

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #512
ON JUNE 14, 2024

DATE OF REPORT JULY 15, 2024

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

Investigation of Complaint

K.A.R. § 91-40-5(c)(5) requires that the complaint investigation include "[a] discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded." Laura Jurgensen, complaint investigator, held this discussion with the parents via Zoom on July 8, gathering additional information and verifying the specific allegations to be investigated. Laura Jurgensen provided the specific allegations to be investigated to the parents in emails on July 3 and 8. The parents did not dispute how the complaint investigator framed the issues to be investigated. The parents also provided documentation for the complaint investigator to consider as part of the investigation and the parents and investigator exchanged multiple emails. The district special education director and the investigator had a call on July 8 and the district provided the investigator with a response to the issues the investigator identified, as well as all documentation and data the investigator requested.

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

- District's Response to the Complaint, Jul. 10, 2024.
- District Photos of Visuals Staff Use with this Student, July 10, 2024.
- Screenshots of Parents' Skyward Account, Jul. 9, 2024. (The investigator determined this was not relevant to the complaint investigation as the district's method of providing progress reports is via email or hardcopy.)
- Parents' Complaint, June 13, 2024. (KSDE's receipt occurred upon opening the complaint on June 14, 2024.)
- Email Exchange Between Special Education Director Email and Parents Regarding Progress Reports, Jun. 12-14, 2024.
- Complaint Investigation Report, May 31, 2024.
- Email from Resource Teacher to Parents with Quarter 4 Progress Report, May 30, 2024.

- District Log of Student’s Special Education Services, Feb. 22–May 29, 2024.
- 2023–24 IEP Progress and Related Rubrics for Student’s Sister, May 28, 2024. (The investigator determined this was not relevant to the complaint investigation as this complaint did not concern the student’s sister.)
- Email from Parents to School Staff Voicing Concern with May 22 Recess Incident, May 25, 2024.
- Audio Recording of Google Assistant Recording Incoming Phone Call to Parents from School Staff About Student, May 22, 2024.
- Time Stamp of Video from Mother’s Phone, May 22, 2024.
- Email from Parents to School Staff Requesting School Call Parents during Student Crisis, May 20, 2024.
- Prior Written Notice for IEP Amendment with Parents Written Comments, Dated Mar. 4, 2024, and Signed Mar. 16, 2024.
- Student’s IEP, Mar. 4, 2024.
- IEP Team Meeting Recording, March 4, 2024.
- District’s Schedule and Log of Student’s Special Education Services for Speech Goal, Aug. 15, 2023–Feb. 22, 2024.
- Notice of Mar. 4, 2024, IEP Team Meeting, Feb. 21, 2024.
- Email Exchange Between Parents to School Social Worker Regarding Day and Time of Social Work Services and Outside Services, Dec. 12, 2023–Jan.18, 2024.
- Email from Speech and Language Pathologist to Parents with Quarter 2 Progress Report, Jan. 4, 2024.
- Email from Speech and Language Pathologist to Parents with Quarter 1 Progress Report, Oct. 17, 2023.
- 5 SEL Activities for the Home, undated. (The investigator determined this was not relevant to the complaint investigation.)

Kansas regulations require that a complaint “allege a violation that occurred not more than one year before the date the complaint is received” K.A.R. § 91-40-51(b)(1). Therefore, this complaint investigator did not consider any information either party submitted dated prior to June 14, 2023.

The parents also provided a great deal of information that was not pertinent to the issues investigated in this complaint. The investigator only lists above the information directly related to the issues within this complaint and used in this investigation.

Background Information

This complaint is focused on a first grader reported to be “a bright, kind student” who “enjoys helping other students and teachers.” (Student’s IEP, Mar. 4, 2024.) The student’s Other Health Impairment identification “requires specially designed individualized instruction to acquire,

maintain and generalize social/emotional/behavioral skills across settings." (Student's IEP, Mar. 4, 2024.) During a previous complaint investigation involving this student, this investigator reviewed documentation that showed the student was initially identified with a speech or language impairment and after the student's November 30, 2023, reevaluation the district proposed a change in identification and to change the student's speech services to indirect services, based on the reevaluation data. (Complaint Investigation Report, May 31, 2024.) On February 22, the parents consented to the change in the student's identification to Other Health Impairment and established two IEP goals, one focused on social engagement and the other focused on behavior, on which the student would receive specially designed instruction for 30 minutes per day five days per week, and on March 4 the student's IEP Team made further updates to the student's IEP. (Complaint Investigation Report, May 31, 2024; Student's IEP, Mar. 4, 2024.)

