

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT

FILED AGAINST

UNIFIED SCHOOL DISTRICT #232, DESOTO PUBLIC SCHOOLS

ON MAY 6, 2024

DATE OF REPORT JUNE 7, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #232 (DeSoto Public Schools) on behalf of ----- by his mother, ----- . In the remainder of the report, ----- will be referred to as “the student” and ----- will be referred to as “the complainant”, “the parent”, or as “the mother.”

The complaint is against USD #232 (DeSoto Public Schools). In the remainder of the report, USD #232 will be referred to as “the district.” The student attends DeSoto High School which will be referred to as the “school” in the remainder of the report. Lee Hanson was the Director of Special Services in USD #232 until the beginning of December 2023 and will be referred to as the “Director of Special Services”. Andrea West has been the Interim Director of Special Services since the end of January 2024 and will be referred to as the “Interim Director of Special Services”. Michelle Smotherman is the Special Services Coordinator and will be referred to as the “Special Services Coordinator”. Erin Krehbiel is the Occupational Therapist (OT) and will be referred to as the “OT”. Alison Hanks is the Speech Language Pathologist (SLP) and will be referred to as the “SLP”.

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 6, 2024. On June 3, 2024 a one week extension was requested and granted by KSDE.

### **Evidence Reviewed**

During the investigation, the Complaint Investigator Nikki Crawford reviewed all evidence and documentation, which was provided by both the district and the parent. Additionally, the complaint investigator contacted the district and mother on May 10, 12, 13, 15, 16, 17, 19, 20, 22 and June 3, 2024 by phone and email to clarify evidence and documentation. The following documentation and information were used in consideration of the issues:

1. Student’s Triennial Psychoeducational Assessment Report from Summit Public Schools dated August 30, 2021.
2. Student’s Individualized Education Program (IEP) from the previous school dated September 7, 2021 and amended on March 24, 2022.
3. Student’s Move-in IEP from previous school dated September 28, 2022.

4. Comparable Services Chart (prior to IEP) created by USD #232 dated August 16, 2023.
5. Notice of Meeting dated August 28, 2023.
6. Student's proposed Annual IEP dated September 14, 2023.
7. Prior Written Notice dated October 31, 2023.
8. Email from school psychologist to mother dated November 10, 2023 at 12:42 p.m.
9. Email from mother to school psychologist dated November 11, 2023 at 6:01 p.m.
10. Email from school psychologist to mother dated November 12, 2023 at 1:48 p.m.
11. Email exchange between Director of Special Services and mother on November 13, 2023 at 12:49 p.m. and 3:10 p.m.
12. Email from school psychologist to mother dated November 14, 2023 at 10:33 a.m.
13. Email exchange between Director of Special Services to mother dated November 27, 2023 at 11:04 a.m and 12:47 p.m.
14. Email from school psychologist to mother dated November 28, 2023 at 11:36 a.m.
15. Email from mother to school psychologist dated November 29, 2023 at 9:42 p.m.
16. Email from Director of Special Services to mother dated November 30, 2023, 1:00 a.m.
17. Email from mother to school psychologist dated December 1, 2023 at 3:09 p.m.
18. Email exchange between mother and school psychologist on December 4, 2023 at 12:08 p.m., 1:05 p.m. and 4:03 p.m.
19. Comparison of move-in IEP and USD #232 proposed offer of FAPE, dated December 20, 2023.
20. Email from Special Services Coordinator to mother on December 21, 2023 at 6:00 a.m.
21. Email from mother to Special Services Coordinator on December 23, 2023 at 3:51 p.m.
22. Email from Special Services Coordinator to mother on January 4, 2024 at 2:27 p.m.
23. Email exchange between Special Services Coordinator and mother on January 26, 2024 at 8:33 a.m. and 9:58 p.m.
24. Email from Special Services Coordinator to mother on January 29, 2024 at 2:33 p.m.
25. Email from school psychologist to mother dated February 29, 2024 at 11:55 a.m.
26. Email from mother to school psychologist dated March 4, 2024 at 8:47 p.m.
27. Email from Special Services Coordinator to mother dated March 6, 2024 at 3:29 p.m.
28. Notice of Meeting dated March 8, 2024.
29. Email from Interim Director of Special Services to mother dated March 29, 2024 at 6:15 p.m.
30. Student's proposed IEP dated March 29, 2024.

