

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #469  
ON OCTOBER 9, 2023

DATE OF REPORT NOVEMBER 9, 2023

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

The complaint is against USD #469, Lansing Public Schools. In the remainder of the report, USD #469 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 9, 2023, and the 30-day timeline ends on November 9, 2023.

### **Evidence Reviewed**

During the investigation, the Complaint Investigator, Dr. Donna Wickham interviewed the complainant on October 15, 2023. The Complaint Investigator requested six additional individuals be interviewed with information about this investigation - the parents of additional students in the district (phone interview with 2 parents, left message and was unreturned of 3rd parent), two previous employees (phone interview with one and phone not answered and no answering machine with second) and a Child Protective Services Investigator (phone interview). The complainant and Complaint Investigator further exchanged emails between October 15 and November 11, 2023.

The Complaint Investigator conducted a group phone interview with the school principal, assistant school principal, Special Education Coordinator and Special Education Director on October 30, 2023. The Special Education Director and Complaint Investigator exchanged emails between October 14, 2023 and November 8, 2023.

Finally, the Complaint Investigator 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. Individual Education Plan (IEP) dated December 6, 2022, includes Functional Behavior Assessment report, Behavior Intervention Plan, Crisis Plan
2. Emergency Safety Intervention Board Policy revised July 10, 2023

3. Student Discipline Report dated between August 25, 2023 through October 23, 2023
4. Emergency Safety Intervention report dated September 1, 2023 at 10:05 AM
5. Emergency Safety Intervention report dated September 1, 2023 at 10:09 AM
6. ABC Data Descriptions dated September 4, 2023-October 2, 2023
7. Emergency Safety Intervention report dated September 8, 2023 at 10:41 AM
8. IEP amendment dated September 22, 2023
9. Prior Written Notice, signed by grandmother dated September 22, 2023
10. Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated October 2, 2023 (from September 22, 2023 meeting)
11. Email from Special Education Coordinator to parent dated October 12, 2023 at 3:37 PM
12. IEP Team Meeting notes dated October 16, 2023 at 11:00 AM
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 October 17, 2023
14. Emergency Safety Intervention report dated October 20, 2023 at 9:43 AM
15. Emergency Safety Intervention Parent Feedback form and Parent Contact form, undated
16. Student Discipline Reports for the 2023-2024 school year through October 16, 2023
17. Attendance for the Student, 2022-2023 school year and 2023-2024 school year – October 16, 2023
18. Email from Special Education Coordinator to parent dated October 18, 2023 at 7:48 PM
19. Emergency Safety Intervention Reports for the Student for the 2023-2024 school year through October 20, 2023
20. District Response dated October 23, 2023
21. Student Progress Report dated October 27, 2023
22. Copy of Student's Class Schedule for the 2023-2024 school year

### **Background Information**

The student is a second grader in a multi-age self-contained classroom in a K-3 elementary school in the student's district. The classroom has three students with one teacher and one paraprofessional. The student is eligible for special education and related services as a student with developmental delays. He was diagnosed at a pediatric behavioral center with

oppositional defiant disorder - moderate, and attention deficit hyperactivity disorder - combined presentation- severe.

The student has an IEP in effect dated December 6, 2022 and amended on September 22, 2023. The IEP has a BIP and Crisis Management Plan. In addition, the student takes medication and has a health condition that necessitates monitoring his activity for breathing and during hot temperatures. According to the December 2022 evaluation the student demonstrates sensory processing skills delays including sensory sensitivity and sensory avoiding. Therefore, he may have difficulty participating in group settings where there is talking or other noises. He may fidget with whole body movements or appear disruptive when standing in line or close to other people.