Issues

In the written complaint, the parents allege three issues upon which this investigation will focus:

Issue One: Did USD 512 provide periodic reports on the progress the student was making toward meeting the annual goals, as indicated in the student's IEP, during the 2023–24 school year? 34 C.F.R. § 300.320(a)(3)(ii); K.S.A. § 72-3429(c)(3).

Issue Two: Did USD 512 ensure that all special education services were available to the student, during the 2023–24 school year? 34 C.F.R. § 300.323(c)(2); K.S.A. § 72-3429(a)(1).

Issue Three: Did USD 512 provide the student with the supplementary aids and services (accommodations) listed in her IEP during a May 22, 2024, incident, including ensuring that the district staff involved in the May 22, 2024, incident were informed of the student's accommodations? 34 C.F.R. §§ 300.320(a)(4), 300.323(d)(2); K.S.A. § 72-3429(c)(4); K.A.R. § 91-40-16(b)(5).

The parents presented a fourth issue that the investigator determined was foundational to the analysis of Issue Two of the previous complaint. (Parents' Complaint, June 14, 2024.) Issue Two of the previous complaint was whether USD 512 provided the student with a free appropriate public education (FAPE), including ensuring that the IEP Team considered whether the student's behavior interfered with her learning or that of others and, if so, considered the use of positive behavioral interventions and supports, and other strategies, to address that behavior. (Complaint Investigation Report, May 31, 2024.) That investigation carefully considered all elements necessary to analyze whether the district provided the student with FAPE, including analyzing the student's IEP description of how the student's progress toward meeting the annual goals will be measured and comparing that description to the student's progress reports. (Complaint Investigation Report, May 31, 2024.) In this complaint, the parents alleged that USD 512 had not ensured that the student's IEP included a description of how the

student's progress toward meeting the annual goals will be measured. (Parents' Complaint, June 14, 2024.) Because this investigator relied upon the student's IEP description of how the student's progress toward meeting the annual goals will be measured in analyzing a previous complaint issue, the previous investigation shows that the required description is present in the student's March 4, 2024, IEP. (Complaint Investigation Report, May 31, 2024.) This investigator determined that this issue would not be further investigated in this complaint.

Issue One

Providing Progress Reports: Did USD 512 provide periodic reports on the progress the student was making toward meeting the annual goals, as indicated in the student's IEP, during the 2023–24 school year? 34 C.F.R. § 300.320(a)(3)(ii); K.S.A. § 72-3429(c)(3).

Applicable Law

Special education law requires each child's IEP to include "[a] description of . . . [w]hen periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided" (34 C.F.R. § 300.320(a)(3)(ii).)

Analysis: Findings of Fact

The parents state in their complaint that they did not receive the February 21, March 20 progress reports for the student, and were not aware they existed, until they received the student's May 30, 2024, progress report. (Parents' Complaint, June 14, 2024.) In the initial discussion with the complaint investigator the parents stated that they did not receive any progress reports during the 2023–24 school year until the May 30, 2024, progress report. The parents expressed in the initial discussion that they were worried that school staff were putting the progress reports in the district's student information system and that the parents' account was not properly configured to see the progress reports because the parents could not find them. The parents provided an email exchange between them and the district special education director where they asked for assistance in finding the progress reports in the student information system. (Email Exchange Between Special Education Director Email and Parents Regarding Progress Reports, Jun. 12–14, 2024.) The district special education director responded that district staff provide progress reports through email or by sending a hard copy, not by providing the progress reports in the student information system. (Email Exchange Between Special Education Director Email and Parents Regarding Progress Reports, Jun. 12–14, 2024.)

