **Summary and Conclusions**

For two days at the beginning of the 2023-24 school year, the district was not prepared to ensure a safe learning environment for the student to receive the special education services required by her IEP. On these two days the district asked the parent to keep the student at home while staff made preparations to appropriately serve the student. On a third day in August 2023, the parent was called to the school to assist staff in moving the student from the office. Though the parent was not directly asked to take the student home, the district did not contest the parent's choice to do so. The district stipulates that the student is entitled to compensatory services for these three days.

Because the student was for three school days not provided with the special education services required by her IEP, a violation of special education statutes and regulations *is substantiated* on this aspect of this issue.

With regard to alleged FERPA violations, the district has amended the student's educational records to accurately reflect the reason the student did not attend school for the three days in August 2023 addressed under this issue. Incident reports for these 3 days which were previously included in the student's record have been removed. If the parent does not agree with these changes, she may request a hearing. No other action will be required related to this aspect of this issue as a result of this investigation.

## **Issue Two**

The district failed to consider the student's disability when reporting the student as truant.

### **Parent's Position**

It is the position of the parent that the district failed to consider the student's sleep regression diagnosis when determining that the student to be truant

### **Applicable Statutes and Regulations**

The Kansas Compulsory School Attendance Law (K.S.A. 72-3120) places responsibility with school boards of education to determine the validity of excuses for absences and to designate one or more employees as responsible for notifying the Department of Children and Families (DCF) or the county/district attorney of unexcused non-attendance (K.S.A. 72-3121).

At K.S.A. 72-3121(c)(1), statutes establish guidelines regarding when the inexcusable absence of a student must be reported (three consecutive school days or five school days in any semester or seven school days in a school year, whichever occurs first). A student is considered inexcusably absent if he or she is absent for all or a significant part of a school day without a valid excuse acceptable to the board designated reporter. Prior to making a report, the designated employee of the board must notify the parent that continued failure of the student to attend school without a valid excuse will result in a report being made to the secretary for children and families or to the county or district attorney (K.S.A. 72-321(d)).

### **Investigative Findings**

In order to comply with state requirements, the district has established policies regarding reporting procedures for inexcusable absences (Board Policy 1461). The policy establishes the "3, 5, 7 Rule" which mirrors state requirements regarding the number of days of inexcusable absences. The policy defines "substantial part of the school day" for an elementary student as being "inexcusably absent one and one half hours in either the morning or afternoon of a school day."

Board Policy 1461 defines a "valid excuse for absences" as

1. Medical or dental treatment, examination or recuperation;
2. Death/serious illness in immediate family;
3. Approval by school authorities, secured prior to the absence;
4. Circumstances or conditions which, in the opinion of the attending school principal or designee constitutes a valid excuse; and
5. Under the law (ICEOMC), WPS may grant up to 5 days excused absences per school year for a military-connected student whose parent or guardian is an active duty Guard or Reserve member who has been called to duty for, is on leave from, or is immediately returned from deployment to a combat zone or combat support posting; if absence is

preapproved; student is in good standing; student has a prior record of good attendance; missed work is completed and turned in within allotted time period; and the absence is not during standardized testing dates.

According to a document entitled "USD 259 Attendance Reporting Procedures For Inexcusable Absences" provided by the district, Board Policy 1461 includes the following notation:

*"Students accumulating more than 12 days/96 periods of illness will be considered to have excessive absences and will be required to provide a doctor's note for all future absences OR be recorded as truant/inexcusably absent."*

The "Family Handbook" for the student's school provides direction as to the "Notification of an Absence." As stated in the handbook,

*"Parents/Guardians of students absent from school are to call the attendance line...by 9:15 AM the day of the absence. Please leave the following information on voice mail:*

- *Identify yourself*
- *Student's name and grade*
- *Date(s) of absence*
- *Reason for absence (please be specific i.e. doctor's appointment, illness, out of town, etc...)*

*Absence will only be excused for the following reasons:*

- *Illness*
- *Doctor's or dentist's appointments*
- *A family death or serious illness*
- *Court/judicial appearance*
- *Religious observations*
- *School sponsored activities*