31. Prior Written Notice for change in services dated March 29, 2024.
32. Email from mother to Interim Director of Special Services dated March 30, 2024 at 3:02 p.m.
33. Prior Written Notice for reevaluation dated April 1, 2024.
34. Emails from Interim Director of Special Services to mother dated April 1, 2024 at 7:01 p.m. and 7:04 p.m.
35. Screenshot of Interim Director of Special Services calendar dated April 1, 2024 showing a meeting to discuss the student's IEP with the district after the mother provided previous IEP dated September 7, 2021 with an update on March 24, 2022.
36. Email from Interim Director of Special Services to district IEP team members dated May 6, 2024 at 9:54 a.m.
37. Emails from Interim Director of Special Services to mother dated May 6, 2024 at 3:54, 5:54 and 6:24 p.m.
38. Email from mother to Interim Director of Special Services dated May 6, 2024 at 6:04 p.m.
39. Image of USPS mail tracking of consent documentation with most current location update on May 8, 2024 at 8:56 a.m.
40. Email from mother to complaint investigator on May 11, 2024 at 8:08 p.m.
41. Call with the Interim Special Education Director on May 13, 2024 at 9:24 a.m. lasting 25 minutes.
42. Phone call from mother on May 13, 2024 at 10:27 am for 17 minutes.
43. Email from mother to complaint investigator on May 13, 2024 at 2:24 p.m.
44. Call from mother on May 13, 2024 at 3:03 p.m. lasting 5 minutes.
45. Call with the Interim Special Services Director on May 13, 2024 at 3:26, lasting 7 minutes.
46. Interview with SLP, OT, and Interim Director of Special Services May 15, 2024 lasting 45 minutes.
47. ACT website at act.org <https://www.act.org/content/act/en/products-and-services/the-act/registration/accommodations.html> on May 15, 2024.
48. Student attendance record for 2023-2024 school year dated May 16, 2024.
49. Call with ACT representative on May 17, 2024 at 9:58 a.m. lasting 5 minutes.
50. Call with Interim Special Services Coordinator on May 20, 2024 at 10:30 a.m. lasting 36 minutes.
51. Report card for 3rd quarter grades for the 2023-2024 school year.
52. Occupational Therapy (OT) service logs for the 2023-2024 school year.
53. Speech Language Pathology (SLP) service logs for the 2023-2024 school year.
54. Call with mother on May 23, 2024, 9:34 am lasting 7 minutes.

## **Background Information**

The subject of this complaint is a 16-year old male student enrolled in the 11th grade at DeSoto High School during the 2023-24 school year. He transferred into USD #232 on August 17, 2023 from Summit Public Schools in the state of California where he attended an alternative high school which used a curriculum based on a project based learning model. Enrollment paperwork and records received from the out-of-state school district showed the student had a current IEP in the state of California.

The student is living with a family in the district while his mother is currently residing in California. It is noted that USD #232 has recognized and included the mother as the parent of the student in all procedures and practices related to the IDEA even though she is living in another state.

## **Issues Investigated**

Based on the written complaint and an interview with the complainant, four issues were identified and investigated.

### **Issue One**

USD #232, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop an IEP that meets the student's needs with IEP team input including parent participation in the development of the student's IEP during the 2023-2024 school year.

### **Applicable Law**

Federal regulations implementing the IDEA at 34 C.F.R. 300.322(a) require that school districts ensure parents are provided the opportunity to participate in IEP team meetings by providing notification of the meeting early enough to allow the parent to attend the meeting.

Under federal regulations implementing the IDEA at 34 C.F.R. 300.323(f) if a child with a disability who had an IEP in effect in a previous public agency in another State transfers to a new public agency in a new State and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with a free appropriate public education (FAPE) which includes providing comparable services to those described in the child's IEP from the previous public agency until the new public agency determines whether the student is a student with a disability in the new state and develops, adopts, and implements a new IEP, if appropriate.