The Functional Behavior Assessment (FBA) included in the IEP revised 9/22/23 conducted according to district staff about November 2022 included additional information, “[Student] has had 44 office referrals to date. He has had 6 Out of School Suspensions. [Student] has not been successful in the General Education classroom with a para, and is now receiving his instruction primarily in a Special Education setting with a one on one para. A plan has been put into place for re-integrating [Student] back into the Gen Ed classroom. Further, it is reported that “Data collection for 30 school days revealed 17 incidents of physical aggression (both towards adults and peers as well as property destruction). Antecedents to physical aggression includes unstructured activities (e.g., lining up, recess), not receiving immediate adult attention, a task demand (academic or non-academic). Data collection for the month of November [2022] indicates that dysregulated incidents range from 3 minutes up to 163 minutes. Consequences of behaviors include an adult 1. verbally redirecting 2. removing [student] to a recovery room to calm down and process.” The primary function of the behavior is listed as adult attention and the secondary function as demand. The hypothesis of the FBA is listed as, “During unstructured periods as well as academic periods in the general education classroom, when given a direction [Student] will become dysregulated (may look like: kicks items, throws items on floor, hangs on chairs, knocks chairs over, runs on tables, climbs shelf, breaks items, physically aggressive towards adults and peers, elopes from a classroom and/or the building, and/or uses profane language) which is followed by an adult interceding to help [Student] calm down. Therefore, the primary function of the behavior is to obtain adult attention, and the secondary function is to avoid a task demand.”

### **Issues Investigated**

1. **ISSUE ONE**: USD #469, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to follow the Student’s IEP, specifically the Behavior Intervention Plan during the 2023-2024 school year.
2. **ISSUE TWO**: USD #469, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to revise the IEP, including the

Behavior Invention Plan to address a lack of expected progress toward goals during the 2023-2024 school year.

3. **ISSUE THREE:** USD #469, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), conducted an assessment/evaluation with the Student without proper consent during the 2023-2024 school year.

### **Issue One**

USD #469, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to follow the Student's IEP, specifically the Behavior Intervention Plan during the 2023-2024 school year.

### **Applicable Law**

Federal regulations at 34 C.F.R. §300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

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

The grandparent alleged that the IEP is not being followed. She has expressed concern with the student's behavior and how it effects his access to the general education curriculum. She is concerned with the time spent in the recovery room and the classroom.

The district responds that the student's last annual IEP meeting was held on December 6, 2022 which also included a re-evaluation. The re-evaluation was conducted to determine the appropriate services and educational placement for the student and included a Functional Behavior Assessment and gifted cognitive and academic assessments. Re-evaluation results indicated a need to develop a Behavior Intervention Plan and he did not meet eligibility criteria for gifted services. The IEP team increased time from the prior IEP in special education classroom due to behavioral data indicating behaviors were interfering with his ability to participate in general education setting; his educational placement service minutes were updated to reflect self-contained placement with the behavior program with general education inclusion during specials and recess.

The district further responded that during the 2023-2024 school year the BIP has been followed within the self-contained behavior program in his school. The "reaction" section of the BIP indicates that when dysregulated and aggressive behaviors are occurring, he will receive services within the special education environment. His first discipline record for the 2023-2024

school year occurred on August 25, 2023, additional behavior data has been documented and shared with his guardians via a daily communication log.

The Behavior Intervention Plan included in the December 6, 2022 IEP and revised September 22, 2023 include prevention, replacement, and reaction strategies.

The student's IEP in effect on December 6, 2022 and again revised 9/22/23 includes 4 accommodations that address components of the BIP and include, 1) access to a more restrictive environment during lunch, either self- directed or teacher directed daily until the student is able to self regulate again; 2) access to a more restrictive environment either teacher directed or self directed whenever student is stressed or not in control of his emotions for the duration of the stressor; 3) access to sensory strategies and/or equipment to support self regulation needs/attention to task (e.g., body sock, mini-trampoline, hand fidgets, alternative seating, etc.) daily until his sensory needs are met; and 4) access to preferential seating daily until he is able to demonstrate attention to task." Parent and district report and documentation from discipline referrals dated August 25, 2023, August 29, 2023 (twice), August 31, 2023 (access) September 5, 2023, showed the more restrictive environment (recovery room) was used. Beginning September 9, 2023 discipline records report the student had access to a more restrictive environment. No documents or data were provided to demonstrate implementation of Accommodations 3 and 4.

