

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES
REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #263 MULVANE PUBLIC SCHOOLS
ON JULY 9, 2024

DATE OF REPORT: AUGUST 8, 2024

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

The complaint is against USD #263 (Mulvane Public Schools). In the remainder of the report, USD#263 will be referred to as “the district”, “the local education agency (LEA)”, or “the school”.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date 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 9, 2024 and the 30-day timeline ended on August 8, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Gwen Beegle, reviewed evidence and documentation, which was provided by both the district and the complainant(s). Emails to the Complaint Investigator were received from the district from July 17, 2024 to August 7, 2024 and from the parent from July 20, 2024 to August 7, 2024.

The parent was interviewed to clarify the issues of the complaint on July 17, 2024 and interviewed again on August 7, 2024. Four district staff members were interviewed: Renee Sweetwood on July 29, 2024; Casey Lucas (Assistant Special Education Director) Kyle Dillon (current special education teacher, and Diane Tuhro (paraprofessional) were interviewed on August 1, 2024. Follow up questions to Casey Lucas were sent via emails through August 7, 2024.

Although other documentation was also reviewed, the following documentation and information were used in consideration of the issue(s):

1. Student’s IEP amendment dated May 10, 2023
2. Health Care Plan dated May 10, 2023

3. Prior Written Notice (PWN) dated May 10, 2023 for changes to the IEP including material change in services and substantial change in placement for a meeting on May 20, 2023 and signed by the parent giving consent on May 18, 2023.
4. Teacher and paraprofessional service schedule for student, 2023-24 school year
5. Speech Language Pathologist service log, 2023-24 school year
6. Text messages exchanged between the parent and Gavin Pickering (Special Education Teacher) beginning on or before August 15, 2023 and ending March 6, 2024.
7. Student's IEP amendment without a meeting dated September 8, 2023 signed by the parent consenting not to have a meeting on September 8, 2023
8. Prior written notice dated September 8, 2023 for changes to the IEP including material change in services and substantial change in placement signed by the parent giving consent on September 8, 2023
9. Student Health Plan dated September 8, 2023
10. Parent request to Mulvane Elementary School for IEP amendment dated September 15, 2023
11. Email from the parent to Renee Sweetwood dated September 18, 2023 at 10:20 am forwarded to Casey Lucas.
12. Email exchange from Casey Lucas to Renee Sweetwood, the parent, L. Sorenson, Trista Cuthbertson (Assistant Superintendent), A. Branine (Kindergarten Teacher), Gavin Pickering (Special Education Teacher) the father, and Kylie Ferrer (Speech Language Pathologist) beginning September 19, 2023 at 12:06 p.m. and ending on October 24, 2023 at 3:41 p.m.
13. Prior written notice for re-evaluation dated September 19, 2023 and signed by the parent giving consent on September 20, 2023
14. Behavior data sheets dated September 22, 2023 through May 9, 2024.
15. Parent consent for release of medical information and Medicaid reimbursement signed by the parent refusing consent on September 23, 2023
16. IEP progress report for IEP amended on October 24, 2023, with entries dated October 16 and December 3 and 16, 2023
17. Notice of Meeting dated October 16, 2023 for a meeting on October 24, 2023
18. Prior written notice dated October 24, 2023 for changes to the IEP including material change in services for a meeting on October 24, 2023 signed by the parent giving consent on October 26, 2023
19. Agenda for October 24, 2023 IEP meeting
20. Student Health Plan dated October 24, 2023
21. Social work assessment rubric dated December 1, 2023
22. Student IEP dated December 4, 2023
23. Student Health Care Plan dated December 4, 2023
24. Student reevaluation dated December 4, 2023
25. IEP meeting notes dated December 4,, 2023

26. Prior written notice for eligibility, services and changes to the IEP with material change in service and change in placement dated December 4, 2023 unsigned by parent
27. Email exchange between Casey Lucas, the parents, Gavin Pickering, and Renee Sweetwood beginning December 18, 2023 at 1:20 p.m. and ending December 19, 2023 at 2:38 p.m.
28. IEP progress report for IEP dated December 4, 2024 with entries dated January 10, March 4, and May 15, 2024
29. Document sharing notice from Gavin Pickering dated January 18, 2024 at 12:41 p.m.
30. Document sharing notice from Gavin Pickering dated January 24, 2024 at 1:47 p.m.
31. Notice of meeting dated January 30, 2024 for IEP meetings on February 7 and February 8, 2024, with parental signature dated January 30, 2024 consenting to waive 10 day notice.
32. Letter to parent dated February 1, 2024 requesting meeting for February 7 and February 8, 2024.
33. Email from the parent to Casey Lucas dated February 7, 2024 at 4:43 p.m.
34. IEP meeting notes and transcripts dated February 7 and February 8, 2024
35. Prior written notice (revised) for eligibility, services and changes to the IEP with material change in service and change in placement dated December 4, 2023 signed by the parent giving consent on February 18, 2024
36. Document sharing notice from Gavin Pickering dated February 28, 2024 at 8:13 a.m.
37. Email from the mother to Casey Lucas, Renee Sweetwood, the father, Amy Branine, Kyle Dillon, Kylie Ferrer (Speech Language Pathologist), Kellene Rorabaugh (Social Worker) Laura Canfield (nurse) on Apr 25, 2024 at 6:10 p.m.
38. Notice of meeting for a meeting on May 9, 2024 with parent signature dated April 25, 2024
39. Transcript of IEP Meeting dated May 17, 2024
40. Student Health Plan dated May 9, 2024
41. IEP Amendment dated May 9, 2024 and May 17, 2024 with parental signature agreeing to changes without a meeting dated May 22, 2024
42. PWN dated May 9, 2024 for meetings on May 9, 2024 and May 17, 2024 for changes to the IEP including a material change in services, with parental signature dated May 22, 2024 giving consent
43. Letter to parent dated May 13, 2024 for incident on May 10, 2024
44. Email exchange between Casey Lucas to the parents, Renee Sweetwood, and Kyle Dillon beginning on May 21, 2024 at 2:42 p.m. and ending May 23, 2024 at 3:56 p.m.

