

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES
REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #260, DERBY PUBLIC SCHOOLS
ON JULY 2, 2024
DATE OF REPORT: JULY 25, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #260 (Derby Public Schools) on behalf of ----- by his mother, ----- . In the remainder of the report, ----- will be referred to as “the student” and ----- will be referred to as “the complainant”, “the parent”, or as “the mother.” ----- family friend will be referred to as the “family friend”.

The complaint is against USD #260 (Derby Public Schools). In the remainder of the report, USD #260 will be referred to as “the district.” The student attends Park Hill Elementary School which will be referred to as the “elementary school” in the remainder of the report. Dawn Gresham is the Director of Special Services in USD #260 and will be referred to as the “Director of Special Services”. Katie May is the Assistant Director of Special Services in USD #260 and will be referred to as the “Assistant Director of Special Services”. Skye Mosley is the Social Worker in USD #260 and will be referred to as the “Social Worker”. Jennifer Bazzelle was the Structured Learning Teacher at Park Hill Elementary and will be referred to as the “Special Education Teacher”. Shayleigh Allison is the School Psychologist and will be referred to as the “School Psychologist”. Leanne Bath is the Occupational Therapist (OT) and will be referred to as the “OT”. Kendra Trimmell is the paraprofessional and will be referred to as the “paraprofessional”.

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 July 2, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator Nikki Crawford reviewed all evidence and documentation, which was provided by both the district and the parent. Additionally, the complaint investigator contacted the district and mother on July 9, 10, 11, 16, 17, 18, 19, 20 and 22, by phone and email to clarify evidence and documentation. The following documentation and information were used in consideration of the issues:

1. Board of Education Emergency Safety Interventions Policy last reviewed September 10, 2018
2. District’s Level 2 Special Education Paraprofessional Job Description dated July 2019
3. District Paraprofessional Duties handout revised June 12, 2023

4. Daily behavior sheets from August 2023 to May 2023, Missing October 2023 and the first half of November 2023
5. Summary of behavior data beginning August 2023
6. Occupational Therapy Service Logs for August, September, October, November 2023 and March, April and May 2024. Missing December 2023, January and February 2024
7. Student class schedule dated August 4, 2023
8. Student attendance record from August 31, 2023 to May 10, 2024
9. Progress report for academic goals including July and October 2023 progress notes
10. Annual Individualized Education Program (IEP) including the Behavior Intervention Plan (BIP) dated October 23, 2023
11. Prior Written Notice (PWN) for the annual IEP dated October 23, 2023
12. Progress report for academic goals including January, March and May 2024 progress notes
13. Email from classroom teacher to mother dated March 6, 2024 at 8:03 p.m.
14. IEP with amendment dated April 3, 2024
15. Emergency Safety Record (ESI) dated April 4, 2024
16. Email of behavior incidents from Classroom Teacher to mother dated April 8, 2024 at 9:05 a.m.
17. IEP Amendment dated April 22, 2024
18. IEP amendment dealing with Extended School Year (ESY) dated April 23, 2024
19. PWN for IEP amendment dated April 23, 2024
20. Discharge paperwork from emergency placement at mental health hospital dated May 7, 2024
21. Suicide Prevention/Emergency Protocol for the student dated May 7, 2024
22. Discharge plan from emergency placement facility dated May 9, 2024
23. Signed PWN dated May 17, 2024 as a result of May 14, 2024 meeting
24. Signed PWNE for reevaluation dated May 21, 2024
25. Email exchange between mother and Assistant Director of Special Services also including Director of Special Services, Social Worker, Principal Classroom Teacher and family friend on May 21, 2024, at 11:45 a.m. and 8:05 p.m.
26. Email exchange between Assistant Director of Special Services and Director of Special Services dated May 21, 2024 at 12:10 p.m. and 12:16 p.m.
27. Email from Principal to School Psychologist, Director of Special Services and Assistant Director of Special Services dated May 21, 2024 at 12:53 p.m.
28. Email from Director of Special Services to mom and the principal on May 22, 2024 at 1:07 p.m.
29. Email reply from mom to Director of Special Services on May 23, 2024 at 9:50 p.m.
30. Email from Director of Special Services to mom and Assistant Director of Special Services on May 28, 2024 at 8:05 a.m.
31. Email with PWN attachment from Assistant Director of Special Services to Director of Special Services and mom on May 29, 2024 at 6:45 a.m.