Section G in Chapter 4 of The Kansas State Department of Education Kansas Special Education Process Handbook, describes the procedure to be followed when a student with an IEP from another state transfers into a Kansas school district as follows:

*When a child with an exceptionality, who has a current IEP in another state, transfers to a school district in Kansas, the new school district, in consultation with the parents, must provide the child with FAPE, including services comparable to those described in the child's IEP from the previous school district until the Kansas school district either adopts the current IEP, or conducts an initial evaluation of the child, if deemed necessary, and develops and implements a new IEP for the child. Comparable services have the meaning of services that are "similar" or "equivalent" to the services that were described in the child's IEP from the previous school, as determined by the child's newly designated IEP team in the new district (Federal Register, August 14, 2006, p. 46681). Accordingly, IEP teams should work together to come to a consensus in determining the content of the "comparable" services to be provided. If there is a dispute between the parent and the school district regarding what constitutes comparable services, the dispute could be resolved through mediation procedures or, as appropriate, the due process hearing procedures. If the parent disagrees with the new school district about the comparability of services, stay-put would not apply (Federal Register, August 14, 2006, p. 46682).*

*The new school district may: (a) adopt the current IEP; (b) develop and implement a new IEP; or (c) conduct an initial evaluation to determine eligibility, and develop and implement a new IEP. . . The new IEP generated from any of the three processes described above, in (a) through (c), is an initial offer of special education and related services in Kansas and is the initial Kansas IEP. As such, the district must have parent consent before implementing the services proposed in the initial Kansas IEP. If a parent refuses to consent, or fails to respond to the request for consent, to the initial services offered in the proposed initial Kansas IEP, the district may not provide those services, the district may not initiate due process or mediation procedures, and the district will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure of the district to provide the services specified in the proposed IEP (K.S.A. [72-3429(g)]). The parent retains the right to request mediation or a due process hearing to challenge the district's offer of initial services.*

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

The following finding of facts is based upon a review of the documentation noted previously and interviews with both parties.

1. The student transferred into USD #232 in August at the beginning of the 2023-24 school year from the state of California. USD #232 requested educational records from the previous school district, Summit Public School District, at the time of enrollment.
2. Summit Public School District provided USD #232 with a copy of an IEP dated September 28, 2022 and the most recent special education evaluation report dated August 30, 2021.

3. The September 28, 2022 IEP required individual counseling, specialized academic instruction, occupational therapy, college awareness, career awareness and speech/language to address ten goals; two speech and language goals focused on social language and problem solving; three transition goals including, career awareness, college awareness, and transition; a goal for written expression; a counseling goal to address emotional awareness; and three OT goals to address visual scanning, independent living and handwriting. This IEP also included 40 accommodations and modifications.
4. The student's most recent special education evaluation was conducted in the state of California on August 30, 2021 and documented that the student was eligible for special education and related services under the exceptionality categories of Other Health Impaired (OHI) due to medical diagnoses including Attention-Deficit/Hyperactivity Disorder (ADHD) and anxiety as well as a Specific Learning Disability (SLD) including a processing weakness in graphomotor/sensorimotor abilities and weakness in writing.
5. On August 24, 2023, the mother, student, and school staff met briefly to introduce themselves. No documentation of this meeting was provided by either party.
6. The Interim Director of Special Services reported the district agreed to adopt the September 28, 2022 IEP from the previous school at this meeting. However, the parent reported that she did not agree with the adoption of the September 28, 2022 IEP at this meeting but did acknowledge a discussion related to occupational therapy services for the student.
7. A Notification of Meeting dated August 28, 2023 was provided to the parent scheduling an IEP team meeting on September 14, 2023.
8. USD #232 provided the student with individual counseling, specialized academic instruction, occupational therapy, college awareness, career awareness and speech/language, along with 40 accommodations until the scheduled IEP team meeting on September 14, 2023. These services appear to be comparable to the services required by the student's transfer IEP dated September 28, 2022.
9. The parent participated in the September 14, 2023 IEP team meeting via Zoom; however, due to prolonged discussion, the IEP team agreed to continue the IEP team meeting on October 10, 2023.
10. USD #232 provided the student with comparable services until the continuation of the scheduled IEP team meeting on October 10, 2023.
11. On October 10, 2023 the parent participated in the continuation of the September 14, 2023 IEP team meeting via Zoom and, as a result of that meeting, USD #232 provided the parent with prior written notice on October 31, 2023 describing the initial offer of a Kansas IEP and requesting consent to initiate the proposed special education and related services.
12. The parent declined to provide consent for the proposed initial Kansas IEP on October 31, 2023.