Background Information

The student is 6 years old and attended kindergarten in USD #263 during the 2023-24 school year. The student also attended preschool in the district. The student's most recent IEP states eligibility for special education as a student with autism and speech language disorders. During the 2023-24 school year, the student received speech language therapy, pull out special

education resource services, and special education support in the general education classroom, along with numerous accommodations to address sensory, disability and behavioral concerns. The student has numerous health considerations and a health plan at school. The student had a behavior intervention plan included in the IEP.

Issues Investigated

1. ISSUE ONE: The USD #263 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the student's behavior plan, accommodations, paraprofessional services, placement in general education, providing behavior data to the parent providing specific behavior information to parent
2. ISSUE TWO: The USD #263 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP that addressed the child's disability, specifically considering parental concerns and input into accommodations and behavior planning, avoiding use of restraint and isolation, and staff training on student support needs.
3. ISSUE THREE: The USD #263 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to providing Prior Written Notice to parent for actions such as denying parental requests

Issue One

The USD #263 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the student's behavior plan, accommodations, paraprofessional services, placement in general education, providing behavior data to the parent providing specific behavior information to parent

Applicable Law

Federal/State statutes and regulations at 34 CFR 300.39 defines special education as specially designed instruction at no cost to the parent to meet the unique needs of a child with a disability. Further 34 CFR 300.320(a)(4) requires that the IEP include "a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child: (i) To advance appropriately toward attaining the annual goals; (ii) To be involved in and make progress in the general education curriculum. . . and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and nondisabled children. "

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 parent alleged that the student's IEP had not been followed in a number of ways, especially with regard to his behavior. The parent alleged that the staff were not using de-escalation techniques, that the student was in seclusion for more than 30 minutes at a time, and that the district was supposed to provide detailed daily behavior notes to the parent. In the written complaint, the parent alleged that the student's behavior plan had not been followed when he was injured with a rug burn on his back. The parent believed that this event was unwitnessed at school because the paraprofessional who was assigned to provide 1:1 services to the child was not present and providing special education services. The parent alleged that she did not believe the child was getting his general education time and that the district was not using the child's communication device. The parent alleged that the student was not getting his general education time and that the field trip had not been appropriate for the student due to his allergies. The parent alleged that the student's accommodations had not been provided by the school, and that the district had not provided the required speech language device to the student or the behavioral data to the parent as required by the IEP.

The district responded that it had followed the IEP by providing the services, accommodations, and staff training required by the student's IEP. The district responded that they met many times with the parent to discuss the student's needs and communicated frequently with the parent about the implementation of the IEP, including the provision of accommodations during the school day and the student's behavior. The district responded that the student's schedule provided for a special education teacher or special education paraprofessional to provide support for the student, along with speech language therapy services. The district responded that staff were trained in CPI.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #263. The findings will be organized to show the timeline of special education actions and the midyear re-evaluation, followed by IEP services including assistive technology, behavior intervention plan, accommodations and supplementary aids and services, staff training to implement the IEP, and daily behavior communication with the parent.

Timeline of special education events

During the past year, the student had two IEPs which were amended through a series of IEP meetings. IEP 1: The student's IEP dated December 7, 2022 was amended on May 10, September 8 and October 24, 2023. IEP 2: The student's annual IEP meeting including the triennial reevaluation was held on December 4, 2024, with continuation meetings on February

7 and 8 2024, followed by two meetings on May 8 and May 17, 2024 that resulted in an IEP amendment.

IEP Required Services and Implementation

The student's IEP dated December 7, 2022 amended on May 10, 2023 required a gradual lengthening of the student's school day over the first 4 weeks of kindergarten, beginning with 245 minutes beginning August 14, 2022) and increasing to a full day of 435 minutes a day beginning September 16, 2023. The IEP was amended on September 8, 2023 to alter the schedule slightly, add a strategy to the behavior plan, and to add two additional accommodations. On September 15, 2023, the parent requested revisions to the IEP and according to the district, student and staff illnesses interfered with scheduling the IEP meeting until October 24, 2023. The following paragraphs summarize the student's services and accommodations for this period of time.

After the student's day was increased beginning September 23, 2023, the IEP as amended on September 8, 2023 required following services: speech language services (10 minutes 4 days a week), special education support in special classes (45 minutes 4 days a week), attendant care at lunch, special education services in special education setting (30 minutes 4 times a day 5 days a week), special education support in general education classes (195 minutes 4 days a week, 175 minutes 1 day a week), special education support in general education (recesses) (45 minutes 5 days a week). Purposes listed for special education in special education settings (pull out) were for arrival and dismissal requirements, sensory breaks, movement activities, social/emotional instruction, practice with headphones, relationship building and restroom breaks. The IEP did not specify one to one adult to student services in the services.