32. Ready, Willing and Able (RWA) letter related to Extended School Year (ESY) from Assistant Director of Special Services to the mother dated June 18, 2024
33. Call with mother and family friend on July 9, 2024 at 9:00 a.m.
34. Call with the Director of Special Services on July 9, 2024 at 4:00 p.m.
35. Call with the Assistant Director of Special Services on July 10, 2024 at 8:00 a.m.
36. District response to complaint dated July 15, 2024
37. Call with the Social Worker on July 16, 2024 at 10:00 a.m.
38. Call with the Director of Special Services, Principal of the elementary building and Assistant Director of Special Services on July 18, 2024 at 4:00 p.m.
39. The student's primary paraprofessional's record of learning credits dated July 18, 2024
40. District record of student's suspensions for the 2023-2024 school year dated July 18, 2024
41. Email exchange referencing missing OT service logs between the OT and Director of Special Services dated July 19, 2024

Background Information

The subject of this complaint is a 10-year old male student enrolled in the 4th grade at Park Hill Elementary School during the 2023-24 school year. According to the student's mother, he was first diagnosed with Level 3 Autism around three years of age. He was also diagnosed with Post-traumatic Stress Disorder (PTSD) in May 2024 and Disruptive Mood Dysregulation Disorder (DMDD) in June 2024.

The student's October 23, 2023 IEP goals include naming objects and their corresponding functions, comprehension skills, verbal/sign/symbolic communication, following a visual schedule, subtraction, identification of coins, story comprehension, and striking a ball/object with a bat, hand or racket. Related services include indirect OT, indirect and direct speech, adapted physical education, indirect counseling and special education services. Support for school personnel includes OT as a resource for fine motor and handwriting. The student may use the special education bus for transportation to and from school. The supplementary aids and services in the IEP include visual supports, sensory items, adaptive paper, pencils and writing board, consistent schedule, choice when possible and verbal reinforcement. The student qualifies to take the alternate state assessment, does not receive program modifications but does qualify for extended school year.

Issues Investigated

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

Issue One

The USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to notify the parent with a Prior Written Notice (PWN) including the rationale for the district's placement decision and the parent's recourse if in disagreement with the schools decision for school year 2024-2025.

Applicable Law

Federal regulations implementing the IDEA at 34 C.F.R. 300.503(b)(3) require that the PWN sent by the school district includes, "(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;". State regulations at K.S.A. 72-3430(d) require, "a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;".

Analysis: Findings of Fact

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

1. The student had a serious behavioral incident on April 25, 2024 resulting in an out of school suspension.
2. The mother was able to get the student admitted to a local children's mental health hospital on April 25, 2024 where he stayed until April 30, 2024.
3. On May 1, 2024 there was a serious behavioral incident which resulted in an out of school suspension.
4. On May 7, 2024 there was an additional serious behavior incident which did not result in an out of school suspension, but rather the second admission to a children's mental health hospital May 7 to 9, 2024
5. Upon the student's release on May 9, 2024 the mother requested a meeting to discuss student's behavior support at school and a possible alternative placement.
6. An IEP update meeting was held on May 14, 2024 to discuss behavioral support and potential change in placement. Attending were the principal, social worker, special education teacher, assistant director of special services, the mother and a family friend.
7. At the meeting the district shared a conversation they had with the hospital's physician who stated that the student was now diagnosed with PTSD as a result of interactions with his biological father. The doctor also shared that, "public school may not be the place" for the student but did not suggest private placement or a reevaluation, according to the principal.
8. There are no minutes from this meeting.
9. A PWN dated May 17, 2024 was sent as a result of the May 14, 2024 meeting and signed by the mother on May 17, 2024.