The student's IEP states, "[p]rogress on goals will be reported quarterly." (Student's IEP, Mar. 4, 2024.) The student's IEP does not state a method of delivery and the regulations implementing IDEA leave this open, either for an IEP Team to determine a particular method is necessary or

leaving it to the district as it is the district's responsibility to ensure delivering progress reports occur. With this student, district staff followed the method that the special education director articulated in the email exchange with the parent, providing progress reports by email for Quarters 1, 2, and 4. (Email Exchange Between Special Education Director Email and Parents Regarding Progress Reports, Jun. 12–14, 2024; Email from Speech and Language Pathologist to Parents with Quarter 1 Progress Report, Oct. 17, 2023; Email from Speech and Language Pathologist to Parents with Quarter 2 Progress Report, Jan. 4, 2024; Email from Resource Teacher to Parents with Quarter 4 Progress Report, May 30, 2024.) The district provided the emails it sent to the parents in these three quarters and the investigator was able to review the sender (district staff), the recipient (the two email addresses this complaint investigator used to communicate with the parents), the date, and the attachment names. (Email from Speech and Language Pathologist to Parents with Quarter 1 Progress Report, Oct. 17, 2023; Email from Speech and Language Pathologist to Parents with Quarter 2 Progress Report, Jan. 4, 2024; Email from Resource Teacher to Parents with Quarter 4 Progress Report, May 30, 2024.) The Quarter 2 email string includes responses from the parents on January 7 and 23, 2024. (Email from Speech and Language Pathologist to Parents with Quarter 2 Progress Report, Jan. 4, 2024.)

On the Quarter 3 Progress Report, the district did not provide documentation that staff emailed the student's progress report to the parent. (District's Response to the Complaint, Jul. 10, 2024.) The district maintains that it provided the parents with the Quarter 3 progress report at the March 4, 2024, IEP Team meeting. (District's Response to the Complaint, Jul. 10, 2024.) The progress report for Quarter 3 is dated March 20, 2024. The district indicates the difference in date is simply that the progress reports for Quarter 3 are due on March 20, not that the information was compiled on March 20. (Special Education Director Email to Complaint Investigator, July 11, 2024.) The parents provided the investigator with an audio recording of the March 4, 2024, IEP Team meeting and the investigator listened to the recording to see if district staff indicated they were providing the parents with the Quarter 3 progress report. (IEP Team Meeting Recording, March 4, 2024.) District staff specifically reference that they provided the parents with a copy of the Notice of Meeting and Prior Written Notice for amendments to the student's IEP, but do not specifically reference the Quarter 3 progress report at any time during the meeting recording. (IEP Team Meeting Recording, March 4, 2024.)

The Notice of Meeting for the March 4, 2024, IEP Team meeting indicates the purpose of the meeting is to discuss possible changes in the student's IEP, which makes sense as the IEP Team was in the midst of multiple times working toward consensus based on the student's most recent reevaluation. (Notice of Mar. 4, 2024, IEP Team Meeting, Feb. 21, 2024; Complaint Investigation Report, May 31, 2024.) The Notice of Meeting does not mention that the district would provide the parents with the student's Quarter 3 progress at the March 4 IEP Team meeting. Attached to the student's March 4 IEP is a document titled, "IEP Attendance and

Acknowledgement” which includes a section for the district to list the documents it provided to the parents. This section states that the district provided to the parents, “Parental Rights in Special Education” and “IEP.” Here is another place the district could have stated that it provided the parents with the Quarter 3 progress report, but it is not listed. The Prior Written Notice regarding the proposed amendments upon which the IEP Team reached consensus at the March 4 IEP Team meeting could also have indicated that the district provided the parents with the Quarter 3 progress report, but a statement like this is also not included on that document. (Prior Written Notice for IEP Amendment with Parents Written Comments, Dated Mar. 4, 2024, and Signed Mar. 16, 2024.)

Conclusion

A district must document items for which it is responsible. The district did this with the student’s Quarter 1, 2, and 4 progress reports. However, the district did not meet this obligation with the student’s Quarter 3 progress report. As the student’s IEP did not specify the method of delivery, the district could have emailed the progress report to the parents, as it did the other three quarters, or documented that it provided the progress report to the parents at the March 4 IEP Team meeting. Because the district did not document whether it provided the student’s Quarter 3 progress report, this investigation concludes that USD 512 *violated its obligations* under 34 C.F.R. § 300.320(a)(3)(ii); K.S.A. § 72-3429(c)(3). USD 512 has since provided parents with the student’s Quarter 3 progress report as it was included on the student’s Quarter 4 progress report that the district provided to the parents on May 30. (Email from Resource Teacher to Parents with Quarter 4 Progress Report, May 30, 2024.)

Issue Two:

Providing Special Education Services: Did USD 512 ensure that all special education services were available to the student, during the 2023–24 school year? 34 C.F.R. § 300.323(c)(2); K.S.A. § 72-3429(a)(1).