*All other absences (other than those listed above) are unexcused unless approved by a principal prior to the absence..."*

According to documents provided by the district and the parent, the student did not attend school for all or part of 36 days between August 17, 2023 and April 18, 2024. Three of these days fell within the first full month of the school year and have been discussed above under Issue One. For all but 6 of the remaining 28 days, the student's absences were excused for reasons including illness, weather, or medical/dental or were listed as "school related" or "early out." Two absences had been previously approved. By January 23, 2024, the student had accumulated 12 days of absence due to illness.

According to the Mediation/Due Process Supervisor for the district, while the parent continued to report absences due to the student's illness after the student had missed 12 days of school during the 2023-24 school year, the school did not have a doctor's note on file and began counting the student's absences due to illness as unexcused.

According to the district, front office staff at the student's school informed the parent of the need for a doctor's note when the parent called to report the student's absence on each of these 6 days.

Six absences - all falling between January 24 and March 4, 2024 - were shown as "Truant/Inexcusable." These included absences on the following dates:

- January 24, 2024,
- January 25, 2024,
- January 26, 2024,
- February 7, 2024,
- February 28, 2024, and
- March 4, 2024.

Records provided by the district show that the student attended school for 210 minutes (out of a 390 minute school day) on 4 of the 6 unexcused days.

On March 25, 2024, the building principal sent a letter to the parent stating

*"The Compulsory Attendance Law enacted by the legislature of the State of Kansas requires that the school report to the Department for Children and Families (DCF) and to the Kansas Commission of Education the names of non-attending (truant) pupils with inexcusable absences. A truant pupil is a student who has missed, inexcusably, a substantial portion of three (3) consecutive days from school, five (5) days in a semester, and/or seven (7) days in a school year."*

The record shows that three of the "truant/inexcusable" absences fell on consecutive days (January 24-26, 2024) and all 6 "truant/inexcusable" absences fell within the second semester of the 2023-24 school year, thereby triggering the required reporting.

During a telephone call with the investigator on April 30, 2024, the parent stated that she had provided the district with a "Letter of Medical Necessity" dated March 8, 2023 which had been written by a treating physician on the topic of the student's "Sleep Regression Cycles."

According to the parent, she had presented the letter to the "front desk" staff at the student's previous school in the Spring of 2023.

This letter was discussed during an IEP team meeting on November 14, 2023 in reference to the student's need for extended school year services. According to meeting notes, the parent "offered to send [the letter] over." When this complaint (which included a copy of the letter) was received by the district, staff from the student's current school attempted to track down the copy of the letter provided during the 2022-23 school year, and contacted the student's previous school of attendance. However, the letter was not found.

As stated in the March 8, 2023 Letter of Medical Necessity which was provided by the parent,

*"...triggers include a break in her Academic routine, requiring additional time resources, and accommodations in order to help her manage symptoms related to her Anxiety and Autism."*



*The sequence of her Sleep Regression cycles vary depending on the length of the break in routine. Winter Break for example may require several weeks to adapt and adequately adjust [the student's] needs to fit into her usual Academic Routine.*

*Her Summer Break magnifies the recovery time by at least 3 times the amount needed to recover.*

*Symptoms related to an ongoing sleep regression cycle include behavioral changes including irritability, elopement, regression in day to day tasks, and an accumulating bout of Anxiety that has caused a negative shift in her ability to communicate her needs.*

*The primary goals for the requested accommodations are to include but not be limited to, additional time to adjust to her Academic routine after extended breaks. This may include but not be limited to excusing tardiness, as [the student] requires additional rest and accommodations to be fully prepared to attend to a full school day."*

None of the dates of unexcused absence fell after a school break (Winter Recess, Spring Recess, etc.) Only one unexcused absence occurred on a Monday.

