

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #458
ON MAY 21, 2024

DATE OF REPORT JUNE 28, 2024

On May 21, 2024, ----- (hereafter “the mother,” “the complainant,” or “the parent”) filed a formal complaint with the Kansas State Department of Education (“KSDE”) alleging that USD 458 Public Schools (“USD 458,” “the school,” or “the respondent(s)”) is not meeting their obligations under the federal Individuals with Disabilities Education Act in providing special education services to her child, ----- (“the child”). Brian Dempsey served as investigator for the complaint.

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.” A telephone interview with the mother was conducted by investigator Brian Dempsey on Wednesday, May 29, 2024. The mother permitted KSDE legal intern Jennifer Halbhuber to observe this interview. During this conversation, the mother provided additional information, verified her claims, and added specificity to her allegations. She did not contest how the investigator framed the issues. 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). Owing to this limitation, the investigator clarified to the mother that KSDE may only make findings on issues within the previous 365 days leading up to the complaint’s filing: May 21, 2023. The mother verbalized understanding of this limitation.

A Zoom interview was conducted with Jennifer Martin, Director of Special Education (hereafter “the SPED director”) for the Tonganoxie / USD 458 Special Education Cooperative (hereafter “the Cooperative”), on June 5, 2024. This interview was led by investigator Brian Dempsey and observed by KSDE legal intern Jennifer Halbhuber. During this conversation, the SPED director provided additional information and clarified some historical data. The investigator explained that KSDE may only make findings on issues within the past 365 days leading up to the complaint’s filing, but may request earlier documentation to provide context to the issues. The SPED director verbalized understanding. The SPED director promptly provided the investigator with requested materials and answers to queries. She followed up with relevant personnel to seek clarity when necessary and provided additional documentation via email.

The following documents were provided by the parties and reviewed by KSDE during its investigation. As the parents share an email address, no effort was made to distinguish which parent received the information (primarily emails), but most submissions indicate the mother as the primary recipient. Because some documents were reproduced in multiple places, efforts were made to preserve a record of each location the data appeared in. As USD 458 submitted two rounds of materials chronicled by letter, the first round is indicated with a (1), and the second round is indicated by a (2); e.g., "Document X(2)" would be Document X from USD 458's second round of submissions. It should be noted that, though email chains appear only as a single entry, if the email is listed, the entire submission was considered, including earlier interactions in the chain. Documents dated before May 21, 2023, were considered only for their relevancy toward the child's provision of FAPE on and after May 21, 2023.

Emails

Date: January 2, 2023
From: Bailey Edgar
To: Parents
Subject: FINALIZED: [Child's First Name] NOM.pdf
Attached: NOM.pdf

Date: January 13, 2023
From: Bailey Edgar
To: Parents
Subject: Re: Additional OT Information

Date: January 13, 2023
From: Mother
To: Donna Foy
Subject: [Child's Name]
Attached: [Child's Name].pdf

Date: January 13, 2023
From: Dawnyale Jones
To: Parents
Subject: 'DS

Date: January 13, 2023
From: Donna Foy
To: Parents
Subject: Independent Educational Evaluation
Attached: Criteria for Independent Educational Evaluations Revised (1)(1)(1).pdf;
Kansas Special Education Process Handbook.pdf AKA: Document N(1) AKA2: Document N(2)

Date: January 19, 2023
From: Bailey Edgar
To: Parents
Subject: [Child's Name] IEP Paperwork from 12/13 & 1/12
Attached: [Child's Name] PWN from 12.13.22 Meeting.pdf;
[Child's Name] PWN from 1.12.23 Meeting.pdf;
[Child's Name] Evaluation Summary Report 12.13.22.pdf;
[Child's Name] IEP Documents.pdf AKA: Document W(2)

Date: January 19, 2023
From: Bailey Edgar
To: Parents
Subject: ACTION NEEDED: [Child's Name] Evaluation Summary Report 12.13.22.pdf

Date: January 20, 2023
From: Bailey Edgar
To: Parents
Subject: 'REMINDER: ACTION NEEDED: [Child's Name] Evaluation Summary Report 12.13.22.pdf

Date: January 23, 2023
From: Bailey Edgar
To: Parents
Subject: 'REMINDER: ACTION NEEDED: [Child's Name] Evaluation Summary Report 12.13.22.pdf

Date: January 26, 2023
From: Michelle Garcia
To: Amy Garver
Subject: Re: Draft Report + Parent Rights

Date: January 27, 2023
From: Michelle Garcia
To: Parents
Subject: Daily Agenda

Date: January 27, 2023
From: Michelle Garcia
To: Parents
Subject: Draft Amendment IEP
Attached: [Child's Name]_Review_IEP_01_27_2023.pdf

Date: January 30, 2023
From: Donna Foy
To: Parents
Subject: Re: Independent Educational Evaluation

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Attached: [Child's Initials] ST services dates
2022_2023.pdf;
[Child's Initials] Log (screen, assessment).pdf

Date: January 30, 2023
From: Bailey Edgar
To: Parents
Subject: 'REMINDER: ACTION NEEDED:
[Child's Name] Evaluation Summary
Report 12.13.22.pdf

Date: January 31, 2023
From: Dawnyale Jones
To: Parents
Subject: Re: Health

Date: January 31, 2023
From: Scott Hornbaker
To: Parents
Subject: Re: Typing Program in 6th Grade Computers
Class

Date: February 1, 2023
From: Michelle Garcia
To: Parents
Subject: [Child's First Name]'s Writing Samples
Attached: Screen Shot 2023-02-01 at 3.42.30 PM.png;
Screen Shot 2023-02-01 at 3.44.32 PM.png

Date: May 26, 2023
From: brightsped
To: Parents
Subject: 4th Q IEP Progress report.
Attached: J5FZHML1285.u306.pdf

Date: August 31, 2023
From: Peter Lelich
To: Parents
Subject: Meeting Agenda
Attached: Agenda 9-1-23.pdf

Date: September 7, 2023
From: Heidi Hill
To: Parents
Subject: Amended Draft IEP
Attached: [CHILD'S INITIALS] Amended Draft IEP.pdf

Date: September 25, 2023
From: Heidi Hill
To: Parents
Subject: Re: DRAFT AMENDED IEP #2

Date: October 25, 2023
From: Heidi Hill
To: Parents
Subject: Re: Notice of Meeting

Date: October 26, 2023
From: Peter Lelich
To: Parents

Subject: PWN/Services
Attached: G3KZKyX963.u384.pdf

Date: October 31, 2023
From: Heidi Hill
To: Parents
Subject: Draft IEP
Attached: [CHILD'S INITIALS] DRAFT 11_2003.pdf

Date: December 12, 2023
From: Dawnyale Jones
To: Parents
Subject: Re: IEP Minutes
Attached: [Child's Name] 9_1_2023.pdf;
[Child's Name] 11_3_2023.pdf

Date: December 14, 2023
From: Heidi Hill
To: Annette Gleason
Subject: Fwd: Electronic Communication

Date: December 14, 2023
From: Heidi Hill
To: Parents
Subject: Re: Electronic Communication

Date: March 23, 2024
From: Heidi Hill
To: Parents
Subject: 3rd Quarter Progress Report
Attached: LSDWPHj66e.u171.pdf

Date: March 28, 2024
From: Jackie Crisp
To: Jennifer Martin
Subject: Re: records

Date: March 29, 2024
From: Heidi Hill
To: Parents
Subject: Re: [Child's First Name]
Attached: [CHILD'S INITIALS] IEP and Signed signature
bundle 2023.pdf

Date: March 29, 2024
From: Jackie Crisp
To: Parents
Subject: Re: records request
Attached: D.S 2022 eval.pdf; D.S. 2021-22.pdf;
D.S 2023.pdf; D.S. 2020.pdf

Date: May 23, 2024
From: Heidi Hill
To: Parents
Subject: 4th Quarter Progress Report
Attached: U5FWXwP19cb.u171.pdf

Date: May 29, 2024
From: Tyler Bacon
To: Parents

Subject: Re: Records Request
Attached: Google Drive link (empty files)

Date: May 29, 2024
From: Parents
To: Investigator
Subject: FW: Meeting Agenda
Attached: Agenda 9-1-23.pdf

Date: May 29, 2024
From: Parents
To: Investigator
Subject: FW: PWN/Services
Attached: G3KZKyX963.u384.pdf

Date: May 29, 2024
From: Parents
To: Investigator
Subject: FW: Docusign
Attached: Screenshot_29-5- 2024_10594_dochub.com
.jpeg;

Notice of Meeting.pdf _ DocHub.pdf;
[CHILD'S INITIALS]. Evaluation Summary.pdf;
Screenshot_29-5- 2024_105948_dochub.com.jpeg

Date: May 29, 2024
From: Parents
To: Investigator
Subject: FW: [Child's First Name]
Attached: [CHILD'S INITIALS] DOCHUB SCREENSHOT
32924.png;
[CHILD'S INITIALS] IEP and Signed signature bundle
2023.pdf

Date: May 29, 2024
From: Parents
To: Investigator
Subject: FW: Notice of Meeting
Attached: [CHILD'S INITIALS] NOM 2023.pdf

Notices, Evaluations & IEPs

Date: October 23, 2019
Document: PWN
AKA: [CHILD'S INITIALS]. 2020.pdf

Date: December 28, 2019
Document: NOM
AKA: [CHILD'S INITIALS]. 2020.pdf

Date: January 27, 2020
Document: NOM
AKA: [CHILD'S INITIALS]. 2020.pdf

Date: February 20, 2020
Document: PWN
AKA: [CHILD'S INITIALS]. 2020.pdf

Date: August 14, 2022
Document: NOM
AKA: [CHILD'S INITIALS]. 2021-22.pdf
AKA2: Document A(1)
AKA3: Document A(2)

Date: August 15, 2022
Document: PWN
AKA: [CHILD'S INITIALS]. 2021-22.pdf
AKA2: Document B(1)
AKA3: Document B(2)

Date: August 15, 2022
Document: Excusal
AKA: [CHILD'S INITIALS]. 2021-22.pdf

Date: September 16, 2022
Document: PWN AKA: Document C(1)
AKA2: Document C(2)

Date: October 28, 2022

Document: NOM
AKA: Document D(1)
AKA2: Document D(2)

Date: November 8, 2022
Document: PWN
AKA: Document E(1)
AKA2: Document E(2)

Date: November 22, 2022
Document: NOM
AKA: [Child's Name] IEP Documents.pdf
AKA2: [CHILD'S INITIALS] 2023.pdf
AKA3: Document F(1)
AKA4: Document F(2)
AKA5: Document Z(2)

Date: December 13, 2022
Document: IEP Amendment Proposal
AKA: [Child's Name] IEP Documents.pdf

Date: December 13, 2022
Document: IEP Amendment Between Annual IEP
Meetings
AKA: [Child's Initials] 2023.pdf

Date: December 13, 2022
Document: PWN
AKA: [Child's Name] PWN from 12.13..22 Meeting.pdf
AKA2: [Child's Initials] 2023.pdf
AKA3: Document H(1)
AKA4: Document D2(2)

Date: January 2, 2023
Document: NOM
AKA: [Child's First Name] NOM.pdf

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AKA2: [Child's Name] IEP Documents.pdf
AKA3: [Child's Initials] 2023.pdf
AKA4: Document G(1)
AKA5: Document G(2)

Date: January 12, 2023
Document: PWN
AKA: [Child's Name] PWN from 1.12.23 Meeting.pdf
AKA2: [Child's Initials] 2023.pdf AKA3:
Document H(1)
AKA4: Document H(2)

Date: August 22, 2023
Document: NOM AKA: Notice of Meeting.pdf _
DocHub.pdf

Date: October 24, 2023
Document: NOM
AKA: Attached to "FWD: Electronic Communication"
AKA2: [Child's Initials] NOM 2023.pdf
AKA3: Document I(1)
AKA4: Document I(2)

Date: October 26, 2023
Document: PWN
AKA: G3KZKyX963.u384.pdf

Date: November 3, 2023
Document: PWN
AKA: Attached to "FWD: Electronic Communication"
AKA2: Document J(1)
AKA3: Document J(2)

Date: February 20, 2020
Document: Evaluation/Eligibility Report
AKA: D.S. 2020.pdf

Date: February 20, 2020
Document: Annual IEP AKA: D.S. 2020.pdf

Date: August 15, 2022
Document: Interim IEP
AKA: D.S. 2021-22.pdf
AKA2: Document U

Date: November 8, 2022
Document: Annual IEP AKA:
Document X(2)

Date: December 13, 2022
Document: Evaluation/Eligibility Report
AKA: [Child's Name] Evaluation Summary Report
12.13.22.pdf

AKA2: D.S 2023.pdf
AKA3: [CHILD'S INITIALS]. Evaluation Summary.pdf
AKA4: Document M(1)
AKA5: Document M(2)

Date: December 13, 2022
Document: Amended IEP AKA: D.S 2023.pdf
AKA2: Document K(1)
AKA3: Document K(2)
AKA4: Document Z(2)

Date: December 15, 2022
Document: Evaluation Report
AKA: D.S 2022 eval.pdf

Date: January 27, 2023
Document: Draft IEP
AKA: [Child's Name] Review_IEP_01_27_2023 .pdf

Date: September 7, 2023
Document: Draft IEP
AKA: [CHILD'S INITIALS] Amended Draft IEP.pdf

Date: October 31, 2023
Document: Draft IEP
AKA: [CHILD'S INITIALS] DRAFT 11_2003.pdf

Date: March 29, 2024
Document: Annual IEP (11-03-23)
AKA: [CHILD'S INITIALS] IEP and Signed signature bundle
2023.pdf
AKA2: Document A2(2)

Date: May 29, 2024
Document: Docusign Screenshot
AKA: Screenshot_29-5- 2024_10594_dochub.com .jpeg

Date: May 29, 2024
Document: Docusign Screenshot
AKA: [CHILD'S INITIALS] DOCHUB SCREENSHOT
32924.png

Date: May 29, 2024
Document: Docusign Screenshot (2nd)
AKA: [CHILD'S INITIALS] DOCHUB SCREENSHOT
32924.png

Date: June 3, 2024
Document: Attendance Detail Report 08/16/2022-
05/24/2024
AKA: Document B2(2)

Other

Date: November 17, 2016
Document: Psychoeducational Report
AKA: Document C2(2)