The IEP team met on December 4, 2023 to develop the IEP and complete the re-evaluation. The IEP included 8 goals (in brief): (1) sit in designated area during group activities, (2) work independently on assignments, (3) have no more than one physical aggression 3 of 5 days a week, (4) increase receptive and expressive language, (5) increase grammar and language structure, (6) write letters and numbers, (7) produce sounds in words, and (8) name 6 coping strategies.

The student's services listed in this IEP were: speech language services (10 minutes 4 days a week), special education support in special classes (45 minutes 5 days a week), attendant care at lunch, special education services in special education setting for emotional support (30 minutes 4 days a week), special education support in mathematics (30 minutes 5 days a week), special education support in reading (125 minutes 4 days and 95 minutes 1 day a week), special education services in general education for social emotional and adaptive behavior (45 minutes 5 days a week), special education services in special education setting for sensory breaks throughout the day (60 minutes 5 days a week), social work services in social worker's office (20 minutes 1 day a week); ESY speech language and ESY special education services were also listed.

PWN dated December 4, 2023 was provided to the parent, who signed it giving consent for the material change in services (social work) on February 17, 2024.

The district reported that the student's IEP services had been provided, as evidenced by the staff and student schedule. The student schedule, after full time kindergarten was established beginning September 23, showed: Arrival 7:50-8:00; Morning Meetings 8:00-8:15 a.m.; Math in Kindergarten 8:15-9:15 a.m.; Recess 9:15-9:30 a.m.; SEL Time (Special education classroom) 9:30-10:00 a.m.; Special education support in kindergarten or special classes 10:00-11:40; Lunch 11:40 a.m.-12:10 p.m.; Recess 12:10-12:25 p.m.; General education support for academics, specials and recesses till dismissal at 2:50 p.m., with speech therapy 12:40-12:50 p.m. 4 days a week.

The paraprofessional's schedule showed that she was assigned to the student from his arrival at school through his departure, except during her assigned lunch period, 11:40 a.m.-12:30 p.m. During that period, the teacher was assigned for the student's lunch period and recess each day. In addition, the special education teacher's schedule showed that he supported the student with the paraprofessional at arrival time as needed (10-20 minutes 4 days a week). The special education teacher provided social emotional learning for one hour 4 days a week in the special education classroom, and special education in the kindergarten class 50 minutes 3 times a week, 20 minutes one time a week, and in special classes 30 minutes 2 times a week and 20 minutes one time a week. The district showed the speech language pathologist's service log showing speech language services 10 minutes 4 times a week.

Assistive technology

The IEP as amended May 10, 2023 required the following assistive technology: school provided speech generating device (currently proloque2go Ipad app) AAC for communication of emotions and needs at school and a second AAC device for communication of emotions and needs in the home. The IEP dated December 4, 2023 required a school-provided dedicated speech generating AAC device (currently ProLoQuo2Go) for communication of emotions and needs at school, to be used at times of dysregulation.

In an interview, the assistant special education director reported that, at the beginning of the school year when she realized only one device was being used (going back and forth with the student), she talked with the parent. She reported that she believed that the parent agreed to have only one device being used in two settings and the IEP would be updated at the next meeting.

Accommodations

Fourteen accommodations were listed in the student's IEP as amended May 10, September 8, and October 24, 2023: (1) Access to headphones, (2) First then phrasing, (3) Delayed arrival early departure, (4) Task boxes, (5) Reinforcers for leaving school and getting in the car (6) Visual schedule, (7) Dismissal Social Story, (8) Separate setting for testing, (9) Parent supplied

Jiobit tracker, (10) Parent supplied Seizure bracelet and cell phone, (11) 20 minutes story time Google Meet, (12) Separate arrival and dismissal location, (13) Brain breaks and Sensory breaks, and added October 24, 2023 was (14) Extended time on assignments and assessments

The accommodations in the IEP dated December 4, 2023 maintained these ten accommodations: Access to headphones, First then phrasing, Task boxes, Visual schedule, Separate setting for testing, Parent supplied Jiobit tracker, Parent supplied Seizure bracelet and cell phone, Separate arrival (7:50 am and 8:50 am on Wednesday) and dismissal (2:50 pm) location, and Brain breaks and sensory breaks. It added these five accommodations: Extended time on assignments and assessments, Parent provided wrist support resting pad, Reduced workload by 50%, Multi modal assignments (paper, chromebook, Ipad, apps), and Access to sensory tools (fidgets, seating, apps, or other preferred sensory objects). Three accommodations were deleted: 20 minutes story time Google Meet, reinforcer leaving school and getting in the car and dismissal social story.

In interviews, the paraprofessional reported that she used the student's accommodations throughout the day. In an interview, the principal reported that accommodations were used in the general education classroom.

Undated text messages between the parent and the principal showed that the parent alerted the principal to the student's allergies related to the class field trip and that the field trip was discussed at the student's IEP meeting. The principal then offered the parent an alternative field trip, which the parent refused.