13. Due to the lack of parental consent to the changes between the September 28, 2022 and the initial Kansas IEP from the September 14, 2023 meeting, the district scheduled a follow-up meeting on December 8, 2023 in an attempt to come to consensus with the mother to ensure IEP services were current and appropriate.
14. USD #232 continued to provide the student with comparable services until the scheduled meeting on December 8, 2023.
15. The parent participated in the December 8, 2023 meeting via Zoom where a side-by-side comparison of the September 28, 2022 IEP and the September 14, 2023 proposed initial Kansas IEP was reviewed and discussed.
16. As a result of this meeting, the parent was re-sent the prior written notice dated October 31, 2023 from the September 14, 2023 initial Kansas IEP meeting as the recommendations remained the same. However, the parent failed to respond to USD #232 by either granting or declining to provide consent to initiate the proposed services.
17. USD #232 continued to provide the student with comparable services.
18. A Notification of Meeting dated March 8, 2024 was provided to the parent scheduling an IEP team meeting on March 29, 2024.
19. Multiple emails between the parent and district staff were exchanged between the dates of the December and March meetings; December 23, 2023, January 4, 2024, January 26, 2024 and March 29, 2024. Based on these emails, it appears the parent wanted the district to use the March 24, 2022 amendment to the student's September 7, 2021 IEP as the transfer IEP rather than the September 28, 2022 IEP.
20. The parent participated in the March 29, 2024 IEP team meeting via Zoom and, as a result of the meeting, the parent was provided with prior written notice dated March 29, 2024 for notification of changes of less than 25% in services between the September 28, 2022 IEP and the March 29, 2024 proposed initial Kansas IEP.
21. The district also sent a prior written notice requesting consent to conduct a reevaluation of the student dated April 1, 2024.
22. The parent has not provided written consent for either a reevaluation of the student or the initial offer of a Kansas IEP.
23. USD #232 continued to provide the student with comparable services through the end of the 2023-24 school year.

### **Conclusion**

Federal regulations implementing the IDEA at 34 C.F.R. 300.322(a) require that school districts ensure parents are provided the opportunity to participate in IEP team meetings by providing notification of the meeting early enough to allow the parent to attend the meeting. It is noted that participation does not equate with agreement on the issues and the ultimate offer of a free appropriate public education (FAPE) by the public agency.

In this case, the parent participated in all meetings regarding the student's IEP held on August 24, 2023, September 14, 2023, October 10, 2023, December 8, 2023, and March 29, 2024. Based on the foregoing, noncompliance is not identified in regards to providing the parent the opportunity to participate in the IEP meetings for the student.

Under federal regulations implementing the IDEA at 34 C.F.R. 300.323(f) if a child with a disability who had an IEP in effect in a previous public agency in another State transfers to a new public agency in a new State and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with a free appropriate public education (FAPE) which includes providing services comparable to those described in the child's IEP from the previous public agency until the new public agency determines whether the student is a student with a disability in the new state and develops, adopts, and implements a new IEP, if appropriate.

In this case, the student transferred into USD #232 at the beginning of the 2023-24 school year with a current IEP dated September 28, 2022 and an eligibility determination from the state of California dated August 30, 2021. Please note that issues related to the student's reevaluation will be specifically addressed under ISSUE TWO.

Interviews found the parent and school staff did meet on August 24, 2023 to briefly discuss the special education services to be provided to the student prior to his IEP team meeting scheduled for September 14, 2023. It is unclear if these services were the result of the district's adoption of the California eligibility determination dated August 30, 2021 or the result of an agreement with the parent to provide comparable services. Regardless, the student received individual counseling, specialized academic instruction, occupational therapy, college awareness, career awareness and speech/language therapy, along with 40 accommodations which were comparable to the services found in the transfer IEP dated September 28, 2022 until the IEP team meeting on September 14, 2023.

USD #232 conducted an IEP team meeting on September 14, 2023 which was continued to October 10, 2023 with agreement of the IEP team members. In the interim, USD #232 continued to provide comparable services to the student. On October 31, 2023, USD #232 proposed an initial Kansas IEP and provided the parent with prior written notice and request for consent for initial services in the state of Kansas per the guidance in The Kansas State Department of Education Kansas Special Education Process Handbook. The parent signed the prior written notice indicating that she was declining to consent to the proposed initial Kansas IEP and services.

After failing to receive consent to implement the proposed initial Kansas IEP, USD #232 chose to continue to provide comparable services to the student and scheduled another meeting with the parent in an attempt to reach a compromise. Based on this action, it appears that USD #232 had accepted the most recent evaluation report and was considering the student as a student eligible for special education services in the state of Kansas. This meeting was held



on December 8, 2023 and resulted in a second offer of the same proposed initial Kansas IEP and prior written notice for consent for initial services in Kansas. However, the parent did not grant or decline consent for the initial Kansas IEP and special education services offered by USD #232. USD #232 continued to provide comparable services to the student.