Date: 2019-2020

Document: Progress Report
AKA: [CHILD'S INITIALS]. 2020.pdf

Date: November 1, 2019
Document: Electronic Communication

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AKA: [CHILD'S INITIALS]. 2020.pdf
Date: February 20, 2020
Document: Electronic Communication
AKA: [CHILD'S INITIALS]. 2020.pdf
Date: February 20, 2020
Document: Meeting Notes
AKA: [CHILD'S INITIALS]. 2020.pdf
Date: February 20, 2020
Document: Individualized Nursing Care Plan
AKA: [CHILD'S INITIALS]. 2020.pdf
Date: February 28, 2020
Document: Assistive Technology Access Help Form
AKA: [CHILD'S INITIALS]. 2020.pdf
Date: 2022-2023
Document: Progress Report
AKA: Document L(1)
AKA2: Document L(2)
Date: August 15, 2022
Document: Electronic Communication
AKA [Child's Initials]. 2021-22.pdf
Date: August 15, 2022
Document: Medicaid Consent
AKA: [CHILD'S INITIALS]. 2021-22.pdf
AKA2: Document C(2)
AKA3: Document U(2)
Date: August 15, 2022
Document: Meeting Notes
AKA[Child's Initials] 2021-22.pdf
AKA2: Document P(1)
AKA3: Document P(2)
Date: September 16, 2022
Document: Medicaid Consent
AKA: Document C(1)
Date: November 8, 2022
Document: Meeting Notes
AKA: Document O(1)
AKA2: Document O(2)
Date: November 8, 2022
Document: Medicaid Consent
AKA: Document U(2)
Date: November 10, 2022
Document: Electronic Communication
AKA: Document E(1)
AKA2: Document E(2)
Date: December 13 2022
Document: Meeting Notes
AKA: [Child's Name] IEP Documents.pdf
AKA2: D.S 2023.pdf
AKA3: Document Q(1)
AKA4: Document Q(2)
Date: December 13, 2022
Document: Electronic Communication
AKA: D.S 2023.pdf
AKA2: Document Z(2)
Date: 2023-2024
Document: Progress Report
AKA: Document L(1)
AKA2: Document L(2)
Date: January 12, 2023
Document: Meeting Notes
AKA: [Child's Name] IEP Documents.pdf
AKA2: D.S 2023.pdf
AKA3: Document R(1)
AKA4: Document R(2)
Date: January 13, 2023
Document: Letter to Donna Foy
AKA: [Child's Name].pdf
Date: January 30, 2023
Document: [Child's Name] Service Dates for 2022/2023
AKA: [CHILD'S INITIALS] ST services dates 2022_2023.pdf
Date: January 30, 2023 Document: Untitled Table
AKA: [CHILD'S INITIALS] Log (screen, assessment).pdf
Date: February 1, 2023
Document: Screenshot
AKA: Screen Shot 2023-02-01 at 3.42.30PM.png
Date: February 1, 2023 Document: Screenshot
AKA: Screen Shot 2023-02-01 at 3.44.32PM.png
Date: May 26, 2023
Document: Progress Report (2022-2023)
AKA: J5FZHML1285.u306.pdf
Date: August 31, 2023
Document: Meeting Agenda
AKA: Agenda 9-1-23.pdf
Date: September 1, 2023
Document: Meeting Notes
AKA: [Child's Name] 9_1_2023.pdf
AKA2: Document S(1) AKA3: Document S(2)
Date: October 31, 2023
Document: Progress Report (11/2022 -11/2023)
AKA: Attached to "FWD: Electronic Communication"
Date: November 3, 2023
Document: Medicaid Consent
AKA: Attached to "FWD: Electronic Communication"
AKA2: Document A2(2)
Date: November 3, 2023
Document: Electronic Communication

Consent
AKA: Attached to "FWD: Electronic Communication"
Date: November 3, 2023
Document: Meeting Notes
AKA: Attached to "FWD: Electronic Communication"
AKA2: [Child's Name] 11_3_2023.pdf AKA3: Document T(1)
AKA4: Document T(2)
Date: March 23, 2024

Document: 3rd Quarter Progress Report
AKA: LSDWPHj66e.u171.pdf
Date: May 23, 2024
Document: 4th Quarter Progress Report
AKA: U5FWXwP19cb.u171.pdf
Date: May 29, 2024
Document: AccountStatus Sheet
AKA: Recovered from "re: Records Request"
Google Drive link

Background Information

The child is described as a charming, independent 13-year-old boy who will be going into the eighth grade in the Fall. (Annual IEP, Nov. 3, 2023.) He has received speech therapy services and occupational therapy services through the medical model since the age of two. (Psychoeducational Report, Nov. 17, 2016, at 2.) By age six, the child was diagnosed with multiple food allergies, Apraxia of Speech, and Sensory Integration Disorder. (*Id.*) He was issued a Certificate of Incapacity by the state of Indiana. (*Id.* at 3.) Around kindergarten, the child's style of motor activity was described as, ". . . similar to other boys his age." (*Id.*) Primary concerns were then described as "academic" in nature. (*Id.*)

In the state of Indiana, the child received special education services since (at least) November of 2017 under the eligibility categories of a Specific Learning Disorder, Language Impairment, and Speech Impairment. (Evaluation/Eligibility Report, Feb. 20, 2020.) In first grade, February of 2018, he moved to Kansas and began attending Basehor Elementary School. (*Id.*) The child commenced third grade at Linwood Elementary School in August of 2019. (*Id.*)

By February 2020 of his fourth-grade year, asthma, eczema, and a history of hospitalizations were added to the child's record, and Linwood Elementary School placed him under an Individualized Nursing Care Plan. (Individualized Nursing Care Plan, Feb. 20, 2020.) An eligibility reevaluation was conducted on February 20, 2020. (Evaluation/Eligibility Report, Feb. 20, 2020.) At that time, no fine or gross motor concerns were yet reported in the IEP by either the parents or his providers. (*Id.*) The child was qualified for special education services under the primary eligibility category of a Specific Learning Disability in reading fluency and comprehension, and the secondary eligibility category of Speech and Language Disabilities. (*Id.*) He was qualified with eligibility for Extended School Year (ESY) services to retain his curriculum over the summer break. (*Id.* at 6.)

Eight days later, on February 28, 2020, Special Education Consultant Jamelle Zablow- Moloney submitted an "Assistive Technology Access Help Form" on behalf of the child which indicated fine motor skills as an area of concern. (Assistive Technology Access Help Form, Feb. 20, 2020.) Shortly after these events, owing to the COVID-19 pandemic and the child's history of asthma, the parents elected to remove the child from the general education setting and, instead,

temporarily homeschool the child and provide for services therein. (Interview with Parent, May 29, 2024.)

August 15, 2022: Interim IEP Meeting

In August of 2022, the child reentered USD 458 as a sixth grader. (Interim IEP, Aug. 15, 2022.) An IEP meeting was conducted on August 15, 2022 to set up the Interim IEP while the team gathered more data. (Meeting Notes, Aug. 15, 2022.) In her complaint, the mother alleged she did not receive a Notice of Meeting for this meeting. (Complaint, at 2.) The record reflects that a Notice of Meeting was generated on August 14, 2022 and provided to the parent on the same day of the meeting, August 15, 2022. (Prior Written Notice, Aug. 14, 2022.) The parent signed the document and checked the box “yes” to waive her 10-day notification entitlement. (*Id.* at 2.)

This meeting was attended by the mother, Michelle Garcia (SPED Instructor), Dawnyale Jones (Speech and Language Pathologist), and Jana Bremenkamp (Psychologist). (Interim IEP, Aug. 15, 2022, at 2.) There is a valid Notice of Excusal on the record for Amy Garver, LEA Representative (Principal). (Notice of Excusal, Aug. 15, 2022.) However, the child’s General Curriculum Instructor was not present at this meeting. (Interim IEP, Aug. 15, 2022, at 2.) There is no corresponding notification on the record excusing a General Curriculum Instructor. (Interim IEP, Aug. 15, 2022, at 2.)

During this meeting, the parent(s) advised the team that the child would be attending outpatient speech and occupational therapy services every Tuesday at 8:30 a.m., during which time he would miss class. (Meeting Notes, Aug. 15, 2022.) Otherwise, no occupational therapy concerns were attributed to either party within the meeting notes at this time. (*Id.*)

A letter written by the mother on January 13, 2023, however, contradicts the meeting notes’ accounting of the conversation. (Letter from Parent, Jan. 13, 2023.) *“I raised concerns about [the child’s] motor planning at school since having him home from 2020-2022, we noticed the number of external aids (visual, tactile and auditory) he was requiring in order to complete his assignments. This took place at the initial, meeting when we implemented the old IEP from Linwood Elementary School.”* (Letter from Parent, Jan. 13, 2023, at 2.)

Regardless, the accounts do agree that, during this meeting, the parent was advised the child’s three-year evaluation was coming up, she would need to sign consent to reevaluate, and that document would be forthcoming “at a later date.” (*Id.*; Meeting Notes, Aug. 15, 2022, at ¶ 2.)

Under the Interim IEP, the child was to receive 20 minutes three times a week of direct speech and language services outside the classroom and 86 minutes five times a week of direct services inside the general curriculum classroom. (Interim IEP, Aug. 15, 2022, at 8.)

During this meeting, it was noted that the child did not like being pulled from class to attend services, and follow-up would be conducted with the school nurse and the child’s parents to better gauge the child’s health needs. (Meeting Notes, Aug. 15, 2022.) The IEP produced by this meeting addressed speech, language, reading, written expression, and health exceptionalities.

(Interim IEP, Aug. 15, 2022 at 3.) It indicates the child requires both text to speech and speech to text technology to read and write. (*Id.* at 6.) The child was marked eligible for ESY services and state assessment accommodations, then placed back under an Individual Nursing Care Plan. (*Id.* at 6-7, 10.)

Between Meetings

In her letter, the next event the mother describes is that, prior to receiving the promised consent form, her child was allegedly pulled from a general education class without her foreknowledge or consent by Megan Nolla to conduct a Decoste Writing Protocol assessment. (Letter from Parent, Jan. 13, 2023, at 2.) In an email to the parent, Donna Foy clarified that on September 9, 2022, the child was given a screener in the general education setting, and on October 5, 2022, the child was given the Decoste Writing Protocol outside of the general education setting. (Email to parent, Subject: Re: Independent Educational Evaluation, Jan. 30, 2023.) The parent's letter describes alerting the school to her upset and being provided with a "retroactive consent form." (Letter from Parent, Jan. 13, 2023, at 3.) Jana Bremenkamp provided Prior Written Notice to conduct a reevaluation on Friday, September 16, 2022 via Dochub, which was signed the same day. (Prior Written Notice, Sept. 16, 2022.) The reevaluation sought to gather new and existing data in the areas of Health/Motor Ability (Fine Motor), Academic Performance (Reading and Written Expression), Communicative Status (Articulation and Language), and Assistive Technology. (*Id.* at 2.)

November 8, 2022: Annual IEP Meeting

A Notice of Meeting was generated by Michelle Garcia on October 28, 2022, and delivered by email alerting the parents to an upcoming November 8, 2022 IEP meeting. (Notice of Meeting, Oct. 28, 2022.) Topics to be discussed at this meeting included eligibility, possible changes, and the child's annual review. (Notice of Meeting, Oct. 28, 2022.) Concerningly, the Meeting Notes indicate parental confusion regarding the purpose of the meeting; the emailed document is hand-signed by both parents on November 10, 2022 (alongside other procedural documents also signed on that day); and, despite the 11-day lead time, the parents checked the box to waive their 10-day notification entitlement. (*Id.* at 2; Meeting Notes, Nov. 8, 2022.) However, that both parents were able to attend this in-person meeting and prepare hardcopies of printouts and outside evaluations clearly demonstrates that some form of meaningful advance notification was provided. (Meeting Notes, Nov. 8, 2022.) The parent's complaint indicates she received this notification. (Complaint, at 2.)

In attendance of this meeting were both parents, Dawnyale Jones (Speech Language Pathologist), Becky Kazmaier (Regular Curriculum: 7th grade ELA and LEA Representative), Michelle Garcia (SPED teacher and Evaluation Interpreter), and Jaclyn Naster (Regular Curriculum: 6th grade ELA). (Annual IEP, Nov. 8, 2022, at 2; Email from SPED Director: Re: 24FC458-004 Follow-up Questions, June 14, 2024.) During this meeting, the mother shared her

belief that the child had Global Apraxia. (*Id.*) At this time, the child had not yet been diagnosed with this motor disability; he would receive an official medical diagnosis of Developmental Coordination Disorder (A.K.A. "Global Apraxia") on November 29, 2022 by Dr. Chad Sharky at Virtue Medical in Lee's Summit, Missouri. (Evaluation/Eligibility Report, Dec. 13, 2022.)

During the meeting, the mother shared printouts about Global Apraxia with the team and offered suggestions for accommodations she felt were important to his education. (Meeting Notes, Nov. 8, 2022.) The mother brought occupational therapy evaluations conducted on the child by an outside agency she worked for. (*Id.*) However, she would not furnish copies and would not permit these evaluations to be shared with an absent provider: Megan Nolla, practicing Occupational Therapist for the Cooperative. (*Id.*) Instead, the mother expressed she wanted to see what data the school would come up with. (*Id.*; Interview with Parent, May 29, 2024.)

This statement did not yet yield either an evaluation of motor skills or a Prior Written Notice refusing to evaluate, though again, consent to evaluate fine motor skills had already been obtained two months prior. (Annual IEP, Nov. 8, 2022.) Prior Written Notice was provided, however, to permit current services (described as 86 minutes/5x/weekly direct in class and 20 minutes/2x/weekly direct out of class) to remain in place while awaiting reevaluation results. (Prior Written Notice, Nov. 8, 2022, at 2.) That Notice incorrectly checked the box indicating the changes to be made were non-material, not requiring a parental signature. (*Id.* at 2.) It, too, was hand-signed on November 10, 2022. (*Id.* at 3.) This Prior Written Notice, however, also incorrectly describes the services put in place and dropped by the team. (*Id.*; Annual IEP, Nov. 8, 2022.)

Based on the information provided by the parent during this meeting, the team decided to add an executive functioning goal to the child's IEP. (Meeting Notes, Nov. 8, 2022.) Because the child was already missing so much general education time, the team decided to decrease his speech therapy services from three times a week to twice a week. (*Id.*) The parent requested additional accommodations she felt were important: Extended time to complete assignments missed owing to outside services; extended processing time; read aloud for advance level texts; and a separate setting to complete assessments. (*Id.*) All four of these proposals were accepted. (Annual IEP, Nov. 8, 2022.) Math skills were not mentioned in the meeting notes. (Meeting Notes, Nov. 8, 2022.)

As mentioned, the IEP produced by this meeting made several changes to the child's curriculum that were not indicated in the Prior Written Notice issued on that date, not mentioned in the Meeting Notes, and not justified with attached data. (Meeting Notes, Nov. 8, 2022; Annual IEP, Nov. 8, 2022 [Document X].) For example, though the information contained within the "Health" section is virtually identical to the August 15, 2022 IEP and there were no health providers invited to or in attendance of the November 8, 2022 meeting, the new IEP drops the child from his Individual Nursing Care Plan without an explanation. (Cf. Interim IEP,

Aug. 15, 2022, at 5-6, with Annual IEP, Nov. 8, 2022 at 5-6.) Similarly, the child is marked as ineligible for Extended School Year services under the November 8, 2022 IEP without an explanation or record indicating its discussion. (Cf. Interim IEP, Aug. 15, 2022, at 6, with Annual IEP, Nov. 8, 2022, at 6; Meeting Notes, Nov. 8, 2022.) Though, as mentioned earlier, the Prior Written Notice was signed, that the meeting notes make no mention of these changes and the Notice document did not indicate these changes makes it unclear whether that consent was informed as to these specific changes in placement. (Prior Written Notice, Nov. 8, 2022.) However, the parent has not vocalized any concern to KSDE regarding these specific placement decisions. (Interview with Parent, May 29, 2024; Complaint.)

The IEP produced by this meeting indicates the parent's concerns are with, ". . . executive functioning, coordination with visual/motor, fine motor, and concerns with global apraxia that impact his everyday functional and academic skills in the general education setting." (Annual IEP, Nov. 8, 2022, at 3.) It checked the boxes to address speech, language, reading, math (new), written expression, and health exceptionalities. (*Id.*) Both fine motor and gross motor skills are left unchecked. (*Id.*)

Twenty minutes of direct service time was added to the IEP to incorporate the addition of math to be served from December 13, 2022 until November 7, 2023. (*Id.* at 9.) Contrary to the signed Prior Written Notice provided on this same date, this addition brought the child's promised services to 106 minutes five days a week of direct services in the general curriculum classroom and 20 minutes twice a week of direct Speech and Language services outside of the general curriculum classroom. (*Id.*) The team decided to reconvene for the December evaluation/eligibility meeting to make further placement decisions. (Meeting Notes, Nov. 8, 2022.)