Prevention strategy 1) receive direct instruction in Behavior Management as well as Social Skills. The 2023-2024 student schedule included 30 minute blocks for each topic twice each week. One of the teachers has a schedule with these times.

Prevention strategy 2) Use of a token economy. The district staff and long term substitute agreed that a token economy was implemented for the student to earn tokens to receive recess time with 2nd general education students. This was later refined to receive recess time with 3rd grade general education students which was reported as more reinforcing. No data were provided as to how often the student earned recess.

According to the Child Complaint on September 28, 2023 "In person conversations with admin [administrators] on the antecedent to the behavior; nobody could provide a specific answer other than [principal] saying he became dysregulated during transition that correlated with recess time. I specifically asked each person if he was being denied recess and nobody would answer that question. I was at the school because I was called to see if I could assist calming [student] down after he left the building, crossed the playground, and climbed the fence (fence climbing was not disclosed by staff) and was hitting yelling and using profanity."

Prevention strategy 3) Use of teacher initiated/student requested break system. No evidence was provided for this prevention strategy.

Prevention strategy 4) Use of visuals (coping skills that have been pre-taught as well as size of the problem/reaction) No evidence was provided for this prevention strategy.

Replacement strategy 1) Use of coping skills to match [student] 's emotional state Ability to match size of reaction to size of problem Ability to process with staff when at behavior baseline (regulated) No evidence was provided for this prevention strategy.

The IEP includes one goal, that during the school day the student will be able to use socially acceptable, self control skills (breathing, pausing and relax) when he becomes upset, mad, or frustrated 80% of all opportunities. His baseline is listed at 41%. The progress reports for Quarter 1, dated October 27, 2023 do not report progress on this goal.

Reaction strategy 1) When a directive is given to [student] (in a small group or one-on-one setting), first, gain his attention - can be a nonverbal (e.g., making eye contact and proximity). Give him one-step directions (First you will sit in your seat then complete this worksheet). Give [student] approximately 10 seconds to comply before giving one redirect. If [student] begins the work, give him a token paired with high specific social praise. (e.g., I like the way you are listening to directions the first time and started working - you have 2 tokens now, you only need one more for a break). If [student] does not begin his work - redirect verbally. If [student] continues not to comply , give him a choice of working in his current setting, or moving to a more restrictive environment, providing visuals with pre-taught coping skills. If [student] refuses to move to the next more restrictive environment, staff will call for administration to assist. When [student] is moved to a recovery room, the Processing Protocol will be completed. The Processing Protocol that will be used will include (but not limited to): discussing a sequential series of events, taking perspective of others in the situation, behavior mapping of the situation, engaging in restitution justice. As [student] becomes more successful, the number of tokens needed for a break should increase, gradually fading the number of breaks needed. Evidence was only provided about the use of the recovery room. No evidence was provided about the steps leading up to the use of the recovery room nor the process that follows.

According to the Child Complaint the grandmother wrote that on September 14, 2023 “when asked about his day, specifically his morning, [student] spoke of attempting to go out the window after entering the Recovery Room with [staff 1] and [staff 2]. I asked him if anyone tried to stop him from going out the window and he said that [staff 1] physically restrained him. I asked him to show me how and he demonstrated a 2 arm hold of his torso from behind and said his arms were outstretched toward the window”. Further, “[Student] has previously told me of a para walking behind him with her hand on his shoulder upper arm guiding him to the padded room at the back of the seclusion room, not shutting the door instead physically standing in the door from preventing him from walking out. I believe this may have been one of his suspensions days as he tried to shove his way past her.

According to the Child Complaint the grandmother wrote that on September 27, 2023 the student and complainant were “directed to it (seclusion room) for him to complete work on this day and he got very upset at the mere mention of being told to go there.”