Behavior Intervention Plan and Implementation

The student's Behavior Intervention Plan (BIP) associated with the first IEP amended on May 10, September 8, and October 24, 2023 identified the following problem behaviors resulting from skill deficits in communication, emotional regulation and social skills: refuse to complete transition, hide behind person/object, throw items, vocalize frustrations, push, attempt to leave area, lay on ground/floor. The BIP focused on one problem behavior, refusing to transition, and identified the motivation as escape/avoidance. The BIP included the following strategies. *Environmental Structure & Supports* were: first/then phrasing, visual schedule, consistent schedule, high rate of positive reinforcement, offering choices when appropriate, visual supports to communicate emotions and needs choices, access to a sensory room, with an addition on September 8, 2023 of escorted walk in the hallway when dysregulated. *Proactive Interventions* were: social story, promissory reinforcer, early dismissal, visual schedule, first/then phrasing, offer visual supports to communicate emotions and needs, choices, allowed to pull a wagon during transitions, delayed arrival. *Teaching New Skills* (replacement) were: Modeling AAC use, yes/no teaching, teaching emotions-recognizing own and emotions of others teaching calming strategies teach use of visual aids to help identify emotions and replacement choices. *Consequence Interventions* were: rewarded with chosen reinforcer at dismissal rewarded with replacement activity when communicating emotions and needs.

The student's Behavior Intervention Plan (BIP) associated with IEP dated December 4, 2023 and amended on May 17, 2024 continued the provisions of the prior IEP. The parent provided consent to the PWN dated December 4, 2024 on February 18, 2024. The BIP identified the two problem behaviors, continued to focus on refusing to complete transitions, added a second behavior, physical aggression/throwing/crawling under staff, and identified the motivation as escape/avoidance for both and added sensory needs as a second motivation for physical aggression. The BIP strategies to address both behaviors remained largely the same as in the prior IEP, now addressing two behaviors. For *Environmental structure and supports*, access to the special education classroom as needed was added, and "as needed" was added to access to the sensory room. For *Proactive Interventions*, social story and promissory reinforcer were deleted and "visual" schedule was changed to "posted classroom" schedule. *Teaching new skills* section was unchanged. The *Consequence Interventions* section was slightly changed, rewarded with chosen reinforcer "when the reinforcement chart is full" instead of "at dismissal." and verbal praise was added.

No mention of the use of de escalation techniques was found in the IEPs in place during the 2023-24 school year.

When asked in an interview and follow up email, the district staff reported that documentation of the sensory breaks occurred in behavior sheets provided to the parent. When asked in an interview, district staff reported that the procedure for the use of the sensory room required the student to be calm for a period of time before exiting.

In an interview with the parent, the parent stated that the student was being left in isolation for longer than 30 minutes. The paraprofessional, special education teacher and assistant director were asked about any use of isolation in interviews. The district staff reported a description of the sensory room's use, which was witnessed by the parent. The sensory room is near the main office with no harmful things within it and the procedure is that the student must remain regulated for a period of time before leaving, although the student is never blocked from leaving the room and the door is open. If they leave, they are redirected to the room to restart the calming process.

The parent reported in the written allegation and provided in email a description and photo related to an incident on or before March 6, 2024, when the parent found what appeared to be a rug burn on the student's back. An examination of the daily behavior sheet for March 5, 2024 found it to be incomplete, with entries only through 10:05 a.m. showing participation in activities. An examination of two daily behavior sheets for March 6, 2024 found that during reading class the student had 8 instances of hitting/kicking, 2 instances of running around the classroom, 5 instances of throwing objects and stated that the student went home early. On March 6, 2024, the parent sent a text with a picture of the child's back injury to the principal and requested a phone call. In an interview, the principal stated that she investigated the incident by asking the special education teacher about what happened. The special education

teacher reported to the principal that the student had mentioned it to him, that he had examined it, and believed it to be a few days old at that time. In an interview, the paraprofessional reported that she did not see any incident causing the injury; in addition, the paraprofessional reported that she was present every day according to her schedule, except for leave, lunch and bathroom breaks.

The district reported and showed documentation that the student had been restrained 5 times on the following dates: January 18, January 24, February 1, February 28, and May 10, 2024. The district did not have access to detailed reports for 3 of the 5 incidents due to loss of electronic records (emails) eliminated automatically when the student's teacher resigned in March, 2024. The district reported that the student had been restrained for less than one minute each time. Daily behavior sheets on February 1, February 27, 2024 and May 10, 2024 described the procedure used for restraint. The district provided evidence that the current special education teacher, prior special education teacher and the paraprofessional had attended Crisis Prevention Institute (CPI) training at the beginning of the school year.

Staff use of behavior intervention plan and accommodations.

In interviews, the current special education teacher and the paraprofessional were asked if they followed the student's behavior plan and used his accommodations. The paraprofessional, who described her work as a "high needs para", listed the following accommodations and strategies when asked about a typical day: sensory break and de escalation (when dysregulated), sensory breaks, sensory apps if dysregulated, noise canceling headphones, wrist rest, Chromebook, Ipad as alternate for paperwork, communication device (although unused by student), walks in hallway, offering choices for activities and work, first/then requests, reinforcers, schedule choices, train stamps, prizes from box, and verbal praise "good job." The special education teacher added social emotional support during pull out services, including talking about feelings and coping strategies, first/then, choices, alternative settings for work, and breaks. The assistant special education director reported that she observed the previous special educator using times, reinforcers, games with timers, and strategies to begin work.

