

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #512  
ON MAY 31, 2024

DATE OF REPORT MAY 31, 2024

This report is in response to a complaint ----- filed with our office, on behalf of their daughters, ----- . For the remainder of this report, ----- will be referred to as "Student 1" and ----- will be referred to as "Student 2." ----- will be referred to as "the father," ----- will be referred to as "the mother," and the two will be referred to collectively as "the parents."

### **Investigation of Complaint**

K.A.R. § 91-40-5(c)(5) requires that the complaint investigation include "[a] discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded." Laura Jurgensen, complaint investigator, held this discussion with the parents via Zoom on May 20, gathering additional information and verifying the specific allegations to be investigated. Laura Jurgensen provided the specific allegations to be investigated to the parents in an email on May 20. The parents did not dispute how the complaint investigator framed the issues to be investigated. The parents also provided a great deal of documentation for the complaint investigator to consider as part of the investigation. The district provided the investigator with a response to the issues the investigator identified, as well as all documentation and data the investigator requested.

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

- Parents' Complaint, May 1, 2024.
- Document from Father Summarizing Information for Complaint Investigation Issues, May 28, 2024.
- Document from Mother Summarizing Information for Complaint Investigation Issues, May 28, 2024.
- Emails between Parents and School Staff that Parents Provided, Sept. 8, 2023– May 28, 2024.
- District's Response to the Complaint, May 28, 2024.
- The investigator reviewed the following documents only to review Student 1's progress as part of the Issue 1 FAPE determination:
  - Student 1 IEP, Sept. 26, 2022.
  - Student 1 Progress Report for Sept. 26, 2022, IEP, Oct. 14, 2022, Jan. 3, 2023, Mar. 21, 2023.
- Student 1 Grade Card for the 2022–23 School Year, May 25, 2023.

- Student 2 IEP, Nov. 7, 2022.
- Student 1 IEP, Sept. 14, 2023.
- Student 1 Progress Report for Sept. 14, 2023, IEP, Oct. 13, 2023, Dec. 21, 2023, Mar. 8, 2024, May 28, 2024.
- Student 1 Grade Card for the 2023–24 School Year, Mar. 22, 2024.
- Student 2 IEP, Oct. 10, 2023.
- Student 2 Progress Report for Oct. 10, 2023, IEP, Oct. 17, 2023, Jan. 4, 2024.
- Student 2 Reevaluation, Nov. 30, 2023.
- Student 2 Proposed IEP, Nov. 30, 2023.
- Student 2 Prior Written Notices Proposing to Incorporate IEP Changes Based on Nov. 30, 2023, Reevaluation, Nov. 30, 2023, Jan. 19, 2024.
- Student 2 IEP Team Attendance Forms, Dec. 11, 2023, Jan. 19, 2024.
- Student 2 IEP, Feb. 21, 2024.
- Student 2 Request for Consent for Special Education Action, Feb. 22, 2024
- Student 2 IEP Amendment, Mar. 4, 2024.
- Emails between Parents and School Staff that District Provided, Mar. 5–18, 2024.
- Student 2 Progress Reports for Feb. 21, 2024, IEP, Mar. 20, 2024, May 30, 2024.
- Student 2 Grade Card for the 2023–24 School Year, Mar. 22, 2024.
- 2023–24 School Year Gifted Evaluation Data for Students' School, May 24, 2024.
- 2023–24 School Year Students Identified with Gifted USD 512 Reported to the Kansas State Department of Education, May 31, 2024.

Kansas regulations require that a complaint “allege a violation that occurred not more than one year before the date the complaint is received” K.A.R. § 91-40-51(b)(1).

Therefore, this complaint investigator did not consider any information either party submitted dated prior to May 1, 2023, except for the items listed above for the indicated purpose.

### **Background Information**

This complaint is focused on two siblings who attend the same elementary school. (Parents' Complaint, May 1, 2024.) Student 1 is a third grader identified as gifted and not identified with a disability. (Student 1 IEP, Sept. 14, 2023.) Student 1 was identified as gifted beginning in November 2021, during her first-grade year. Student 1's September 14, 2023, IEP indicates that she “is an extremely bright student who has a huge passion for learning and is always seeking out a challenge” and that her “performance in general education demonstrates a need for greater depth and complexity in learning tasks.”