December 13, 2022: Amendment Proposal Meeting

After waiting a short interval to accrue data, a Notice of Meeting was generated on November 22, 2022, to invite the parents to an upcoming eligibility/amendment meeting on December 13, 2022. (Notice of Meeting, Nov. 22, 2022.) The notification was delivered by Bailey Edgar via email and signed by the mother that same day. (*Id.* at 2.) As mentioned earlier, just prior to this meeting, November 29, 2022, the child received a diagnosis of Developmental Coordination Disorder from Dr. Chad Sharky at Virtue Medical in Lee's Summit, Missouri. (Evaluation/Eligibility Report, Dec. 13, 2022, at 1.) An Evaluation/Eligibility Report was completed and the meeting conducted on December 13, 2022. (*Id.*) In attendance was the mother, Morgan Panovich (Regular Curriculum), Michelle Garcia (SPED Instructor), Bailey Edgar (Evaluation Interpreter), Scott Hornbaker (LEA Representative), Dawnyale Jones (Speech Language Pathologist), and Megan Nolla (Occupational Therapist). (*Id.* at 11.)

The Evaluation/Eligibility Report generated by this meeting reviewed both new and old data taken from research-based interventions, current assessments, parent reports, classroom

observations, and provider observations. (Evaluation/Eligibility Report, Dec. 13, 2022, at 1.) At this meeting, the mother shared a copy of Virtue Medical's diagnosis of Developmental Coordination Disorder. (Meeting Notes, Dec. 13, 2022.) Again, though she brought a copy of the outside evaluations (a Beery VMI and a BOT-2) conducted on her child, she would not allow the team to use these evaluations as the basis for making any decision regarding her child's placement. (*Id.*) The child's diagnosis of Developmental Coordination Disorder was added to his record. (Evaluation/Eligibility Report, Dec. 13, 2022, at 1.)

In the area of Health/Physical/Motor/Sensory, the child was evaluated using teacher interview, parent interview, student interview, observations, informal penmanship probes, a record review, and the Decoste Writing Protocol. (*Id.* at 2-3.) Data collected revealed the child was often falling behind in class owing, in part, to his motor disability's impact on his ability to produce writing. (*Id.* at 2.) The report describes the Decoste Writing Protocol as a, ". . . *formative assessment tool used to identify factors that affect an individual student's ability to produce writing . . . to make more informed decisions about instructional strategies and the appropriate use of technology to meet classroom demands. Using the Decoste Writing Protocol, a student's performance is compared across conditions, not to other students.*" (*Id.* at 2.)

The child's category of eligibility remained set to a Specific Learning Disability under the qualifying categories of Basic Reading Skills, Math Calculation, and Written Expression. (*Id.* at 8.) He also met criteria for the secondary eligibility category of a Speech or Language Disability. (*Id.*) The box disqualifying "visual, hearing, or motor impairments" is checked "no." (*Id.*)

Data collected indicated that the child qualified for occupational therapy services, so the team commenced discussion what those would look like. (Meeting Notes, Dec. 13, 2022.) The school proposed 15 minutes of indirect consult occupational therapy services once a month. (Prior Written Notice, Dec. 13, 2022.) Forming the basis for this proposal were the Kaufman Tests of Educational Achievement (3rd) (which were a part of his reevaluation In Academics), progress monitoring, classroom assessments, grades, attendance, state assessments, and district assessments. (*Id.* at 3.)

The mother indicated she thought the proffered service model was inappropriate. (Meeting Notes, Dec. 13, 2022.) She expressed her belief that consult-based services should be provided as supplementary services to a direct delivery model, not as standalone services. (*Id.*) The mother requested 20 minutes of direct occupational therapy services one time a week. (*Id.*; Letter from Parent, Jan. 13, 2023.) USD 458's Occupational Therapist, Megan Nolla, explained she felt the consult model was most appropriate because of the child's embarrassment at being pulled out of class and her belief that the child needs to work on problem solving skills, which are better addressed through the consult model. (Meeting Notes, Dec. 13, 2022, at 2.) Additionally, the team had already just added more time away from the general education setting for math support, and the team felt that the harm which would come

from the child missing anymore class outweighed the risk of not providing direct occupational therapy services. (Prior Written Notice, Dec. 13, 2022, at 3.)

The mother disagreed with this plan of action, and this notice was left unsigned. (*Id.*; Dochub Screenshot.) The school additionally provided an IEP Amendment consent form alongside the Prior Written Notice, which was similarly returned unsigned. (*Id.*; IEP Amendment Proposal, Dec. 13, 2022.) The Evaluation Summary Report was sent through Dochub by Bailey Edgar, which was viewed by the mother but never signed. (Dochub Screenshot; Email to Parent: Dochub Reminder, Jan. 23, 2023.)

Despite this, the IEP was amended by this meeting. (Dec. 13, 2022.) Direct services were dropped from 106 minutes / 5x a week back down to 86 minutes / 5x a week, a nonmaterial change in services of 19%. (Amended IEP, Dec. 13, 2022.) This amendment does not appear to have been intentional on behalf of USD 458. (See Email from Michelle Garcia: Re: Draft Report + Parent Rights, Jan. 26, 2023, "Do I need to email the complete IEP or are you doing that? Just want to make sure mom has her copy," and Email from Michelle Garcia: Draft Amendment IEP, Jan. 27, 2023, "I wanted to make sure you have the draft amendment IEP. I guess it's not a real IEP until the PWN is signed. I just want you to know that he will be getting assistance in math and we will be monitoring his math goal.") Rather, it seems that USD 458 mistakenly thought they had proposed 20 additional minutes of math services during the December 13, 2022, eligibility/amendment meeting as opposed to the November 8, 2022 annual meeting. (Cf. Prior Written Notice, Nov. 8, 2022, with Prior Written Notice, Dec. 13, 2022.) Neither party caught this error at this time. (See, generally, emails exchanged by parties in 2023, making no mention; Prior Written Notice, Dec. 13, 2022.) In 2022, the child's attendance report indicates this child experienced 23.66 excused absences, 1.86 unexcused absences, and 16 tardy periods. (Attendance Detail Report, June 3, 2024.)

Spring 2023

At some undocumented point between August 15, 2022, and January 4, 2023, the parent reportedly shared the results of her child's outside occupational therapy assessments with a provider, Michelle Garcia, with instructions to not share the information with the Cooperative's Occupational Therapist, Megan Nolla. (Email from Bailey Edgar: Re: Additional OT Information, Jan. 4, 2023.) Michelle Garcia, unsure what her professional obligations were as sole custodian of a student's protected information, sought guidance from the district regarding how to handle the situation. (Interview with SPED Director, June 5, 2024.) She was advised that any information given to her as a representative of the district must become a part of the child's educational record. (*Id.*) Thus, the files were added to the child's record, and the parent was alerted by email on January 4, 2023 what had transpired. (Email from Bailey Edgar: Re: Additional OT Information, Jan. 4, 2023.) The parent was reportedly upset by this. (Interview with SPED Director, June 5, 2024.) These outside occupational therapy evaluations were not provided to KSDE by either party to this action.

January 12, 2023: Parental Concerns Meeting

On January 2, 2023, a Notice of Meeting was generated by Bailey Edgar and delivered to the parents via Dochub alerting them to an upcoming IEP meeting on January 12, 2023. (Notice of Meeting, Jan. 2, 2023; Email to parents: FINALIZED: [Child's First Name] NOM.pdf, Jan. 2, 2023.) This notification was signed the same day it was generated. (Email to parents: FINALIZED: [Child's First Name] NOM.pdf, Jan. 2, 2023.) This parent-requested meeting was held to, "*continue OT eligibility discussion.*" (Notice of Meeting, Jan. 2, 2023.) Though an Occupational Therapist did not appear on the list of invitees described by the Notice, an Occupational Therapist (Megan Nolla) did attend the meeting and contribute input. (Meeting Notes, Jan. 12, 2023; Letter from Parent, Jan. 13, 2023, at 2.)

During this meeting, the parent accused the OT of utilizing a screener without her permission, and again expressed that she felt her child's needs could only be effectively served through a direct service delivery model of occupational therapy. (*Id.*) Megan Nolla reiterated that the child should not miss out on more core classes, was self-conscious about being pulled out or utilizing push-in services, and the consult model offered the most opportunities to meet the child's need for repetition. (*Id.*) The parent reiterated her request for 20 minutes / 1x a week of direct occupational services, requested an Independent Educational Evaluation, and reported that she would not accept anything less than direct services and would contact an attorney if necessary. (*Id.*)

At this meeting, the school's Psychologist reportedly asked, ". . . *why we wouldn't train someone to give [the child] those services throughout the week[?]*" (*Id.* at 2.) Further, in her January 13 letter, the parent alleged Megan Nolla (Occupational Therapist) said, "*We only do consult-based services for middle school.*" (Letter from parent, Jan. 13, 2023.) These statements, though facially concerning, do not appear to be an accurate reflection of the Cooperative's practice. According to SPED Director Jennifer Martin, there are current students within the district who receive a direct service delivery model of occupational therapy services under their IEPs. (Interview with SPED Director, June 5, 2024.)

A Prior Written Notice refusing to initiate direct delivery occupational therapy services in the SPED setting was generated by this meeting and emailed to the parents. (Prior Written Notice, Jan. 12, 2023.) Though the document indicates it was emailed to the parents by Bailey Edgar on January 12, 2023, a January 13, 2023 email from Bailey Edgar clarifies that the team is finalizing the Prior Written Notice and would have it to the parents by Tuesday, January 17th. (Email from Bailey Edgar: Re: Additional OT Information, Jan. 13, 2023.) The Notice was delivered to the parents on January 19, 2023 from Bailey Edgar by email. (Email from Bailey Edgar: [Child's Name] IEP Paperwork from 12/13 & 1/12, Jan. 19, 2023.) This Notice, which did not require a parental signature, was not signed by the parents. (Prior Written Notice, Jan. 12, 2023.) The parent indicated she was happy with all proposed amendments from the December 13, 2022 meeting except the indirect occupational therapy consult proposal. (Email to Bailey Edgar: Re:

Additional OT Information, Jan.12, 2023.) Nothing changed as a result of this meeting as the parent did not consent to the proposals indicated on the Prior Written Notice. (Prior Written Notice, Jan. 12, 2023; Annual IEP, Nov. 3, 2023, at 1, amended date.)

IEE Request – End of Spring 2023 Semester

At the January 12, 2023 meeting and by email immediately following, the parent requested an Independent Educational Evaluation. (Email to Bailey Edgar: Re: Additional OT Information, Jan. 12, 2023.) Bailey Edgar forwarded this request by email to Donna Foy on January 13, 2023, and Donna Foy reached out to the parent with instructions how to obtain an Independent Educational Evaluation. (Email to parent: Re: Independent Educational Evaluation, Jan. 13, 2023.) Reminders that this information had been sent were provided by Donna Foy via email on January 19th or January 30th, 2023. (Email from Donna Foy: Re: Independent Educational Evaluation, Jan. 19, 2023 & Jan. 30, 2023.) As of this investigation's initiation, the parent has not yet sought the Independent Educational Evaluation she requested. (Interview with SPED Director, June 5, 2024.)

An email from Bailey Edgar to the parents on January 19, 2023 attached four documents, duplicating those requiring signature through a Dochub request. (Email from Bailey Edgar, [Child's Name] IEP Paperwork from 12/13 & 1/12, Jan. 19, 2024.) Included amongst these were a Prior Written Notice and the Evaluation Report, both stemming from the December 13, 2022 meeting. (*Id.*) Neither of these documents were returned with a signature, nor were reminder emails responded to. (Prior Written Notice, Dec. 13, 2022; Evaluation/Eligibility Report, Dec. 13, 2022; Dochub Screenshot.)

On May 26, 2023, the child's fourth quarter progress report was delivered to the parents via email. (Email from brightsped: 4th Q IEP Progress Report, May 26, 2023.)

September 1, 2023: Parental Concerns Meeting

On August 22, 2023, a Notice of Meeting was generated by Peter Lelich on August 22, 2023 reminding the parents of a requested meeting upcoming on September 1, 2023. (Dochub Screenshot.) The parents finalized the signature request on August 22, 2023. (*Id.*) The Notice invited an Occupational Therapist to attend. (Notice of Meeting, Aug. 22, 2023.) This document was not provided by the school, as the SPED Director was under the mistaken impression that a Notice of Meeting had not been issued. (Interview with SPED Director, June 5, 2024.)

At this meeting, the parent again brought the outside medical evaluations conducted on the child, but reiterated that, ". . . *she did not want the testing used from the medical setting. [She] stated the school may not use those scores.*" (Meeting Notes, Sept. 1, 2023.) The parent advised attendees she would still be pulling the child from class to receive outside therapy, but would attempt to do so during an elective class. (*Id.*) Later in the meeting, however, the parent indicated the child will miss two hours of class to attend outside therapies and expressed a demand that he will, "need to be excused from all the hours." (*Id.* at 2.)

While the provider present that day remains unnamed within the record, during this meeting, the Cooperative's Occupational Therapist advised the mother that the testing her child received, a Beery VMI and a BOT-2, could not be redone because, according to the testing protocols, you cannot repeat these tests in under a calendar year and expect accurate results. (*Id.*) The parent requested the Cooperative's Occupational Therapist to break test protocol and conduct the evaluation now since it was almost a year, but this proposal was declined. (*Id.*) The SPED Administrator, in attendance, asked the team whether they thought further evaluation was necessary, but the team indicated they thought the evaluations they had performed in December 2022 were adequate. (*Id.*) The parent again insisted on 20 minutes of direct occupational services provided one time a week and indicated that she, "will not budge." (*Id.*) She expressed skepticism that providers would show up for consult services if they were not required to log those services. (*Id.*)

The team proposed five minutes / once weekly indirect consultation occupational therapy services (slightly increased from their first proposal back in December 2022 which was 15 minutes / once monthly) based on the parent's concerns that the child required frequent repetition. (*Id.* at 2.) They also proposed Cloze notes, a break card, access to sensory items, a large visual timer for the break room, co-taught math class, reducing written tasks, and removing speech to text (due to poor function with this individual child) to replace it with word prediction. (*Id.*)

Though the document was not provided by the parties or signed by the parents, a Prior Written Notice was issued by Peter Lelich through Dochub on September 6, 2023. (Dochub Screenshot.) This Prior Written Notice purportedly covered all proposals save for the refusal of the parent's request for direct OT service delivery. (Email from Peter Lelich: PWN/Services, Oct. 26, 2023.) It is unclear whether this means the Prior Written Notice included the school's refusal to perform additional evaluations on motor skills before trying their proffered service delivery model. (*Id.*)

On September 7, 2023, Heidi Hill sent a first draft of the IEP to the parents. (Email from Heidi Hill: Amended Draft IEP, Sept. 7, 2023.) After a phone call to consult with the mother, Heidi Hill issued the parents a second draft on September 10, 2023. (Email from Heidi Hill: DRAFT AMENDED IEP #2, Sept. 10, 2023.) On September 17, 2023, Heidi Hill reached back out to the parent to discuss what she thought of the second draft. (Email from Heidi Hill: DRAFT AMENDED IEP #2, Sept. 17, 2023.) In an email, the parent explained she thought the IEP looked great except for a bit of confusion on 5 minutes v. 15 of indirect OT. (Email from parent: DRAFT AMENDED IEP #2, Sept. 25, 2023.) At this point in time, it appeared to be the parent's intention to accept the IEP. (*Id.*) However, the parent then advised Heidi Hill that she would not sign the Prior Written Notice because the notice had been issued after the meeting, not before. (*Id.*) Thus, no changes occurred as a result of the September 1, 2023 meeting. (*Id.*)

In that email chain, the mother also expressed that she was “rattled” by the “deceptive” disclosure email she had received which purportedly did not accurately depict who would be in attendance. (*Id.*) Unfortunately, the Meeting Notes do not document attendance from this meeting, and no “disclosure email” was provided for the investigator’s review. (Meeting Notes, Sept. 1, 2023.) The Notice of Meeting invited the parents, a General Curriculum Instructor, a SPED Instructor, a school representative, a person capable of interpreting evaluation results, an Occupational Therapist, and a Speech Pathologist, with “others” left blank (meaning no others invited). (Notice of Meeting, Aug. 22, 2023.) An email from the mother sent to Heidi Hill said of the event, “*The disclosure email was a bit deceptive as to who would be included and unfortunately I am not easily rattled. Again, nothing to do with you all directly working with him (BLMS or Dawnyale who is amazing) just related services.*” (Email from parent: Re: DRAFT AMENDED IEP #2, Sept. 25, 2023.) An unspecified “SPED Administrator” was present, but that person was likely fulfilling the role of the school representative. (Meeting Notes, Sept. 1, 2023.) No other unfamiliar roles/persons appear in the Meeting Notes, though they could well have been present. (*Id.*)

On Wednesday, October 25, 2023, the mother emailed her child’s Special Education Instructor, Heidi Hill. (Email from parent: Re: Notice of Meeting, Oct. 25, 2023.) “*Here is the signed PWN. Thank you so much for reaching out yesterday and working so diligently to find solutions to really help [the child] in being successful. We REALLY appreciate it and cannot tell you how much it means to us. After speaking with [the child], it definitely is important to him to have a sense of autonomy and independence with producing his work. . .*” (*Id.*)

The school was unable to locate a record of having provided the parent with a progress report in October of 2023. (Email from Jennifer Martin: [Child’s Name] re: 24FC458-004, June 5, 2024.) On October 26, 2023, 56 days after the meeting, Peter Lelich emailed the parent, clarifying that his earlier September 6, 2023 Prior Written Notice did not address the parent’s request for direct OT services, and issuing her a secondary Prior Written Notice refusing that service. (Email from Peter Lelich: PWN/Services, Oct. 26, 2023.) The language in this Prior Written Notice was similar to the January 12, 2023 notice refusing the same. (Cf. Prior Written Notice, Jan. 12, 2023, with Prior Written Notice, Oct. 26, 2023.)

