

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #413
ON MAY 22, 2024

DATE OF REPORT JUNE 24, 2024

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

The complaint is against USD #413, Chanute Public Schools. In the remainder of the report, USD #413 will be referred to as “the district”, “the local education agency (LEA)”, or “the school”.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date on which it was filed. A complaint is considered filed on the date on which it was received by KSDE. In this case, the KSDE initially received the complaint on May 22, 2024, and the 30-day timeline ends on June 21, 2024. The timeline was extended to June 24, 2024, to include additional issues that emerged through the natural course of the investigation.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Crista Grimwood, reviewed all evidence and documentation, which was provided by both the district and the complainant.

The following documentation and information were used in consideration of the issue:

1. The parent’s original Formal Complaint and allegations.
2. The District’s written response to the allegations.
3. The parent interview, conducted on 5/28/2024.
4. The District interview with Mrs. Wolken, (Elementary Assistant Principal), conducted on 6/5/2024.
5. The student’s IEP, dated 12/11/2023.
6. A PWN requesting consent to evaluate dated and signed 9/28/2023.
7. The Evaluation/Eligibility Team Report dated 12/11/2023.
8. A Notice of Special Education Meeting (NOM) dated 11/27/2023 for a meeting held 12/11/2023.
9. An NOM acknowledgment, signed on 12/11/2023.

10. A PWN for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated 12/11/2023, finding the student eligible.
11. The Functional Behavior Assessment dated 12/07/2023.
12. The Positive Behavior Intervention Plan dated 12/07/2023 and consented to on 12/11/2023.
13. Email communication between Mrs. Wolken, Ms. Wire (Principal), and the parent dated March 1, 2023 – March 19, 2023, addressing the parent’s concern that the student was not receiving services as required in the IEP.
14. Email communication between Mrs. Wolken, Ms. Wire, Ms. Pena (Special Education ED Teacher), and Ms. Mewhinney (3rd grade General Education Teacher) addressing a schedule change for the student and an elopement incident, dated March 6, 2024 – March 8, 2024.
15. Email communication between Ms. Wire and the parent addressing a parent request for Jen Gonzalez’s (Special Education Resource Teacher) employment schedule and days absent, dated February 29, 2024.
16. Email communication between the parent, Ms. Wire, Ms. Mewhinney, Ms. Gonzalez, and Mrs. Wolken addressing parent concerns about PE field day and farm day, dated May 21, 2024.
17. Email communication between the parent and Ms. Sessums (School Psychologist) addressing the parent’s desire to revoke consent for services.
18. Hand-written notice from the parent, revoking consent for services, dated 5/22/2024.
19. PWN revoking consent for services, dated and signed by the parent on 5/22/2024.
20. List of district staff and roles.
21. Amended, “updated” Progress Report, dated 6/10/2024, where the district corrects a failure to provide progress monitoring on goals for the 5/17/2024 progress monitoring period.

Background Information

The student is currently a fourth-grade student. The student was a third-grade student, attending Chanute Elementary School, during the period of this investigation. The student was identified as a student with an exceptionality, specifically under the classification of Emotional Disability with a secondary classification of Learning Disability. The student also has a current diagnosis of Oppositional Defiant Disorder.

Eligibility was determined on 12/11/2023, and an IEP was developed that same day. The parent provided consent to special education and related services on 12/11/2023. The parent revoked consent for services on 5/22/2024. The parent was an employee, at Chanute Elementary School, during the time of this investigation.

Issues

In the original complaint, the complainant alleged that USD #413 failed to provide the least restrictive environment for the student, as required by the student's IEP. In interviews with the complainant, the complainant expressed additional allegations. The following issue was investigated:

1. **ISSUE ONE:** Whether USD #413, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP to the maximum extent possible, the student is to be educated and participate with other non-identified peers in general education classes and in extracurricular and other nonacademic activities (K.S.A. 72-3429(c)(5)).

In other words, the parents single allegation is that the school failed to implement the child's IEP with regard to the extent to which the child would be educated with non-disabled children.