Support for Staff (training) in the Student's IEP

All three district educators interviewed reported having extensive work experience with persons experiencing autism; two reported experience as family members of persons with autism. The district reported and showed evidence that the teacher and paraprofessional received CPI training. Implementation of health plans is related to the investigation through the IEP requirement for staff training, which is the focus here.

The IEP as amended May 10, September 8, and October 24, 2023, required support for staff (training) in three areas: seizures and allergic reactions, AAC device, and use of and location of the AED [defibrillator], detailed as: (a) training in seizures, including absent seizures,

procedures and allergic reactions by the school nurse once a semester (b) training staff in modeling and use of speech generating AAC device once a month and (c) use of and location of the AED once a year. The IEP dated December 4, 2023 continued the staff support, slightly reworded as: (a) training in seizures, including absent seizures, procedures and allergic reactions, location of AED by the school nurse to occur one time a semester or for new staff and substitutes and (b) Training staff in modeling and use of a dedicated speech generating AAC device one time a semester.

Text messages submitted by the parent showed that district staff were in frequent conversation with the parent regarding the student's health and diet at school (see August 15, August 30, September 12, 2023; January 30, February 6, March 6, 2024). In interviews, the district staff working with the student reported that they had been trained on the student's health plan and the specific elements in the student's IEP, including anaphylaxis plan/procedure, seizures and seizure watch, and the use of the communication device. In an interview, the special education teacher reported being trained by the nurse on health plans and meeting with the speech language pathologist on the communication device when he was hired.

The principal reported that the district staff working with the student received training on the student's health plan needs from the school nurse, including AED device, seizures, first aid, allergies and reactions, special wipes, soap and hand sanitizer, and "look fors." In an interview, the principal reported that the nurse, trained nursing assistant or both were present in the building each day. Nursing records showed that the student was taken to the nurse for ailments listed in his health plan or other health concerns (such as fever) on 9 occasions during the school year on the following dates: August 15, October 17 (2 times), November 28, and December 11, 2023; February 6, February 14, April 1, and May 2, 2024.

Daily communication - behavior sheets

Neither IEP in place during the 2023-24 school year included the requirement that behavior data be communicated to the parent daily. However, the parent is to receive IEP reviews as progress reports each quarter.

The parent reported that she wanted detailed behavior sheets in order to understand why the student was having behavior problems at school that were not evident at home. The parent reported that she believed these were required by the IEP and that the district had changed the format enough that she no longer had detailed information on the student's behavior at school.

Photos of the behavior sheets in the parent's text messages corresponded to those provided by the district as evidence. Behavior sheets sent home from August, 2023 to March, 2024 were in the form of a schedule with participation or problem behavior tally marks, with narrative descriptions at the bottom of the page that detailed any significant behavioral events. Behavior

sheets sent home from beginning February 14, 2022 - May 10, 2024 showed the student's schedule and a 3-choice rating scale for each period, with space for brief notes along the side and at the bottom, with some of the daily sheets having a second page with the student's schedule and tally marks for number of prompts, aggressions, and leaving the area, with space for written descriptions.

The IEP team met on May 9 and May 17, 2024 to amend the IEP. No changes to the BIP or special education and related services were made. Home school communication (daily behavior data) format was discussed. According to the transcript of the May 17, 2024 meeting, the team looked for where the home communication format was located in the IEP, and not finding it, added the behavior sheet format to parental concerns.

According to the PWN dated May 9 and May 17, 2024, the IEP was amended (1) to state that substitute teachers would receive the student's medical information with their lesson plans, with two changes to the rationale for this change (2) to delete the accommodation of the seizure bracelet (3) to update conditions for the use of the headphones at his request or when the need is seen by an adult, and (4) to add to the parent concerns regarding the daily communication tool being used.

According to the district and the progress reports provided, the parent received progress reports quarterly, in October and December, 2023 and March and May, 2024.

Conclusion

In this case, the student's team met many times during the school year to address parental concerns, to complete the student's re-evaluation, and to review the IEP for needed changes. The student had detailed health plans in place, and during the investigation, the parent disclosed allegations of particular instances when the health plan precautions were not properly followed, such as providing specific parent provided birthday cupcakes instead of previously provided frozen ones or wiping the lunchroom table with special wipes before the student's lunch box was placed on it. However, these were not investigated beyond staff training and support required by the IEP to implement the student's IEP which referred to the health plans and communication needs. The health plans themselves were not included in the student's IEP. Evidence showed that the staff had been provided training and support to implement the student's health plan, that nursing services were in the building and accessed by staff for the student, and the staff communicated with the parent about the student's diet, allergic reactions and other health related concerns.

In the written complaint, the parent specified an alleged incident of abuse. This could not be investigated by this investigator and other resources were provided to the parent. In the IDEA issue clarification interview with the parent, the parental concern for implementation of the behavior plan, accommodations, paraprofessional services, and time in general education

were expressed and included in the issues provided to the district and are addressed in this report.

As noted above, the district reported and provided staff schedules showing continual paraprofessional support throughout the day except for breaks and lunch, when the special education teacher was scheduled to be present to provide attendant care. The staff schedules showed both pull out special education services and special education support by both paraprofessional and teacher in the general education setting. At times during the student's day, both the teacher and the paraprofessional were present to provide special education and supplementary aids and services including accommodations.

