

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #500
ON MARCH 19, 2024

DATE OF REPORT MAY 3, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of twelve students by -----, Social Worker in USD #500. In the remainder of the report ----- will be referred to as “the complainant”. The twelve students will be referred to collectively as “the Students” and individually as noted in the chart below:

Name	Date of Birth	Referred to as
(Redacted)	(Redacted)	Student 1
(Redacted)	(Redacted)	Student 2
(Redacted)	(Redacted)	Student 3
(Redacted)	(Redacted)	Student 4
(Redacted)	(Redacted)	Student 5
(Redacted)	(Redacted)	Student 6
(Redacted)	(Redacted)	Student 7
(Redacted)	(Redacted)	Student 8
(Redacted)	(Redacted)	Student 9
(Redacted)	(Redacted)	Student 10
(Redacted)	(Redacted)	Student 11
(Redacted)	(Redacted)	Student 12

It is noted that the complainant is not the parent/legal guardian of any of these students nor a district employee serving as an IEP team member for any of these students. Consent to release personally identifiable information to the complainant was not provided by the parent/legal guardian of any of the students. As such, the complainant is being provided with a redacted copy of the final investigation report.

The complaint is against USD #500 (Kansas City Kansas Public Schools). In the remainder of the report, this public agency may also be referred to as “the district”, “the local education agency (LEA)”, or “the school”.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on March 19, 2024 and the 30-day timeline was extended to allow for a systemic investigation.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation, which was provided by both the district and the complainant. The following documentation and information were used in consideration of the issue:

1. Evaluation/Eligibility Report for Student 2 dated November 4, 2022
2. Prior Written Notice (PWN) for initial evaluation of Student 2 dated February 21, 2023 and signed by the parent on February 28, 2023
3. Individualized Education Program (IEP) for Student 5 dated February 24, 2023
4. IEP for Student 10 dated April 11, 2023
5. IEP for Student 3 dated October 4, 2023
6. Email from EverDriven staff to Angela Spann, Special Education Coordinator, dated October 12, 2023
7. IEP for Student 9 dated October 18, 2023
8. IEP for Student 2 dated October 25, 2023
9. IEP for Student 8 dated December 1, 2023
10. EverDriven Transportation Request for Student 6 dated December 4, 2023
11. IEP for Student 1 dated December 13, 2023
12. PWN for a material change of services and substantial change of placement for Student 8 dated January 19, 2024 and signed by the parent on January 26, 2024
13. IEP for Student 5 dated February 9, 2024
14. Copy of the 2023-24 Special Education Case Manager Handbook
15. The Paraprofessional Handbook for the Wyandotte County Special Education Cooperative in USD #500
16. The Kansas Special Education Process Handbook
17. The 2023-24 Kansas Special Education Reimbursement Guide: State Categorical Aid
18. The 2023-24 Attendance Reports for Students 1, 6, and 10
19. Response to Intervention Logs for Students 2, 3, and 5 during the 2023-24 school year
20. The 2023-24 Parent Contact Log for Student 6
21. Frequency Data Sheets for Student 2 and Student 3 during 2023-24 school year
22. Email chain titled Re: Behavior Assessment/Bethel dated February 20 and February 28, 2024 written by Dr. Heather Hamlit, Principal at Bethel Early Childhood Center, to a variety of USD #500 staff
23. Formal Complaint Request Form signed by the complainant on March 19, 2024
24. Interview with the complainant on March 29, 2024
25. Interview with Dr. JaKyta Lawrie, Executive Director of Special Education on March 29, 2024