Applicable Law

Special education laws indicates that, “[a]s soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP.” (34 C.F.R. § 300.323(c)(2).)

Analysis: Findings of Fact

The student’s IEP indicates that the district will provide 30 minutes of specially designed instruction five times per week. (Student’s IEP, Mar. 4, 2024.) The parents’ complaint indicates that the student informed them that she was not meeting regularly with the special education teacher to receive specially designed instruction. (Parents’ Complaint, June 14, 2024.) In the initial discussion with the complaint investigator, the parents stated that they were worried that the district had scheduled the student’s specially designed instruction for first thing in the

school day. The parents reported, both in the initial discussion with the investigator and in emails to school staff, that it was frequently difficult to get the student to school on time due to the impact of the student's disability and that the student had regular appointments outside of school that occurred in the morning. (Email Exchange Between Parents to School Social Worker Regarding Day and Time of Social Work Services and Outside Services, Dec. 12, 2023–Jan.18, 2024.) The email exchange referenced was mostly about support the student participated in that was outside of the student's IEP, but the student's general education teacher, school psychologist, and special education teacher were copied on some or all of the email string, so they would have had access to the parent's concern about services being scheduled first thing in the school day.

The district provided the complaint investigator with the schedule and log of the student's special education services for the student's speech goal, from August 15, 2023, the first day of the 2023–24 school year, through February 22, 2024, the date the parents consented to changing the student's IEP goals and services. (District's Schedule and Log of Student's Special Education Services for Speech Goal, Aug. 15, 2023–Feb. 22, 2024; District Calendar, 2023–24 School Year, https://brookwood.smsd.org/about/calendar?cal_date=2023-08-01; Complaint Investigation Report, May 31, 2024.) The district also provided the complaint investigator with its log of the student's special education services from February 22, 2024, through the end of the school year. (District Log of Student's Special Education Services, Feb. 22–May 29, 2024.)

The district's log showed that the parents consented to the change in special education services on February 22, a Thursday, and began implementing the change in services the following Monday, February 26. (District Log of Student's Special Education Services, Feb. 22–May 29, 2024.) The district's log is detailed, providing the focus of the student's specially designed instruction, data from the general to the special education teacher or that the special education teacher observed, changes in the student's schedule or routine, and notes on when the student was out of the classroom. (District Log of Student's Special Education Services, Feb. 22–May 29, 2024; Special Education Director Email to Complaint Investigator, July 11, 2024.)

The district scheduled the student's 30 minutes of specially designed instruction to occur from 8:15–8:45 a.m. (Special Education Director Email to Complaint Investigator, July 11, 2024.)

However, because school staff were aware of the student's regular tardies and absences due to outside appointments, the district scheduled a second opportunity from 10:00–10:30 a.m. to ensure that specially designed instruction occurred each school day the student was present. (Special Education Director Email to Complaint Investigator, July 11, 2024.) The special education director indicated during the investigation that if the student was absent for both designated windows, due to tardiness and/or an appointment, then school staff made up the specially designed instruction at an alternate time of day. (Special Education Director Email to Complaint Investigator, July 12, 2024.) The special education services log show that the district provided specially designed instruction each school day the student was present, except that the district is missing records in its log for May 10, 28, and 29. (District Log of Student's Special

Education Services, Feb. 22–May 29, 2024.) The district also does not have a record of services on May 23, but the log indicates it was Field Day. (District Log of Student’s Special Education Services, Feb. 22–May 29, 2024.)

The parents disputed the accuracy of the district’s recording the student absent on April 4, but the district was able to provide information from its attendance system corroborating the recorded absence in the service log. (Email Exchange Between Complaint Investigator and Parents, July 12, 2024; Email Exchange Between Complaint Investigator and Special Education Director, July 12, 2024.) The district’s attendance system showed that the student’s general education teacher reported the student absent at 8:19 a.m., which was edited at 8:40 a.m. to tardy, edited again at 9:40 a.m. for a doctor’s appointment, and edited again at 12:32 p.m. to indicate an absence at the parent’s request. (Email Exchange Between Complaint Investigator and Special Education Director, July 12, 2024.) The parents maintain that the district mistakenly attributed an absence to the student that should have been attributed to her sister but were unable to provide documentation to support this. (Emails from Parents to Complaint Investigator, July 12, 2024.)