November 3, 2023: Annual IEP Meeting

On October 24, 2023, Heidi Hill sent a Notice of Meeting “. . . includ[ing] everyone I could think of that could possibly be there. . .” to the parents alerting them to a November 3, 2023 meeting, which was returned signed by the parent on October 25, 2023. (Email from Heidi Hill: Re: Notice of Meeting, Oct. 24, 2023.) In preparation for this meeting, Heidi Hill prepared a third draft IEP which was presented for the parents’ review on October 31, 2023. (Email from Heidi Hill: Draft IEP, Oct. 31, 2023.)

The team that day included Dawnyale Jones (Speech Language Pathologist), Heidi Hill (SPED Instructor), Becky Kazmaier (Gen. Ed. Instructor), Peter Lelich (School Psychologist), Scott Hornbaker (Assistant Principal), and Michael Isaacsen (District). At this meeting, the school proposed 43 minutes 5x/week of math services. (Meeting Notes, Nov. 3, 2023.) The Prior Written Notice generated by this meeting added those 43 minutes to his “then current” 86 minutes, resulting in a proposal of 129 minutes per day / 5x / week of special education support in Reading, Math, and English. (Prior Written Notice, Nov. 3, 2023.) The school also proposed 86 minutes / 5x / week of special education support in Science and Social Studies, maintaining his current 20 minutes / 2x / week of Speech and Language Pathology Services, and the accommodations from the last meeting. (*Id.* at 2.) These accommodations were word prediction, Cloze notes, a break card, access to sensory items, a typing program to replace his English bell work, a visual timer for the calming room, and grading only what the child completes. (*Id.*) The team proposed changing the child’s reduction of written assignments accommodation to one which allowed him extended time, but the parent disagreed, so the extended time stayed in. (Meeting Notes, Nov. 3, 2024.)

The child’s (current) IEP was completed on November 3, 2023. (Annual IEP, Nov. 3, 2023.) Prior Written Notice was hand-signed the same day consenting to the proposals. (Prior Written Notice, Nov. 3, 2023.) This notification mentions that indirect occupational therapy services were again declined at this meeting. (*Id.* at 3.) The data used to describe the basis for these proposals included, “[the] Previous IEP, Observation, Record Review, Parent/Teacher Input, Previous Evaluation, [and] progress monitoring data.” (*Id.* at 3.)

On January 2, 2024, the child’s parents were provided with their child’s second quarter progress report via the brightsped email account. (Email from Jennifer Martin: [Child’s Name] re: 24FC458-004, June 5, 2024.) A third quarter progress report was delivered to the parents via email on March 23, 2024 through the brightsped email account. (Email from brightsped: 3rd Quarter Progress Report, March 23, 2024.) The fourth quarter progress report was delivered on May 26, 2024. (Email from Jennifer Martin: [Child’s Name] re: 24FC458-004, June 5, 2024.)

In 2023, this child experienced 35.44 excused absences, 5.78 unexcused absences, and 45 tardy periods. (Attendance Detail Report, June 3, 2024.) In the time surrounding this complaint’s initiation, the child has consecutive unexcused absences on May 17, May 21, May 22, and May 23, 2024. (*Id.*) The child’s Math teacher, Science teacher, Social Studies teacher, English teacher, and Personal Finance teacher have all each individually reported that the child’s absences are interfering with his ability to succeed in the general education curriculum. (Annual IEP, Nov. 3, 2023, at 5.) The only provider who reports that the child is doing well, ironically, is his Physical Education teacher. (*Id.*)

Multiple meeting notes indicate, and the parent’s January 13th letter reiterates, that the child is experiencing “. . . anxiety secondary to not being able to perform on the same level of his same-

aged, typically developing peers." Letter from parent, Jan. 13, 2023, at 3. To cope with anxiety, the child receives an additional accommodation to utilize a break card with a large visual timer. (Meeting Notes, Nov. 3, 2023; Annual IEP, Nov. 3, 2023, at 15.) He is given longer breaks when he is crying. (*Id.*; *Id.*) In an attempt to mitigate the child's excessive absences, he has been granted additional accommodations to allow him extended time on assignments missed for appointments, the reduction of graded material (though this accommodation also relates to his challenges in producing output), and most recently, extended time on all assignments. (*Id.*; *Id.*)

In a June 17, 2024, email to the SPED Director, the mother clarified her position regarding screeners versus evaluations. *"An appropriate assessment for [this child] is a Standardized assessment. The following are some of the most common standardized assessments utilized in the school setting by Occupational Therapists; BOT-2 (Bruiniks- Oseretsky Test of Motor Proficiency, Second Edition) scores are standardized and based upon the child's age; Beery VMI (Beery-Buktenica Developmental Test of Visual- Motor Integration, Sixth Edition) scores are standardized; WRAVMA (Wide Range Assessment of Visual Motor Abilities)- this assessment has not been utilized for Daniel. The assessment focuses on visual spatial, fine motor skills, and visual-motor integration. This is also a standardized assessment. As stated in numerous IEP meetings, team meetings, etc. [The child] was only given the DeCoste Protocol which is NOT an assessment, it is an informal tool that can look at a child's writing and typing capabilities with informal results related to speed, spelling and other mechanics of writing. It is not a formal objective assessment for capturing baseline objective data."* (Email from parent, Re: Request Clarification, June 17, 2024.)

In her written complaint, the mother submitted three issues for KSDE's investigation. (Complaint, May 23, 2024.) Some allegations specific to the complaint (e.g., not receiving a 2022 Notice of Meeting) were ineligible for investigation as they were outside of the one-year statutory timeframe prescribed by K.A.R. § 91-40-51(b)(1).

Some allegations specific to the complaint (e.g., the team's alleged treatment of the mother as a practicing Occupational Therapist) were ineligible for investigation under this complaint process as they do not represent an allegation that the district violated state or federal special education legal requirements under K.A.R. § 91-40-51(a), and thus fall outside of KSDE's purview. While this complaint investigation cannot resolve allegations of harassment or retaliation against a parent, the investigation can and must determine whether any of these underlying concerns impacted this child's entitlement to a free appropriate public education (FAPE). K.S.A. § 72-3410(a)(2); K.A.R. § 91-40-2; K.A.R. § 91-40-51.

Issue One

Did USD 458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), fail to issue timely Prior Written

Notices, Notices of Meetings, Notices of Excusal, and Progress Reports regarding this child?

Applicable Law

To allow parents and guardians an opportunity to meaningfully participate in their exceptional child's IEP development, both federal and Kansas regulations require schools to follow procedural safeguards at particular junctures in the IEP process. See 34 C.F.R. § 300.321(a-e); K.A.R. § 91-40-17. One of these junctures is whenever an IEP meeting is forthcoming. The required Notice of Meeting for a Part B IEP team meeting in the state of Kansas must include the purpose, time, and location of the meeting, the titles and/or positions of attendees, and a minimum 10 day advance written notification unless the parent opts to waive that particular state-granted entitlement. K.A.R. § 91-40-17(2); 34 C.F.R. § 300.322(a)(1).

When an IEP team meets, both federal and state statutes identify and describe the particular team members who must be present. See 34 C.F.R. § 300.321; K.S.A. § 72-3404(u). Required team members include a school representative knowledgeable about the general curriculum and the school's resources ((u)(4)), an individual able to interpret evaluation results ((u)(5)), the parents of the child ((u)(1)), at least one special education teacher or provider of the child((u)(3)), and, "at least one regular education teacher of the child if the child is, or may be, participating in the regular education environment." K.S.A. § 72-3404(u)(2). The child's regular education teacher must assist in determining appropriate behavioral interventions and strategies, supplementary aids and services, and program modifications or support for personnel that will be provided to assist the child. K.A.R. § 91-40-17(h).

Optionally, both the school and the parent(s) may, in their individual discretion, invite any individual with knowledge or special expertise about a child to the child's IEP team meeting. K.A.R. § 91-40-17(j). In such a circumstance, it is within the sole purview of the individual extending the invitation to determine whether the invited person has knowledge or special expertise. *Id.* "Therefore, the other party may not bring into question the expertise of an individual invited to be a member of the IEP team and may not exclude another team member's expert based on the amount or quality of their expertise." *Kansas Special Education Process Handbook*, at 64, referencing 34 C.F.R. § 300.321(c); K.A.R. § 91-40-17(j).

Every educational agency is responsible for ensuring that the IEP is in effect prior to providing special education and related services to an exceptional child. K.A.R. § 91-40-16(b)(1). The school must ensure that those services for which written consent was granted are implemented within 10 school days of the parent's signature. (b)(2). The child's teachers must be informed regarding the specific accommodations, modifications, and supports to be provided in accordance with the child's IEP. (b)(5)(B). All amendments to a child's IEP must be made by the IEP team, which includes the parent as a member. K.S.A. § 72-3429(b)(1). Any

amendments must be dated and signed by both the parent and the agency representative in order to be valid. (b)(4)(B).

Additionally, when applicable, parents and guardians of exceptional children are entitled to Prior Written Notice under both federal and state regulations. See 34 C.F.R. § 300.503; K.S.A. § 72-3430. Prior Written Notice must be provided to parents and guardians of exceptional children in a reasonable amount of time (in Kansas, typically ~15 days barring extenuating circumstances) prior to initiating or changing the identification, evaluation, educational placement, or the provision of FAPE to an exceptional child. See KSDE Memo: "Reasonable Time," at <https://www.ksde.org/Default.aspx?tabid=614>; K.S.A. § 72-3430(b)(2). Note from the chart on the following page that Prior Written Notice is mandated before making any change, but that Notice need only be consented by the parents or guardians if the change being made is material or substantial (25%). K.S.A. § 72-3430. K.S.A. § 72-3432(a-g) delineates the required contents of the notice including a description of the action proposed or rejected, an explanation why the agency is making the choice it is, a description of considered and rejected options, a description of materials used to form the basis of the action or inaction, a statement of other relevant factors in making the decision, a statement of parent rights, and referrals for parents seeking assistance understanding those rights.

The following chart has been reproduced from Chapter One, page 10 of KSDE's *Kansas Special Education Process Handbook* (referencing K.S.A. § 72-3430 and 34 C.F.R. § 300.503) to better illustrate Kansas's requirements for parental notification and consent under the IDEA:

Requirements for Parental Notice and Consent (K.S.A. 72-3430; 34 C.F.R. 300.503) Proposed Action by the School	Prior Written Notice (PWN)(300.503) or Notification	Requires Parental Consent
Initiate evaluation	PWN	Yes
Refuse to initiate initial evaluation or reevaluation	PWN	No
Identification and Eligibility Determinations	PWN	No
Initial provision of IEP services (placement)	PWN	Yes
Reevaluation of a student	PWN	Yes
Substantial change in placement (more than 25% of student's day)	PWN	Yes
Change in placement that is 25% or less of the student's day	PWN	No
Material change in services (25% or more of any one service), includes accommodations listed on the IEP	PWN	Yes
Change in instructional methodology specified in IEP	PWN	No
Change in service that is less than 25% of the service being changed	PWN	No
Add a new service or delete one completely	PWN	Yes
Evaluation reevaluation or initiate services for children parentally placed in private schools	PWN	Yes
Notification of the IEP meeting	Notification	No
Invite an outside agency to the IEP for secondary transition	Notification	Yes
Use of Medicaid	Notification (annually)	Yes (once)

Parental consent is required before making a material change in services to, or a substantial change in the placement of, an exceptional child. K.A.R. § 91-40-27(a)(3). In Kansas, a “material change in services” means an increase or decrease of 25% or more in the duration or frequency of a special education service, related service, or supplementary aid or service specified on the IEP of an exceptional child. K.S.A. § 72-3430. K.A.R. § 91-40-19, defining IEP Liability, notes, “(a) Each agency, teacher, and related services provider shall provide special education and related services to an exceptional child in accordance with the child's IEP and shall make a good faith effort to assist the child to achieve the goals and objectives stated in the IEP. (b) An agency, teacher, or related services provider that complies with subsection (a) of this regulation shall not be held liable or accountable if a child does not achieve the growth projected in the goals and objectives stated in the child's IEP.” K.A.R. § 91-40-19(a) & (b). Furthermore, “[a]n agency shall not be in violation of its obligations for identification, evaluation, or reevaluation if the agency declines to pursue an evaluation or reevaluation because a parent has failed to provide consent for the proposed action.” K.A.R. § 91-40-27(f)(3).

A required member of the IEP Team (such as a General Education Instructor) may be excused with parental consent if (1) the parent consents to the excusal in writing and (2) the missing IEP team member submits written input into the development of the IEP to both the parents and the team prior to the meeting's occurrence. 34 C.F.R. § 300.321(e); K.S.A. § 72-3429(b)(2-3).

Parental consent before action is not required in at least two circumstances: (1) When reviewing existing data as part of an evaluation, reevaluation, or functional behavioral assessment; or (2) when administering a test or other evaluation (not requiring consent) that is administered to all children. 34 C.F.R. § 300.300(d); K.A.R. § 91-40-27(e).

An “evaluation” is a multisource, multidisciplinary examination conducted in accordance with the provisions of K.S.A. § 72-3428. K.S.A. § 72-3404(v). “Evaluation” is not, and can never be, a single measure or assessment. K.S.A. § 74-3428(b)(2). Rather, evaluation data includes many potential sources such as general education interventions, record reviews, interviews, observations, and any other tests or “assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided. . .” See *Kansas Special Education Process Handbook* at 46; K.S.A. § 77-3428(c)(3). There is no requirement in the state of Kansas that formal evaluation must include only those diagnostic assessments utilized within the medical model. See K.S.A. § 77-3428. A screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not, by itself, an evaluation under Kansas regulations. K.S.A. § 72-3428(4). Prior Written Notice is required prior to conducting an evaluation on an exceptional child, not a screener. K.S.A. § 72-3430(b)(2)(B).

Agencies are responsible for ensuring that any assessment selected is (a) administered in a nondiscriminatory fashion, (b) administered in the student's native language, (c) valid and reliable for the specific purpose for which it is used, (d) administered by trained personnel, and

(e) administered according to the instructions provided by the testing instrument. K.S.A. § 72-3428(c)(1). The child must be assessed in all areas of suspected exceptionality, and assessment tools must provide relevant information that assists in determining the child’s educational needs. (c)(2 &3). While parents have the right to request a specific assessment and have that request considered, it is up to the school team to determine what assessments are to be conducted as part of the evaluation. *Kansas Special Education Process Handbook*, at 59, ¶ 19. Should the parent disagree with the results, the parent has a right to request an Independent Educational Evaluation for the team’s consideration. *Id.* at 59, ¶ 20; K.A.R. § 91-40-12.