Evidence in interviews, supported in part with daily behavior sheets, showed that the district staff were familiar with and providing accommodations listed in the student's IEP, including relying frequently on the use of the sensory room for breaks and student calming. The sensory room and breaks are included as accommodations and in the student's behavior intervention plan. It cannot be determined the extent to which the use of sensory breaks detracted from the student's general education participation. However, these were accommodations and behavior intervention strategies required by the IEP and being used routinely by district staff.

The format of the daily behavior sheets was discussed at IEP meetings but not listed in the IEP as a requirement. The parents were provided quarterly IEP reviews reporting progress. Therefore, the district's daily communication with the parent is seen as ordinary home school partnership efforts. The alternative for the field trip (discussed at the October 24, 2023 meeting and in the associated PWN) was offered by the principal to the parent when the parent expressed her concern regarding possible allergens at the chosen field trip site.

Based on the foregoing, *it is not substantiated* that USD #263 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the student's behavior plan, accommodations, paraprofessional services, placement in general education, and providing behavior data to the parent.

Issue Two

The USD #263 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP that addressed the child's disability, specifically considering parental concerns and input into accommodations and behavior planning, avoiding use of restraint and isolation, and staff training on student support needs.

Applicable Law

Federal statutes and regulations at 34 CFR 300.324(a) require that in developing the child's IEP, the IEP team shall consider the following: the strengths of the child, the concerns of the

parents, the results of the child's evaluation, the academic and functional needs of the child, the use of positive behavior interventions and supports if the child's behavior impedes learning, the need for braille or the impact of limited English proficiency, the child's communication needs, and the need for assistive technology. In particular, 34 CFR 300.324(a)(2)(ii) states that in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. Federal and state statutes at 34 CFR 300.324(b)(ii) and K.S.A. 72-3429(f) require that the IEP team reviews the child's IEP periodically, no less than annually, to determine if the goals are being achieved and revises the IEP as appropriate to address lack of expected progress toward goals or general education curriculum, results of a reevaluation, information about the child provided by the parents, the child's anticipated needs or other matters.

Analysis: Findings of Fact

The parent alleged that the district did not take their concerns into account when developing the IEP, including suggestions for accommodations, curriculum needs (advanced mathematics), and staff understanding of alternative communication when the student is unable to speak, and staff use of parent suggested strategies for behavior and communication support to prevent the need for restraint and isolation. The parent stated the staff did not understand the student's disability and could not tell the difference between "melt down" and "temper tantrum" in the student's behavior and that the staff did not use de-escalation techniques.

The district responded that they had met with the parent multiple times to address the parent's concerns and had incorporated multiple parent suggested strategies into the IEP. The district responded that the staff were trained in behavior prevention techniques and that the district had maintained the student's communication device at school despite their assessment that the student now communicated his wants and needs orally. The district responded that the staff are familiar with many unique individuals with autism, including the student.

The findings of Issue One are incorporated herein by reference.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #263.

The IEP team amended the student's IEP on May 10, 2023 in anticipation of the student's entry into kindergarten, with a delayed start time beginning August 14, 2023 to allow the student to adjust to the new schedule, gradually increasing to a full day schedule by September 23, 2023. The IEP team amended that schedule with participation by the parent on September 8, 2023.

On September 15, 2023, the parent wrote to the district requesting specific accommodations and technology applications to be integrated into the IEP and to have an amendment or an IEP meeting prior to the annual IEP. The district responded to begin scheduling the meeting, which was delayed until October 24, 2023 due to student and staff illnesses. The parent

requested (1) zoom in for reading time, (2) allowed to complete missed school work at home within 3 days, (3) electronic formats for school work, (4) iPad Air 5 and I Pencil 2, (5) Floreo VR preloaded on the Meta Oculus 2. In the letter, the parent asserted that the student could do advanced mathematics and would learn social interaction and other skills by using the virtual reality headset and apps suggested. In response, the IEP team met on October 23, 2024 and amended the IEP to include two new accommodations: (1) Google meet for reading time when absent, (2) extended time on all assignments needed for processing time or absences.

According to the October 24, 2023 PWN, the district added that the student would have 3 days to complete school work, in electronic formats as requested by the parent, In addition, the PWN stated that the upcoming re-evaluation would address the continued need for the communication device and, rather than providing a virtual reality headset (with risk of seizures and lack of research with young children) that the student be assessed for social work services to develop his social interaction and coping skills. The PWN also stated that the parent-requested IPAD Air 5 and I Pencil 2 would be purchased and used as a trial device for the student.

The district provided a PWN dated October 24, 2023 which stated that the team met to discuss accommodations related to work completion and assistive technology requested by the parent. The PWN stated that the school would purchase, collect data, and trial an IPAD Air 5 and Pencil 2 as the student's assistive technology, and that the upcoming evaluation would include assessing the student's need for AAC. In response to the parent's request for social interaction software, the IEP team discussed an evaluation for social work services to meet the student's social development needs. The PWN listed an accommodation for work completion when he missed school due to medical concerns. In response to the parental concerns about participation in a field trip, the IEP team discussed two possible accessible field trip options or virtual participation, which were not listed as accommodations on the IEP amendment, nor are they listed on the LRE considerations of the IEP amendment. The parent signed the PWN giving consent on October 26, 2024.