The "Medical information/Health Summary" portion of the "Special Considerations" section of the student's April 25, 2023 IEP and all subsequent revisions of the IEP made thus far during the 2023-24 school year have included the following statement:

*"Diagnosis: Level 3 Autism Spectrum Disorder and sleep regression"*

The student does not have a Health Care Plan, and none of the IEPs which have been implemented for the student during the 2023-24 school year require any specific accommodations related to sleep regression.

### **Summary and Conclusions**

While all of the IEPs in place for the student during the past 12-month period covered by this complaint have included a reference to the student's autism diagnosis and related sleep regression, none of these IEPs have specified any accommodations associated with sleep regression. The Letter of Medical Necessity provided by the parent when submitting this complaint speaks to sleep regression problems associated with extended breaks in school routine, but none of the student's unexcused absences occurred after such a break.

The parent consistently complied with district policy and reported the student's absences. Records show that until the student had accumulated 12 absences due to illness, absences due to illness were excused. However, once these absences had reached the 12-day total for the school year, the district began counting additional absences reported by the parent as due to illness as trancies since the school did not have a required doctor's letter on file.

The district met its responsibility for developing policies regarding the reporting of truancy in compliance with the Kansas Compulsory School Attendance Law. Requirements regarding the

reporting of truancy in Kansas apply to all students and do not fall under special education statutes and regulations. The student's IEP does not require any accommodations or modifications regarding the application of state truancy reporting requirements for this student because of her sleep regression. Under these circumstances, a violation of special education statutes and regulations *is not substantiated* on this issue.

### **Additional Comments**

In an effort to resolve this aspect of this complaint, the district committed to meeting with the parent to review the content of the Letter of Medical Necessity and to review the report of truancy in light of that discussion.

### **Issue Three**

The district has failed to provide the student with a FAPE because it has, during the 2023-24 school year, denied the student opportunities to participate with general education peers in "special" classes, lunch and recess.

### **Parent's Position**

The parent asserts that she was unaware until March of 2024 that the student was not participating in art, music, PE, lunch, and recess with general education students. It is the position of the parent that by keeping the student in the mixed abilities classroom for the majority of her school day, the district has restricted the student's ability to work on social goals. The parent also contends that the FBA conducted by the district was invalid because it did not include data taken while the student was participating in her special classes.

### **Applicable Statutes and Regulations**

As noted above under Issue One, federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. Federal regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special education and related services provided in conformity with an Individualized Education Program (IEP).

Educational placement refers to the educational environment for the provision of special education and related services rather than a specific place, such as a specific classroom or school (K.A.R. 91-40-1(t)). For children with disabilities, the special education and related services must be provided in the environment that is least restrictive, with the general education classroom as the initial consideration. The decision must be based on the child's needs, goals to be achieved, and the least restrictive environment for services to be provided. Least restrictive environment (LRE) means the child is provided special education and related

services with peers who are not disabled, to the maximum extent appropriate (K.A.R. 91-40-1(II)). The group of persons determining placement must consider how the child with a disability can be educated with peers without disabilities to the maximum extent appropriate, and how he/she will participate with children without disabilities in other activities such as extracurricular and nonacademic activities.

### **Investigative Findings**

An annual review of the student's IEP was conducted on April 25, 2023. The review was conducted by a properly constituted IEP team which included the parent and a parent advocate. According to the "Statement of Special Education/Related Services section of the student's April 25, 2023 IEP (which remained in place for the start of the 2023-24 school year):

*"[The student] will receive all her daily special education services in the special education setting participating without non-exceptional peers to work on her IEP goals, functional academics, curriculum based on extended standards, and daily living skills. This will include visual supports, works systems and access to her communication book for lunch, recess and any class or school assemblies or field trips, during which she will be with non-exceptional peers. [She] will receive attendant care services during lunch and recess [and] will have the opportunity to attend PE, Music, Library, and Art with grade level peers with para support...direct OT services 15 min one time a week. This may be pull out service or in classroom individual or group service...[and she] will receive adapted PE (2 times weekly for a total of 40 mins). [The student] will have direct Speech-Language services 30 minutes weekly, typically this will be served in 2-15 minute or 3 10-minute sessions, but this may vary based on need."*

According to the district, the student was offered opportunities to participate in specials (art, PE, library, and music) beginning with her first week of attendance for the 2023-24 school year. At that time, the student would leave her classroom but would then drop to the floor and refuse to get up - generally for the duration of the special class period.

