

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT

FILED AGAINST

UNIFIED SCHOOL DISTRICT #457, GARDEN CITY PUBLIC SCHOOLS  
ON MAY 3, 2024

DATE OF REPORT JUNE 3, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #457 Garden City Public Schools on behalf of ----- by his mother ----- . In the remainder of the report, ----- will be referred to as "the student." ----- is the student's mother and in the remainder of the report she will be referred to as "the complainant," "the parent," or as "the mother."

The complaint is against USD #457 Garden City Public Schools. In the remainder of the report, USD #457 will be referred to as "the district." The student attends Victor Ornelas Elementary School and in the remainder of the report this elementary school will be referred to as 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 May 3, 2024 and the 30-day timeline ends on June 3, 2024.

### **Evidence Reviewed**

During the investigation, the Complaint Investigator Donna Wickham reviewed all evidence and documentation, which was provided by both the district and the parent. Additionally, the complaint investigator contacted the district and family several times by phone and email to clarify evidence. The complaint investigator contacted the mother by phone on May 14, 2024 and May 25, 2024 to clarify issues and evidence. The complaint investigator interacted with the district by phone and email to clarify evidence and a phone interview was conducted with Gina Galpin (Director of Special Education), Josh Guymon (Assistant Superintendent USD 457), Jennifer Cunningham (Attorney for USD 457), Tracy Leiker (Principal of Victor Ornelas Elementary School), Ashley Hurd (Speech Language Pathologist), Theresia Woods and Darci Nelson (special education teachers) on May 20, 2024. The following documentation and information were used in consideration of the issues:

1. Individual Education Program dated March 1, 2023.
2. Student Progress Reports dated October 27, 2023, January 8, 2024, March 25, 2024.
3. Consideration of Special Education Reevaluation, Waiver Request dated November 27, 2023, signed by parent November 27, 2023.

4. Prior Written Notice for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent, dated March 1, 2023, parent consent signed March 6, 2023.
5. Individual Education Program dated February 19, 2024.
6. Prior Written Notice for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent, dated February 19, 2024 parent consent signed February 19, 2024.
7. Speech and Language Pathologist service log dated between February 19, 2024 through May 8, 2024.
8. Speech and Language Pathologist record, dated May 10, 2024 and May 15, 2024.
9. District response dated May 20, 2024.

### **Background Information**

The student is a five year old kindergartener at the district elementary school where he is eligible for special education and related services under the category of autism and language impairment. The student was evaluated for special education services on May 13, 2021. Prior to that the student was receiving services under Part C of IDEA through Russell Child Development Center. The student started the school year for half day, but during his IEP dated February 19, 2024 the student increased his school services to full days of kindergarten in a RISE program.

The student has five IEP goals and receives 380 minutes of special education with 20 minutes of speech and language services 3 days a week in a RISE program classroom and 400 minutes of special education service 2 days every week in a RISE program classroom. He qualified for Extended School Year services as well.

### **Issues Investigated**

**ISSUE ONE:** USD #457, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP in regard to providing correction, discipline and access to the iPad for instructional programming (e.g., communication, choice making, transitions) during the 2023-2024 school year.

**ISSUE TWO:** USD #457, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to craft the student's IEP based on the student's needs and present levels of functioning during the 2023-2024 school year.

### **Issue One**

USD #457, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP in regard to providing correction, discipline and access to the iPad for instructional programming (e.g., communication, choice making, transitions) 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 parent alleged that the student's IEP is not being followed. An incident occurred during the fall resulting in her student being restrained. At that time, she believed that changes were being made, however, a new incident occurred on May 6, 2024. The mother stated that she was not notified about this incident until the following day. She stated that her son was punished for taking another student's rice bowl that the other student was no longer using. She stated that the cup was "ripped out of his hands twice" causing her student to have a behavioral reaction and being sent to time-out. She stated that they use restraint because he is spoiled, doesn't get disciplined enough or taught." Further, she alleged that the student is not being provided an iPad for communication, and instead is using ASL.

The district responded that the student's IEP does not describe specific ways to provide correction or discipline, however the IEP does state that staff should receive training on de-escalation strategies and physical disengagement skills and staff will use a structured approach to daily routines and work and the staff are doing that. The district responded that the teachers receive ongoing training and consultation from the Region 7 TASN consultant to ensure the student's program is highly structured, has routine and relies on positive reinforcement. Further, the autism case manager consults with the student and staff regularly to provide ongoing support in maintaining and improving the student's program.