26. Emails from the complainant to the investigator dated April 8, 2024 at 10:14 AM; April 9, 2024 at 6:05 AM, at 6:13 AM, at 9:11 AM, and 9:17 AM; April 11, 2024 at 4:10 PM; April 17, 2024 at 12:11 PM and 2:15 PM; and April 18, 2024 at 8:21 AM.
27. Response to the Allegations dated April 10, 2024 written by Dr. Lawrie
28. Email from Angela Spann, Special Education Coordinator, to the investigator dated April 26, 2024 at 4:34 PM regarding special education teacher assignments for the identified students
29. Email from Miguel Martin, Director of Transportation, to Dr. Lawrie dated May 1, 2024 at 9:13 AM
30. Emails from Dr. Lawrie to the investigator dated May 1, 2024 at 1:17 PM, 2:02 PM, 2:11 PM, and 2:15 PM
31. Job posting for "Elementary / Early Childhood Paraprofessional" on the USD #500 website
32. USD #500 Human Resources Data for Quita Scales and Deborah Byers, the paraprofessionals assigned to work in the early childhood special education classroom

Background Information

The twelve students are all enrolled in USD #500 and identified as eligible for special education and related services. These services are being provided through the district's early childhood special education (ECSE) program during the 2023-24 school year. The district acknowledged that these students have attended ECSE classes in two different school buildings during the school year due to staffing issues. The students attended the Earl Watson Early Childhood Center between August 17 and December 8, 2023 and the Bethel Early Childhood Center beginning December 11, 2023 through the current date.

Issues Investigated

Based on the written complaint, three issues were identified and investigated.

Issue One

USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEPs of twelve identified students, specifically by not providing the required special education services from a special education teacher during the 2023-24 school year.

Applicable Law

Federal regulation implementing the IDEA at 34 C.F.R. 300.156 require each state education agency (SEA) to establish and maintain qualifications to ensure that personnel necessary to provide special education and related services in accordance with the IEP are appropriately and adequately prepared and trained.

The Kansas Department of Education (KSDE) details personnel qualifications in the 2023-24 Special Education Reimbursement Guide: State Categorical Aid. Per the Special Teacher Reimbursement Licensing Requirements chart in Appendix B, an early childhood special education teacher must hold a Kansas Teaching Certificate with an endorsement for Early Childhood Unified or Early Childhood Handicapped in order to be appropriately certificated.

The Kansas Special Education Process Handbook states that local education agencies (LEAs) may set the standards for employment as a paraprofessional. The Kansas Special Education Process Handbook also states, "Paraeducators (paras) cannot be given responsibility for designing or be the primary person in charge of delivering classroom content."

According to the Paraprofessional Job description in 2023-24 Paraprofessional Handbook, USD #500 requires job related experience, targeted professional development, and 60 college hours or an Associate's degree. However, the job posting for the position of "Elementary/Early Childhood Paraprofessional" on the USD #500 website lists the required credentials as:

Have a high school diploma or a GED certificate **AND**

- Complete 48 hours at an institution of higher education **OR**
- Obtain an associate's (or higher) degree **OR**
- Pass a state approved assessment. Approved assessments include: Workkeys, ParaPro or Para Educator.

The 2023-24 Special Education Reimbursement Guide: State Categorical Aid requires paraprofessionals with three years of experience to receive 10 hours of professional development each school year. It also includes the following list of prohibited activities for paraeducators:

- *Responsible for selecting or administering formal diagnostic or psychological instruments or for interpreting the results of those instruments;*
- *Responsible for selecting, programming, or prescribing educational activities or materials for the students without the supervision and guidance of the special teacher;*
- *Solely responsible for preparing lesson plans or initiating original concept instruction;*
- *Assigned to implement the IEP for students with exceptionalities without direct supervision and involvement from the professional;*
- *Employed in lieu of certified or licensed special education personnel. Staff claimed as paraeducators but employed as professionals to avoid licensing issues will not be reimbursed;*
- *Used as substitute teachers, unless paraeducators possess the appropriate Kansas license;*
- *Performing nursing procedures or administering medications without appropriate supervision/training from an approved health care professional.*

Analysis: Findings of Fact

The following chart summarizes the requirements of the IEPs of the twelve identified students during the 2023-24 school year:

Student	Date(s) of IEPs	Amount of special education instruction required
Student 1	12/13/23	795 minutes per week (mpw)
Student 2	10/25/23	780 mpw
Student 3	10/4/23	Special Education Services: 120 mpw of "special education services provided by paraprofessional" 660 mpw of "special education support with paraprofessionals" Support for School Personnel: 5 minutes of teacher consultation related to feeding once every 18 th week 5 minutes of teacher consultation related to sensory once every 12 th week
Student 4	1/17/23 1/29/24	760 mpw 485 mpw
Student 5	2/24/23 2/9/24	780 mpw 810 mpw
Student 6	5/22/23	640 mpw
Student 7	11/16/23	780 mpw
Student 8	12/1/23 1/26/24	386 minutes per day at "Kansas School for the Deaf" Parent written consent for PWN for a material change in services and a substantial change of placement
Student 9	11/18/23	840 mpw
Student 10	4/11/23	790 mpw
Student 11	12/8/23	120 mpw
Student 12	10/11/23	795 mpw

The complainant alleges that the classroom paraprofessionals have been providing the primary instruction to students during the current school year. USD #500 staff acknowledge that, because of staff shortages, multiple teachers have been assigned to the classrooms for these twelve students; however, the paraprofessionals have remained consistent throughout the school year. USD #500 staff also acknowledge that the paraprofessionals have provided instruction and support to students but maintain this acceptable under Kansas rules and regulations.

According to the Quarterly Staff Assignment Summary provided by USD #500, the following chart documents staff assignments for the classroom where the 12 students were assigned during the 2023-24 school year:

Quarter	Special Education Staff	SPED Paraprofessional
First Quarter August 17 – October 12	<u>SPED teacher</u> Jennifer Simmons August 17 – September 11 <u>Virtual IEP case manager</u> Patricia Jerald September 11 – October 12 <u>Building Substitute Teacher</u> Michael Mitchell September 11 – October 12	Debbie Byers August 17 – October 12 Quita Scales August 17 – October 12
Second Quarter October 16 – December 15	<u>Virtual IEP case manager</u> Patricia Jerald October 16 – December 15 <u>Building Substitute Teacher</u> Michael Mitchell October 16 – December 8	Debbie Byers October 16 – December 8 Quita Scales October 16 – December 15
Third Quarter January 4 – March 7	<u>SPED Teacher</u> Erin Cerny January 4 – January 17 <u>SPED Instructional Coach</u> Vanessa Vample January 26 – March 7	Quita Scales January 4 – March 7 <u>Substitute Para</u> Phasinee Brown January 17 – March 7
Fourth Quarter March 18 – May 24	<u>SPED Teacher</u> Kathryn Brooks March 18 - present	Quita Scales March 18 - present <u>Substitute Para</u> Phasinee Brown March 18 - present

Three persons were hired as the ECSE special education teacher for the classroom where the 12 students were assigned. Erin Cerny, and Kathryn Brooks both hold Kansas teaching certificates with Early Childhood Handicapped endorsements. Jennifer Simmons does hold a Kansas teaching certificate but with endorsements for adaptive special education K-6, elementary K-9, and English for speakers of other languages.

Three additional currently employed USD #500 staff were assigned to support and supervise the paraprofessionals in the classroom where the 12 students were assigned. Patricia Jerald works as a special education case manager and holds a Kansas teaching certificate with an endorsement for high incidence special education K-12. Vanessa Vample works as special education instructional coach and holds a Kansas teacher certificate with an endorsement for adaptive special education K-12. Michael Mitchell holds a substitute teaching certificate and works as the building substitute teacher at Bethel.

There have been three special education paraprofessionals assigned to work with these 12 students. Quita Scales has been employed as a paraprofessional in the district since the 2016-

17 school year and holds an Associate's Degree. Deborah Byers has been employed as a paraprofessional in USD #500 since the 1999-2000 school year and she has passed the ParaPro Exam. The Professional Development Logs for both of these employees show at least 10 hours of inservice training during the 2023-24 school year. Phasinee Brown holds a substitute teacher certificate.