Student 2 is a first grader reported to be “a bright, kind student” who “enjoys helping other students and teachers.” Student 2's Other Health Impairment identification “requires specially designed individualized instruction to acquire, maintain and generalize

social/emotional/behavioral skills across settings.” (Student 2 IEP Amendment, Mar. 4, 2024.) Student 2 was initially identified with a speech or language impairment and after the student’s November 30, 2023, reevaluation the district proposed a change in identification and to change the student’s speech services to indirect services, based on the reevaluation data. (Student 2 IEP, Nov. 7, 2022; Student 2 Reevaluation, Nov. 30, 2023; Student 2 Prior Written Notices Proposing to Incorporate IEP Changes Based on Nov. 30, 2023, Reevaluation, Nov. 30, 2023, Jan. 19, 2024.)

## **Issues**

In the written complaint, the parents presented several concerns, many of which are not eligible for investigation under this complaint process as they do not represent an allegation that the district violated state or federal special education legal requirements. K.A.R. § 91-40-51(a). Following a discussion with the parents to gather information and identify, verify, and record the allegations for this complaint investigation, the complaint investigator emailed the parents the list of concerns not eligible for investigation through this process and resources to try to resolve those concerns. (Email from Complaint Investigator to Parents, May 19, 2024.) Many of the parents’ concerns not eligible for investigation through this process focused on alleged bullying, harassment, retaliation, and discrimination involving both students. (Parents’ Complaint, May 1, 2024.) This complaint investigation does not have the authority to resolve these concerns, however, this complaint investigation can and must determine, based on the parent’s complaint, whether these underlying concerns impacted each student’s right to FAPE. (K.S.A. § 72-3410(a)(2); K.A.R. § 91-40-2, -51(a).) The parents allege three issues able to be investigated under this complaint process:

**Issue One:** Did USD 512 provide Student 1 with a free appropriate public education (FAPE)? K.S.A. § 72-3410(a)(2); K.A.R. § 91-40-2.

**Issue Two:** Did USD 512 provide Student 2 with a free appropriate public education, including ensuring that the IEP Team considered whether the student’s behavior interfered with her learning or that of others and, if so, considered the use of positive behavioral interventions and supports, and other strategies, to address that behavior? 34 C.F.R. §§ 300.101, .324(a)(2); K.S.A. §§ 72-3410(a)(2), -3429(d)(4); K.A.R. § 91-40-2.

**Issue Three:** Did USD 512 ensure the students’ school followed child find requirements to identify, locate, and evaluate all children who may be gifted residing within the school’s jurisdiction? K.A.R. § 91-40-7(a).

## **Issue One: FAPE for Student 1**

Did USD 512 provide Student 1 with a FAPE? K.S.A. § 72-3410(a)(2); K.A.R. § 91-40-2.

### **Applicable Law**

Kansas statute requires each local board of education to “. . . provide a free appropriate public education for exceptional children enrolled in the school district . . .” (K.S.A. § 72-3410(a)(2).) Kansas special education law provides rights and protections for “[e]xceptional children” which means “children with disabilities and gifted children.”

K.A.R. § 91-40-2(v). Kansas special education regulations define FAPE as “special education and related services that meet the following criteria: (1) Are provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the state board; (3) include an appropriate preschool, elementary, or secondary school education; and (4) are provided in conformity with an individualized education program.” (K.A.R. 91-40-1(z).)

There is not Kansas case law specifically analyzing FAPE for a gifted child. Because Kansas law requires FAPE for “exceptional children” and does not distinguish between the FAPE offering for a child with a disability and a child who is gifted, this complaint investigation will rely on the United States Supreme Court’s FAPE analysis under *Endrew F.* to determine whether this district provided this student with FAPE. To meet its FAPE obligation to a child with an exceptionality, the local board of education “. . . must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Endrew F. v. Douglas Co. Sch. Dist.*, 580 U.S. 386 (Mar. 22, 2017.))