An IEP team meeting regarding the student was held on September 13, 2023. The parent attended the meeting virtually. Notes from the meeting show that strategies had been put in place to reduce opportunities for the student's elopement from the classroom. The notes state that the student was being provided with para support for lunch and recess, but "both [were] being done in the classroom due to concerns of elopement."

Throughout the first quarter of the school year, the student participated in Adapted Music twice weekly in her Mixed Abilities classroom with her classmates. Additionally, she received Adapted PE services as specified in her IEP.

While opportunities continued to be available for the student to participate in specials into November 2023, it became common for the student to refuse to leave her classroom. When the time came for the student to leave the classroom for a "special" class, she would drop to the floor and refuse to get up.

A meeting was conducted on November 14, 2023 for the purpose of reviewing the results of a reevaluation that had been requested by the parent. Notes from that meeting (which was attended remotely by the parent), describe an incident when the student had gone to another classroom for adapted music supported by a paraeducator and then resisted returning to the Mixed Abilities classroom. The general education music teacher who was present for the meeting reported that the student had come to her class once since the beginning of the school year. Meeting minutes reflect that the student would

*"...spend the majority of her day in a mixed abilities classroom. She has para support during lunch, recess and specials. The team offers specials to [the student] but [she] often does not want to go."*

The student's IEP was reviewed and revised on November 14, 2023. Under the section of the IEP entitled "Statement of Special Education/Related Services," the IEP states that

*"[The student] will receive attendant care services during lunch and recess [and] will have the opportunity to attend PE, Music, Library and Art with her grade level peers with para support."*

According to the "Least Restrictive Environment (LRE)" section of the student's November 14, 2023 IEP,

*"[The student] will not participate with non-exceptional peers when receiving services in a mixed abilities classroom. She may participate with General Education Peers during non-academic activities with special education support."*

According to the prior written notice form signed by the parent on November 19, 2023,

*"The team believes the data shows [the student's] least restrictive environment is spending the majority of her day in a mixed abilities classroom participating with non-exceptional peers. [The student] will be offered participation with non-exceptional peers during recess, lunch, and specials. [She] will receive para support during those times."*

The meeting notes also reflect that there had been "an uptick in peak behavior, i.e. dropping to the floor and refusing to move or eloping." The school team wanted to "open a Functional Behavior Assessment to detail what is driving her elopement and developing a plan to prevent peak behavior" - behavior that was limiting the student's ability to participate in special classes and other general education activities. The parent gave written consent for a "limited scope reevaluation" on November 19, 2023.

Baseline data for the FBA was taken during the period of November 20 through December 14, 2023 focusing on the target behavior of elopement. Interventions were developed and implemented during the period of November 20, 2023 through January 26, 2024. The FBA was reviewed on March 6, 2024 in a meeting attended by the parent and her IEP advocate. Under the section entitled "Review of Existing Data," it was noted that

*"Attempts are being made to get [the student] to participate in grade level specials with general education peers. [The student] often becomes overwhelmed and will elope specials or drop to the ground in the hallway to indicate refusal to go to specials. Music is the most successful at this time."*

In an April 30, 2024 telephone call with the investigator, the parent stated that she did not believe the Functional Behavior Assessment to be valid since it did not include observations of the student during specials.

Notes from the March 6, 2024 IEP team meeting show that the parent asked about the student's participation in specials and about the support system in place to address elopement. The school psychologist noted that since elopements had decreased, a behavior goal for "increased participation for leaving the classroom would be a good idea...being able to attend specials for half the time."

The district proposed adding a Behavior Plan to the student's IEP as well as an annual goal to address the student's transitions to and participation in "instructional and/or recreation activity locations outside the classroom, 50% of all opportunities per week" without elopement or avoidance behaviors. At the time this goal was proposed, the student was - according to the proposed IEP - making appropriate transitions 33% of the time.