The IEP of every exceptional child in the state of Kansas must include, “a description of how the child’s progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided. . . .” K.S.A. § 72-3429(c)(3).

Analysis

The following table tracks the history of procedural notifications issued and meetings conducted by USD 458 relating to this child:

Meeting Date	Notice of Meeting	Prior Written Notice	Excusal Form	Notes
August 15, 2022	Yes (Aug. 14, 2022) (10 day waived)	Yes (Aug. 15 2022)	Yes, but needed 2 (Aug. 15, 2022) (Gen Ed Ins. not excused)	Interim IEP (moving in) PWN: Sub. Change in Placement (comparable services).
November 8, 2022	Yes (Oct. 28, 2022.)	Yes, but defective (Sept. 16, 2022) (Nov. 8, 2022)	No (N/A)	Sept. 16 PWN: Consent to (Re)evaluate “Health/Motor Ability – Fine Motor (OT)” + Academics, Communication, and AT. -Nov. 8 PWN: Proposes 86m/5x/week direct special education and 20m/2x/week/direct speech pathology services. Does not indicate ESY and Nursing Plan to be dropped. Checked “parental consent not required.” School actually offered, and parent accepted, 106 minutes— not 86.

Meeting Date	Notice of Meeting	Prior Written Notice	Excusal Form	Notes
December 13, 2022	Yes (Nov. 22, 2022)	Yes, but defective (Dec. 13, 2022)	No (N/A)	PWN proposes 106m/5d/Gen, 20m/2d/SPED, and OT consult 15m/1 q month. Parent does not consent. IEP amended to 86m/5x/Gen, 20m/2x/SPED
January 12, 2023	Yes, but defective (Jan. 2, 2023)	Yes (Jan. 12, 2023)	No (N/A)	Jan. 2 NOM: OT “not invited,” but present according to meeting notes. Jan. 12 PWN: Refuses to initiate direct OT services in SPED setting.
September 1, 2023	Yes (Aug. 22, 2022.)	Yes, but untimely (Sept. 6, 2023.) (Oct. 26, 2023.)	No (N/A; <u>Becky Kazmaier</u>)	Sept. 6 PWN: Accommodations. Record is inconclusive as to whether it contained refusal to evaluate; it needed to. Oct. 26 PWN: Untimely refusal of direct OT.
November 3, 2023	Yes (Oct. 24, 2023)	Yes (Nov. 3, 2023)	No (N/A)	Nov. 3 PWN: Proposes 129m/5d/Gen, 20m/2d/SPED, 86m/5d/Gen. Notes indirect OT was declined. Parent accepts.

In her written complaint, the mother alleged that she did not receive a Notice of Meeting for the August 15, 2022 Interim IEP meeting. This allegation is outside of the statutory timeline prescribed by K.A.R. §91-40-51(b)(1). However, as any procedural violations must be considered inside the FAPE analysis (Issue Three), this report will still make observations of those sitting outside of the statutory period to provide context.

The notification generated on August 14, 2022 indicates the meeting’s purpose, time, and location in manner reasonably calculated to allow for the parents’ meaningful participation as required by K.A.R. § 91-40-17(2). It was signed by the mother on August 15, 2022, with the box checked to waive the parent’s entitlement to a 10-day advance notification. Thus, the parents received the required Notice of Meeting for the August 15, 2022 meeting because they voluntarily elected to waive their right to a 10- day Prior Written Notice. If a parent is unhappy with the amount of advance notification being given before an IEP meeting, they are entitled to adjourn the meeting and request it be rescheduled until such time as the school may satisfy their procedural obligations. *See* K.A.R. § 91-40-17(a)(1), *requiring that the meeting be scheduled at a mutually agreed-upon time and place.*

This meeting did contain one procedural error: A required team member was not present and was not validly excused with a corresponding Notice of Excusal. While Amy Garver, LEA

Representative, was excused from the meeting with a valid, signed Notice of Excusal, no such notice exists in the record to excuse the absence of an unlisted General Curriculum Instructor. Both federal and state regulations demand that a General Curriculum Instructor attend the IEP meeting if the child is, or may, participate in the general education environment. K.S.A. § 72-3404(u)(2). Further, when a General Curriculum Instructor is to be absent from a planned meeting, the missing IEP team member must submit written input into the development of the IEP before the excusal is valid. K.S.A. 72-3429(b). Regardless, again, this procedural observation is outside of the statutory timeline prescribed by K.A.R. §91-40-51(b)(1).

In her complaint, the mother alleged that she did not receive Prior Written Notices as required under Kansas regulations and the IDEA. Prior Written Notice must be provided to notify parents of any change in the identification, evaluation, placement, or provision of FAPE to an exceptional child within a reasonable amount of time, usually around 15 days. K.S.A. § 72-3430(2). The notice must include (but is not limited to) a description of what the agency intends to do or not do, an explanation of why they're making that choice, a description of materials they used to form the basis of that conclusion, and a statement of any other relevant considerations. K.S.A. § 72-3432.

Though both instances occurred outside of the statutory timeline, this investigation was able to uncover two defective Prior Written Notices to credit the mother's allegation:

1. The November 8, 2022 Prior Written Notice did not notify the parents that the child would be dropped from Extended School Year and his Individualized Nursing Plan. Without Prior Written Notification, there is no evidence in the record that either of these 100% drops in service were discussed or meaningfully consented to. That claim is bolstered by the Notice incorrectly marking the changes to be made as non-material, denying the parent the opportunity to assist in making a material placement determination. This was a material change in services that required signed Prior Written Notice. K.S.A. § 72-3430; K.A.R. § 91-40-27(a).
2. The December 13, 2022 Prior Written Notice "proposed" 106 minutes / 5x / weekly of direct special education services. When this proposal went unaccepted, the Team inadvertently "reverted back to" 86 minutes, not 106 minutes. Thus, the Prior Written Notice did not properly notify the parents that the child's services were being reduced. The meeting notes reflect that the day's discussion predominantly focused on the dispute about occupational therapy provision. Perhaps owing to that preoccupation, neither party noticed the error. However, this 19% drop in services required only that Prior Written Notice be issued. It did not require parental consent as it was under Kansas's 25% threshold of materiality. K.S.A. § 72-3430.

Also outside of the statutory timeline, when the team "reverted" to 86 minutes of direct special education services after the December 13, 2022 Prior Written Notice went unsigned, they did not check to see that the correct IEP was in place before provisioning special education services as indicated by K.A.R. § 91-40-16(b)(1). The team did not ensure they were providing

services in accordance with the child's IEP as required by K.A.R. 91-40-19(a) & (b). Instead, they inadvertently amended the IEP without consent, running afoul of K.S.A. § 72-3429(b)(1) and (b)(3)(B). This 19% change in services did not require parental consent, but it did require Prior Written Notice and substantiation. K.S.A. § 72-3430; K.S.A. § 72-3432.

Additionally, there was one final procedural defect outside of our timeline in the Notice of Meeting provided for the January 12, 2023 meeting: An Occupational Therapist is not listed on the invitation, yet an Occupational Therapist, Megan Nolla, attended the meeting. In a meeting discussing occupational therapy eligibility it was very appropriate for the school to invite this provider. However, this omission from the Notice may have acted to the detriment of the quality of the team's working relationship as the parent had already demonstrated considerable distrust of that particular provider, such that having them show up "unexpectedly" might have been upsetting.

In her complaint and through communication with the school, the parent expressed her belief that only "standardized assessments" are appropriate assessments for her child. She suggested a BOT-2, a Beery VMI, or a WRAVMA. In the state of Kansas, educational agencies are responsible for having trained professionals adhere to each test's prescribed testing protocols to administer valid and reliable assessments for specific, appropriate purposes in all areas of suspected exceptionality. K.S.A. § 72-3428(c). Educational agencies are not, however, required to utilize any particular methodology of assessment beyond those excerpted here. As Megan Nolla indicated during the January 2023 meeting, it would be against regulations for USD 458 to conduct a Beery VMI or a BOT-2 earlier than one year after these assessments were previously conducted as that decision runs afoul of the tests' protocols. K.S.A. § 72-3428(c)(1). On this record, though the mother has voiced concerns over how the child was assessed and the type of services being offered, she has never before specifically requested the WRAVMA assessment which she mentioned in her June 17, 2024 email.

The school's selection of a Decoste Writing Protocol was reasonable given the mother's reported concerns, progress reporting, and the provider notes, all of which indicated the child's fine motor skills – particularly his handwriting and typing – may be impacting his ability to access the curriculum by slowing him down too much to keep up. The Decoste Writing Protocol looks for functional barriers to these skills and helps the IEP team identify ways to modify the child's curriculum based upon these challenges. The selected assessment was reasonably and individually calculated to provide relevant information regarding the child's exceptionality. K.S.A. § 72-3428(c). While more information was potentially available to the IEP Team (in the form of the results of the Beery VMI and the BOT-2 reportedly conducted at the parent's clinic in 2022), the school was explicitly instructed during the January 12, 2023 meeting that these tests results were not to be shared with the whole team (particularly Megan Nolla, Occupational Therapist, though she had seen them by this point) or relied upon in developing the IEP. Though parental consent is always voluntary, parental refusal does not obligate the IEP

Team to conduct further testing without a team consensus that more data is needed. K.A.R. § 91-40-27(f)(3).

During the statutory period of this complaint indicated by K.A.R. 91-40-51(b)(1), the school provided all Notices of Excusal and Notices of Meeting in an appropriate timeframe. It provided one defective Prior Written Notice on October 26, 2023, 56 days after a meeting had occurred. Though all other progress reports were provided, there is no record of the school providing the parent with a quarterly progress report in October 2023.

Conclusion

In her complaint, the parent alleged USD 458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to issue timely Prior Written Notices, Notices of Meetings, Notices of Excusal, and Progress Reports pertaining to this child. During the statutory period of this complaint indicated by K.A.R. 91-40-51(b)(1), the school provided all Notices of Excusal and Notices of Meeting in an appropriate timeframe.

However, after the team met on September 1, 2023, the school did not issue timely Prior Written Notice refusing the parent's request for direct Occupational Therapy services. Prior Written Notice must be provided to parents and guardians of exceptional children in a reasonable amount of time upon a school's refusal to initiate or change the identification, evaluation, or educational placement of their child. K.S.A. § 72-3430(b)(2).

Furthermore, USD 458 did not provide the parent with a progress report in October of 2023. IEP's must contain accurate descriptions of when periodic reports on the progress the child is making toward their annual goals will be provided. K.S.A. § 72-3429(c)(3).

Based on the foregoing, this investigation concludes that USD 458 *violated its obligation* to (1) provide timely Prior Written Notice within a reasonable amount of time as required by K.S.A. § 72-3430(b)(2), and (2) ensure the parents were provided timely progress reporting as required by K.S.A. § 72-3429(c)(3).

Issue Two

Did USD 458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), fail to allow this child's parents a meaningful opportunity to participate in the IEP development process?

Applicable Law

In the state of Kansas and under federal regulations, parents are required members of the IEP team. K.S.A. § 72-3404(u)(1). Parents have the right to, "be members of any group that makes decisions on the educational placement of their child." K.S.A. § 72-3430(b)(7); see also 34 C.F.R. § 300.501(c)(1). Kansas educational institutions are responsible for ensuring that one or both parents of the exceptional child are present at every IEP meeting and afforded an opportunity

to meaningfully participate. K.A.R. § 91-40-17(a). "*If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with 34 C.F.R. § 300.328 (related to alternative means of meeting participation).*" 34 C.F.R. 300.322 (c).

Districts must afford parents a meaningful opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to the child. K.A.R. § 91-40-17, 21 & 24; 34 CFR § 300.501(b). "Participation must be more than mere form; it must be meaningful." *Deal v. Hamilton Board of Ed.*, 42 IDELR 109 (6th Cir. 2004). Documented consideration of parental concerns, answering questions, discussing the continuum of placement options, and considering parental suggestions are all ways in which courts have allowed for districts to show parents enjoyed meaningful participation. *Id.*; *Board of Ed. Of Waterford-Halfmoon Union Free Sch. Dist.*, 20 IDELR 1092 (SEA NY 1994).

As a general principle, parents do not have veto power over the IEP, and there is no "majority vote" inside of IEP meetings. *N.T., et al. v. Garden Grove United Sch. Dist.*, 67 IDELR 229 (C.D. Cal. 2016); *Letter to Richards*, 55 IDELR 107 (OSEP 2010). IEP team decisions must be made by a *group* of persons, including the child's parent or parents and other persons who are knowledgeable about the child. K.A.R. § 91-40-21(c)(1)(A).

According to the *Kansas Special Education Process Handbook*, IEP teams should always attempt to reach a consensus. *Kansas Special Education Process Handbook*, at 59, ¶ 15. When parents disagree with the team, the final decision rests with the LEA Representative attending the meeting. *Id.* In such a case, parents are still entitled to Prior Written Notice within a reasonable timeframe. K.S.A. § 72-3430; 34 C.F.R. § 300.503(a).

Schools do not violate parents' rights when they effect communication plans to manage parental input that has become hostile, derogatory, or intimidating. *L.F. v. Lake Washington Sch. Dist.* #414, 947 F.3d 621 (9th Cir. 2020). When a parent advised a school guidance counselor that he had, "*serious concerns [regarding her] impartiality and competence*" and asked that she, "*take that into consideration as [you] decide on who should be appropriately involved,*" the tone and excessiveness of the parent's communication over the course of a few weeks was enough for the 9th Circuit to hold that the school did not violate the parents' First Amendment rights by limiting the parent's communication to one biweekly meeting set with two District Administrators. *Id.*

Analysis

The record reveals strong evidence of considerable and meaningful parental participation in this child's IEP development process.

A meeting was held on January 12, 2023 at the parent's request. This meeting was held to address the parent's concerns relating to occupational therapy service provision. During this meeting, the parent accused the Cooperative's Occupational Therapist, Megan Nolla, of

running a screener without her permission. The mother reportedly told the team that she would not accept anything less than direct (OT) services and would sue if necessary. *See, generally*, K.A.R. § 91-40-21(c)(1)(A). As in *Waterford- Halfmoon* (SEA NY 1994), the meeting notes indicate that Megan Nolla responded to these concerns by explaining the continuum of placement options available and why she, in her professional judgment, felt that indirect consult services were the most appropriate placement option for this child. The parent requested an Independent Educational Evaluation at this meeting. She did not pursue the matter thereafter, though her upset over the situation remained as evidenced by later exchanges and this complaint.

The mother sent a letter to Donna Foy on January 13, 2023, which also supports a showing of meaningful parental participation. In the first paragraph of her letter, the mother describes Occupational Therapist Megan Nolla and SPED Director Jennifer Martin as “manipulative” and “disrespectful.” She accuses Megan Nolla of having, “. . . [a] lack of professionalism, [a] lack of knowledge, and decreased competency.” *See, generally*, L.F. v. Lake Washington (9th Cir. 2020). The mother expressed her trepidation that Megan Nolla was incapable of providing support to children with complex diagnoses. She accused Megan Nolla of “. . . avoiding accountability requirements. . .” and accused the provider of contacting her child’s private Occupational Therapist (who had been brought to some meetings as an invited participant with firsthand knowledge) without consent. The mother called Megan Nolla’s justification for the proffered occupational therapy service delivery model “laughable,” explained that she was not pleased with Megan Nolla delivering services, and advised Donna Foy she felt skeptical of the provider’s “clinical reasoning skills.” To address this, the mother reportedly invited the provider to come shadow her at the clinic she was employed by, but rescinded the invitation shortly thereafter, accusing the provider of only wanting to learn more about shared patients. The parent accused Megan Nolla of “. . . not want[ing] to do the work required . . .” and expressed her belief that the provider did not care. The mother reiterated her stance that her child requires, “. . .intense repetitions for his brain to build new neuropathways,” then reiterated her request for “the bare minimum,” which she described as 20 minutes a week of direct occupational therapy services within the special education setting. She closed this letter advising Donna Foy that she would be meeting with a state Senator to explore the issue before threatening to file a formal complaint.