The IEP team was reconvened on March 29, 2024 in a third attempt to follow the out-of-state transfer procedures. As a result of the IEP team meeting, the district provided the parent with a prior written notice for consent to conduct a reevaluation on April 1, 2024. In addition, USD #232 proposed a different initial Kansas IEP and again provided the parent with prior written notice and request for consent to initiate special education services in the state of Kansas. To date, the parent has not granted or declined consent for either the reevaluation or for initial special education services in the state of Kansas.

USD #232 has made three separate attempts to propose an initial IEP for the student in the state of Kansas. The parent declined the proposed IEP and initial provision of services on October 31, 2023 and did not respond to a second prior written notice following the December 8, 2023 meeting. USD #232 continued to provide comparable services to the student until another IEP team meeting was held on March 29, 2024. Following this IEP team meeting, USD #232 proposed a different initial Kansas IEP and again provided the parent with prior written notice for consent to initiate special education services in the state of Kansas; however, the parent did not provide the required written consent to initiate the proposed special education services.

Based on the foregoing, USD #232 has continued to make multiple efforts to work with the parent to develop an appropriate IEP throughout the entire 2023-24 school year and has provided the parent with multiple proposed initial Kansas IEPs and prior written notices for consent to initiate the proposed special education services. It is noted the parent initially declined to initiate special education services in the state of Kansas on October 31, 2023 but the district continued to provide comparable services to the student and made two additional attempts to reach a consensus with the parent. However, the parent has not responded to USD #232 by either granting or declining consent to initiate the services described in the most recent offer of an initial IEP dated March 29, 2024. As such, the district has made ongoing efforts and is found to be in compliance with the requirement to properly develop an IEP that meets the student's needs with IEP team input including parent participation in the development of the student's IEP during the 2023-2024 school year.

Although the district is not out of compliance with Issue One because they continued to provide FAPE through the provision of compensatory services while engaging with the parent in an attempt to develop an initial IEP in Kansas during the 2023-24 school year, USD #232 seemed unaware of the pertinent Kansas requirements and guidance. K.S.A. 72-3429(g) says that the new Kansas IEP is an initial offer of services and Section G in Chapter 4 of The Kansas State Department of Education Kansas Special Education Process Handbook which states, "As

such the district must have parent consent before implementing the services proposed in the initial Kansas IEP. If a parent refuses to consent, or fails to respond to the request for consent, to the initial services offered in the proposed initial Kansas IEP, the district may not provide those services, the district may not initiate due process or mediation procedures, and the district will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure of the district to provide the services specified in the proposed IEP (K.S.A. [72-3429(g)]). The parent retains the right to request mediation or a due process hearing to challenge the district's offer of initial services."

Again, while *noncompliance is not identified*, it is recommended that USD #232 review its policies, procedures, and practices regarding out-of-state transfers and provide training to all special education staff employed by the LEA to ensure all staff have a clear understanding of how to respond when a student with an IEP transfers into the school district from out-of-state.

## **Issue Two**

USD #232, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to get parent consent prior to conducting formal special education evaluations during the 2023-2024 school year.

## **Applicable Law**

Federal regulations at 34 C.F.R. 300.111(a)(1) requires school districts to ensure that all children with disabilities residing within the district boundaries and who are in need of special education and related services, are identified, located and evaluated, regardless of the severity of their disability.

Federal regulations at 34 C.F.R. 300.301(b) allows either the parents of the student or the school district to initiate a request for an initial evaluation to determine if the child is a child with a disability and in need of special education and related services.

Federal regulations at 34 C.F.R. 300.300(a) require that public agencies provide parents with prior written notice and obtain written parent consent for an initial special education evaluation before conducting such an evaluation of the student.

Federal regulations at 34 C.F.R. 300.303(b)(2) requires public agencies to ensure that a reevaluation of each child with a disability is conducted at least once every three years, unless the parent and the public agency agree that reevaluation is unnecessary.

Federal regulations at 34 C.F.R. 300.300(c) require public agencies to provide parents with prior written notice and obtain written consent for a reevaluation for special education before conducting such an evaluation of the student. If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using consent override procedures which include documentation of reasonable efforts to obtain parent consent and that the student's parent has failed to respond.