An interview with a long-term substitute who instructed the student beginning November through mid-August 2023 was conducted November 7, 2023. During the interview, the long-term substitute stated that he observed that using the recovery room only escalated the student. He stated that instead he formed a relationship with the student and was able to manage the student's behavior through respect and holding high expectations. Additionally, although the student did not qualify for gifted services, he often got access to higher grade materials to extend the grade level curriculum and challenge the student.

An interview with the parents of another student in the same classroom observed the student of this investigation began to display dysregulated behavior and the staff responded by telling the student to stop and when he did not stop allowed him to become more agitated and then called the office to have the student picked up by the parent.

According to the September 22, 2023 IEP amendment the following BIP revision was made.

"[Student] will have non-contingent rapport building time 2x per week for 10 minutes with his general education teacher for his grade level. After the team has determined that rapport has been established, pending safety criteria below, [student] will be able to join 15 minutes of the afternoon math group in the general education setting, with the same teacher. He will get to choose coming in for the first or second half of the group and that will be his schedule. Criteria for attending the general education math group: [student] will exhibit safe behavior for the entire 1 hour leading up to math group time. Safe behavior includes staying in his designated learning space (no eloping), appropriate language (no profanity or otherwise inappropriate language), and safe body (no physical aggression or property destruction)." It was reported that this has not been implemented due to scheduling logistics with the teacher. Once the logistics have been worked through the district reports it will be started.

The IEP dated December 6, 2022 and revised September 22, 2023 indicated that a Crisis Management Plan was warranted and included use of recovery room or emptying a classroom if student becomes physically aggressive toward staff or peers. The crisis plan then listed a contact list for additional support and an emergency plan including calling 911. Discipline referrals and ESI records demonstrate these instances. The complainant and district staff agree the crisis plan was implemented although the complainant expresses concern that not all instances were reported.

The IEP dated December 6, 2022 and IEP amended on September 22, 2023 lists 50 minutes of special education service 5 days every week in the general education/inclusion setting for electives/specials; 5 minutes of special education service 5 days every week in the special education/resource/pull-out setting for triage; 30 minutes of special education service 2 days every week in the special education/resource/pull-out setting for social skills; 30 minutes of special education services in the special education/resource/pull-out setting for behavior management; 8 minutes of nursing service 5 days every week in the general education/inclusion setting for medication; 30 minutes of attend care in general

education/inclusion 5 days every week for recess; 265 minutes of special education service 5 days every week in the special education/resource/pull-out setting for core subjects; and 15 minutes of indirect (consultation) occupational therapy services every quarter.

The district reported in their October 23, 2023 response that “the IEP team increased time (compared to the prior IEP written on 3/29/22) in the special education classroom due to behavioral data indicating behaviors were interfering with his ability to participate in the general education setting; his educational placement service minutes were updated to reflect self-contained placement within the behavior program with general education inclusion during specials and recess.”

The district reported during their interview on October 30, 2023 that the student receives his services in a multi-age self-contained program of 3 students in a K-3 elementary school with a teacher and two paras available to the student. This is confirmed by the September 22, 2023 PWN and October 16, 2023 IEP team meeting notes that discuss re-integrating the student back into general education classes. The student’s schedule for the 2023-2024 school year shows his day beginning at 8:00 a.m. (breakfast and break) with instruction (morning meeting) beginning at 8:45 a.m. and dismissal at 3:25 p.m. summing to 440 minutes of time the student is at school daily. According to the service minutes the student is receiving a total of 88 minutes daily in the general education/inclusion setting for recess, specials or nursing services and 330 minutes daily in the special education setting for triage, social skills, behavior management and core instruction for a total of 418 minutes of service daily.

## Conclusion

There are both procedural and substantive violations of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2).

Procedurally, the district’s response to the Child Complaint stated that they increased time for the student in the special education setting on or about March 29, 2022 in response to data showing increased student behavior, however the December 6, 2022 IEP and September 22, 2023 IEP amendment show no change in service minutes in sped/resource/pull-out or general education/inclusion settings. Further, the September 22, 2023 and October 16, 2023 documents IEP team discussion about the logistics and conditions for the student to re-integrate back to general education classes.