The parent alleged other possible violations that were not investigated as they are not subject to the Individuals with Disabilities Education Act (IDEA), and therefore the Kansas State Department of Education does not possess jurisdiction to investigate these claims. The issues include allegations of bullying and retaliation.

Issue One

Whether USD #413, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP to the maximum extent possible, the student is to be educated and participate with other non-identified peers in general education classes and in extracurricular and other nonacademic activities (K.S.A. 72-3429(c)(5)).

Applicable Law

First, it should be clarified that special education statutes and regulations do not require children with disabilities to be educated with children who are non-disabled, to the maximum extent possible. Instead, federal and state statutes and regulations require districts, to the maximum extent appropriate, to educate children with disabilities with children who are not disabled, and to provide special classes, separate schooling or for the removal of children with disabilities from the regular education environment only when the nature or severity of the disability of the child is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily. (34 C.F.R. 300.114(a)(2); K.S.A. 72-3420(a)). OSEP guidance suggests that a "regular educational environment", as referenced in 34 C.F.R. 300.114(a), includes regular classrooms and other school settings, like the cafeteria and recess, where children without disabilities participate (71 Fed. Reg. 46,585 (2006)). Kansas regulation defines the "Least Restrictive Environment" to mean "the educational placement in which, to

the maximum extent appropriate, children with disabilities, including children in institutions or other care facilities, are educated with children who are not disabled, with this placement meeting the requirements of K.S.A. 72-976, and amendments thereto, and the following criteria: (1) Determined at least annually; (2) based upon the student's individualized education program; and (3) provided as close as possible to the child's home. (K.A.R. 91-40-1(II)).

The process for determining the least restrictive environment for each child must be individualized, with decisions made by the child's IEP team, including the parent. (34 C.F.R. 300.116). Each child's IEP must include a "statement of special education and related services and supplementary aids, based on peer-reviewed research to the extent practicable, and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child... (B) to be involved in and make progress in the general education curriculum... and to participate in extracurricular and nonacademic activities; and (C) to be educated and participate with other exceptional and nonexceptional children in the activities described in this paragraph" (K.S.A. 72-3429(c)(4)). To that end, a student's IEP must include "an explanation of the extent, if any, to which the child will not participate with nonexceptional children in the regular class and in the activities described in provision (4)". (K.S.A. 72-3429(c)(5)).

Findings

The parent alleges there were two incidents in which the student was not included with non-identified peers. The parent shared with the investigator that the student was intentionally excluded from general education peers on two different occasions, 5/14/24 and 5/21/24. These were both field trips for all students, specifically "Farm Day" and "PE Day", respectively. The parent is concerned the student is only being grouped with "behavior students" for these activities.

It is the position of the district that the student was permitted to participate with non-identified peers to the extent appropriate on PE Day and Farm Day. On PE Day, the district asserts, "[A]ll students were group (Sic) with chaperones, and [the student] was placed with the staff member who knew his behavior plan the best to ensure his safety. He was still provided the opportunity to participate with his non-disabled peers and also provided choices as the events of the day progressed to ensure his continued participation. He chose to stay with special education staff when given the choice." The district claims the student did participate in Field Day as required in the student's IEP. The district admits the student was placed in a small group with only other special education students, but that the small group did participate in activities, such as tug of war, lunch, and an obstacle course with general education peers.

The district summarizes; "It is the districts (Sic) position that the IEP was followed and that [the student] was provided the opportunity to be educated and participated with his non-disabled peers in general education classes AND extracurricular and other nonacademic activities."

An e-mail dated May 21, 2024, between various district employees and the parent discusses the two events in question. The parent begins by expressing concerns that the student was removed from general education peers on both Farm Day and PE Day. As the parent states, the student should be with "HIS CLASS" ... not room 408" ... "[T]hat is not his class, it's an alternative room for him to go for breaks and lunch." The parent claims she has repeatedly requested the student be separated from another student because the two students do not get along.