Under federal regulations implementing the IDEA at 34 C.F.R. 300.323(f) if a child with a disability who had an IEP in effect in a previous public agency in another State transfers to a new public agency in a new State and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with a free appropriate public education (FAPE) which includes providing comparable services to those described in the child's IEP from the previous public agency until the new public agency determines whether the student is a student with a disability in the new state and develops, adopts, and implements a new IEP, if appropriate.

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

The following finding of facts is based upon a review of the documentation noted previously and interviews with both parties.

1. The findings of Issue One are incorporated herein by reference.
2. The most recent reevaluation of the student was conducted in California on August 21, 2021.
3. While there is no documentation that USD #232 accepted the student's eligibility determination for special education and related services from the state of California; the district did treat the student as eligible for special education services in the state of Kansas by providing comparable services to the student during the entire 2023-24 school year.
4. The first documented request for a reevaluation of the student is found in the December 21, 2023 email from the Special Services Coordinator to the mother. The email refers to the December 8, 2023 meeting and states, "At that time, you continued to decline our offer of FAPE and indicated that you would like to think about mediation. You also mentioned an outside evaluation. We declined that offer because we have not conducted an evaluation in our district. We then offered you the option of our district conducting a re-evaluation." It is noted however, there was no prior written notice for consent included in the email.
5. January 4, 2024 and January 29, 2024 emails from the Special Services Coordinator to the parent also document the district's efforts to follow-up on the status of the district's request for consent for a reevaluation of the student.
6. In an April 1, 2024 email from the Interim Director of Special Services to the mother the director expressed that "the best course of action is to initiate a reevaluation to further assess (student's) current educational needs as well as obtain strong present levels". In communication with the investigator the Interim Director also stated that the school would like to begin the reevaluation soon because the reevaluation is due August 30, 2024 which will be a quick turnaround for school staff at the start of the school year.
7. USD #232 provided the parent with prior written notice dated April 1, 2024 requesting consent for a reevaluation of the student. This prior written notice was emailed to the parent through the Spedtrack system by the Interim Special Services

Director on April 4, 2024. In addition, another copy of the prior written notice was mailed to the parent via the United States Post Office on April 18, 2024.

8. The parent stated that she did not receive any prior written notice by post requesting consent to conduct a reevaluation from USD #232 in an interview on May 13, 2024.
9. USD #232 had made two separate attempts to obtain written consent from the student's mother on April 4, 2024 and April 18, 2024. However, the parent did not respond and the district proceeded to conduct the reevaluation of the student using the override procedures allowed in the IDEA.
10. As noted in the district's Formal Complaint Response, "Following no response at 30 days from the first contact, the IEP team moved forward with re-evaluation data collection in accordance with K.A.R. 91-40-17(e)(2); 34 C.F.R. 300.322(d)(1)."
11. It is noted that the district immediately stopped the reevaluation of the student when it received communication from KSDE staff on May 6, 2023 that the mother had filed a complaint due in part to the unconsented special education reevaluation.

### **Conclusion**

Federal regulations at 34 C.F.R. 300.300(c) require public agencies to provide parents with prior written notice and obtain written consent for a reevaluation for special education before conducting such a reevaluation of the student. If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using consent override procedures which include documentation of reasonable efforts to obtain parent consent and that the student's parent has failed to respond. In this case, the district met its obligation to document reasonable efforts to obtain parent consent. The district requested consent for a reevaluation at the meeting on December 8, 2023, in emails on January 4, 2024, January 29, 2024 and April 1, 2024. Additionally, the consent was uploaded into the Spedtrack system on April 4, 2024 and sent via the United States Post Office on April 18, 2024.

Based on the foregoing, although USD #232 failed to get parent consent prior to conducting formal special education reevaluations during the 2023-2024 school year. The district is *not out of compliance* due to guidance offered in 34 C.F.R. 300.300(c), which allows consent override procedures including documentation of reasonable efforts to obtain parent consent.

### **Issue Three**

USD #232, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP by providing the accommodation of extended time for ACT testing during the 2023-2024 school year.

## **Applicable Law**

Federal regulations at 34 C.F.R. §300.320(a)(6) require that the IEP include a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments.

## **Analysis: Findings of Fact**

The following finding of facts is based upon a review of the documentation noted previously and interviews with both parties.