Within the procedural timeline, another parent-requested meeting was held on September 1, 2023. K.A.R. § 91-40-17, 21 & 24. Though the team discussion began with the child’s MAP scores, it seemingly quickly turned back into the same disagreement from January. During this meeting, the parent requested the Beery VMI and BOT-2 which she had previously had conducted on the child at her clinic in October of 2022. The Cooperative’s Occupational Therapist indicated she could not conduct these particular assessments as it would violate testing protocols. During this meeting, though the parent brought a copy of the evaluations with her for the third time, she reiterated that the outside testing conducted on her child

within the medical setting could not be used to develop her child's IEP ". . . because you have to do your own." When the SPED Director queried the team whether they felt additional evaluations were necessary, the parent interjected her belief that the IDEA indicates the team may not use outside influences.

At that meeting, the parent advised the team that her child would be missing two hours of school to attend occupational therapy services and he would "need" to be excused from all those hours. The parent stated she wanted that excusal put into his IEP. See, generally, *Garden Grove* (C.D. Cal. 2016); *Letter to Richards* (OSEP 2010). The parent asked for a log documenting her child's provision of services, as she did not trust providers to show up when they were supposed to. The mother accused the Cooperative's Occupational Therapist of not being familiar with her child. During this meeting, both the mother and father contributed to the team's discussion, reporting that they thought high frequency repetition was necessary and the child needed work on his handwriting skills. K.S.A. § 72-3430(b)(7). The team incorporated the mother's suggestions for a break card and answered questions about study guides and the continuum of potential occupational therapy placements, though the parents ultimately did not sign the Prior Written Notice associated with this meeting. See K.S.A. § 72-3430.

On Wednesday, October 25, 2023, the mother emailed her child's Special Education Instructor, Heidi Hill, with an expression of gratitude. "*Thank you so much for reaching out yesterday and working so diligently to find solutions to really help [the child] in being successful. We REALLY appreciate it and cannot tell you how much it means to us.*" This email further demonstrates parental participation in meaningful, and not just mere, form. See, generally, *Deal*, 42 IDELR 109 (6th Cir. 2004).

Parent provided documentation indicates this parent has participated in over 30 email chains with various school providers since August of 2022, each containing their own uncounted individual emails within the chain. Phone calls were answered quickly enough that, when one was missed on January 19, 2023, the parent accused Donna Foy in an email of "screening" her calls. Donna Foy responded to this email within two hours of its receipt. When the parent requested an Independent Educational Evaluation, she was advised how to obtain one at no cost by Donna Foy within 24 hours, though she not yet chosen to obtain one (as is her discretion). As the situation deteriorated, the school requested the parent participate in mediation offered through KSDE on January 26, 2023, but received no response. Multiple draft IEPs (at least three) were prepared in anticipation of meetings by Heidi Hill, with each draft changing due to parental input. The meeting notes from November 2022 and November 2023 both indicate the incorporation of parental input, including suggestions for particular accommodations which ended up in the final IEP documents. The parents have had a meaningful opportunity to participate in the IEP development process as required under K.A.R. § 91-40-17, 21 & 24 and 34 C.F.R. § 300.501(b).

Conclusion

In her complaint, the parent alleged that USD 458 was not allowing her an opportunity for meaningful participation in the IEP development process. The record reflects that the school has conducted two parent-requested meetings, incorporated the parents' suggestions into both final IEP's and drafts, and responded substantively to questions and concerns. The parent has been afforded all opportunities to participate required by K.A.R. § 91-40-17, 21 & 24. Based on the foregoing, this investigation concludes that USD 458 *did not violate its obligation* to ensure the parents had an opportunity for meaningful participation in the IEP development process.

Issue Three

Did USD 458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), fail to provide a free appropriate public education (FAPE) to this child? See K.S.A. § 72-3410(a)(2); K.A.R. § 91-40-2; 34 C.F.R. § 300.101; Board of Ed. Of Hendrick Hudson Central Sch. Dist. v. Rowley, 458 U.S. 176 (1982); Endrew F. v. Douglas Co. Sch. Dist., 580 U.S. 386 (2017).

Applicable Law

Under the Individuals with Disabilities Education Act, a free appropriate public education (hereafter "FAPE") must be made available to all children with an exceptionality residing in the state of Kansas between the ages of three and 21. K.A.R. § 91-40-2; 34 C.F.R. § 300.101. In the state of Kansas, "FAPE" means the special education and related services which are provided at public expense and under public supervision, meet the standards of the state board, include an appropriate education, and are provided in conformity with the child's Individual Education Program (IEP). K.A.R. § 91-40-1(z)(1-4); -1(gg)(1-7). Kansas law 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). Exceptional children must be educated in the least restrictive environment, which requires that children be, "educated in regular classrooms to the maximum extent appropriate." *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004) citing 20 U.S.C. § 1412(a)(5)(A).

A "special education" is defined as no cost, specially designed instruction tailored to meet the individual needs of a disabled child. 34 C.F.R. § 300.39; K.S.A. § 72-3404(i). In the state of Kansas, a special education may require related services such as home instruction, physical education instruction, paraeducator support, occupational or physical therapies, interpreter services, speech-language pathology services, travel training, and/or vocational education when any such service is necessary for an exceptional child to access the general education curriculum. K.A.R. § 91-40-1(kkk)(1-5); 20 U.S.C. § 1401(26)..

"Specially designed instruction" is the delivery mechanism for a special education. It demands adapting the learning material to address the unique needs of the individual child which result from the child's exceptionality and ensuring the child is given access to the general education

curriculum so that they have an opportunity to meet the educational standards of their district. K.A.R. § 91-40-1(III)(1-2). A school district satisfies its obligation to provide a FAPE to a disabled child "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Jefferson Cty. Sch. Dist. R-1 v. Elizabeth E.*, 798 F. Supp. 2d 1177, 1180 (D. Colo. 2011) quoting *Board of Ed. Of Hendrick Hudson Central Sch. Dist. v. Rowley*, 102 S. Ct. 3034, 553 IDELR 656 (U.S. 1982). "The IEP is a written statement that sets forth the child's present performance level, goals and objectives, specific services that will enable the child to meet those goals, and evaluation criteria and procedures to determine whether the child has met the goals." *Ass'n for Cmty. Living in Colo. v. Romer*, 992 F.2d 1040, 1043 (10th Cir. 1993); see also 20 U.S.C. § 1414(d)(1)(A).

Since 1982, the *Rowley* Standard has been employed to assess a school's provision of FAPE to an exceptional student utilizing a two-prong test: (1) Was this IEP developed in adequate compliance with the procedural obligations imposed under the IDEA? (2) Is this IEP reasonably calculated to enable the student to derive some educational benefit? *Board of Ed. Of Hendrick Hudson Central Sch. Dist. v. Rowley*, 102 S. Ct. 3034, 553 IDELR 656 (U.S. 1982). At that time, the *Rowley* Court refused to adopt any one test to determine the adequacy of the educational benefits conferred by the IEP. *Id.*

When the first prong of the *Rowley* Standard reveals procedural violations, the FAPE analysis is not complete. A procedural violation (or violations) may only rise to the level of a substantive deprivation of FAPE (prong (2) of *Rowley*) when at least one of three things is also true: (a) The procedural violation(s) impeded the child's right to a FAPE; (b) the procedural violation(s) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to their exceptional child; or (c) the procedural violation(s) caused the deprivation of educational benefit. K.S.A. § 72-3416(g)(2)(A-C); 34 C.F.R. § 300.513(a)(2).

Speaking to K.S.A. § 72-3416(g)(2)(A), school districts incur liability when their actions rise to ". . . a *material* failure to implement an IEP. . ." (emphasis added) *Beer v. USD 512 Shawnee Mission*, No. 21-2365-DDC-TJJ, 2023 U.S. Dist. LEXIS 45822, at *79 (D. Kan. Mar. 17, 2023). The 4th, 5th, 8th, 9th, and 11th U.S. Circuit Courts of Appeal have each, too, held that only a *material* procedural implementation failure will qualify as a denial of FAPE. For example, in a 2019 11th Circuit case, the parent of an Autistic child could not show the district denied her child FAPE by failing to provide every service and support required under his IEP. *L.J. v. Sch. Bd. of Broward Cnty., Fla.*, 74 IDELR 185 (11th Cir. 2019). The L.J. Court found that, though an implementation failure had occurred, that failure was not a material change in services. *Id.* Other metrics that courts have used to determine whether IEP implementation failures constitute denials of FAPE are evidence of progress (See *A.P. v. Woodstock Bd. of Ed.*, 55 IDELR 61 (2d. Cir. 2010, unpublished), short v. long duration failures (See *Turner v. D.C.*, 61 IDELR 125 (D.D.C. 2013), and

the district's efforts to ensure the child is using the supports indicated in their IEP (See *Carr v. New Glarus Sch. Dist.*, 73 IDELR 36 (W.D. Wis. 2018)).

Regarding K.S.A. § 72-3416(g)(2)(C), "educational benefit" can be difficult to quantify. This report will follow the analysis used in *Andrew F.*, a Supreme Court case which laid out the groundwork for us to determine whether an IEP was reasonably calculated to provide not just some educational benefit, but to provide appropriate progress in light of a student's unique circumstances. *Andrew F.*, 137 S. Ct. 988, 69 IDELR 174 (U.S. 2017). *Andrew F.* will show us how to analyze whether sufficient educational benefit existed to determine that the student received a FAPE. If it did, we must then determine whether any alleged procedural violations denied the child that benefit.

To begin, we must ground our analysis in the definition of "special education": ". . . *specialty 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 the child, we must consider the student's present levels of academic achievement and functional performance and how the student's exceptionality impacts their access to and progress within the general education curriculum. K.S.A. § 72-3429(c)(1). 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.*" See KSDE Guidance: PLAAFPs, at <https://www.ksde.org/Portals/0/SES/KIAS/PLAAFP.pdf>.

Next, we look to the child's measurable annual goals to determine whether those goals align with the child's present levels and impact and access to the general curriculum. K.S.A. § 72-3429(c)(2). Next, we consider whether the child's services are aligned with their needs and whether it is 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 *Andrew F.*, allowing us to determine whether the IEP is "reasonably calculated" to provide appropriate educational benefit in light of a student's circumstances. *Andrew F.*, 137 S. Ct. 988, 69 IDELR 174 (U.S. 2017). The key factor in determining FAPE is determining whether the data on the student's progress, is "appropriate in light of the child's circumstances." *Id.*

In its discussion in *Andrew F.*, the Supreme Court clarified that the "appropriate progress" standard is more than a *de minimis* standard. *Andrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988, 69 IDELR 174 (U.S. 2017). "*To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.*" *Id.* at 999. Thus, an IEP that is perfectly adequate for one child may not come even close to approximating the need of another. "The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." *Id.* at 1000.

When a child is not fully integrated in general curriculum setting and not able to achieve on grade level, their IEP does not need to aim for grade-level advancement. " . . . [B]ut his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade-to-grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives." *Id.* "[A]ny review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal." *Id.* at 999. " . . . [C]ourts have warned against engaging in a retrospective analysis of academic achievement in determining the appropriateness of an IEP because unfortunately, it cannot always be reasonably expected that progress will occur in such a lock-step manner when a child is suffering from a learning disability." (internal quotations omitted) *J.T. v. Denv. Pub. Sch.*, Civil Action No. 21-cv- 01227-NYW-STV, 2023 U.S. Dist. LEXIS 15310, at *23 (D. Colo. Jan. 30, 2023) quoting *K.D. by & through Dunn v. Downingtown Area Sch. Dist.*, 904 F.3d 248 (3d Cir. 2018).

A school is not in violation of its obligations for identification, evaluation, or reevaluation if the school declines to pursue an evaluation or reevaluation because a parent has failed to provide consent for the proposed action. K.A.R. § 91-40-27(f)(3). A school shall not be required to obtain parental consent for a reevaluation or a proposed change in services or placement of the child if the school has made attempts, as described in K.A.R. § 91-40-17(e)(2), to obtain consent, but the parent(s) have not responded. *Id.* at (g). However, it is important to clarify that a parent disagreeing or rejecting an evaluation's findings is not the same thing as failing to give consent for special education services. *Beer v. USD 512 Shawnee Mission*, No. 21-2365- DDC-TJJ, 2023 U.S. Dist. LEXIS 45822, at *48 (D. Kan. Mar. 17, 2023). Further, the school is not required to classify or reclassify an exceptional child into the child's category of exceptionality provided that the child is (1) still regarded as a child with an exceptionality and (2) still receives FAPE. K.A.R. § 91-40-10(g).

Analysis

Beginning under the *Rowley* Standard, we first take note that the parent has made no specific allegations relating to *Rowley's* second prong, substantive violations, nor did this investigation unearth any. Thus, this analysis will focus on *Rowley's* first prong. We must first analyze whether the November 2023 IEP was developed in adequate compliance with the procedural obligations imposed under the IDEA. *Rowley*, 102 S. Ct. 3034 (U.S. 1982). From the Background and the discussion within Issue One, we know that, while a single procedural violation exists within our statutory timeline, several more occurred just outside of it which may have impacted the child's ability to receive a FAPE. Thus, we must move to the three-prong test provided by K.S.A. § 72- 3416(g)(2)(A-C) (and duplicated within 34 C.F.R. § 300.513(a)(2)) to determine if any of the following are true:

1. Did the procedural violation(s) significantly impede the parent's opportunity to meaningfully participate in the decision-making process regarding the provision of FAPE to their exceptional child?
2. Did the procedural violation(s) impede the child's right to FAPE?
3. Did the procedural violation(s) cause the deprivation of educational benefit?

As may already be evident, the first prong listed here, K.S.A. § 72-3416(g)(2)(B), is a rephrasing of Issue Two, but with the added qualifier of being a "significant" impediment. Through its investigation, KSDE has already determined within Issue Two of this report that the parents were not denied meaningful participation. With that so held, the first prong of § K.S.A. § 72-3416(g)(2)(A-C) can be disposed of.

The second prong, asking whether these procedural violations impeded the child's entitlement to a FAPE, does not come with such easy answers. Instead, we must analyze each and every procedural violation (alleged and confirmed) both inside and outside our statutory timeframe to determine whether any of them, or perhaps all of them cumulatively, impeded the child's right to FAPE.

Progress Reports

In her written complaint, the parent alleged that she was not receiving progress reports as indicated on the child's IEP. K.S.A. § 72-3429(c)(3). Indeed, no party to this action could show that a progress report was provided to the parents in October of 2023, crediting the parent's allegation.

However, nothing in this record substantiates an allegation that the parent not receiving this report materially impeded the child from exercising his right to a FAPE. While a progress report was not provided in October 2023, the child's progress was discussed during IEP team meetings on September 1, 2023 and November 3, 2023. The meeting notes from each reflect the incorporation of parental input and responsiveness to questions. The record indicates the mother was exchanging other emails with the IEP team on August 31, September 7, September 10, September 25, October 25, October 26, and October 31, 2023, crediting meaningful participation in the development process despite the procedural defect. KSDE is satisfied that the absence of an October 2023 progress report did not impede this child's rightful entitlement to a FAPE.

Notices of Excusal

In her written complaint, the parent alleged that she was not receiving proper parental notifications required under the IDEA from her child's school. Though not specifically alleged within her complaint (and sitting outside of our statutory timeline), this investigation uncovered one meeting, held on August 15, 2022, wherein a required participant was not present or excused. K.S.A. § 72-3404(u)(2). While Amy Garver, LEA Representative, was validly excused

through a signed Notice of Excusal on the meeting date, no such form exists to excuse the absence of a General Curriculum Instructor.