The district reports that the student received special education services on the three days that the log does not contain information and the provider just mistakenly did not record the provision of services. (Email Exchange Between Complaint Investigator and Special Education Director, July 12, 2024.) The district requires staff to make up any missed services when a student is tardy or has an appointment. (Email Exchange Between Complaint Investigator and Special Education Director, July 12, 2024.) The district provides staff with latitude in how to record that services were provided and maintains that it monitors whether services are actually provided through requesting staff schedules, calendars, data collection sheets, teacher notes, and/or provider communication; accountability of the team working with the student; and regularly checking student progress and then acting if the student is not making anticipated progress. (Email Exchange Between Complaint Investigator and Special Education Director, July 12, 2024.)

Conclusion

The investigator determines that because the district’s special education log is sufficiently detailed and can be independently corroborated by another source of information that the special education log is reliable. The district has several mechanisms in place that would alert school and district leadership if a student was missing the special education services the student’s IEP required. Despite the three days for which the district’s records were missing information, the previous complaint investigation involving this student concluded that the district provided the student with educational benefit. Based on the foregoing, this investigation concludes that USD 512 *did not violate its obligation* to ensure that special education and related services are made available to the child in accordance with the child’s IEP. (34 C.F.R. § 300.323(c)(2).)

Issue Three

Providing Accommodations during May 22 Incident: Did USD 512 provide the student with the supplementary aids and services (accommodations) listed in her IEP during a May 22, 2024, incident, including ensuring that the district staff involved in the May 22, 2024, incident were informed of the student's accommodations? 34 C.F.R. §§ 300.320(a)(4), 300.323(d)(2); K.S.A. § 72-3429(c)(4); K.A.R. § 91-40-16(b)(5).

Applicable Law

Special education law requires that each child with an IEP be provided with the accommodations that will be provided to the child, "[t]o advance appropriately toward attaining the annual goals; 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 exceptional and nonexceptional children in the activities described in this paragraph " (K.S.A. § 72-3429(c)(4).) Additionally, district must ensure that each "teacher and provider [who is responsible for IEP implementation] is informed of [t]hat individual's specific responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." (K.A.R. § 91-40-16(b)(5).)

Analysis: Findings of Fact

The parents' complaint states that on "May 22, 2024, [the student] became dysregulated while on the playground during second recess" and that the staff involved did not provide the student with the accommodations in her IEP. (Parents' Complaint, June 14, 2024.) The parents wondered whether district staff present did not provide the student with her accommodations as they were not "her normal support personnel" and had not been informed of their obligations to implement the student's accommodations. (Parents' Complaint, June 14, 2024; Parents' Initial Discussion with Complaint Investigator, July 8, 2024.)

On May 20, the father emailed school staff in anticipation of the regular building support staff being out of the building for the remainder of the school year and another staff member stepping in. (Email from Parents to School Staff Requesting School Call Parents during Student Crisis, May 20, 2024.) The father asked if the student had any issues or struggles to call the parents so they could come to the school and support her. (Email from Parents to School Staff Requesting School Call Parents during Student Crisis, May 20, 2024.) The father also reminded school staff of specific accommodations that the student's IEP required school staff to use proactively to prevent issues or struggles. (Email from Parents to School Staff Requesting School Call Parents during Student Crisis, May 20, 2024.)

During the investigation, the parents shared the May 22 incident from their perspective and their concerns that the student's accommodations were not implemented as required through an email the father sent to school and district staff on May 25, the initial discussion with the

investigator, and multiple emails to the investigator. (Email from Parents to School Staff Voicing Concern with May 22 Recess Incident, May 25, 2024; Email Exchange Between Parents and Complaint Investigator, July 8–11, 2024.) The parents stated that school staff called them to let them know that the student “had become so emotionally distraught that she would not leave the playground.” (Email from Parents to School Staff Voicing Concern with May 22 Recess Incident, May 25, 2024.) The father stated that school staff called him at 2:16 p.m., did not reach him, and then called the mother at 2:20 p.m. (Email from Parents to School Staff Voicing Concern with May 22 Recess Incident, May 25, 2024.) The parents indicated they arrived at the school together at about 2:30 p.m. (Email from Parents to Complaint Investigator, July 11, 2024.) The parents said that school staff in the front office told them that they were not permitted to enter the building, but that either staff would bring the student to the office or staff would come escort them to the playground. (Email from Parents to School Staff Voicing Concern with May 22 Recess Incident, May 25, 2024.) At 2:35 p.m. when neither of those things had occurred, the mother entered the building and made her way to the playground. (Email from Parents to School Staff Voicing Concern with May 22 Recess Incident, May 25, 2024.) The mother indicated that when she arrived on the playground the building support person and principal were with the student “intermittently bent over, crouched down, standing up and talking to her. No visual aids or calming support tools were provided.” (Email from Mother to Complaint Investigator, July 12, 2024.) The mother approached the student, the student voluntarily left the playground with the mother, and the parents took the student home for the day. (Email from Mother to Complaint Investigator, July 12, 2024.)