1. The findings of Issue One are incorporated herein by reference.
2. The ACT is a standardized test used for college admissions in the United States. It is currently administered by ACT, a nonprofit organization of the same name. The ACT test covers four academic skill areas: English, mathematics, reading, and scientific reasoning. It also offers an optional direct writing test.
3. The September 28, 2022 IEP has accommodations of extra processing time and extended time for written assignments but not extended time for testing.

## **Conclusion**

Federal regulations at 34 C.F.R. §300.320(a)(6) require that the IEP include a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments.

In this case, the student's September 28, 2022 IEP includes 40 different accommodations to support learning. However, extended time for testing is not included in this list of accommodations. It is noted that the ACT is not considered a State or district-wide assessment and the district has no authority to require ACT to provide a specific accommodation during the test administration. ACT has a procedure in place for students with disabilities to request appropriate accommodations be provided during the administration of the ACT.

Based on the foregoing, *it is not substantiated* that USD #232 failed to follow the student's IEP by providing the accommodation of extended time for ACT testing during the 2023-2024 school year.

## **Issue Four**

USD #232, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP by providing Speech and Occupational Therapy during the 2023-2024 school year.

## **Applicable Law**

Under federal regulations implementing the IDEA at 34 C.F.R. 300.323(f) if a child with a disability who had an IEP in effect in a previous public agency in another State transfers to a new public agency in a new State and enrolls in a new school within the same school year, the

new public agency (in consultation with the parents) must provide the child with a free appropriate public education (FAPE) which includes providing comparable services to those described in the child's IEP from the previous public agency until the new public agency determines whether the student is a student with a disability in the new state and develops, adopts, and implements a new IEP, if appropriate.

It is noted that based on the findings in Issue One, the student transferred into USD #232 from the state of California and was provided with comparable services to those described in the September 22, 2022 IEP throughout the 2023-24 school year while the district attempted to develop and implement a new IEP.

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

The following finding of facts is based upon a review of the documentation noted previously and interviews with both parties.

1. The findings of Issue One are incorporated herein by reference.
2. USD #232 created a Comparable Services Chart dated August 16, 2023 which reflected OT and speech therapy services to be provided 30 minutes, one time per week which is what is required in the September 28, 2022 IEP.
3. The district provided OT and speech therapy logs documenting the days and times of services. These logs were compared against the student's attendance record and services were found to be consistent with services required in the September 28, 2022 IEP.
4. This schedule of service was provided until the March 28, 2024 prior written notice when OT was reduced to 23 minutes per week and speech therapy was reduced to 23 minutes per week. These changes of less than 25% do not require parental consent.

### **Conclusion**

Under federal regulations implementing the IDEA at 34 C.F.R. 300.323(f) if a child with a disability who had an IEP in effect in a previous public agency in another State transfers to a new public agency in a new State and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with a free appropriate public education (FAPE) which includes providing comparable services to those described in the child's IEP from the previous public agency until the new public agency determines whether the student is a student with a disability in the new state and develops, adopts, and implements a new IEP, if appropriate.

In this case, the student's September 28, 2022 IEP required OT and speech therapy services to be provided for 30 minutes, one time per week. A review of OT and speech therapy service logs reflected that these related services were provided as required in the transfer IEP as

comparable services while the district attempted to develop an initial Kansas IEP during the 2023-24 school year.

Based on the foregoing, *it is not substantiated* that USD #232 failed to follow the student's IEP by providing Speech and Occupational Therapy during the 2023-2024 school year.

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

1. **ISSUE ONE:** A violation of 34 C.F.R. 300.322(a) was not found based on the ongoing district efforts to properly develop an IEP that meets the student's needs with IEP team input including parent participation in the development of the student's IEP during the 2023-2024 school year. No corrective action is required.
2. **ISSUE TWO:** A violation of 34 C.F.R. 300.111(a)(1), 34 C.F.R. 300.301(b), 34 C.F.R. 300.300(a), 34 C.F.R. 300.303(b)(2), and 34 C.F.R. 300.300(c) was not found based on the consent override procedures including documentation of reasonable efforts to obtain parent consent. No corrective action is required.
3. **ISSUE THREE:** A violation of 34 C.F.R. §300.320(a)(6) was not found based on the fact that the ACT is not a State or district-wide assessment and USD #232 has no authority to require any accommodations during the administration of the ACT. Corrective action is not required.
4. **ISSUE FOUR:** A violation of 34 C.F.R. 300.323(f) was not found based on the provision of OT and SLT services comparable to those required by the student's out-of-state transfer IEP dated September 22, 2022. 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)