Conclusion

Federal regulations at 34 C.F.R. 300.323(c)(2) require USD #500 to ensure that the special education and related services are made available to the child in accordance with the child's IEP. In this case, all 12 students had IEPs that required some amount of specialized instruction during the 2023-24 school year.

Like many other districts, USD #500 is experiencing an on-going shortage of qualified special education teachers during the 2023-24 school year. At various time during the school year, two teachers with appropriate ECSE certification were employed to provide the required special education services to the 12 identified students.

However, there were multiple other periods of time when USD #500 either had an ECSE teacher without the appropriate teaching certification or was using current staff with other job duties familiar with special education to fulfill the responsibilities of the special education teacher including direct instruction, instructional planning, and supervision of paraprofessional staff. Despite these efforts, State regulations are clear that the assigned special education teacher must have both the credentials required as well as the time to complete the job duties of the position.

In this case, the lack of services was caused by the absence of an appropriately certificated special education teacher, not the absence of the student. While the district has made ongoing efforts to hire an appropriately certificated ECSE teacher there has been periods of time during the first, second and third quarters where the 12 students were not provided with special education services by an appropriately certificated special education teacher as required by Kansas rules and regulations.

In addition, the IEP for Student 3 specifically states that a paraprofessional is responsible for the provision of the required 120 minutes of specialized instruction with a total of only ten minutes of support from a special education teacher [five minutes every 12th week and five minutes every 18th week]. It is unreasonable to expect ten minutes every three to four months would allow the special education teacher enough time to provide ongoing direct instruction to the student as well as ample supervision for the paraprofessional to be in compliance with the Kansas state requirements.

Additionally, Student 8 began attending school in USD #500 approximately three months ago but the most current IEP for Student 8 is dated December 1, 2023 and requires 386 minutes per day of specialized instruction at the Kansas School for the Deaf despite a PWN signed by

the parent on January 26, 2024 changing the student's placement to the Bethel Early Childhood Center and significantly reducing the amount of special education and related services provided to the student.

Based on the foregoing, *it is substantiated* that USD #500 failed to implement the IEPs of the 12 identified students specifically regarding the provision of specialized instruction from an appropriately certificated special education teacher during the 2023-24 school year.

The Office of Special Education Programs (OSEP) in the Department of Education issued policy guidance on March 8, 2007 in Letter to Clark stating that local educational agencies (LEAs) are required to ensure that all children with disabilities receive a free appropriate public education (FAPE) consistent with their individualized education programs (IEP). General practice is that services missed because of student absences are not made up because the district was ready, willing, and able to have provided the required special education and related services while services missed because of the absence of a provider are made up or provided by a qualified substitute.

OSEP further encouraged agencies to consider the impact of the absence of a child or provider on the child's progress toward meeting annual goals. OSEP stated that determination of whether an interruption in services constitutes a denial of FAPE must be made on a case-by-case basis.

No findings related to the denial of FAPE for these 12 students can be made at this time because current data is not yet available regarding the long-term impact of the interruption of the specialized instruction being provided by an appropriately certificated ECSE special education teacher caused the staff shortage.

Issue Two

USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide transportation for twelve identified students to access their special education services during the 2023-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.323(c)(2) require school districts to ensure that the special education and related services are made available to the child in accordance with the child's IEP.

Federal regulations at 34 C.F.R. 300.320(a)(4) requires school districts to include a description of the related services required to allow the student to advance appropriately toward attaining the annual goals on the IEP; to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be

educated and participate with other children with and without disabilities in the least restrictive environment.

Federal regulations at 34 C.F.R. 300.34 includes transportation as a related service if that transportation is required to assist a child with a disability to benefit from their special education services as described in the child's IEP.

Analysis: Findings of Fact

The complainant and the district agreed that only three students were alleged to not have received transportation as a related service during the 2023-24 school year: Student 1, Student 6, and Student 10. For this reason, the other nine students will not be addressed in this investigation.