Substantively, there was no documentation or data provided on the preventative, replacement, and some precursor steps of the reactive phases of the behavior intervention plan. Based on the foregoing, *it is substantiated* that USD #469 failed to follow the Student’s IEP, specifically the Behavior Intervention Plan during the 2023-2024 school year.



## **Issue Two**

USD #469, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to revise the IEP, including the Behavior Intervention Plan to address a lack of expected progress toward goals during the 2023-2024 school year.

### **Applicable Law**

Federal regulations and Kansas statutes at 34 C.F.R. 300.324(b)(1)(A), and K.S.A 72-3429(f)(2), states the IEP team should revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate.

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

The findings of Issue One are incorporated herein by reference.

The complainant alleged that the student's behavior continues to worsen and while the IEP team has met twice during the 2023-2024 school year the district is focused on reducing his time in the general education setting, using a recovery room in spite of it not working, reducing his school hours, or considering out of district placement.

The district responded that the IEP team met on September 22, 2023 to amend the IEP including the behavior intervention plan and discuss additional concerns presented by his grandmother. The amendment revised the BIP to include a general education reintegration plan. The amendment paperwork was signed on October 16, 2023 during a meeting with the grandmother to discuss additional concerns including discussing the contents of his current BIP.

The investigation of Issue 1 found that the Behavior Intervention Plan was not implemented.

The IEP team meeting notes and PWNS from both IEP meetings held during the 2023-2024 school year, discipline reports and ESI reports from the 2023-2024 school year show that the IEP team agree that the student is not progressing with the current IEP/BIP.

Interviews with the complainant and district show agreement that the student is not progressing with the current IEP/BIP.

### **Conclusion**

Based on the foregoing, it is found that the district recognized that the student was not progressing and the IEP team has met twice since the start of the 2023-2024 school year. The IEP meeting notes and Prior Written Notices show that the IEP team discussed the changes and therefore *it is not substantiated* that USD 469 failed to revise the IEP, including the Behavior Intervention Plan to address a lack of expected progress toward goals during the 2023-2024 school year. While it is found that the district did meet the IEP to consider revisions for a

student not progressing with the current IEP/BIP it is important to note that Issue 1 concluded that the IEP/BIP was not implemented and may be a crucial factor in the student's lack of progress.

### **Issue Three**

USD #469, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), conducted an assessment/evaluation with the Student without proper consent during the 2023-2024 school year.

### **Applicable Law**

Federal regulations at 34 C.F.R. §300.304(a) state that the public agency must provide notice to the parents of a child with a disability that describes any evaluation procedures the agency proposes to conduct.

State statutes at K.S.A. §72-3430(b)(2) states the parents of exceptional children shall have the right to written prior notice whenever an agency: (A) Proposes to initiate or change; or (B) refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

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

The findings of Issues One and Two are incorporated herein by reference.

The complainant alleged that on September 27, 2023 she was at the school and observed an unfamiliar woman interacting with the student who then followed the student and complainant to a different room while continuing to interact with the student. The complainant finally asked who this unfamiliar person was and was told it was a BIST instructor who comes in once a month to lead trainings throughout the day. On September 28, 2023, the complainant questioned the school in an email and in the student's behavior log if she was there to provide an assessment/evaluation/recommendation to the district regarding the student. The complainant stated she has not received a response to that question sent on September 30, 2023.

The district responded that the BIST consultant mentioned in the complaint that the grandmother saw in the building is a general education consultant for the school and district, not specific to the student. The district has a contract with Cornerstones of Care for BIST training and the consultant comes in for observations, to clarify training points as they apply to specific students and respond to teacher and administrative questions as they work to implement the training with students.

The district further responded it has not initiated any new re-evaluation during the 2023-2024 school year. The student's guardian requested a gifted evaluation, however, during the meeting on September 22, 2023 the team agreed not to evaluate at this time and to instead provide

enrichment materials. The Prior Written Notice dated October 2, 2023 and signed by the guardian on October 16, 2023 records that a gifted evaluation would be revisited when the student has established rapport with school staff.