10. The PWN did not include evaluation procedures, assessments, records or reports used in the district's decision making, as required by IDEA.

Conclusion

In this case, the May 17, 2024 PWN included most of the required information; however, it lacked any descriptions of evaluation procedures, assessments, records, or reports used to determine the district's response, as required in both federal and state law. The statement included in the PWN to fulfill the requirement for 34 C.F.R. 300.503(b)(3) and K.S.A. 72-3430(d) reads, "Teacher observations, data collection, parent input, Special Services Administration Input." This statement does not mention evaluation procedures, assessments, records or reports used in the district's decision making. Further, the district reported that they did not have behavior data summaries to use in the meeting, but rather daily data sheets. There are no meeting minutes reflecting the use of data in the district's decision making. The student's recent behavior had become severe enough to warrant three days of out of school suspensions; two days in April and one day in May, 2024, as well as two emergency hospitalizations at mental health facilities in a two week period (April 25 and May 7, 2024). Given these serious events, summarized and easy to understand behavior data, current behavioral assessments, the BIP, FBA or other relevant information would have been appropriate for the team to review and use for data-based decision making.

The requirement in this portion of the PWN is to give a "description" of the evaluation procedures, assessments, records, or reports, that the district used. Merely inserting a list of reports, as the district did here, is insufficient.

As stated above, the description may be summarized and in easy to understand language. It does not have to include excessive detail. It may be a general description, but it does need to sufficiently "describe" any evaluation procedures, assessments, records, or reports used to determine the district's response. For example, this PWN says "teacher observations." It does not "describe" the teacher observations. It simply "lists" teacher observations. The parents in this complaint have not been informed of what the teacher observations were or even whether those observations supported the team's decision. The district could have complied with the requirement of this section by providing a short statement in the PWN indicating that there were: (a) teacher observations of serious behavior incidents and signs of emotional distress in the student; (b) parent concerns about the state of the student's mental health; Special Services Administration concerns about the safety of this student and other students; and data collection showing that serious behavior incidents were accelerating.

Based on the foregoing, *it is substantiated* that USD #260 failed to issue a PWN on May 17, 2024 which included a sufficient description of data used as a basis for decision making including evaluation procedures, assessments, records, or reports.

Issue Two

The USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to get parent consent for a change in placement during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.503(a)(1) requires a school district to provide PWN when it "(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child;" Kansas regulation KSA 72-988(b)(2) states that parents have the right to prior written notice whenever an agency proposes to initiate or change; or refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

Additionally, KAR 91-40-27(a)(3) requires that each agency shall obtain parental consent when making a material change in services to or a substantial change of the placement of an exceptional child. Substantial change in placement means the movement of an exceptional child for more than 25% of the child's school day from a less restrictive environment to a more restrictive environment, or from a more restrictive environment to a less restrictive environment, according to KAR 91-40-1(sss).

K.A.R. 91-40-21(c)(1) offers, "(c) (1) In determining the educational placement of a child with a disability, including a preschool child with a disability, each agency shall ensure that the placement decision meets the following requirements: (A) The decision shall be made by a group of persons, including the child's parent or parents and other persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options."

Analysis: Findings of Fact

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

1. The Mother reported that in the last few months of school her son was in a "small room throughout the day with only a paraeducator for instruction and companionship, missing out on social interaction such as recess and lunch with his classmates."
2. The Assistant Director of Special Services shared in an interview on July 10, 2024 that the district was not aware until the May 14, 2024 IEP update meeting that the special education teacher had moved the student to the sensory room for instruction and that he was not having lunch or recess with his classmates.
3. This change in educational environment constitutes a substantial change in placement, for which parent consent is required.
4. The special education teacher is no longer employed by the district as of the end of the 2023-2024 school year.