However, nothing in this record substantiates an allegation that the parent not excusing this required participant materially impeded the child from exercising his right to a FAPE. The August 15, 2022 meeting was a “move-in” meeting wherein the team set up the child’s Interim IEP. Due to the circumstances, no IEP services or accommodations were modified on this date. The child’s “old” IEP was temporarily accepted while the team worked to gather more data. Because no changes were made, it would be unreasonable to presume that the outcome of this meeting would have been materially different had a General Curriculum Instructor been present and contributing input.

Notices of Meeting

In her written complaint, the parent alleged that she was not receiving timely Notices of Meeting at least 10 days before IEP meetings were held. K.A.R. § 91-40-17(2). She specifically alleged that she had not received a Notice of Meeting for the August 15, 2022 meeting. As detailed in Issue One, this allegation ended up unfounded. Though not specifically alleged (and sitting outside of our statutory timeline), this investigation uncovered one additional Notice of Meeting, generated on January 2, 2023, containing a minor procedural defect. The Notice of Meeting generated by Peter Lelich does not “invite” an Occupational Therapist, yet an Occupational Therapist was in attendance.

Though perhaps atypically problematic given the parent’s contentious relationship with that particular provider, there is nothing in this record to substantiate an allegation that this provider’s presence materially impeded the child from exercising his right to a FAPE. Because the January 12, 2023 meeting was a parent-requested meeting held over concerns relating to occupational therapy provision, it would have been inappropriate to leave such a service provider “out” owing simply to a defective notice. The parent came in ready to discuss occupational therapy concerns, including bringing copies of outside evaluations. At this meeting, the school proposed occupational therapy consult services. No changes were made from this meeting, as the parent refused to sign the Prior Written Notice.

As all parties came to the meeting aware of the topic to be discussed, it is reasonable to conclude that the parties were aware such a discussion would likely include an Occupational Therapist. Crediting this interpretation further, the parent has not expressed any concern within her complaint over the presence of an Occupational Therapist at the January 12, 2023 meeting. KSDE is satisfied that this minorly defective notification did not materially impede the child’s entitlement to a FAPE.

Prior Written Notices

In her written complaint, the parent alleged that she was not receiving required Prior Written Notices prior to the school altering the identification, placement, evaluation, or provision of

FAPE to her child. K.S.A. § 72-3430. The parent did not specifically allege any particular violation; instead, her complaint articulates a generalized belief that she knows some are missing. To her credit, this investigation uncovered two instances (containing five total defects) wherein no notice at all or seriously defective notice was provided. While none of these instances occurred within the statutory timeframe, this analysis will still scrutinize their subsequent impact on the child's right to FAPE.

Though sitting outside the procedural timeline, the Prior Written Notice generated for the November 8, 2022 meeting was seriously defective. To begin, this notification describes the change in services as non-material, not requiring parental signature. The school describes their proposals and refusals of service by saying, "The team discussed [the child's] present levels and decided that his current services have been successful in his progress. Therefore, he will receive the following services from 11-8-2022 to 11-9-23; [the child] will receive special education services in the general education classroom for 86 minutes 5 days a week for English and Reading. [The child] will receive speech and language services in a special education setting for 20 minutes 2 days a week." The explanation provided states, "The action of continuing with the same services was proposed because at this point he has been successful in his classes." When explaining their rationale for rejecting other options, the school explained, "All other options were considered, but rejected at this time. He is undergoing a reevaluation so when that is complete then other options may be considered."

Yet, as discussed, services changed as a result of this meeting that are not indicated or justified within the signed PWN. While adding math services was a 19%, non-material addition (though it still required proper Prior Written Notice under K.S.A. § 72-3430), dropping Extended School Year and the Individual Nursing Plan were both material changes in service (100% drops) that required parental consent for removal expressed through signed, proper Prior Written Notice. K.S.A. § 72-3430 & 3432; K.A.R. § 91-40-27(a). A silent Prior Written Notice issued on the same date is not enough to substantiate that this occurred. K.S.A. § 752-3432(a-g).

The record is unclear as to whether these particular procedural violations impeded the child's ability to access FAPE. It is not even clear that the child ever utilized either of these services (ESY or Nursing Plan) before they were dropped. Regarding the provision of services, it could be argued that the parent only "signed" to keep getting the exact same services; thus, only those services indicated on the Prior Written Notice are valid. Under that framework, all changes made to the IEP on this date were invalid, even accommodations, a position it appears neither party would agree with. Likewise, it could be argued that only those services explicitly mentioned within the meeting notes or the Prior Written Notice are valid. In such a case, while the new accommodations would hold, all three major service changes (ESY, Nursing Plan, and math addition) are still improper, leading to the same result. If math services were not "supposed to" change that day, then the December 2022 amendment was harmless procedural error correcting the November 2022 clerical error. If math services were "supposed

to" change that day, that credits an argument that dropping ESY and the Individual Nursing Plan were consented choices evidenced by bad paperwork. The parent has made no mention of these changes in services though it is clear from her complaint's notation of a missed checkbox that she scrutinizes her child's IEPs to ensure accuracy. If the parents had not anticipated their child being home this summer instead of receiving Extended School Year services, it seems probable that that information would have entered their complaint. Yet it is equally conceivable that the parents did not "catch" these alterations simply by virtue of the nature in which they are presented (single checkboxes, as they tend to appear statewide) and unfamiliarity with how ESY provision "works." The promised dates of service beginning on December 13, 2022 only add a layer of further ambiguity, as that fact, taken in conjunction with the parent's silence to the issue, suggests it's even possible that no party to this action has provided a wholly accurate version of the November 8, 2022 IEP as it appeared on that date. Though not required by statute, obtaining signatures within the IEP document itself could have wholly disposed of this issue.

In sum, it is unclear at this point in the timeline whether the unconsented material drop-in services stemming from the November 8, 2022 meeting had an actual impact on the child's provision of FAPE. For now, that is the furthest this analysis will go in forming a conclusion on substantive degree of this error, but this will be expanded upon after a discussion of the December meeting.

On December 13, 2022, Prior Written Notice was issued covering the evaluation/amendment meeting proposals. The notice presented to the parent described the services proposed from December 13, 2022 until November 7, 2023 as, "[the child] will receive special education services in the general education classroom for 106 minutes per day 5 days a week for math, English, and reading. [The child] will receive special education services in the special education classroom for 20 minutes per day 2 days a week for speech and language services. Occupational Therapy consult/indirect services for 15 minutes 1 time per month." This Prior Written Notice and all associated documentation was returned unsigned by the parent.

The procedural issue stemming from the December 13, 2022 meeting is that, without signed consent, services should not have changed. K.A.R. § 91-40-19. Yet the record reflects that, as a result of this meeting, services "reverted back" to 86 minutes of direct special education support, not 106 minutes. While this reintroduces all the questions posited for the November 8, 2022 meeting, this 19% change in services is not quite as problematic as the material November drops. K.S.A. § 72-3432. The meeting notes and Prior Written Notice indicate the provisioning of math services was discussed during this meeting. The meeting notes say, "Doing an amendment to add math." (emphasis added). A January 13, 2023 email from Bailey Edgar to the parent indicates, ". . . [there] will be another Prior Written Notice that addresses the addition of the math services that we will need your consent on. . . ." These records reflect, at the very least, a team that thought they were adding math services that day, not in

November. No rebuttal to this understanding is reflected in the meeting notes or in later communications, including the parent's January 13, 2023 letter. When draft IEPs were prepared in October of 2023, the parent did not vocalize any concern regarding the provision of math services, the dropping of ESY, or the dropping of the Individual Healthcare Plan.

These facts tend to bolster a conclusion that, though there are serious procedural defects within the Prior Written Notices associated with the November 8, 2022 and December 13, 2022 meetings, it is unlikely that those defects were in the arena of actually impacting the child's provision of FAPE so much as they were serious clerical errors that reverberate throughout the parties' submissions. While they certainly could have impacted FAPE, there is nothing in the record to credit an allegation that they actually did. This investigation has not received any documentation indicating that the child's unaddressed healthcare needs were disrupting his right to receive FAPE. The investigator has also not received any documentation crediting an allegation that the parent anticipated Extended School Year services, objected to their removal, or that the child could not make adequate progress without such services. To conclude that these deficits impacted the child's right to receive FAPE would be to presume a necessary educational benefit flowing from these services that just has not been established on this record.

The investigator did not receive a copy of the Prior Written Notice issued by Peter Lelich on September 6, 2023. According to Peter Lelich's October email, this notice purportedly covered "all considerations" from the team meeting except the refusal of direct occupational therapy services within the special education setting. It is unclear whether this document contained a refusal to *evaluate*. Though at least two Prior Written Notices exist in the record showing a refusal to provide direct occupational therapy within the SPED setting, it is unclear whether the parent's request for evaluation was met with a Prior Written Notice denying her. If it was not, it should have been. K.S.A. 72-3430; 34 C.F.R. 300.503. Furthermore, the Prior Written Notice issued on October 26, 2023 was not timely according to Kansas guidance defining a "reasonable time" under K.S.A. § 72-3430(b)(2). See KSDE Memo: "Reasonable Time," at <https://www.ksde.org/Default.aspx?tabid=614>.

However, there is no evidence within the record that would credit an allegation that the deficiencies contained within this notice impacted FAPE. To the issue regarding a refusal to evaluate, the school has refused this evaluation because they already evaluated the child in December of 2022, but the parent did not agree with the evaluation results or consent to the initiation of services. A school is not in violation of its obligations for identification, evaluation, or reevaluation if the school declines to pursue an evaluation or reevaluation because a parent has failed to provide consent for the proposed action. K.A.R. § 91-40-27(f)(3). Procedurally, it is improper to refuse a parent's request to evaluate without generating a Prior Written Notice for the parents' review. K.S.A. § 72-3430(2). Furthermore, the parent has obtained outside evaluations for this child that she is unwilling to allow the school to use in forming the basis for

her child's placement decisions. If the school denied the child an evaluation, even inappropriately (though this denial itself was not unlawful; see the *Kansas Special Education Process Handbook*, 59, at Question 19), the parent has always retained the option of submitting her child's outside evaluation results for the team's consideration when making placement determinations. If a parent disagrees with the results of an evaluation or feels a school is not adequately identifying all areas of need, they are entitled to request an Independent Educational Evaluation under K.A.R. § 91-40-12 for the team's consideration. Finally, though the Prior Written Notice issued on October 26, 2023 by Peter Lelich was not issued in a reasonable time, the information contained therein is identical to the information provided in the Prior Written Notice issued on January 12, 2023. The record reflects that the parents were not waiting on this Notice before taking any particular action or even expecting it to show up when it did. That its absence had so little impact on the ultimate course of events reflects that this procedural violation did not impact the child's right to FAPE.

With prongs one and two disposed of, this analysis must now answer the question, "Did these procedural violations result in a deprivation of educational benefit?" This is where we will begin our Endrew F. analysis, allowing us to determine whether this IEP was reasonably calculated to provide this child with appropriate progress in light the child's circumstances. If it was, we must then determine whether the procedural defects outlined in Issue One rose to such a level as to deprive this child of those benefits.

First, we must consider the student's present levels of academic achievement and functional performance and how the student's exceptionality impacts their access to and progress within the general education curriculum. K.S.A. § 72-3429(c)(1). To facilitate this analysis, the relevant portions of the child's 2023 IEP have been excerpted below:

Present Levels of Academic Achievement and Functional Performance

- When given 5th grade level reading probes, 85% accurate.
- When given 6th grade level reading probes, 60% accurate.
 - Missed fact v. opinion and prediction.
- When given writing prompt, correctly capitalizes 69%; comma usage 50%; grammatical accuracy 68%; conclusory punctuation 55%.
 - Run-on sentences lowered score.
 - Student refuses speech to text function on his computer, even in private setting.
- Able to use a variety of conjunctions.
- Requires structured practice and repetition.
- Sentences have subject and predicate, but not much description.
- Most writing assignments take extended time because processing speed and need for technology/scribe.
- Kansas State Assessments:
 - ELA: 274 (Level 1)
 - MAP Reading: 213 (47%), up from 205 (26%) previous semester
- When given 4h grade level math probe, 90% accurate.
- When given 5th grade level math probe, 83% accurate.
- When given 6th grade level math probe, 56% accurate.

- Most frequently missed problems: Fractions, converting fractions.
- Kaufman (3rd Ed.): Math composite standard score:75 (5%) (Below Average).
- Kansas State Assessments:
 - MATH: 271 (Level 1)
 - MAP Math: 198 (10%), down from 201 (10%) previous semester.
 - Produces multisyllabic words with 67% accuracy.
- Great progress on vocalic /r/ and differentiating productions of ar/or.
- Tries to substitute big vocabulary words for easier to pronounce words, making him more difficult to understand.
- Benefits from breaking down the syllables and putting them back together.
- Benefits from repetitive practice.
- Benefits from tactile/visual cues for sounds in error; e.g., /th/.
- Errors are inconsistent, typical of DDX; needs to employ strategies when stuck.
- MAP Language Usage: 190 (6%).
- Science teacher reports student uses accommodations; student does not check email or work at home during absences, causing him to fall behind.
- Math teacher reports student usually refuses accommodations; student does not typically need extended time on assignments unless absent.
- PE teacher reports student is doing fine; no concerns.
- Social Studies teacher reports student's accommodations are working fine; student is struggling to catch up from many absences.
- English teacher reports student usually refuses accommodations except read aloud and extended time; student is having a difficult time getting caught up from absences.
- Personal Finance teacher reports even with reduced assignments, student is struggling to understand material for quizzes due to absences.
- Hearing: Pass
- Vision: Pass

Impact of the Exceptionality on Child's Participation in Gen. Ed. Curriculum

- Exceptionality in the area of reading and writing affects his access to and progress in the general education curriculum.
- Child has slow processing rate, so he needs instructions broken down into smaller parts, extended time and separate setting for tests, read aloud for above level texts, and graphic organizers for complex assignments.
- Exceptionality in the area of math affects his access to and progress in the general education curriculum.
- Child requires additional examples and for multi-step problems to be broken into smaller steps.
- Exceptionality in the area of speech ("diagnosis of Apraxia of speech") affects his memory and discrimination of sounds.
- These skills are needed for reading and spelling development.
- These skills affect the child's ability to clearly express himself and participate in expressive language development.
- The child has diminished listening comprehension, which impacts his ability to correctly answer comprehension and sequencing questions.

Measurable Annual Goals (Academic and Functional)

- #2.1: By 11/21/24, when given 7th grade level reading probe, 80% accurate on 4/5 data days.

- #4.1: By 11/2/24, when given writing prompt or editing assignment, child will proof and edit his own work for capitalization, punctuation, grammar, and sentence sense with 80% accuracy in each category on 4/5 data days.
- #3.1: By 11/2/24, when given 7th grade level math probe, 70% accurate on 4/5 data days.
- #1.1: By 11/2/24 child will produce multisyllabic words during structured speaking opportunities with 80% accuracy on 2/3 data days.