Ms. Wire, the elementary principal, responds, "[B]oth are in the same class as well as the same program. I know that their schedules are different to some extent. But I am not sure exactly what you are expecting out of this." About PE Day, she continues, "I am not aware of [the student] not being with his class today? (Sic) Mrs. Wolken witnessed him do multiple activities with his class."

Special Education ED Teacher, Ms. Pena, responded, "Last week at farm week, we were handed a list and they had groups on them. My Group (408) had my 3rd grade kiddos only, including [the student]. So, there were only 3 kids in my group." She continues, "Today [PE day] I didn't get handed a paper with groups but got told to form our own group again and go with our 408 kids. Our kids including [the student] did join his gen ed class for tug a war (Sic) and lunch time. The rest of the time we were in our own group."

General education teacher, Ms. Mewhinney confirms Ms. Wire and Ms. Pena's recollection of Farm Day. "On farm day our third graders are divided into 12 groups... [The student] was placed in Trinity's group for coverage and had an awesome day. We did join back up as a whole class for lunch and...classroom activities when we returned."

Ms. Mewhinney and Special Education teacher, Ms. Gonzalez provided further insight about PE Day.

Ms. Mewhinney states, "...[the student] joined us for our third station of the day. [The student] did tug of war and relay races with us before lunch. He joined us for lunch and would have continued the day with us." Ms. Gonzalez indicated that [the student] elected to stay with his small group at PE Day and Farm Day when he was asked if he wanted to join his general education class but did meet up with peers for tug of war, an obstacle course, and lunch.

Also, during Farm Day, the student began to fight with another student in his small group (the same student the mother had requested the student be separated from) and was returned to the ED room at the school. According to the district, "On the farm day, [the student] exhibited behavior that posed a risk to himself and others, therefore he was taken back to the school to the ED classroom". The record shows the student exhibited verbal aggression during the altercation.

The parent is also concerned about the student's transportation, claiming the student is forced to use an alternative mode of transportation for extracurricular activities and is not allowed to join his peers on the regular school bus.

During an interview, Mrs. Wolken, shared the student expressed fear of riding on the large school bus and displayed behaviors indicative of those listed within his BIP regarding changes in routine and transitions. As a result, arrangements were made for the student to ride on a smaller van and be in a smaller group with an adult who is versed in his specific behavior support needs.

In an e-mail, dated May 21, 2024, Ms. Gonzalez states, "I have asked [the student] about riding the bus and going with his peers and he gets upset and says he does not like riding the bus. For this reason, he got lumped into our group. All the rest of the 3rd grade formed groups as they got off the bus and immediately started spreading out to different stations. We did the same."

The student's initial evaluation report, dated 12/11/2013, indicates the student was referred for an evaluation due to behavior concerns. Observations of the student include the student taunting other students, name-calling, targeting other students, and intentionally bumping into other students. The report states that due to the student's behavior in the general education classroom, the student was removed from the classroom and sent to the self-contained ED room for the remainder of the day. Upon arrival in the ED room, the student declared, "I get to stay in here for the rest of the day."

Included in the student's evaluation report is a treatment plan from Southeast Kansas Mental Health Center, dated 09/08/2023, which diagnosed the student with Oppositional Defiant Disorder. Goals in the student's treatment plan include reducing agitation, learning to cooperate, and controlling defiance. Services recommended are individual therapy and case management. Other current diagnoses include Generalized Anxiety Disorder, Disruptive Mood Dysregulation Disorder, and Major Depressive Disorder. The student is currently taking medications including Risperidone, Sertraline, and a generic form of Abilify.

In the evaluation report, school personnel rated the student's behaviors as Extremely Elevated for Behavioral Control, Problem Solving, and Emotional Control indexes. This indicates that in a school setting, the student has extreme difficulty maintaining self-control and has difficulty regulating impulsive behaviors.