5. The district was not able to provide documentation of how many days instruction was solely provided to the student in this location, nor the level of supervision provided to the paraeducator by the special education teacher.
6. There is no record of a team meeting, data review or meeting with the mother to change the location of instruction for the student and remove him from recess and lunches with his classmates.
7. Although at some point mom knew her son was in this new location with a paraprofessional as sole instructor, she was not provided a PWN including a rationale for this decision nor a meeting to discuss a path for the student to resume instruction, recess, and lunches with his classmates, nor given the opportunity to either grant or withhold consent.
8. There is no mention of the use of the sensory room as a location for instruction in the student's October 23, 2023 IEP.

Conclusion

In this case, the mother was not provided a PWN as a result of the change of placement for instruction, nor was notified that her son would not have recess or lunch with his classmates, nor provided with the opportunity to grant or to withhold consent for this substantial change in placement.

The mother reports that the student was in the sensory room all day with a paraprofessional for the last few months of school. The district is not able to offer records or reports that show where the student received instruction. The school has no record of what date this arrangement first took place, no record of how many days it occurred and no information on the level of supervision the special educator offered to the paraprofessional who delivered instruction to the student.

It appears the decision to move the student to one-on-one instruction by a paraprofessional in a small room was made unilaterally by the special education teacher who is no longer at the district and not available for an interview. There was no team meeting prior to, or during this change in placement.

Based on the foregoing, *it is substantiated* that the USD #260 failed to issue a PWN or to obtain the mother's consent for a change of placement of more than 25% made unilaterally by the special education teacher for the last few months of the 2023-2024 school year.

Issue Three

The USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop and follow an appropriate behavior intervention plan, including emergency procedures during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.324(b)(1)(ii) require that the IEP team revises “the IEP, as appropriate to address—(A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;”.

Analysis: Findings of Fact

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

1. The most recent BIP update occurred in October of 2023 and was included in the IEP dated October 23, 2023.
2. The district states there is a current Functional Behavior Assessment, but is not able to produce it.
3. The district reports that staff training on the student’s BIP is ongoing although they are not able to provide documentation as to who has been trained or when the training took place.
4. The student’s current IEP behavior goals include reducing behaviors such as; yelling, laying on the floor, hitting, kicking, biting and spitting at others. Each of these behaviors has baseline data collected from August 15, 2023 to October 22, 2023.
5. The behaviors first summarized by the district at the end of the 2024 school year in graphic form reflect data for; disruptive vocalizations (screaming/verbal refusal), physical aggression, elopement, throwing, refusal to move, destruction of property, and climbing.
6. The behaviors summarized by the district at the end of the 2023-2024 school year do not match the behaviors in the student’s current BIP thus determining progress from baseline is difficult.
7. The district has behavior data for much of the 2023-2024 school year but is missing data for October and the first half of November.
8. Elopement, a potentially life threatening behavior, which occurred between 10-15 times during the 2023-2024 school year, is not addressed in the BIP.
9. There were seven days of out of school suspension during the 2023-2024 school year: December 6, 2023 for two days; January 5, 2024 for one day; April 11, 20204 for two days; April 25, 20204 for one day and May 1, 2024 for one day.
10. On April 3, 2024 staff reported that an Emergency Safety Intervention (ESI) was used to deal with the student's behaviors.
11. Law enforcement officers were called to the school to physically restrain the student at least once in the spring of 2024.
12. There were two emergency mental health hospital placements (April 25 and May 7, 2024) due to extreme behaviors at school.

13. There was a team meeting to discuss the student's behavior and possible alternative placement on May 14, 2024, there are no minutes from this meeting.
14. The mother reports in her July 2, 2024 complaint that her son's classmates were often instructed to evacuate the room due to her son's behavior, "at one point, the need for evacuation had become a daily occurrence for an entire week".

Conclusion

Federal regulations at 34 C.F.R. 300.324(b)(1)(ii) require that the IEP team revise the IEP as appropriate to address the lack of expected progress toward the annual goals.