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

The analysis of whether a child received FAPE must be grounded in the definition of special education, “. . . specially designed instruction provided at no cost to parents to meet the unique needs of an exceptional child” (K.S.A. § 72-3404(i).) To understand the “unique needs” of Student 1, we must consider the student’s present levels of academic achievement and functional performance and how the student’s exceptionality impacts the student’s access to and progress in the general curriculum. (K.S.A. § 72-3429(c)(1).) We then look to the student’s measurable annual goals to determine whether the goals align with the student’s present levels and impact and access to the general curriculum. (K.S.A. § 72-3429(c)(2).) Next, we consider whether the student’s services are aligned with the student’s needs and designed to enable the student to make progress toward their goals and in the general curriculum. (K.S.A. § 72-3429(c)(4).) This is the analysis the Court lays out in *Endrew F.*, allowing us to determine whether the IEP is “reasonably calculated.” (*Endrew F. v. Douglas Co. Sch. Dist.*, 580 U.S. 386 (Mar. 22, 2017.)) Finally, we consider the key factor in determining FAPE, data on the student’s progress, to determine whether that progress is “appropriate in light of the child’s circumstances.” (*Endrew F. v. Douglas Co. Sch. Dist.*, 580 U.S. 386 (Mar. 22, 2017.))

The following table shows the previously described information for Student 1 for the student's September 14, 2023, IEP.

Present Levels of Academic Achievement and Functional Performance	Impact of Exceptionality on Child's Involvement in and Progress in the General Education Curriculum	Measurable Annual Goals (Academic and Functional)	Special Education and Related Services	Progress Toward Goals and in General Curriculum	Additional Considerations
<ul style="list-style-type: none"> <li>• Current grades are satisfactory.</li> <li>• Math and reading Measures of Academic Progress (MAP) scores in the 99th percentile.</li> <li>• Needs challenging extensions to things the whole class is learning.</li> <li>• "Areas for potential improvement include time management, organization, and assignment completion."</li> </ul>	Needs greater depth and complexity in learning tasks.	"Over the course of this IEP year, given time and resources, [Student 1] will identify a real-world issue or problem, research to gain sufficient background knowledge to take an action, and create a product or presentation that will raise awareness or propose solutions to the identified problem."	<ul style="list-style-type: none"> <li>• Specialized curriculum within a gifted center to achieve greater depth and complexity in learning tasks.</li> <li>• No related services</li> </ul>	<ul style="list-style-type: none"> <li>• District report indicates Student 1 made progress on her IEP goal in all four quarters of this school year.</li> <li>• On the student's grade card, in all skills evaluated, the student scored as making expected progress or exceptionally good progress.</li> </ul>	Student 1's goal is linked to a Kansas State Board of Education standard.

Student 1's present levels provide the academic information needed for the IEP Team to determine Student 1's academic baseline by including relevant academic data.

However, Student 1's present levels do not provide the functional performance information needed to determine Student 1's baseline by stating these needs as "potential" and not providing any information about how Student 1 is currently performing in these areas so that progress may be measured. Kansas State Department of Education (KSDE) guidance on present levels of academic achievement and functional performance defines functional performance as, "the ability to apply academic skills in a variety of ways and in a variety of settings. Functional performance is also observed in how the student engages in the routine activities of everyday life, including communication, mobility, behavior skills, social skills, and daily living skills." (Kansas State Department of Education, *Present Levels of Academic Achievement & Functional Performance (PLAAPFs)*, <https://www.ksde.org/Portals/0/SES/KIAS/PLAAPF.pdf>,

March 2017.) Student 1's IEP Team is correct to mention the student's functional needs that it did, but the IEP must go further, not to identify just potential functional needs, but actual functional needs and to provide relevant data and information to help the IEP Team understand the student's current performance in the identified need.

The impact of exceptionality statement makes the student's academic needs clear to the IEP Team. The student's goal aligns with her academic present levels and impact of exceptionality but makes no mention of the student's "potential" functional needs. (Student 1 IEP, Sept. 14, 2023.) Student 1's goal establishes expectations of reasonable progress for the student designed to meet her need for "challenging extensions." (Student 1 IEP, Sept. 14, 2023.) The description of Student 1's special education services is stated in her IEP as, "[Student 1] has a gifted exceptionality. Their performance in general education demonstrates a need for greater depth and complexity in learning task." This statement does not describe the specially designed instruction the student will receive but appears to be a restatement of Student 1's impact of exceptionality. Kansas special education regulations define special education as:

*specially designed instruction . . . [which is] . . . adapting, as appropriate to the needs of each exceptional child, the content, methodology, or delivery of instruction . . . [t]o address the unique needs of the child that result from the child's exceptionality . . . .* (K.A.R. § 91-40-1(kkk), (III).)

The statement in Student 1's IEP does not explain how the content, methodology, or delivery of instruction will be adapted to meet her needs identified in her present levels, including her functional needs.