In regard to the student's access to Augmentative or Alternative Communication (AAC), the District responded that the student's IEP has an accommodation for the student to have access and a goal for multi modal communication – therefore he uses his ACC device (iPad) as well as ASL to communicate. Further, the speech language pathologist (SLP) has documentation that she has been working with the student during speech/language sessions to use his iPad. She also works with staff to support them in the implementation of the iPad in the classroom. The iPad is kept in the student's classroom daily and is accessible to him.

Two IEPs were in effect during the 2023-2024 school year. One IEP was dated March 1, 2023 and the second IEP was dated February 19, 2024.

The March 1, 2023 IEP lists a behavior goal, "By March 2024, When [student] is frustrated, he will limit his aggressive behaviors (biting, hitting, pinching, head butting) with adult support for 3/5 opportunities". The Progress Report with reporting dates of March 8, 2023, May 12, 2023, October 27, 2023, and January 8, 2024 documented progress was made with this goal. The May 12, 2023 progress report documented that staff were attempting to teach the student replacement behaviors. Two Supports for Staff were documented in this IEP as well. First, a structured approach to daily routines and work with monthly classroom training for 30 minutes weekly. A second Staff Support listed annual training in verbal de-escalation strategies and physical disengagement skills.

The March 1, 2023 IEP also lists a communication goal, "By March 2024, when given visual and verbal prompts, [student] will use pictures, signs, iPad, and/or words to label and request items to communicate his want/needs in 70% of opportunities." The progress reports dated March 8, 2023, May 12, 2023, October 27, and January 8, 2024 all report progress made with the goal. It is reported that his iPad was broken in December, 2023.

The February 19, 2024 IEP documents that the student's behaviors impact the learning of self or others and is met by a goal, "By February 2025, when escalated [student] will limit his physical aggressions (biting/hitting) with adult support on 4/5 opportunities." The February 19, 2024 IEP also includes a communication goal, "By February 2025, [student] will use pictures, signs, iPad, and/or words to label and request items to communicate his wants/needs in 75% of opportunities." An AAC device is written as an Accommodations to be used daily, all day in the school setting and supports for school staff to include training in verbal deescalation strategies and physical disengagement skills. The Progress Report dated March 22, 2024 documented that the student is using the iPad during center time.

The district's response to the complaint, dated May 20, 2024 documented that teachers have been learning about the Structured Teach framework through the Kansas Department of Education's (KSDE) Technical Assistance System Network (TASN) during the 2023-2024 school year.

The district response dated May 20, 2024 also reported that both certified teachers in the RISE room have received Crisis Prevention Interventions (CPI) training in both de-escalation and appropriate CPI holds. Theresa Woods completed training on August 14, 2023 and Darci Nelson completed the training on January 12, 2024.

In the May 20, 2024 district response, the district stated that teachers encourage the student to use the device, but do not force him. They report he, "often gets upset when using the device and has become physical. The teacher carries the device with her to the gym and recess every day when they leave the classroom. When the AAC device was first introduced to

[student], he became frustrated and broke the device on two occasions. As a result, the teacher has tried to slowly introduce the AAC device into centers, but [student] has continued to be resistant to using the device consistently. [Student] has been making progress in being able to sustain attention and stay seated at the table for breakfast, snack, lunch, and centers.”

The district reported during the May 20, 2024 interview and a log provided by the speech language pathologist (SLP) documented that on May 10, 2024 the mother came to school and spoke with the speech language pathologist. Since that meeting the mother has been modeling and assisting the student use his iPad throughout the school day.

The district response reported that on May 13, 2024 the mother brought the student’s personal device used at home to school for the student to use. The district reported during their interview on May 20, 2024 that the personal device looks different from the format on the school-issued device and also includes movies, games, and YouTube. Since bringing the personal communication device to school, teachers have noticed the student regressing and relying on the personal communication device for movies, games, and YouTube to sit and stay seated at a table.

### **Conclusion**

Based on the foregoing, *it is not substantiated* that USD #457 failed to implement the student’s IEP in regard to providing correction, discipline, and access to the iPad for instructional programming (e.g., communication, choice making, transitions) during the 2023-2024 school year. The student’s IEP has goals, accommodations and staff supports for behavior and the communication device.