The most current IEP for Student 1 is dated December 23, 2023. Documentation shows the parent attended this IEP team meeting in person. Transportation is listed as a related service that is required to be provided to this student. Attendance records show the student has missed a total of 9 school days since this IEP was implemented.

Dr. Lawrie reported that due to district delays in transportation at the beginning of the school year, the parents of Student 1 were offered contracted transportation services through EverDriven. However, the parent initially accepted these services but did not like the fact that the student had to wait on the bus for approximately 10 -15 minutes before a teacher got him off the bus. The parent then chose to transport the student themselves during the remainder of the 2023-24 school year.

The most current IEP for Student 6 is dated May 22, 2023. Documentation shows the parent attended this IEP team meeting in person. Transportation is listed as a related service that is required to be provided to this student. Attendance records show the student has missed a total of 24 school days during the 2023-24 school year.

Dr. Lawrie reported that due to district delays in transportation at the beginning of the school year, the parents of Student 6 were offered contracted transportation services through EverDriven and the parent accepted these services. Records from EverDriven show the parent requested the transportation be placed on hold on September 26, 2023 while waiting for a new chair for transportation and that transportation services were reestablished on December 4, 2023.

Dr. Lawrie reported that once transportation was started, the student did not regularly ride the bus because the parent did not always have the student ready for school during the scheduled pickup window in the morning. The Parent Contact Log shows the parent was most recently called on February 13, 2024 regarding transportation plans.

The most current IEP for Student 10 is dated April 11, 2023. Documentation shows the mother attended this IEP team meeting in person. Transportation is listed as a related service

that is required to be provided to this student. Attendance records show the student has missed a total of 6 school days during the 2023-24 school year.

Dr. Lawrie reported that due to district delays in transportation at the beginning of the school year, the parents of Student 10 were also offered contracted transportation services through EverDriven. Documentation found the student is being transported regularly from and to her babysitter during the 2023-24 school year.

Conclusion

Federal regulations at 34 C.F.R. 300.323(c)(2) require USD #500 to ensure that the special education and related services are made available to the child in accordance with the child's IEP. In this case, Students 1, 6, and 10 had IEPs in place that required transportation as a related service during the 2023-24 school year. Interviews and documentation found USD #500 did offer the parents of these three students with contracted transportation at district expense. The parents of Student 1 was not pleased with the contracted transportation through EverDriven and chose to provide their own transportation. The parent of Student 6 accepted the contracted transportation but did not consistently access this service due to waiting for a new equipment during first semester and not always having the student available each morning to receive the agreed upon contracted transportation during second semester. The parent of Student 10 accepted the contracted transportation and has regularly accessed this related service during the 2023-24 school year.

Based on the foregoing, evidence supports a finding that the district made transportation as a related service available to Students 1, 6 and 10 during the 2023-24 school year.

Issue Three

USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to conduct functional behavior assessments (FBAs) and to develop behavior intervention plans (BIPs) for the twelve identified students during the 2023-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.304(c)(4) require that a child is assessed in all areas related to a suspected disability including, if appropriate, social and emotional status. Federal regulations at 34 C.F.R. 300.503 require school districts to provide parents with appropriate prior written notice and obtain written consent when prior to conducting an evaluation under the IDEA. Federal regulations at 34 C.F.R. 300.303 require reevaluations to be conducted at least once every three years but prohibits reevaluations from occurring more than once per year unless the parent and the LEA agree to conduct such a reevaluation.

Federal regulations at 34 C.F.R. 300.324(a)(2)(i) require a child's IEP team to consider the use of positive behavioral interventions and support, and other strategies to address the behavior of a child whose behavior impedes the child's learning or the learning of others.

The IDEA only includes the term "functional behavioral assessment (FBA)" in terms of disciplinary procedures. Federal regulations at 34 C.F.R. 300.530(3) requires an FBA if the IEP determines that a behavior resulting in disciplinary change of placement is a manifestation of the child's disability. In that situation, the FBA is used to develop IEP goals to address those behaviors and, if a behavior intervention plan (BIP) is developed, then that BIP becomes a part of the child's IEP and the district is responsible for its implementation.