Triennial Reevaluation

The prior written notice for re-evaluation (PWNE) dated September 19, 2023 and signed by the parent giving consent on September 20, 2023. The PWNE stated that existing data would be examined for health and motor skills, and new data would be collected in social emotional, academic performance, general intelligence, and communicative status.

The student's re-evaluation dated December 4, 2023 stated that the purpose of the re-evaluation was to determine continued eligibility and levels of services needed to allow the student to make progress toward state standards. The re-evaluation found that the student was eligible for special education as a student with autism and speech language disorder. Testing found cognitive ability in the below average range and academic achievement in the impaired, below average or borderline impaired ranges.

Social emotional skills were assessed and delays were found. The evaluator used the BASC-3, using the parent, general education teacher and special education teacher to complete the scales on internalizing, externalizing, behavioral symptoms and adaptive skills. Across the raters, behavioral difficulty and social emotional delays were noted in adaptability, hyperactivity, atypicality, with some raters noting problems in activities, daily living, functional communication, anger control, and withdrawal. Teachers reported level of aggression at school to be similar to other children the same age.

The communication portion of the re-evaluation used both assessments and observations, stating that during testing the student had access to a communication device but used only verbal language during the session. During classroom observations, the student used age appropriate, 3-8 word sentences; expressed his requests, questions, comments and thoughts about an activity; used adjectives; and answered yes and no questions. Standardized testing found the student to be impaired in general language ability with needs in both expressive and receptive language. The re-evaluation found that the student had made progress in expressing his wants and needs, asking and answering questions and commenting on activities, with a need for continued speech language services to expand receptive and expressive language, language structure and articulation skills.

The district reported and pointed to the student's reevaluation as evidence that the student did not show the need for an advanced mathematics curriculum. The district reported that they tried advanced math with the student as requested by the parent but did not find the student responsive.

The district provided the social work evaluation that found the student eligible for social work services and the teacher reports showed that the student deficit in emotional awareness, responsibility, following directions, relationships, self control, and executive functioning.

The meeting notes dated December 4, 2023 showed that the parent participated in the discussion about the evaluation on the following topics: handwriting, using restroom at school, dominant hand, digital and paper instructional format, speech and language progress, use of pronouns, and verbal agreement to social work services. During the IEP discussion on December 4, 2023, the meeting notes showed that the team discussed that the communication device was not needed due to the student's vocabulary and the IPAD that was used for communication would remain at school. The meeting notes showed that the parent asked about what would be done when the student hit or acted violently, and the district staff discussed teaching replacement behavior and using CPI techniques. The notes showed "keeping hands and feet to self" to be added to the intervention plan.

Following the December 4, 2023 IEP meeting, the district provided PWN dated December 4, 2023 to the parent for the student's continued eligibility and special education services; continuing the existing services and adding social work services for 20 minutes one time a week. The PWN listed services to be provided as listed in the IEP dated December 4, 2023

(listed above), removed three accommodations (reinforcer for getting in the car after dismissal, dismissal social story and 20 minute story time google meet) and added four (wrist rest pad, reduced assignments by 50%, multimodal assignments, access to sensory tools). The PWN continued the AAC device and listed the need to continue to collect data on the special education trial device (IPad Air 5 and Pencil 2) initiated in October, 2023.

In an exchange of emails with the parent beginning December 18, 2023, the district followed up to ask for consent for the PWN's material change in services, and the parent expressed concern with the new IEP's provisions, including the changed assistive technology communication device requirement, from two to one device, used at school.

In interviews, the district reported that, although the assistive technology device was available to the student at all times and he was prompted to use it at times of duress, the student used understandable oral language instead of the device. The district further reported that the December 4, 2023 reevaluation of the student's communication showed that he did not need the assistive technology device for communication and it was maintained in the IEP at the parent's request. The district reported that the parent had asked for assistive technology in the form of an IPAD Air 5 and I Pencil 2 for school work along with specific apps for learning and coping, which the district purchased and the student used at school, as per the October 24, 2023 PWN.

The district reported that, due to the parent's concerns and lack of consent for the PWN dated December 4, 2023, the district convened the IEP team on February 7 and 8, 2024 as a continuation to the December 4, 2023 IEP determination and evaluation review.

According to meeting notes, the parental concerns were discussed as the evaluation results and IEP provisions were reviewed, section by section. According to the meeting transcript for February 7, 2024, multiple topics were discussed including: medical records provided to the school and permission to contact health providers, the health plan, hand dominance, reviewing of the evaluation assessment results, content of the evaluation report showing teacher responses to test protocols, discussion of regressive autism and OCD, the student's communication assessments by the school and other providers, other syndromes, medication, allergic reactions, birthday cupcakes, hand sanitizer, using the trial device for academic work, chromebook versus IPAD for classroom work, historical discussion of communication device and rationale for two devices due to therapist recommendations, discussion of unique communication and phrasing by the student to express needs, communication apps and programs, use of AT when student self harms if seen at school. The February 8, 2024 transcript showed discussion of the behavior plan, social work services, social/emotional/behavior goal, teaching coping skills and using timers, assistive technology, questions about pictures used in testing, reading and writing, math, staying on task and in place, IEP goals, using fidgets and headphones, listing and use of IEP accommodations.