In this case, the quarterly progress reports for 2023-2024 school year for this student do not include progress on his behavior goals. In the BIP section of the student's IEP it states that for progress monitoring, "a Behavior Tracking Sheet/Report will be reviewed quarterly". There is no evidence that these quarterly reviews occurred. In the interview with district personnel on July 18, 2024 they reported that although they have a team process to review behavioral issues for students without an IEP, there is no team process in place to review behavioral issues for students who have IEPs. The district reports they have no record of the student's BIP being reviewed, can not locate the most current FBA, are missing data for October and the first half of November 2023, and can produce no record of staff training on the BIP. The only team review of the raw data (not graphed or summarized) is at the May 14, 2024 IEP update meeting. IDEA requires that the IEP team revise the IEP to address lack of progress. In spite of the dangerous and disruptive nature of the student's behaviors, there is no evidence of ongoing monitoring of behavior data necessary to gauge progress.

Based on the foregoing, *it is substantiated* that USD #260 failed to revise the IEP, specifically the BIP to address lack of progress toward the annual goals during the 2023-2024 school year.

Issue Four

The USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP by providing Occupational and Behavioral therapies during the 2023-2024 school year.

Applicable Law

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

Analysis: Findings of Fact

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

1. The IEP dated October 23, 2023 states the student will receive indirect OT once per month, for 10 minutes.
2. USD #260 shared OT logs which confirmed that indirect services were delivered once per month for 10 minutes as agreed upon in his October 23, 2023 IEP for each month of the 2023-2024 school year except December 2023, January and February 2024 for which documentation is not available.
3. The October 23, 2023 IEP includes a Positive Behavior Intervention Plan, however it does not require behavioral therapies as a related service.

Conclusion

In this case, the student's October 23, 2023 IEP required indirect OT services to be provided for 10 minutes, one time per month. A review of OT therapy service logs reflected that these services were provided as required in the IEP except for the months of December 2023, January and February of 2024 for which there are no service logs. The district was asked, but was not able to provide additional information such as teacher schedules or OT progress reports which reflected provision of OT services as written in the October 23, 2023 IEP.

A review of related services in the October 23, 2023 IEP contains no mention of behavioral therapy outside of the Positive Behavior Intervention Plan.

Based on the foregoing, *it is not substantiated* that USD #260 failed to follow the student's IEP by providing behavioral therapies during the 2023-2024 school year. However, *it is substantiated* that USD #260 failed to follow the student's IEP by ensuring provision of Occupational Therapy during the 2023-2024 school year.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of 34 C.F.R. 300.503(b)(3) and K.S.A. 72-3430(d) was found based on the incomplete PWN sent on May 17, 2024 which did not include a specific description of the data used as a basis for the district's action. Corrective action is required.
 - a. **CORRECTIVE ACTION:**
 - i. The district shall immediately, within 21 days, by August 22, 2024 submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state statutes and regulations at Federal regulations at 34 C.F.R. 300.503(b)(3) and K.S.A. 72-3430(d) which requires a description of the data used as a basis for the district's action.
 - ii. The district shall train IEP team members responsible for completing the PWN document to include a description of the data used as a basis for the district's action within 60 days, by September 30, 2024.
 - iii. The district shall submit documentation of staff training to Special Education and Title Services (SETS) within 65 days, by October 5, 2024.