Analysis: Findings of Fact

The complainant and the district agreed that only three identified students were alleged to not have FBAs and BIPS during the 2023-24 school year: Student 2, Student 3, and Student 5. For this reason, the other nine students will not be addressed in this investigation.

Student 2 was initially found eligible as a young child with a developmental delay on November 4, 2022. The complainant provided documentation that the parent of Student 2 provided consent for the student to be assessed in the area of social/emotional/behavioral on February 28, 2023. However, the district was unable to confirm that this reevaluation was ever conducted.

Dr. Lawrie reported that Josh Blake, School Psychologist, must have mistakenly completed the PWN and was not a member of the student's IEP team. However, documentation shows Mr. Blake attended the initial special education eligibility determination meeting on November 4, 2022 and conducted the classroom observation of the student used to determine eligibility.

The most current IEP for Student 2 is dated October 25, 2023. Documentation shows the parent attended this IEP team meeting in person. Kendall Lusk, a member of the Behavior Team, was also in attendance at this IEP team meeting. The IEP team determined that the student's behavior does not impede his learning and the learning of others and that a BIP was not required. It is noted that there are IEP goals addressing the behavioral concerns identified in the Present Level of Functional and Academic Performance. There are no disciplinary incidents reported on the 2023-24 Discipline Report for Student 2.

The most current IEP for Student 3 is dated October 4, 2023. Documentation shows the parent attended this IEP team meeting in person. The IEP team determined that the student's behavior does impede his learning and the learning of others but that a BIP is not required. It is noted that there are IEP goals addressing the behavioral concerns identified in the Present Level of Functional and Academic Performance. There are no disciplinary incidents reported on the 2023-24 Discipline Report for Student 3.

Student 5 had two IEPs in effect during the 2023-24 school year. The first IEP is dated February 24, 2023 and the second IEP is dated February 9, 2024. Documentation shows the parent attended both IEP team meetings in person. Josh Blake, School Psychologist, attended the February 4, 2023 IEP team but did not attend the IEP team meeting held on February 9, 2024. Both IEPs document that the IEP team determined that the student's behavior does impede his learning and the learning of others but that a BIP is not required. It is noted that there are IEP goals addressing the behavioral concerns identified in the Present Level of Functional and Academic Performance. There are no disciplinary incidents reported on the 2023-24 Discipline Report for Student 2.

Conclusion

Federal regulations at 34 C.F.R. 300.304(c)(4) require that a child is assessed in all areas related to a suspected disability including, if appropriate, social and emotional status. Federal regulations at 34 C.F.R. 300.503 require school districts to provide parents with appropriate prior written notice and obtain written consent when prior to conducting an evaluation under the IDEA. Federal regulations at 34 C.F.R. 300.303 require reevaluations to be conducted at least once every three years but prohibits reevaluations from occurring more than once per year unless the parent and the LEA agree to conduct such a reevaluation.

In this case, the parent of Student 2 provided written consent on February 28, 2023 for the student to be assessed in the area of social/emotional/behavioral and USD #500 was unable to provide any documentation that this reevaluation had been completed.

Based on the foregoing, the district is found out of compliance for not conducting this reevaluation as proposed and agreed to by the parent.

Federal regulations at 34 C.F.R. 300.300.324(a)(2)(i) require a child's IEP team to consider the use of positive behavioral interventions and support, and other strategies to address the behavior of a child whose behavior impedes the child's learning or the learning of others. In this case, the IEP team for Student 2 determined that child's behavior did not impede his learning or the learning others while the IEP teams for Students 3 and 5 did determine that those children's behavior did impede their learning or the learning of others. However, all three IEP teams determined that a BIP was not required as each of the IEPs addressed behavioral concerns through IEP goals.

In addition, there is no documentation to suggest that any of these three students received a disciplinary change of placement that was determined to be a manifestation of their disability which required an FBA be conducted during the 2023-24 school year under federal regulations at 34 C.F.R. 300.503(c)(4).