The student’s IEP contains several accommodations where the frequency of the accommodation indicates it would be used when the student appears dysregulated, or in a situation such as the one the parent describes (e.g., when student begins to appear dysregulated):

- “Use of sensory tools to support emotion regulation (Most frequently used: Lotion; Mini sponge on face; noise canceling headphones; small fidget items);”
- “Calming space available with access to sensory tools”;
- “Adult modeling for use of calming strategies”; and
- “Provide [the student] with a visual cue to communicate her emotions or to request a break when she is unable to verbalize.” (Student’s IEP, Mar. 4, 2024.)

The district’s response indicates the student’s dysregulation began in the classroom, before recess, which then implicated an accommodation for the student to be used before a transition, “[p]rovide reminders/priming ahead of transitions (both verbal & visual) between activities (approximately 5 minutes).” (District’s Response to the Complaint, Jul. 10, 2024; Student’s IEP, Mar. 4, 2024.) The district’s response included photos of the visuals school staff used with the student. (District’s Response to the Complaint, Jul. 10, 2024.)

The district's response indicates that at approximately 2:05 p.m. it was time for the student's class to get ready to go to their 2:15 p.m. recess. (District's Response to the Complaint, Jul. 10, 2024; Email from Special Education Director to Complaint Investigator, Jul. 12, 2024.) The student had been working on an art project and did not respond to the general education teacher's verbal and visual support preceding the transition to recess. (District's Response to the Complaint, Jul. 10, 2024.) When it was time for the student's class to go to recess the student became visibly upset, throwing classroom items. (District's Response to the Complaint, Jul. 10, 2024.) The building support person came to the classroom to assist, and the student's class left for recess. (District's Response to the Complaint, Jul. 10, 2024.) The building support person provided the student with access to a calming space and the student selected a place near the cubbies in the classroom. (District's Response to the Complaint, Jul. 10, 2024.) The building support person provided the student with her choice of preferred sensory tools and the student selected bubbles. (District's Response to the Complaint, Jul. 10, 2024.)

While the student used the bubbles, the building support person provided a reminder that the student would go to recess in three minutes and set a visual timer. (District's Response to the Complaint, Jul. 10, 2024.) When the visual timer ended, the student brought her art project and she and the building support person walked to recess. (District's Response to the Complaint, Jul. 10, 2024.) On the walk to recess, the building support person provided a reminder of how much time remained for recess and that she would go to specials with her class after recess. (District's Response to the Complaint, Jul. 10, 2024.) When the student went to enter the playground, she remembered that she wanted a stapler for her art project. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.) The building support person problem solved with the student about how it may be unsafe for the student to take a stapler to the playground and the student agreed, asking for tape from the building support person's desk. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.) This required a longer walk to recess, taking about five minutes after the student and building support person left the classroom. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.)

It was during the time the building support person was working to bring the student to recess that district staff stated the school nurse called the parents, per their request in their May 20 email. (Email from Special Education Director to Complaint Investigator, Jul. 12, 2024.) The district reported that this is not the type of incident that rises to a level of a concern that would typically lead staff to call a parent, but because the parent had specifically requested a phone call, the school staff called the parents. (Email from Special Education Director to Complaint Investigator, Jul. 12, 2024.) The parents maintained that the school nurse called them when the student refused to come in from recess. (Email from Mother to Complaint Investigator, July 12, 2024.)