Special Education and Related Services

- Special Education Services (Science and Social Studies)
- Setting: Direct, inside G.E. class
 - Provider: Heidi Hill
 - Duration: 86 min.
 - Frequency: 5 days / q week.
- Modification: The child will have access to a writing checklist to self-edit.
- Modification: The child will have assessments read aloud.
- Modification: The child will have the opportunity to complete a graphic organizer for writing assignments.
- Modification: The child will take tests in a separate location.
- Modification: The child will utilize an agenda tool to prioritize assignments.
- Modification: The child will be provided with guided notes either prewritten or cloze form.
- Modification: The child will be provided with typing programs to practice keyboarding.
- Special Education Services (Reading, English, and Math)
 - Setting: Direct, inside G.E. class
 - Provider: Heidi Hill
 - Duration: 129 min.
 - Frequency: 5 days / q week.
- Modification: The child will show work on one math problem of each type but does not need to show subsequent provided he demonstrates knowledge.
- Modification: The child will be given a study guide or study resources prior to tests.
- Special Education Services
 - Setting: Direct, outside G.E. class
 - Provider: Dawnyale Jones
 - Duration: 20 min.
 - Frequency: 2 days/q week.
- Modification: The child will have access to a technology device to make use of text to speech.
- Modification: The child will have premium Google text/write /word prediction installed on his computer for text to speech/
- Modification: When asked a question in class, allow the child 5 seconds delay to process before anticipating an answer.
- Modification: The child will be given a break card that he may utilize if he needs a break to calm down.
- Modification: The child will have a large visual timer to gauge his time in the calming room.
- Modification: The child will be given extended time on all assignments.
- Modification: Reduce the child's assignments by 50%. Grade portion turned in.
- Modification: The child will receive extended time on assignments missed while he attends weekly outside services two days past the original due date."

Progress Toward Goals and in General Education. Curriculum

- #2.1:
 - 2nd: 61%

- 3rd: 68%
- 4th: 81%
- #4.1:
 - 2nd: Report 1: Capitalizes 95%; Punctuation 92%; Grammar 77%; Proper Nouns 89% Report 2: Capitalization 74%; Commas 61%; Grammar 77%; Ending Punctuation 68%.
 - 3rd: Report 1: Capitalizes 96%; Punctuation 92%; Grammar 79%; Proper Nouns 89%. Report 2: Capitalization 77%; Commas 63%; Grammar 77%; Ending Punctuation 74%.
 - 4th: Report 1: Capitalizes 94%; Punctuation: 88%; Grammar: 80%; Proper Nouns: 88% Report 2: Capitalization 77%; Commas 66%; Grammar 78%; Ending Punctuation 75%.
- #3.1:
 - 2nd: Not measured. (Tested 6th grade level.)
 - 3rd: Not measured. (Tested 6th grade level.)
 - 4th: 71%
 - Classwork: 82% Average (= 77% average score for #3.1.)
- #1.1:
 - 2nd: 72%
 - 3rd: 78%
 - 4th: 71%"

From the child's Present Levels, we can see that the data gathered reflects the child facing challenges with reading comprehension, writing with proper grammar and syntax, math skills, and the production of some vocal sounds. He has a slower processing speed (and thus needs access to "technology/scribe") when utilizing writing skills. Regarding speech, he benefits from repetitive practice and breaking down words then putting them back together. He benefits from tactile/visual cues.

The difficult portion of this analysis arises here, at Present Levels. The proverbial elephant in the room is missing from the baseline data: Motor skills. Nothing in that list addresses the child's physical ability to produce handwriting, for example. Upon review of the handwriting samples provided from the Decoste Writing Profile, this is troubling. His dictation and fast copies are illegible. His handwriting grows larger and spacing grows farther apart as he writes. Even his September 9th informal screening sample – the most legible of the three samples received – flags a possible endurance issue as the child's legibility regresses sentence-by-sentence. The IEP's Present Levels should indicate how the child's disability affects his involvement and progress in all aspects of the general education curriculum. K.S.A. § 72-3429(c)(1)(A).

This omission from the baseline data was procedurally problematic. According to the *Kansas Special Education Process Handbook*, baseline data is such data that is ". . . derived from locally developed or adopted assessments that align with the general education curriculum." *Kansas Special Education Process Handbook*, at 74, ¶ 3. The information gathered by Megan Nolla in conducting the Decoste Writing Profile was useful baseline data for the IEP team to work from in addressing the child's fine motor needs. Schools must ensure the IEP team revises the IEP, as appropriate, to address the results of a reevaluation. K.S.A. § 72-3429(f)(2)(B).

However, this procedural concern does not give rise to a FAPE violation. The parent's January 13, 2023 letter states that the parent did not agree with the use of the Decoste Writing Profile because, *"This screener was not appropriate to utilize given this child's academic performance, as well as his current diagnoses."* Moreover, the parent did not consent to the school's evaluation results or the proffered occupational therapy services that came, in part, as a result of the Decoste. Informed parental consent must be obtained prior to the initial provision of special education or related services. K.A.R. § 91-40-27(a)(2). A school is not in violation of its obligations for identification, evaluation, or reevaluation if the school declines to pursue an evaluation or reevaluation because a parent has failed to provide consent for the proposed action. K.A.R. § 91-40-27(f)(3). The baseline data relating to motor skills should have been incorporated into the IEP document. However, absent parental consent, this error is rendered harmless as no material change could be made to the child's curriculum relating to the provision of occupational therapy services.

The impacts of the child's exceptionality are listed as he requires text to speech support, instructions to be broken down into smaller parts, extended time on assignments, a separate setting for tests, read aloud for above level texts, and graphic organizers for complex assignments. He needs additional examples and multi-step directions in math. His "diagnosis of apraxia of speech" affects his memory and discrimination of sounds, which are needed for reading and spelling development and expressive language development. He also has diminished listening comprehension which impacts his ability to correctly answer comprehension questions.

This section shares the same deficit as the Present Levels: We are missing data about whether/how this child's fine motor skills impact his ability to access the general education curriculum. Though the box is checked on the IEP indicating that anything not discussed is within normal parameters, we know from the four-page analysis in the area of Health/Physical/Motor/Sensory conducted during his December 13, 2022 reevaluation meeting that impacts do exist. For example, the child struggles to open his locker owing to his fine motor skills. *"He at times has difficulty unlocking his locker with the twist knob and would benefit from a keyed lock to keep his locker secure and accessible to him."* The meeting notes from December 13, 2022 indicate the child's handwriting speed is a functional barrier to his access. However, once again, absent parental consent to initiate services, this report reaches the same conclusion.

Next, we look to the child's measurable annual goals to determine whether those goals align with the child's present levels and impact and access to the general curriculum. K.S.A. § 72-3429(c)(2). The child has four goals: First, he's striving for 80% accuracy on 7th grade reading probes by November 2, 2024. Second, he's striving for 80% accuracy when self-editing his own writing assignments for grammar and syntax by November 2, 2024. Third, the child aims to

achieve 70% accuracy on a 7th grade math probe by November 2, 2024. Finally, the child aims to achieve 80% accuracy producing monosyllabic words by November 2, 2024.

These goals fall neatly in line with the information contained within the child's baseline performance and the impacts of his exceptionality. The child's difficulties in reading comprehension are met with an appropriate goal in the area of reading comprehension at age level, upon which the child is reportedly making progress as indicated in his progress notes. The child's struggle to writing with proper grammar and syntax is met with a goal which utilizes self-editing at grade level, which fosters the child's natural sense of independence and problem-solving. Here, too, the child is making documented progress. The child's difficulties in math are being met with a goal to make reasonable progress at a grade-level assessment. Finally, his struggle to produce monosyllabic sounds is met with a goal to increase his accuracy in structured production settings. While the child appears to struggle with this goal, goals are not guarantees. *K.D.*, 904 F.3d 248 (3d Cir. 2018). The IEP need only be reasonably calculated, not ideal. *Andrew F.*, 580 U.S. 386 (2017).

Similarly, with parental consent, a goal addressing the child's fine motor skills would have been appropriate. However, here again, when a parent refuses to consent to the provision of services, the school shall not be considered to be in violation of the requirement to provide a free appropriate public education to the child. K.A.R. § 72- 3428(g)(2)(B). IEP goals must meet each of the child's educational needs that result from the child's disability. K.S.A. § 72-3429. That cannot, however, be read to require a school to develop goals in areas of exceptionality wherein the parent has not consented to the provision of services.

Next, we consider whether the child's services are aligned with their needs and whether it is designed to enable the student to make progress toward their goals and in the general curriculum. K.S.A. § 72-3429(c)(4). The current IEP offers 86 minutes of direct special education services within the general education setting five times a week to support the child in Social Studies and Science. These services support the child by helping him "keep up" or "catch up" when his exceptionality causes the child to lag behind peers. This may include prompting task initiation, assisting with note-taking, ensuring accurate reading comprehension, and aiding the child in producing handwriting. It added 129 minutes of direct special education support in the general education setting five times a week to support the child in Reading, English, and Math. This service addresses three primary areas of need indicated within the IEP. It offers 20 minutes of direct special education support in the special education setting twice a week to provide the child with Speech Language services. This service addresses the child's goal to produce multisyllabic words with 80% accuracy. No area of documented need wherein consent was obtained is left unaddressed by the services and accommodations provided within the IEP. The November 2023 IEP reflects consideration of the child's current performance levels and adjustment of services based upon that reflection.

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. This will tell us whether there was an educational benefit to be deprived of under K.S.A. § 72-3416(g)(2)(C).

First, we should begin with a review of the child's circumstances. This child has several exceptionalities including a motor disability (Global Apraxia, *see* DSM-5, 5th Edition, American Psychiatric Association, 2013.), Speech Apraxia, Sensory Integration Disorder, and multiple food allergies. He was issued a Certificate of Incapacity by the state of Indiana. According to his 2016 Psychoeducational Report, at that point in his life, the child scored "Well Below Average" in reading skills, "Below Average" in written expression, and "Average" in mathematics. He was described as typically developing and was manifesting behavioral concerns (trouble focusing, kicking, eloping, and hiding) at that point in his life which are no longer present. At this time, the child's processing speed tested as "Average." The testing observations within the report reflect a child who became avoidant or withdrawn when he was not confident in his ability to perform a task. His providers then were concerned about the child's response to academic tasks which required "sustained mental effort."

Recently, in Fall 2023, this child scored 213 on the MAP Reading Assessment, placing him in the 47th percentile. This score suggests the child's reading accommodations and services likely provide him educational benefit. He scored 190 on the MAP Language Usage Assessment, putting him in the 6th percentile. While this score could indicate a lack of educational benefit, it may just reflect the regular challenges a child with apraxia faces in producing speech. He scored 198 on the MAP Math Assessment, placing him in the 10th percentile. This last score was down from his Spring 2022 score of 201, which had placed him in the 11th percentile. As math services are new after the reevaluation and were recently increased, it appears that, at least in the area of math skills, the school is appropriately modifying the IEP to adjust for the child's performance.

Today, the child is described as "very likable" with a "quick smile" and an "easy personality" according to his most recent IEP. Some providers mention a processing delay, though it is unclear whether this information is being garnered from personal observation or some empirical source. The observations within the meeting notes and the IEP reflect a child who still becomes avoidant or withdrawn when he is not confident in his ability to perform a task. They also take note that this child is highly independent and does not like asking for help.

The primary concern of the child's providers has shifted considerably, however, from those behavioral concerns previously noted in 2016. Within the November 3, 2023 IEP, the child's Math teacher, Science teacher, Social Studies teacher, English teacher, and Personal Finance teacher have all each individually reported that the child's absences are interfering with his ability to succeed in the general education curriculum. His Science teacher reported that the child is not checking emails or completing work at home after his absences, causing him to fall

behind. The child's Math teacher reported that he can usually complete assignments without needing an accommodation for extra time, but needs extended time for work occurring during his absences. The Social Studies teacher reported that they are struggling to help the child catch up from absences. His English teacher reported that, even with her class's policy for allowing students to turn in missing assignments past their due date, they were struggling to keep him caught up from all the absences, particularly because he was missing more than one class. The child's Personal Finance teacher expressed that they had cut out all of the material from the curriculum that they could, but the child was still struggling to complete enough material to prepare for a quiz. These provider notes reflect a child whose circumstances are becoming untenable for him to continue to make adequate progress.

Multiple meeting notes indicate, and the parent's January 13th letter reiterates, that the child is experiencing ". . . anxiety secondary to not being able to perform on the same level of his same-aged, typically developing peers." In an attempt to mitigate the child's excessive absences, he has been granted additional accommodations to allow him extended time on assignments missed for appointments, the reduction of graded material (though this accommodation also relates to his challenges in producing output), and most recently, extended time on all assignments.

Despite all of this, the child appears to be making adequate progress on most of his documented goals. For example, he met his 2022 goal of producing a syntactically accurate sentence when given a visual and a conjunction with 80% accuracy. In 2022, the child's baseline on a 4th grade math curriculum assessment was a 63%. He met his goal of achieving an 80%, so this was replaced with a new goal to achieve 70% on a seventh-grade math curriculum assessment by November 2, 2024, which was also met with a 71% in 4th Quarter. Some goals he struggles with, as is the case for his goal in producing multisyllabic words, but given the nature of his exceptionality, it is reasonable that such a goal wasn't met within a year. All things considered, in light of his circumstances, this child is making impressive progress. These observations of growth and development are strong indicators that the child's IEP was reasonably calculated to provide him with educational benefit. *Endrew F.*, 580 U.S. 386 (2017).

While neither party to this action submitted a record of the child's grades, it is concerning to the Department that this child's need for services virtually doubled within the course of a single academic year. Even taking into consideration the positive data produced by his progress reports, that this child now requires two more hours of service five days a week indicates that something within this child's circumstances and/or IEP may not be adequately addressing his underlying needs. The provider reporting contained within the November 3, 2023 IEP and the Attendance Detail Report (reflecting 45 absences in the 2023-2024 school year) both reflect a child whose greatest obstacle to obtaining an appropriate education is how often he is absent. Thus, KSDE is satisfied that the school did not deprive the child of educational benefit through its procedural errors to such a degree as to rise to a FAPE violation.

Without consent to initiate occupational therapy services, there can be no deprivation of a merely prospective educational benefit.

Conclusion

In her complaint, the parent alleged that USD 458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a free appropriate public education (FAPE) to her child as required under K.S.A. § 72-3410(a)(2), K.A.R. § 91-40-2, and 34 C.F.R. § 300.101. Though the record is littered with procedural defects, none rise to such a level as to credibly support a finding that USD 458 denied the child FAPE under K.S.A. § 72-3416(g)(2)(A-C). The only two that could have (surrounding the November and December 2022 meetings) are not concerns indicated within the parents' complaint, nor does the record reflect a material impact. Similarly, the Endrew F. analysis indicates the IEP, though deficient, is only deficient in those areas in which the parent has not consented to initiate services or agreed with the evaluation results. Where parents refuse consent, schools will not be held liable for a FAPE violation for refusing to continue evaluating or developing the IEP within the non-consented area. See, generally, K.A.R. § 72-3428(g)(2)(B). Based on the foregoing, this investigation concludes that USD 458 *did not violate its obligation* to provide the child with a Free Appropriate Public Education.

Summary of Conclusions and Corrective Action

Issue One

USD 458 violated K.S.A. § 72-3430(b)(2) 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 458 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. § 72-3430(b)(2), which require the District to provide timely Prior Written Notice within a reasonable amount of time.
 - i. Due Date: July 5, 2024.
 - b. State legal requirements at K.S.A. § 72-3429(c)(3), which requires that parents are provided with the timely progress reporting indicated within their child's IEP.
 - i. Due Date: July 5, 2024.
2. By November 1, 2024, USD 458 shall provide training to Basehor-Linwood Middle School staff and providers regarding their procedural obligations under the IDEA. This training must cover (1) when a Prior Written Notice is indicated, with emphasis on requests to evaluate, (2) what information a Prior Written Notice must contain, (3) the procedural timeframe for issuing timely Prior Written Notice, and (4) the procedural timeframe for timely progress reporting. This training must be given to all general and special education teachers, providers, and administrators who shall work within the building in the 2024- 2025 school year. USD 458 will provide a copy of the training

agenda, dates of training, and verification of individual attendance to SETS according to the schedule below. This training may be provided to individuals as part of coaching or supervisory meetings.

- a. Due Date for training agenda: July 15, 2024.
- b. Due Date for dates of training (schedule): August 18, 2024.
- c. Due date for verification of attendance: November 1, 2024.

Issue Two

This investigation found no violations; thereby, no corrective action is necessary.

Issue Three

This investigation found no violations; thereby, no corrective action is necessary.

Investigator

Brian Dempsey

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 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)