The two behavioral incidents that were reported in the complaint resulted in restraint and were addressed by state and district emergency restraint procedures rather than special education procedures. Restraint procedures were not included in the student’s IEPs during the 2023-2024 school year. The parent expressed concern that the discipline and correction used with the student triggered the behavior resulting in restraint. It was found that the district addresses behavior primarily with teaching replacement behaviors, educating the student in a highly structured classroom, catching problem behaviors early and attempting to redirect with choice making, taking away things that he could break or hurt himself with, or reminding the student to have “gentle hands.”

In regard to the student’s access to the iPad for instructional programming it is found that the district is providing the student access to the iPad throughout the school day, but also allowing the student to communicate with other modalities, gestures, vocalizations, choice making, and signs. It is recognized that the mother has come in the classroom at the end of the school year and modeled to the student and staff to use the iPad for communication. The district reports that the student uses the iPad to communicate more routinely with the mother than the school staff.

## **Issue Two**

USD #457, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to craft the student's IEP based on the student's needs and present levels of functioning during the 2023-2024 school year.

### **Applicable Law**

Federal regulations at 34 C.F.R. §300.324 and state statutes at K.S.A. §72-3429 state that in developing each child's IEP, the IEP team shall consider: (1) The strengths of the child and the concerns of the parents for enhancing the education of their child; (2) the results of the initial evaluation or most recent evaluation of the child; (3) the academic, developmental and functional needs of the child; (4) in the case of a child whose behavior impedes the child's learning or that of others, the use of positive behavioral interventions and supports and other strategies to address that behavior; (5) in the case of a child with limited English proficiency, the language needs of the child as such needs relate to the child's IEP; (6) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child; (7) the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and (8) whether the child requires assistive technology devices and services.

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

The complainant alleged that the student has autism and the student's IEP and staff do not address his disability. They instead punish him and ask him to do things he cannot do because of his autism.

The district responded that the mother was an active participant in creating both IEPs dated March 1, 2023 and February 19, 2024 that have been implemented during the 2023-24 school year to meet the student's individual needs. The mother provided parental input throughout the IEP as documented on the Parent Input/Legal Education Decision-Maker Input page. On the Prior Written Notice (PWN), the mother checked the box that she gave consent to implement the IEP as written. Both IEPs addressed the student's current individual needs through appropriate goals, accommodations, and services that were developed by the IEP team which included the mother. The present levels of performance and needs of the student are clearly documented in all sections including Health, General Intelligence, Social-Emotional, Academics, Communication, and Motor/Other (fine and gross motor skills and adaptive skills).

A special education evaluation was conducted to determine eligibility for services on May 20, 2021 in anticipation of the student turning three and transitioning from Infant Toddler, Part C services to Part B services. The Parent signed consent to waive a re-evaluation for a special education evaluation on November 27, 2023.

The student's initial IEP dated March 1, 2023 was developed based on the May 20, 2021 evaluation and input from the IEP team, including the mother. This IEP proposed five goals focusing on behavior, tracing letters, matching colors, shapes, and numbers 1-20, and using multimodal communication methods to express wants and needs. The goals are consistent with the May 20, 2021 evaluation and staff observation written into the March 1, 2023 IEP.

The student's IEP dated February 19, 2024 proposed five goals focusing on behavior, tracing name, matching letters, matching shapes, and numbers, and using multimodal communication methods to express wants and needs. The goals showed progress reported in the progress reports and evaluation data written into the IEP.

The staff reported during the district interview on May 20, 2024 that the student's highest areas of concern are social emotional (communicating especially as it relates to behavior) behavior and academics. They report that the student has multiple incidents of physical aggression, but that it is improving. They state that the student's behavior has increased with the addition of his home iPad because he wants to use it for watching movies and YouTube rather than for communication.

## **Conclusion**

An IEP describes a child's educational program including services and is developed with parents, school professionals, and the student (when appropriate). Each IEP must be developed with consideration of the individual child's capabilities, strengths, needs, and interests and assists teachers and other staff to have very specific, well-defined measurable annual goals for each eligible child. It should function as the tool that directs and guides the development of meaningful educational experiences, thereby helping the child learn skills that will help them achieve his or her goals. In reviewing the proposed goals in both IEPs, they appear to be consistent with the evaluation reported from the 2021 evaluation and current assessment, progress reports and teacher observation. The IEP records parent input as well.

Based on the foregoing, *it is not substantiated* that USD #457 failed to craft the student's IEP based on the student's needs and present levels of functioning 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 not found, based on interview and documentation. Corrective action is not required.
2. **ISSUE TWO:** A violation of 34 C.F.R. §300.324 and K.S.A. §72-3429 was not found, based on review of evidence and interview. 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)