On Clinical Scales, school personnel and the parent, rate the student as either Clinically Significant or At-Risk in the areas of Aggression, Conduct Problems, and Depression, indicating the student engages in rule-breaking behaviors such as cheating, deception, and or/stealing and that the student is withdrawn, pessimistic, and/or sad. The student also rated as At-Risk in the area of Attention Problems, and Clinically Significant symptomology of Hyperactivity and Anxiety, indicating the student engages in a high number of behaviors that are adversely

affecting other children in the classroom. The student's teachers report the student frequently displays behaviors stemming from worry, nervousness, and/or fear.

The report shows the student's academic performance as "minimal to low" and states it may take the student hours to complete one task. The student's FastBridge assessments, for reading and math, show the student was in the 7th %tile for aReading in the fall of 2022 and 8th %tile in the fall of 2023. aMath scores place the student in the 31st %tile in the fall of 2022 and 31st %tile in the fall of 2023.

The report concludes the student is eligible for special education and related services with a primary exceptionality of Emotional Disability and a secondary exceptionality of Specific Learning Disability, as defined under K.A.R.91-40-1(v) and K.A.R.91-40-1(mmm), respectively.

The student's IEP contains four goals. Goal one is a communication goal, related to speech sound production, and monitored through therapy data, progress monitoring, and observation. The student has made progress, either surpassing or making significant gains in all areas monitored. Goal two is a social-emotional goal, related to non-compliance. The goal states, "For the duration of the IEP, [the student] will decrease non-compliant behaviors to 5 or less a week for 8 out of 9 weeks", monitored through a behavior chart. The student's baseline is an average of 58 non-compliant behaviors in a week. Progress monitoring shows the student did not make progress for the reporting period ending 5/16/2024. For that period, the report shows the student's behaviors at 11, 2, 13, 11, 6, 22, 3, 5, 3, and 9 for each week in the 10-week observation period. However, progress had been made in previous reporting periods. Goal three is a reading goal, working on CCVC/CVCC words and silent E, monitored by teacher observation and data. Progress monitoring shows the student is making some progress in the area of reading. Goal four is also a reading goal, related to the student being able to read 50 WRCM with 80% accuracy in 2 out of 3 trials monitored by teacher observation and data. The student is currently able to read 24 WRCM with 84% accuracy.

The student's IEP lists direct specialized instruction for 30 minutes, 5x a week in the resource room; direct speech services for 15 minutes, 2x a week in the general education classroom or the resource room; 20 minutes of direct social work services, 1x a week in resource room; lunch for 30 minutes, 5x a week in the ED room; and 40 minutes, 5x a week in the ED room for recess and breaks. Accommodations include scheduled breaks, daily during class time, for 5-15 minutes in the general education or ED classroom, and a separate, quiet, or individual area for the duration of an assignment or assessment in either the general education or special education classroom.

The student does not require any supplementary aids or services and does not have transportation listed in the IEP.

The student's IEP contains a section titled, Participation with non-Disabled Peers, under which three categories are defined, and each includes a guiding statement as to what the description

of each category should include. The three categories are 1) general education classes and curriculum, 2) the opportunity to participate in all non-academic and extracurricular activities such as clubs, sports, etc., and 3) the opportunity to participate in field trips, assemblies, special events, etc. While all three categories offer a similar guiding statement, category three offers this specific prompt:

Describe the extent to which the student will have the opportunity to participate in field trips, assemblies, special events, etc., to the same extent as their non-identified peers:

In response, the student's IEP states, "[The student] will have the opportunity to participate in field trips, assemblies, special events, etc. to the same extent as their non-identified peers."

The student's evaluation also includes a Functional Behavior Assessment (FBA). The FBA lists five target behaviors: non-compliance, elopement, suicidal ideation, property destruction, and verbal aggression. The FBA examined the student's daily schedule, noting when, and during what activities, the student would most likely exhibit "problem behaviors". Those times and activities included: *break, recess, snack*, between 9:50-10:30 am in the ED room, *whole group reading* from 10:50-11:10 am in the general education classroom, whole group math from 1:20-1:40 pm in the general education classroom, and *MTSS* from 2:00-2:30 pm in the general education classroom. Times and activities with a low likelihood of "problem behaviors" include breakfast/soft start in the ED room, lunch/independent work in the ED room, speech services, break with Mr. Travis, math journal/break with Mr. Travis, recess with the general education class, and 3rd grade reading resource.