Based on the foregoing, the district *was in compliance* with federal regulations related to FBAs and BIPs for Students 2, 3, and 5 during the 2023-24 school year.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of federal regulations at 34 C.F.R. 300.300.323(c)(2) is substantiated because the district failed to provide the required special education services by an appropriately certificated special education teacher to the 12 identified students during the 2023-24 school year. Corrective action is required as follows:
 - a. **CORRECTIVE ACTION:**
 - i. USD #500 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will ensure that the special education and related services are made available to the students at the Bethel Early Childhood Center in accordance with each child's IEP.
 1. No later than July 1, 2024
 - ii. USD #500 shall reconvene the IEP team of Student 3 and will develop an IEP that provides for specialized instruction from a special education teacher instead of a paraprofessional. USD #500 shall provide SETS with a copy of this IEP no later than 20 days from the date of the IEP team meeting.
 1. No later than September 30, 2024
 - iii. USD #500 shall create an IEP document that reflects the PWN consented to by the parents of Student 8 on January 26, 2024. USD #500 shall provide both the parents and SETS with a copy of this IEP.
 1. No later than July 1, 2024
 - iv. USD #500 shall collect data to determine if or to what extent the failure to provide the required specialized instruction from a special education teacher impacted each the 12 student's progress towards meeting their individualized IEP goals. USD #500 shall provide IEP goal progress reports to the parents of all 12 students for each of their goals requiring specialized instruction from a special education teacher at the end of the first quarter of the 204-25 school year in order to determine if the absence of an appropriately certificated special education teacher impacted the provision of FAPE to each of these students during the 2023-24 school year. If a student is not making progress towards one of these IEP goals, USD #500 shall reconvene that student's IEP team in order to review and revise, if appropriate, the IEP in order to provide FAPE to the student.
 1. No later than December 31, 2024
 - v. USD #500 shall review policies and procedures and develop a written plan of action to address future staff shortages. This plan must include parent notification.
 1. No later than August 1, 2024

2. **ISSUE TWO:** A violation of federal regulations at 34 C.F.R. 300.320(a)(4) and 34 C.F.R. 300.300.323(c)(2) is not substantiated because the district did make transportation as a related service available to Students 1, 6 and 10 during the 2023-24 school year. As such no corrective action is required.
3. **ISSUE THREE:** A violation of federal regulations at 34 C.F.R. 300.300.324(a)(2)(i) is not substantiated as the IEP teams for Students 2,3, and 5 all determined that BIPs were not required to address behavioral concerns noted in the IEPs. In addition, there is no documentation to suggest that USD #500 was required to conduct an FBA under federal regulations at 34 C.F.R. 300.503(c)(4) due to disciplinary change of placements resulting from behavior determined to be a manifestation of the child's disability.

However, documentation shows that USD #500 proposed to conduct a reevaluation of Student 2 in the area of social/emotional/behavioral on February 21, 2023 and the parent gave consent for such a reevaluation to be completed on February 28, 2023. However, there is no documentation to show this reevaluation was ever completed nor considered by the IEP team in developing an IEP to provide a free appropriate public education (FAPE) to Student 2. Based on the foregoing, a violation of federal regulations at 34 C.F.R. 300.303 is substantiated. Corrective action is required as follows:

b. CORRECTIVE ACTION:

- i. USD #500 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will ensure that reevaluations will be conducted as agreed to by the parents and LEA representatives.
 1. No later than July 1, 2024
- ii. USD #500 shall reconvene the student's IEP team, including the parent, and conduct a review of existing data to determine if a reevaluation of the student is required to gather additional data to assist the IEP team in developing an appropriate IEP that provides a free appropriate public education to Student 2. USD #500 shall provide the parent with appropriate PWN of the decision and implement that decision in a timely manner. USD #500 will provide SETS with a copy of the PWN and documentation that the decision was implemented in a timely manner.
 1. No later than September 30, 2024

Investigator

Nancy Thomas

Nancy Thomas, M.Ed., 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)