Student 1's IEP Progress Report indicates she made "Adequate Progress" each quarter of the 2023–24 school year on her IEP goal. (Student 1 Progress Report for Sept. 14, 2023, IEP, Oct. 13, 2023, Dec. 21, 2023, Mar. 8, 2024, May 28, 2024.) The student's IEP meets requirements to describe how the student's progress will be measured and when progress reports will be reported under K.S.A. § 72-3429(c)(3). However, Student 1's 2023–24 school year Quarter 2–4 progress reports do not meet statutory requirements to report ". . . on the progress *the child* is making toward meeting the annual goals" (K.S.A. § 72-3429(c)(3) [emphasis added].) Quarter 1 meets this requirement by explaining the activities in which Student 1 is engaged that appear to relate to the student's IEP goal and the progress she is reported to be making on that goal. (Student 1 Progress Report for Sept. 14, 2023, IEP, Oct. 13, 2023, Dec. 21, 2023, Mar. 8, 2024, May 28, 2024.) However, in Quarters 2–4, the progress report appears to reference all students participating in gifted services, rather than speaking specifically about Student 1 and her progress on her measurable annual goal by using the words "students," "child," "we," and "they," and never specifically referring to Student 1 by name or otherwise. Progress reports must include clear explanations of progress for the specific student at the focus of the progress report and to that student's goal.

To continue the FAPE analysis, we will now consider the relationship within and between IEP components across Student 1's most recent two IEPs to determine whether the individual IEP components showed growth, decreased, or stayed the same across IEPs.

Component	September 26, 2022, IEP	September 14, 2023, IEP
Present Levels of Academic Achievement and Functional Performance	<ul style="list-style-type: none"> <li>• Current grades are satisfactory.</li> <li>• Math and reading MAP scores in the 99th percentile.</li> <li>• Appreciates choice and the freedom to be creative.</li> <li>• Needs higher-level resources, extension and enrichment projects, flexible group, and differentiation through tiered assignments.</li> <li>• "An area of possible improvement is helping her to not overthink a task and to have the confidence to push ahead with her ideas without affirmation. [Student 1] sometimes struggles with time management/assignment completion, perfectionism, and social interaction."</li> </ul>	<ul style="list-style-type: none"> <li>• Current grades are satisfactory.</li> <li>• Math and reading MAP scores in the 99th percentile.</li> <li>• Needs challenging extensions to things the whole class is learning.</li> <li>• "Areas for potential improvement include time management, organization, and assignment completion."</li> </ul>
Impact of Disability on Child's Involvement in and Progress in the General Education Curriculum	Needs greater depth and complexity in learning tasks.	Needs greater depth and complexity in learning tasks.
Measurable Annual Goals (Academic and Functional)	"By the end of this IEP year, given [Student 1's] need to explore and further develop her strengths and interests, [Student 1] will write focused questions to help explore and develop her passion areas and will complete a variety of products to demonstrate newly acquired knowledge and skills."	"Over the course of this IEP year, given time and resources, [Student 1] will identify a real-world issue or problem, research to gain sufficient background knowledge to take an action, and create a product or presentation that will raise awareness or propose solutions to the identified problem."
Special Education and Related Services	<ul style="list-style-type: none"> <li>• Specialized curriculum within a gifted center to achieve greater depth and complexity in learning tasks.</li> <li>• No related services.</li> </ul>	<ul style="list-style-type: none"> <li>• Need for greater depth and complexity in learning tasks.</li> <li>• No related services.</li> </ul>
Progress Toward Goals and in General Curriculum	<ul style="list-style-type: none"> <li>• District report indicates Student 1 made progress on her IEP goal in all four quarters of this school year.</li> <li>• On the student's grade card, in all skills evaluated, the student scored as making expected progress or exceptionally good progress by the end of the school year.</li> </ul>	<ul style="list-style-type: none"> <li>• District report indicates Student 1 made progress on her IEP goal in all four quarters of this school year.</li> <li>• On the student's grade card, in all skills evaluated, the student scored as making expected progress or exceptionally good progress.</li> </ul>

A comparison of the most recent two IEPs shows the same gap regarding clearly identifying Student 1's present functional needs, which would allow the IEP Team to address those needs through a goal and services. There is alignment between Student 1's academic needs in each IEP and her goal. Her goals show growth from year-to-year by moving from identifying focused questions to undertaking research. Neither IEP includes the clarity required in a statement of special education services to enable the IEP Team to understand how the content, methodology, or delivery of instruction within those services will be adapted to meet her needs identified in her present levels, including her functional needs, nor to those statements present a clear connection to her IEP goal for the relevant IEP. Ultimately, Student 1 made progress on her IEP goals and within the general curriculum.