The September 22, 2023 Prior Written Notice recorded, "The family requested evaluation for gifted services for [student]. He was just evaluated last school year, so the IEP team (including the family) agreed that it would not be in [student's] best interest for him to test again with a new person at this time. The team discussed providing enrichment materials for him to work on at school and letting him know it is enrichment and discussing gifted testing again in the future when [student] has built more relationships with school staff members." . The PWN also recorded in the Explanation of why the action was rejected as "The family requested a gifted evaluation for [student]. The team (including the family) has agreed to not move forward with the evaluation at this time. This action is proposed due to [student's] need to build more relationships with school staff and have consistent, extended periods of self-regulation to allow for testing."

The October 16, 2023 IEP meeting notes recorded, "BIST trainer comes to the building once per month to train and provide support. We are not using the BIST program structure with [student]. Grandma had questions about the role of the BIST trainer. They do not come into SBS to provide support."

On October 30, 2023, the district stated during an interview with the complaint investigator that the person who was identified as the Behavior Intervention Support Team (BIST) consultant on September 27, 2023 by the complainant was an *outside consultant contracted by the district who acts as a resource to teachers in the district on behavior. They further stated that the consultant will often accompany administrators on days she is in schools for responsive calls.*

*According to the Cornerstones of Care website BIST is described as a program of Cornerstones of Care, providing training and support to teachers, parents and administrators in pre-K to 12th grade public, private, charter and parochial schools in suburban, urban and rural settings throughout the Midwest. With services and trainings for individuals, teams or entire faculties tailored specifically for each school, Cornerstones of Care lists services for schools to become more trauma-informed for the students. After an initial meeting and in-depth analysis training is provided to the entire staff of the BIST philosophy and program. Then consultants will recommend and follow a plan of action to improve the staff skills.*

## **Conclusion**

Based on the foregoing, *it is not substantiated* that USD #469 conducted an assessment/evaluation with the Student without proper consent during the 2023-2024 school year.

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

1. **ISSUE ONE:** A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was found, based on review of documentation, interview with long term substitute, district staff and parent. Corrective action is required as follows:
  - a. **CORRECTIVE ACTION PROCEDURAL:**
    - i. Conduct an IEP meeting to determine appropriate services and settings. The service minutes and setting do not match the district's response of where the student receives services. Further, the IEP meetings that have occurred during the 2023-2024 school year corroborate that the student is receiving his services 100% of the time in a self-contained classroom and earning time for recess with general education students. This change of placement apparently occurred prior to the date of investigation. The service minutes/setting should reflect the IEP team decision to reintegrate the student back with general education students. The Notice of Meeting, revised IEP along with IEP team meeting minutes and PWN should be provided to SETS within 1 week after the meeting is held.
    - ii. Contract with TASN to train the staff in the student's program on writing IEPs, BIPs, data collection, and when to write PWNs. Submit evidence that the training occurred.
    - iii. Date due: December 31, 2023
  - b. **CORRECTIVE ACTION SUBSTANTIVE:**
    - i. Train all staff that will be implementing the BIP on all phases (prevention, replacement, reaction) including the data collection methods as written into the IEP. Provide the training materials and data collection sheets as well as attendance sheets to SETS.
    - ii. Implement the BIP (including data collection of its implementation of all phases) for 4 weeks and hold an IEP team meeting within 1 week of the 4 weeks of data collection to review and refine the plan. Provide the data and IEP team meeting minutes with plan refinements to SETS.
    - iii. Date due: December 31, 2023
2. **ISSUE TWO:** A violation of 34 C.F.R. 300.324(b)(1)(A), and K.S.A 72-3429(f)(2) was not found, based on review of documentation, findings of Issue One, interview with grandparent and district. Corrective action is not required.
3. **ISSUE THREE:** A violation of 34 C.F.R. §300.304(a) and K.S.A. §72-3430(b)(2) was not found, based on review of documents and interview with district staff. 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)