As of the writing of this report, the parent has not given her written consent for the district to implement the behavior intervention plan or the behavior goal, telling the Mediation/Due Process Supervisor for the district that services should continue to be provided to the student under the provisions of her November 19, 2023 IEP.

The section of the proposed March 2024 IEP entitled "Statement of Special Education/Related Services" continued to show that the student would receive attendant care during lunch and recess and stated that the student would "have the opportunity to attend PE, Music, Library, and Art with grade level peers with para support."

The "Least Restrictive Environment (LRE)" section of the proposed March 2024 IEP states that the student "may participate with General Education peers during non-academic activities with special education support."

Upon returning from Spring Break, records provided by the district show that the student's participation in specials increased significantly and that there were only two occasions of elopement that resulted in the student being brought back to the mixed abilities classroom.

Throughout the 2023-24 school year, the student has been provided with lunch. On days when the student refused to leave her classroom to go to the cafeteria, the student's lunch was brought to her in the mixed abilities classroom. Attendant care was provided to the student for lunch regardless of the setting.

In an email on March 28, 2024, the student's IEP Case Manager/special education teacher stated that the district "started last Monday the 18th with taking [the student] to afternoon recess."

### **Summary and Conclusions**

The student's April, September, and November 2023 IEPs have stated that the student would have opportunities to participate in classes and activities with general education peers. None of these IEPs specify how much time each day the student was required to spend with general education students.

In an effort to better understand the elopement and resistance behaviors that were interfering with the student's participation in special classes and other general education activities, the district obtained parental consent to complete an FBA. The parent contends that the FBA was not valid because the district did not include in the assessment data taken while the student was attending a special class. However, the focus of the FBA was on behaviors that were occurring at the time the student was leaving her mixed abilities classroom to go to a general education opportunity and were limiting her participation in general education opportunities.

At the March 6, 2024 IEP team meeting, the district proposed adding a behavior plan and a behavior goal that would move toward the student's participation in half of the general education opportunities available to her. The parent did not agree to the addition of that goal and has stated that the student should continue to be served under the provisions of her November 19, 2023 IEP.

Evidence presented in the course of this investigation shows that the student has been presented with opportunities to participate in classes and activities with general education peers, but the student's refusal to leave her mixed abilities classroom or her failure to safely and successfully transition to alternate settings have frequently kept her from taking advantage of those opportunities. A violation of special education statutes and regulations *is not substantiated* on this issue.

### **Corrective Action**

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations on an issue specified in this complaint. Specifically, a violation was substantiated with regard to 34 C.F.R. 300.101 and 34 C.F.R. 300.17 which require the provision of a FAPE through conformity with a student's IEP. In this case, the district failed to provide the student with special education services for three days during the first month of the 2023-24 school year.

Therefore, USD #259 is directed to take the following actions:

1. Submit to Special Education and Title Services (SETS) by no later than May 29, 2024, a written statement of assurance stating that it comply with 34 C.F.R. 300.101 and 34 C.F.R. 300.17 by providing special education services in conformity with the student's IEP.
2. By no later than June 14, 2024, USD #259 shall provide the parent with a plan for the provision of 3 days of special education service to compensate the student for services missed on August 17, 18, and 29, 2023.
  - a. The parent shall have the option of accepting or rejecting the district's proposal.
  - b. The parent shall notify the district of her decision to accept or reject the district's plan within 3 business days of the date the plan is presented to her by the district.
  - c. The district shall provide SETS a copy of the proposed plan within 5 business days of the day the proposed plan is presented to the parent and shall at that same time notify SETS of the parent's decision.

Further, USD #259 shall, within 20 calendar days of the date of this report, submit to SETS one of the following:

- a) A statement verifying acceptance of the corrective action or actions specified in this report;
- b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
- c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51(f).

### **Investigator**



Diana Durkin

Complaint Investigator

## **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)