### **Conclusion**

In their complaint, the parent's alleged that several concerns unable to be investigated through this investigation were denying Student 1 FAPE. While the investigation cannot focus on the parents' concerns, this investigation can and must determine whether Student 1's IEP was reasonably calculated to enable her to make progress in light of her circumstances. (*Endrew F. v. Douglas Co. Sch. Dist.*, 580 U.S. 386 (Mar. 22, 2017).) Student 1's IEP Progress Reports and grade cards indicate she made progress on IEP goals and in the general curriculum. However, this investigation has identified a number of required elements missing from Student 1's September 14, 2023, IEP or that are not appropriately aligned.

Student 1's September 14, 2023, IEP includes a gap between the student's current level of functional performance and the student's goal and special education services by not clearly stating the student's current level of functional performance and, if Student 1 has functional needs, not addressing those needs within the student's goal(s) and services. Additionally, Student 1's IEP does not include a description of special education that meets the requirements of K.A.R. § 91-40-1(III). Finally, Student 1's 2023–24 IEP Progress Report for Quarters 2–4 does not provide a description of this student's progress on her IEP goal. These deficiencies create an IEP for Student 1 that is not reasonably calculated to provide FAPE.

Based on the foregoing, this investigation concludes that USD 512 *violated its obligation* to ensure that Student 1's IEP include a statement of her present levels of functional performance as K.S.A. § 72-3429(c)(1) requires, does not include a description of special education services as K.S.A. § 72-3429(c)(4) requires, and Student 1's 2023–24 IEP Progress Report for Quarters 2–4 do not meet the requirement to provide information ". . . on the progress the child is making toward meeting the annual goals . . ." as K.S.A. § 72-3429(c)(3) requires.



## **Issue Two: FAPE for Student 2**

Did USD 512 provide Student 2 with a free appropriate public education, including ensuring that the IEP Team considered whether the student's behavior interfered with her learning or that of others and, if so, considered the use of positive behavioral interventions and supports, and other strategies, to address that behavior? 34 C.F.R. §§ 300.101, .324(a)(2); K.S.A. §§ 72-3410(a)(2), -3429(d)(4); K.A.R. § 91-40-2.

### **Applicable Law**

Federal and Kansas special education regulations requires each local board of education to “. . . provide a free appropriate public education for exceptional children enrolled in the school district” (34 C.F.R. § 300.101; K.S.A. § 72-3410(a)(2)). Kansas special education regulations define FAPE as “special education and related services that meet the following criteria: (1) Are provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the state board; (3) include an appropriate preschool, elementary, or secondary school education; and (4) are provided in conformity with an individualized education program.” (K.A.R. 91-40-1(z)). To meet this obligation, the local board of education “. . . must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.” (*Endrew F. v. Douglas Co. Sch. Dist.*, 580 U.S. 386 (Mar. 22, 2017.)) When a child's behavior interferes with their learning or that of others, the IEP Team must “. . . consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior” (34 C.F.R. § 300.324(a)(2); K.S.A. § 72-3429(d)(4)).

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

The analysis of whether a child received FAPE must be grounded in the definition of special education, “specially designed instruction provided at no cost to parents to meet the unique needs of an exceptional child” (34 C.F.R. § 300.39(a)(1); K.S.A. §72-3404(i)). To understand the “unique needs” of Student 2, we must consider the student's present levels of academic achievement and functional performance and how the student's exceptionality impacts the student's access to and progress in the general curriculum. (34 C.F.R. § 300.320(a)(1); K.S.A. § 72-3429(c)(1).) We then look to the student's measurable annual goals to determine whether the goals align with the student's present levels and impact and access to the general curriculum. (K.S.A. § 72- 3429(c)(2).) Next, we consider whether the student's services are aligned with the student's needs and designed to enable the student to make progress toward their goals and in the general curriculum. (K.S.A. § 72-3429(c)(4).) This is the analysis the Court lays out in *Endrew F.*, allowing us to determine whether the IEP is “reasonably calculated.” (*Endrew F. v. Douglas Co. Sch. Dist.*, 580 U.S. 386 (Mar. 22, 2017.)) Finally, we consider the key factor in determining FAPE, data on the student's progress, to determine whether that progress is “appropriate in light of the child's circumstances.” (*Endrew F. v. Douglas Co. Sch. Dist.*, 580 U.S. 386 (Mar. 22, 2017.))