At recess the student asked to sit on the “buddy” bench to work on her art project. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.) The building support person connected with the building substitute supervising recess and both staff provided the student with a reminder of the remaining time for recess and of the upcoming transition to specials. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.) The student gave a “thumbs up” to both staff members and the building support person went back inside. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.) The district reported that at 2:25–2:30 p.m., when the student’s class transitioned from recess to specials, the student became upset when asked to move back into the building for specials and began screaming and took off her shoes and socks and threw them. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.) The building substitute called the building support staff back to the playground. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.)

The district reports that the building substitute and building support person used the copy of visuals kept in a box on the playground to help cue the student to communicate her emotions. (Email Exchange Between Special Education Director and Complaint Investigator, Jul. 11–12, 2024.) Both staff report that the student was able to communicate her emotions and both staff report that they modeled the use of calming strategies. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.) The building substitute and building support staff gave the student a choice as to where she wanted to be, and the student remained on the playground. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.) The building substitute and building support staff reported that the student had access to sensory tools, that were kept in a box on the playground with the visuals. (Email from Special Education Director to Complaint Investigator, Jul. 11, 2024.) The district reports that the principal was on the playground to support the building substitute and building support person, but all three staff members present indicated that only the building substitute and building support person engaged with the student and provided her accommodations. (Email from Special Education Director to Complaint Investigator, Jul. 12, 2024.) The district reports that within five minutes of the building support person returning to the playground, the mother entered the playground and the student left with her. (Email from Special Education Director to Complaint Investigator, Jul. 12, 2024.) The parents took the student home at approximately 2:45 p.m. (District’s Response to the Complaint, Jul. 10, 2024.)

The district reports that the building support staff and building substitute who engaged with the student during this incident and provided accommodations received training on their specific responsibilities for implementing the student’s accommodations after the student’s IEP Team amended her IEP on March 4. (Email from Special Education Director to Complaint Investigator, Jul. 12, 2024.)

Conclusion

On May 22, from the time the student was asked to transition to afternoon recess to the time the parents took her home, there were several circumstances that required school staff to provide the student with certain accommodations listed in her IEP. Prior to recess, the student was provided with a verbal and visual reminder ahead of the transition. Once the student became dysregulated, she was provided with a calming space and sensory tools in the classroom and a second verbal and visual reminder that the student would soon join her class at recess. Once the student arrived on the playground, school staff provided a verbal and visual reminder of the upcoming end of recess and transition to specials. When the student's class transitioned to specials and the student again became dysregulated, staff report that the student was able to verbalize her emotions and the staff interacting with the student modeled calming strategies, allowed her to be in the space of her choosing, and sensory tools were available on the playground. The district provided information on how it ensured relevant staff were informed of their obligations to provide the student with accommodations and this investigation shows the accommodations were provided.

The timeline the parents presented and the timeline the district presented does not completely align, but the district's full explanation of the event beginning in the classroom and continuing onto the playground, when coupled with the student's class schedule is clear and coherent.

Based on the foregoing, this investigation concludes that USD 512 *did not violate its obligation* to provide the student with her accommodations and informed the staff supporting the student of their specific responsibilities related to implementing the student's IEP.

Summary of Conclusions and Corrective Action

Issue One

The district violated 34 C.F.R. § 300.320(a)(3)(ii) and K.S.A. § 72-3429(c)(3), based on the findings of fact listed above. Corrective action is required, as follows:

1. Within 10 calendar days of the date of this report, USD 512 must submit a written statement to KSDE Special Education and Title Services (SETS) that it will comply with federal and state legal requirements at 34 C.F.R. § 300.320(a)(3)(ii) and K.S.A. § 72-3429(c)(3) which require the district to provide periodic reports on the progress students with IEPs are making toward meeting the annual goals, as indicated in the student's IEP.
2. Within fourteen calendar days of the date of this report, USD 512 must create a procedure or revise an existing procedure to ensure that all students with IEPs receive progress reports as stated in their IEPs and that the district stores documentation that this occurred. Within fourteen calendar days, USD 512 must send the draft procedure to SETS for its review. After receiving SETS' feedback, USD 512 must implement the new

or revised procedure and communicate the procedure to all staff responsible for its implementation.

3. By the first day of USD 512's 2024–25 school year, USD 512 must submit to SETS the communication it provided to staff responsible for implementing the procedure.
4. Due Dates:
 - a. July 25, 2024: 1;
 - b. July 29, 2024: 2; and
 - c. August 13, 2024: 3.

Issue Two

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

Issue Three

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

Investigator

Laura N. Jurgensen
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)