The FBA concludes "[W]hen a peer [the student] dislikes is around, [the student] exhibits verbal aggression in order to obtain negative peer attention..."[W]hen [the student is in a whole group learning situation, [the student] may exhibit property destruction in order to obtain negative peer attention"..."[W]hen a non-preferred task is presented, [the student] engages in non-compliance to avoid the task being presented"..."[W]hen presented with a non-preferred activity, [the student may elope and/or engage in verbal aggression to avoid and gain control of the situation." The FBA results indicate that a Behavior Intervention Plan (BIP) is needed as part of the student's IEP.

The student's BIP targets the five behaviors of concern noted in the FBA, non-compliance, elopement, suicidal ideation, property destruction, and verbal aggression. These behaviors are described as follows:

Non-compliance: Any response that does not match the delivered instruction within 30 seconds from the time the instruction was delivered, allowing for one additional verbal prompt at the end of the 30 seconds.

Elopement: Any (Sic) [the student] leaves the classroom without explicit permission to do so.

Suicidal Ideation: Any time [the student] makes statements indicating that he wants his life to end. [The student] may say things like "I'm going to kill myself" or "I want to die."

Property Destruction: Acting upon property with the intent to (or succeeding in) destroying it. This behavior is not directed toward another person. [The student] may flip chairs, slam objects, push desks, etc.

Verbal Aggression: Any language (verbal or nonverbal directed at someone in a threatening or harmful manner. This can include obscene gestures and profanity. [The student] may tell others things like "I'm going to punch you", or "I'm going to kill you."

To counter targeted behaviors, the BIP outlines, when, and how, replacement behaviors will be encouraged, preventative strategies used, interventions used, and consequences applied.

Replacement behavior involves identifying when the student needs a break and ensuring the student appropriately utilizes that time to regulate and prepare for upcoming activities.

According to the BIP, should the student opt for a break; the student will remain in the break setting for the duration of the activity he is opting out of. Staff will work with the student to identify feelings leading to the request for a break.

Preventative strategies include avoiding power struggles, providing clear directions, frequent breaks, predictable routines/schedules, and private redirection. The student will use a red "X" icon to indicate when he needs a break from an activity.

Interventions include the use of visuals, offering breaks, and giving physical space. If the student does use his red "X" icon, indicating the need for a break, the student should go to the Turn Around Room within the self-contained ED classroom for a "quiet break" for the duration of the activity the student is opting out of. Staff may also give the student tally marks for work completion which the student may trade for prizes.

Consequences for exhibited target behaviors include sharing with the student's parent how the student's day went, restitution owed, note or call home, and loss of privilege(s). The BIP specifies, "Should [the student] engage in behaviors that pose a risk to others, as evidenced by evacuation of the classroom, [the student] shall remain in the ED setting for the remainder of the day"... "[The student] should be expected to restore the environment to its original condition following any episode of property destruction." The consequences section of the BIP also details that when [the student] makes it through a scheduled general education time without maladaptive behaviors, the student should gain access to a preferred activity for 5 minutes and be praised for his success.

Analysis

An analysis of the student's least restrictive environment requires a two-part inquiry. First, the investigator must review the student's IEP to determine what, if any, restrictions exist on the student's opportunity to participate in extracurricular activities with non-identified peers. The second is whether the level of required opportunity to participate was followed by the district on PE Day and Farm Day.

The student's IEP details how the student will participate in extracurricular activities, specifically, "[the student] will have the opportunity to participate in field trips, assemblies, special events, etc. to the same extent as their non-identified peers." This statement is based on a prompt on the IEP form itself, requesting the practitioner "Describe the extent to which the student will have the opportunity to participate in field trips, assemblies, special events, etc. to the same extent as their non-identified peers." While this prompt elicits a statement of the expectation for *all students*, general education, and those receiving special education and related services, it does not naturally invite a statement of how this particular student will *not* participate, as required by law.