The following table shows the previously described information for Student 2 for the student's March 4, 2024, IEP.

Present Levels of Academic Achievement and Functional Performance	Impact of Exceptionality on Child's Involvement in and Progress in the General Education Curriculum	Measurable Annual Goals (Academic and Functional)	Special Education and Related Services and Placement	Progress Toward Goals and in General Curriculum	Additional Considerations
<ul style="list-style-type: none"> <li>• Data from multiple math and reading assessments.</li> <li>• Information on Student 2's current reading intervention focus outside of special education and progress monitoring data.</li> <li>• Behavior Assessment System for Children-Third Edition Behavioral Symptoms Index puts Student 2's concerning behaviors in the Clinically Significant range (based on mother and teacher ratings) and At-Risk range (based on father</li> </ul>	<p>"[Student 2] requires specially designed individualized instruction to acquire, maintain and generalize social/emotional behavioral skills across settings. Learning objectives are based on Kansas State and Career Ready Standards, yet an individual approach is required."</p>	<ul style="list-style-type: none"> <li>• "Within 36 instructional weeks, [Student 2] will demonstrate an independent use of learned routines, skills and strategies as measured on an informal social engagement rubric by scoring 2.5 or more per targeted skill (quarterly average) –             <ol style="list-style-type: none"> <li>1. Initiates conversation with peers</li> <li>2. Takes turns during social conversations</li> <li>3. Joins group activities that have already started</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• Specially designed instruction in the special education setting to support Student 2's progress toward her IEP social/emotional/behavioral goals.</li> <li>• Indirect speech and language consultative services</li> </ul>	<ul style="list-style-type: none"> <li>• District report indicates Student 2 made progress on her IEP goal in the two quarters of this school year since they were put into place.</li> <li>• On the student's grade card, in all skills evaluated, the student scored as making expected progress or exceptionally good progress by the end of the third quarter except</li> </ul>	<p>Student 2's goals are each linked to a Kansas State Board of Education standard.</p>

Student 2's present levels provide a great deal of the relevant academic and functional data and information from her November 3, 2023, reevaluation needed for the IEP Team to

determine Student 2's baseline academic and functional data. Student 2's impact of exceptionality statement makes the student's social, emotional and behavior needs clear to the IEP Team. The student's goals align with her present levels and impact of exceptionality by focusing on specific behavioral, social, and emotional needs rated low in student's baseline data. Student 2's IEP description of special education services articulates the specially designed instruction the student will receive and its purpose. Student 2's IEP Progress Report indicates she made "Adequate Progress" in the 2023–24 school year Quarter 3 on each of her IEP goals, the two quarters since they were put into place. For Quarter 4, Student 2 made "Adequate Progress" on her social engagement goal and met her behavior goal. The father also acknowledges this progress in a summary document he created stating, "[s]ince completion of the revised IEP, [Student 2's] in-school issues have mostly gone away."

To continue the FAPE analysis, this investigation would typically consider the relationship within and between IEP components across Student 2's recent IEPs to determine whether the individual IEP components showed growth, decreased, or stayed the same. However, Student 2's previous IEPs were completely focused on speech and language and not behavior because, at that time, her IEP Team determined her behavior was not interfering with her learning or that of others. (Student 2 IEP, Nov. 7, 2022.) Student 2's November 3, 2023, reevaluation changed Student 2's eligibility category from Speech and Language to Other Health Impairment and, based on the speech and language reevaluation data discontinued Student 2's goals focused on speech and language and changed her special education services in this area to consultative. (Student 2 Reevaluation, Nov. 30, 2023.) Because of the change in Student 2's needs there are not IEP components that would be expected to have a relationship across IEPs under which this investigation would look for progress.