- iv. The district shall, by August 9, 2024, provide a PWN to the parents that includes an appropriate description of any evaluation procedure, assessment, record, or report used in making any proposed change to the student's IEP at the May 14, 2024 IEP meeting.
 - b. **Dates Due:** (i) August 22, 2024; (ii) September 30, 2024; (iii) October 5, 2024 (iv) August 9, 2024.
 2. **ISSUE TWO:** A violation of 34 C.F.R. 300.503(a)(1), KSA 72-988(b)(2), KAR 91-40-27(a)(3), KAR 91-40-1(sss), and K.A.R. 91-40-21(c)(1) was found based on the failure of USD #260 to issue a PWN for the mother's consent for a change of placement of more than 25%, made unilaterally by the special education teacher, for the last few months of the 2023-2024 school year. Corrective action is required.
 - a. **CORRECTIVE ACTION:**
 - i. The district shall immediately, within 21 days, by August 22, 2024 submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state statutes and regulations at 34 C.F.R. 300.503(a)(1), KSA 72-988(b)(2), KAR 91-40-27(a)(3), KAR 91-40-1(sss), and K.A.R. 91-40-21(c)(1) which require school districts to issue a PWN for consent for change of placement of more than 25%, and be made by the IEP Team.
 - ii. The district will ensure and document training related to the appropriate issuance of a PWN for changes of placement of more than 25% including who has the authority to make the change of placement determination within 60 days, by September 30, 2024.
 - iii. The district shall provide documentation of this training to SETS within 65 days, by October 5, 2024.
 - iv. The IEP team shall meet to determine placement within the new elementary school within 12 days, by August 13, 2024.
 - v. The district shall offer compensatory education of no less than two months directed toward the student's most recent IEP goals. The district shall, within 30 days by August 31, 2024 calculate the days of missed instruction for the last two months of the 2023-2024 school year.
 - vi. Subsequent to SETS review, the district will provide the offer of compensatory education to the mother. The mother shall have 10 days to accept none, some, or all of the compensatory education offer. The district will provide a PWN to the mother resulting from the mother's response to the compensatory education offer.
 - vii. The district shall submit the PWN to SETS as evidence of its completion within 100 school days by January 1, 2025.
 - b. **Dates Due:** (i) August 22, 2024; (ii) September 30, 2024; (iii) October 5, 2024; (iv) August 13, 2024; (v) August 31, 2024; (vii) January 1, 2025.
 3. **ISSUE THREE:** A violation of 34 C.F.R. §300.324(b)(1)(ii) was found based on the fact that the district failed to review behavioral data in order to gauge progress and revise the October 2023 IEP, specifically the BIP, as appropriate to address the lack of expected progress toward the annual goals. Corrective action is required.

- a. **CORRECTIVE ACTION:**
 - i. The district shall immediately, within 21 days, by August 22, 2024 submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal and state statutes and regulations at 34 C.F.R. §300.324(b)(1)(ii) require that the IEP team revises “the IEP, as appropriate to address—(A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;”
 - ii. The district shall review and revise if needed their policy and procedures for ensuring revision of the IEP as appropriate throughout the school year. The district shall submit its policy review and any possible revisions, to SETS within 60 days, by September 30, 2024.
 - iii. The district will conduct a FBA within 30 days, by August 31, 2024.
 - iv. The district will hold an IEP meeting to review the FBA and a summary of the target behavioral data from 2023-2024 school year, within 45 days, by September 15, 2024.
 - v. The district will ensure and document training related to the student’s BIP for the school staff who will support the student during the 2024-2025 school year within 10 days of the IEP meeting, no later than September 25, 2024.
 - vi. The district shall submit evidence of actions (ii-v) to SETS as evidence of their completion no later than October 5, 2024.
 - vii. The district will ensure and document quarterly review and sharing of behavior data with the mother at least four times during the 2024-2025 school year, by the end of the 2024-2025 school year.
- b. **Dates due:** (i) August 22, 2024; (ii) September 30, 2024; (iii) August 31, 2024; (iv) September 15, 2024; (v) September 25, 2024; (vi) October 5, 2024.
4. **ISSUE FOUR:** A violation of 34 C.F.R. §300.323(c)(2) was found based on the failure to ensure provision of OT services as required in the October 23, 2023 IEP. Corrective action is required as follows:
 - a. **CORRECTIVE ACTION:**
 - i. The district shall immediately, within 21 days, by August 22, 2024 submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state statutes and regulations at 34 C.F.R. §300.323(c)(2) which require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP.
 - ii. The district shall review and revise if needed their policy and procedures for ensuring provision of IEP services throughout the school year. The district shall submit its policy review and any possible revisions, to SETS within 60 days, by September 30, 2024.
 - iii. Because the student is transferring to a different elementary school within the district, compensatory OT indirect services will be delivered at the new

elementary school. The student will receive an additional 10 minutes of OT indirect services per month in August, September and October 2024.

- b. **Dates due:** (i) August 22, 2024; (ii) September 30, 2024; (iii) August 31, 2024; September 30, 2024 and October 31, 2024.

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)