Under K.S.A. 72-3429(c)(5), a district is required to include, in a student's IEP, "an explanation of the extent, if any, that the student will *not* participate...". Here, the student's IEP accurately states what all students are to receive; that is, the opportunity to participate in extracurricular activities. Given that students receiving specially designed instruction are general education students first, the opportunity to participate in extracurricular activities automatically applies. To create an individualized plan, the district is required to provide a statement that describes when this automatic opportunity to participate would not apply.

While the distinction may seem small, the fact that a student *will* participate in extracurricular activities is implied under IDEA, but to what extent the student will *not* participate, provides districts the ability to create an individualized plan for each student based on their unique needs.

The student's IEP fails to explain to what extent the student will not participate with non-identified peers. Therefore, the student has no restriction on participation in extracurricular activities and must have the same opportunity to participate, and in the same manner, as non-identified peers.

Next, the investigator must review the events that occurred on both PE Day and Farm Day, and the student's opportunity to participate in each event.

On both days in question, the district admits the student was not provided the opportunity to be in a group with non-identified peers. Ms. Pena confirms the student was intentionally placed with her and only other identified peers. In interviews with Mrs. Wolken, she states the student was purposefully placed with an adult who understood his needs and his behavior plan. She notes the student did participate in larger groups, with non-identified peers, for various events on both days. A record of each day's events shows all third-grade students were divided into small groups and those groups participated individually with each other and in larger all-student group activities, such as tug of war. However, participation in a large group activity does not absolve the district from the obligation to provide the student access to non-identified peers, without restrictions, for the entire extracurricular activity, as is required by the student's IEP. To accomplish this, the district should have allowed the student to participate in small groups with non-identified peers and in larger group activities with non-identified peers.

The student's BIP mentions "triggers" for the student, namely, "the presence of peers [the student] dislikes, activities [the student] does not want to participate in, whole group instruction." These triggers, identified through the FBA, are improved through the use of replacement behaviors, preventative strategies, intervention strategies, and consequences.

It appears the district may have attempted to reduce the student's triggers by creating small groups, allowing the student to choose lunch companions, considering the student's fear of riding the large bus, and placing the student with an adult who understood his Behavior Intervention Plan. However, not all these allowances follow the student's BIP.

The BIP permits the student to "opt-out" of non-preferred activities and take a break until the non-preferred activity is done. Records indicate the student was permitted to opt-out of eating lunch with the larger group, and of riding the large school bus. On a regular education day, the student would be required to utilize a red "X" icon to indicate his need for such breaks or opt-out choice. There is nothing in the record to indicate the student used the icon or requested a break. However, given the day's events were extracurricular activities, away from the typical school setting, some modifications to how the student requested his break are likely reasonable. Therefore, a violation of special education law, specifically, a failure to provide the student with the least restrictive environment, as related to the student eating lunch with the special education teacher, Ms. Gonzales, and choosing to ride in the van instead of the large bus, **is not found**, as the school was following the student's BIP.

The district further attempted to remove triggers for the student, by placing the student in small groups. However, the group the student was placed in not only failed to include any non-identified peers, but it also included a student with whom the student in this report has a known conflict, and one the parent specifically requested be separated from the student. This same student was included in the small group for both events and as a result, an altercation between the two students occurred on Farm Day which sent both back to the school and the ED room for the remainder of the day. When the parent confronted the Principal, Ms. Wire, about including this student and the student in this report in the same group, Ms. Wire stated the students were in the same class, the same program, and had similar schedules, implying that it would be impossible to avoid such interactions. This may be true to some extent on regular education days, but the district might have had more flexibility on field trips since the student's typical schedule would not be followed. Even if that were not the case, attempting to avoid known triggers does not relieve the district's obligation to allow the student to participate fully with non-identified peers in extracurricular activities as required by the student's IEP.