Regarding the IEP Team's obligation to consider whether Student 2's behavior interfered with her learning or that of others, the district submitted multiple documents showing its efforts to discuss this topic with parents and come to consensus. At the parent's request, the district agreed to comprehensively reevaluate Student 2 including conducting a functional behavior assessment. (Student 2 Reevaluation, Nov. 30, 2023.) At the November 30, 2023, eligibility meeting the district came with a draft IEP proposing to meet Student 2's social, emotional, and behavior needs the reevaluation identified, including a behavior intervention plan that would be part of Student 2's IEP. (Student 2 Proposed IEP, Nov. 30, 2023.) When the parents and district staff did not agree on the proposed IEP, the district met its obligation to offer what it believed to be FAPE by issuing the parents a Prior Written Notice proposing to incorporate changes to Student 2's IEP based on Student 2's reevaluation. (Student 2 Prior Written Notice Proposing to Incorporate IEP Changes Based on Nov. 30, 2023, Reevaluation, Nov. 30, 2023.) When parents declined to consent to the changes which required their consent, the district scheduled another IEP Team meeting for December 11, 2023. (Student 2 IEP Team Attendance Form, Dec. 11, 2023.) When the December 11, 2023, discussion did not conclude, the IEP Team scheduled another meeting for January 19, 2024. (Student 2 IEP Team Attendance Form, Jan.

19, 2024.) When the January 19, 2024, discussion did not result in consensus, the district met its obligation to offer what it believed to be FAPE by issuing the parents a Prior Written Notice proposing to incorporate changes to Student 2's IEP based on Student 2's reevaluation. (Student 2 Prior Written Notice Proposing to Incorporate IEP Changes Based on Nov. 30, 2023, Reevaluation, Jan. 19, 2024.) The IEP Team set February 12, 2024, as its next meeting date and the parents asked to reschedule for February 21. (Email from District Special Education Director to Complaint Investigator, May 31, 2024.) On February 21, 2024, the IEP Team came to consensus and the next day the parents consented to the items that required their consent. (Student 2 IEP, Feb. 21, 2024; Student 2 Request for Consent for Special Education Action, Feb. 22, 2024.) Student 2's IEP Team met again on March 4, 2024, and came to consensus on amending Student 2's IEP to add accommodations to further support her behavior. (Student 2 IEP Amendment, Mar. 4, 2024.) The parents consented to the items requiring their consent on March 16, 2024. (Student 2 Request for Consent for Special Education Act, Mar. 16, 2024.)

### **Conclusion**

In their complaint, the parent's alleged that several concerns unable to be investigated through this investigation were denying Student 2 FAPE. While the investigation cannot focus on the parents' concerns, this investigation must determine whether Student 2's IEP was reasonably calculated to enable her to make progress in light of her circumstances. (*Endrew F. v. Douglas Co. Sch. Dist.*, 580 U.S. 386 (Mar. 22, 2017.)) This investigation identified all required items as present in Student 2's March 4, 2024, IEP and determined that required items are appropriately aligned, which created an IEP for Student 2 that is reasonably calculated to provide FAPE. Student 2's IEP Progress Reports and grade cards indicate she made progress on IEP goals and in the general curriculum.

Parents always have the right to continue IEP conversations when they do not believe what a district is offering provides their child with FAPE. These parents exercised that right multiple times and continued to advocate for what they believed their daughter needed. The district has an obligation to offer FAPE and did so multiple times after the completion of Student 2's reevaluation. The district has an obligation to ensure the IEP Team considers whether Student 2's behavior impeded her learning or that of others and met this obligation through the student's reevaluation, including a functional behavior assessment. The district then demonstrated that it ensured Student 2's IEP Team considered behavior supports by offering multiple IEPs, including a behavior intervention plan, meeting multiple times to consider and reconsider behavior supports and amending the student's IEP to further address the student's behavior needs.

Based on the foregoing, this investigation concludes that USD 512 *did not violate its obligation* to provide Student 2 with a free appropriate public education, including by ensuring that Student 2's IEP Team considered whether the student's behavior interfered with her learning

or that of others and considered the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

### **Issue Three: Systemic Gifted Child Find**

Did USD 512 ensure the students' school followed child find requirements to identify, locate, and evaluate all children who may be gifted residing within the school's jurisdiction? K.A.R. § 91-40-7(a).

#### **Applicable Law**

Kansas regulation requires that each local board of education “. . . adopt and implement policies and procedures to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction” K.A.R. § 91-40-7(a). Kansas special education law provides rights and protections for “[e]xceptional children” which means “children with disabilities and gifted children.” K.A.R. § 91-40-2(v). In Kansas, a child is eligible to be identified as gifted once they are “school age,” which is “the age at which the local board of education provides educational services to children without disabilities, through the school year in which the child graduates from high school” K.S.A. § 72-3404(g); K.A.R. § 91-40-1(ddd)(1).