The record does reflect the student exhibited verbal aggression on Farm Day when engaging in a fight with another student, however, the BIP does not address this behavior through separation of non-identified peers. According to the BIP, school staff must offer breaks, provide clear directions, use visual cues, give the student physical space, offer private redirection,

model positive behavior, or, as a consequence, remove a privilege from the student. The BIP fails, however, to specify what that loss of privilege is, or when or how it will be utilized.

It is the district's position that the removal of the student, following the fight on Farm Day, which did include verbal aggression, was implementing the student's IEP/BIP. Since extracurricular activities, such as field trips are often considered a privilege, the student's removal from Farm Day is likely following the student's BIP. Even if it was not following the BIP, the Kansas Special Education Process Handbook states that students receiving specially designed instruction are subject to discipline in a similar manner as non-identified students so long as IDEA disciplinary protections are applied. (pg. 191-193; 34 C.F.R.300.530(d)(3); K.S.A. 72-6115(a)). Since the student engaged in a physical and verbal altercation with another student, the district may discipline the student, as it would any other student, in a similar situation. Therefore, a violation of special education laws, specifically, a violation of the student's least restrictive environment, **is not found** regarding the removal of the student during Farm Day due to a fight with another student.

However, based on the language in the student's IEP, the student should have been permitted to participate in PE Day and Farm Day with non-identified peers to the same extent, and in the same manner as non-identified peers. Instead, the record shows the student was intentionally separated from non-identified peers for some, if not most, of both days in question. The school chose to make changes to the student's day, seemingly based on staff availability and convenience, rather than based on the student's behavior since the student was separated from non-identified peers at the start of each day – indicating that the separation from non-identified peers did not result from misbehavior during the trips. Further, the record fails to show any instance, during either day, in which the student appropriately requested a break (as permitted by the student's BIP), other than possibly at lunch or on the bus.

Therefore, the district **did violate** state and federal laws by failing to implement the student's IEP to the maximum extent possible, particularly that the student must be educated and participate with other non-identified peers in general education classes and extracurricular and other nonacademic activities to the same extent as non-identified peers.

Conclusion

Based on the foregoing, a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to implement the student's IEP to the maximum extent appropriate so that the student is educated and participates with other non-identified peers in general education classes and in extracurricular and other nonacademic activities *is substantiated*.

Summary of Conclusions/Corrective Action

ISSUE ONE: Whether USD #413, violated state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to implement the student's IEP so that, to the maximum extent appropriate, the student is educated and participates with other non-identified peers in general education classes and in extracurricular and other nonacademic activities is substantiated.

1. CORRECTIVE ACTION:

- a. Within 20 calendar days of this report, USD #413 will submit a written statement to KSDE Special Education and Title Services (SETs) that it will comply with:
 - i. Federal and state legal requirements at 34 C.F.R. 300.114(a)(2) and K.S.A. 72-3420(a), which required the district to ensure that to the maximum extent appropriate, students are educated with children who are non-disabled and only removed from the regular educational environment if the nature or severity of a student's disability is such the education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily;
 - ii. Federal and state legal requirements at 34 C.F.R. 300.320(a)(5) and K.S.A. 72-3429(c)(5), which requires the district to ensure that the written description in the child's IEP explains the extent, if any, to which the child will not participate with non-disabled children in the regular class and in extracurriculars.
- b. Within 60 calendar days of the date of this report, the district must draft a written procedure by which school leadership will be responsible for tracking when a child with an IEP does not receive time in regular education classes and extracurricular activities, as the student's IEP requires (other than for removals due to disciplinary actions that are in compliance with state and federal special education law) and, if this happens for a time specified within the procedure, school leadership must contact Cooperative leadership to create a plan to ensure time in regular education classes and extracurricular activities is provided as required. The district must submit this draft written procedure to SETS for its review and approval.
- c. Once SETS approves of the written procedure, the district must implement this written procedure by communicating it to all relevant staff and providing staff with any templates for tracking that the procedure would require within 5 school days and sending to SETS the district communication, including templates for tracking the procedure within the same amount of time.

Investigator

Complaint Investigator:
Dr. Crista Grimwood

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 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)