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

The parents' specific concern is that they believe the practice at their children's school is not to evaluate any student for gifted before the third grade and to not begin an evaluation for gifted if it is too close to summer break, in violation of child find requirements. (Parents' Complaint, May 1, 2024; Complaint Investigator Discussion with Parents, May 20, 2024.)

The district's child find procedures, described on its website, make clear that the district follows state procedures for evaluating students who may have an exceptionality, and specifically delineates the relevant age range as beginning at age five. (Shawnee Mission School District, *Screenings and Referrals*, <https://www.smsd.org/academics/special-education/screenings-and-referrals>.) The following is KSDE 2023–24 data on students identified as gifted attending the same school as the students at the focus of this investigation, following business rules that require suppression of any data value below ten.

Grade	Number of Students Identified
2	< 10
3	< 10
4	< 10
5	< 10
6	< 10

For the 2023–24 school year, the district conducted multiple evaluations of students at this building to determine if each student is gifted. Data on the grades of students evaluated is as follows:

Grade	Number of Students Evaluated
1	< 10
2	< 10
4	< 10
5	< 10

Despite the necessary data suppression, this data shows that this building has identified students as gifted, including Student 1 who was identified as a first grader. Of those first and second graders evaluated for gifted this school year, multiple were found eligible. Of the evaluations for gifted, three of them were started in the month of April, the latest beginning 19 school days before the end of the school year.

### **Conclusion**

The district’s procedures on the minimum age for conducting a special education evaluation, as well as gifted identification and evaluation data for this school, refute the parents’ assertions that this school has established practices of not conducting gifted evaluations before a child is a third grader and do not begin a gifted evaluation if it is late in the school year. The district has identified and evaluated multiple students as gifted below the third grade and begins gifted evaluations well into the spring. Based on the foregoing, this investigation concludes that USD 512 **did not violate its obligation** to followed child find requirements to identify, locate, and evaluate all children who may be gifted residing within the students’ school’s jurisdiction.

### **Summary of Conclusions and Corrective Action**

#### Issue One

The district violated K.S.A. § 72-3429(c)(1), K.S.A. § 72-3429(c)(4), and K.S.A. § 72- 3429(c)(3), based on the findings of fact listed above. Corrective action is required, as follows:

1. Within 10 calendar days of the date of this report, USD 512 must submit a written statement to KSDE Special Education and Title Services (SETS) that it will comply with:
  - a. State legal requirements at K.S.A. § 72-3429(c)(1) which require the district to ensure that a gifted student’s IEP includes a statement of the student’s present levels of functional performance;
  - b. State legal requirements at K.S.A. § 72-3429(c)(4) which require the district to ensure that a gifted student’s IEP includes a description of special education services that makes clear the adaption to the content, methodology, or delivery of instruction to address the unique needs of the gifted student that result from the gifted student’s exceptionality; and

- c. State legal requirements at K.S.A. § 72-3429(c)(3) which require the district to ensure it provides progress reporting specific to an individual gifted child.
2. Before the first day of the 2024–25 school year, USD 512 must convene Student 1’s IEP Team or use the IEP amendment process described in K.S.A. 72- 3429(b)(4) to write a statement in Student 1’s IEP of the student’s present levels of functional performance that complies with K.S.A. § 72-3429(c)(1) and, based on that updated statement, determine whether the IEP Team needs to revise the student’s goal(s) and special education and related services to ensure alignment with the updated statement. The IEP Team must also ensure a description of special education services is included in Student 1’s IEP that complies with K.S.A. § 72-3429(c)(4). USD 512 must submit the revised portions of Student 1’s IEP to SETS no later than the first day of the 2024–25 school year. If the IEP Team decides not to revise Student 1’s goal(s) and special education and related services to ensure alignment with the updated statement, USD 512 must submit IEP Team meeting notes to SETS that explain this decision and the reason for the decision.
3. Within 10 business days of the date of this report, USD 512 must provide the parent with a revised IEP Progress Report for the 2023–24 school year that provides information on the specific progress Student 1 made toward meeting her specific annual goal during the 2024–25 school year. USD 512 must provide SETS with the revised IEP Progress Report on the same date it provides it to the parents.
4. Due Dates:
  - a. June 13, 2024: 1.;
  - b. June 17, 2024: 3.; and
  - c. August 13, 2024: 2.

#### Issue Two

This investigation found no violations and there is no corrective action.

#### Issue Three

This investigation found no violations and there is no corrective action.

### **Investigator**

*Laura N. Jurgensen*

Laura N. Jurgensen 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)