A revised PWN dated December 4, 2023 with services to be implemented beginning February 8, 2024 was provided to the parent, who signed the PWN on February 18, 2024 giving consent for the services. Revisions to the PWN dated December 4, 2023 included rewording two accommodations (separate arrival and dismissal to “agreed upon location,” and visual schedule was changed to posted classroom schedule). The PWN determined the student’s continued eligibility for special education, listed the student’s services as per the December 4, 2023 IEP including the new social work service, reworked the list of accommodations, maintained the AAC device at school and continued the trial of the assistive technology initiated in October. The PWN did not include a change to the student’s behavior intervention plan.

Concerns regarding behavior

As noted previously, the parent and school discussed the student’s aggressive behavior as early as the December 4, 2023 IEP meeting, and physical aggression was added to the BIP as a second focus behavior. Teacher input into the reevaluation (occurring in the fall of 2023) did not report that the student was more aggressive than other students his age. As noted previously, the student’s behavior required restraint five times from late January to mid May.

Undated text message exchange between parent and principal, on or before April 16, 2024, showed that the parent alerted the principal that the daily behavior sheets being sent home were not acceptable due to lack of detail. An April 26, 2024 text exchange showed that the parent repeated her disagreement with the form of the behavior sheets and her contacts with the school about them. A reply from the principal showed that they had contacted the assistant special education director to discuss alternatives to the behavior sheets.

The parent wrote an email on April 25, 2024 to the assistant special education director to express her concern that the home communication format (daily behavior notes) had changed and she no longer found them as useful as those notes sent previously. In it she stated, “. . .when we had our last IEP meeting it was agreed at that time that an account of each class lesson and [student] behaviors as well as what he did in that class would be recorded and sent home daily to allow us to track patterns and behaviors of [the student] with a hope of better aiding this team with [student] needs during IEP meetings and throughout the year. It was at that time asked if we could use a pre-existing form the school already used and it was agreed that this would be fine as long as EACH class/lesson had an accounting of that activity and how [student] did.”

In an interview when asked, the assistant special education director reported that the parent did not ask for a functional behavior assessment in the discussions of information needed on the student’s behavior problems occurring at school.

An examination of the quarterly progress reports on the student’s behaviorally related IEP goals showed that the student had not met the IEP goals related to social emotional behavior as of May 17, 2024. Data provided showed that the student stayed in place, “in his designated

area during whole group instruction 0 of 5 trials for 80% he sat an average of 55% of the time over the 5 trials." Data provided showed that the student "demonstrated no more than 1 physical aggressive behavior throughout the school day in 0/5 school days. Over the 5 days observed [the student] averaged 3 physical aggressions."

According to the transcript of the meeting on May 17, 2024, the IEP team discussed the student's behavioral needs. The parent asked for the district staff to get down to the student's level (on the ground if needed) as a behavior strategy. The district pointed to staff training in CPI which has preventive strategies, and stated that the district would suggest getting closer to the student's level but wouldn't require staff to get on the ground. The parent expressed her concern about the use of restraining and the extensive use of the sensory room which she called seclusion. At the IEP meeting on May 17, 2024, the parent stated her concern that the student's behavior was worsening, that his "manipulative" problems needed to "stop before he's too big," and that she believed the student was being placed in seclusion too much, whether or not the conditions of the sensory room accommodations met the definition of seclusion (as defined by the district). In the meeting, the district stated that the procedures for seclusion are specified by law and include if the student is being blocked from exiting a room. At the meeting, the district attempted to clarify what the parent wanted to occur when the student was dysregulated and removed from the general education for sensory breaks, to go to the special education classroom, or to otherwise calm himself. Discussion included calling the parent if the student was dysregulated for 30 minutes at a time, or in the sensory room for 3 times in a day. The district responded positively to the parent's suggestion of using the headphones more often and to repeat the offer of them when the student declined them.

The PWN resulting from this meeting does not change the student's behavior intervention plan. The PWN dated May 17, 2024 and signed by the parent giving consent on May 22, 2024 includes the following additions to staff supports for student's medical needs:

"1. Substitute teachers will be provided with his relevant medical information to be included with the teacher lessons plans. This was added in the description of the training. 2. [The student] will have a red folder in his backpack with all his medical information to transition with him across the school campus so information is readily available if he is in a location where it is not readily available, was added into the rationale. 3. Substitute teachers will be provided with his relevant medical information to be included with the teacher lessons plans so they are aware of all medical needs and plans, was added into the rationale."

The PWN dated May 17, 2024 also stated: "Health Care Plan was updated. Deleted Accommodation record 7 referring to the seizure bracelet and no longer using it. Updated Accommodation record 1 regarding headphone usage and to not limit it to noisy environments but at his request at any time in the day or when an adult sees he may benefit from it to offer it and remind him that he has them available. Added record 3 under parent input/concerns to address daily communication tool back and forth."

In an interview with the parent, the parent reported that she believed the school agreed at the May 17, 2024 meeting that the IEP would be amended to show that the school would call the parent if the student had need of the sensory room for more than 3 times in one day or if the student stayed in the sensory room for 30 minutes at one time. However, an examination of the IEP as amended and the PWN of that date did not show this provision.

Conclusion

In this case, the district and the parent had many meetings and interactions pertaining to the student's needs. The staff were professionally and personally familiar with individuals with autism and their needs. The staff were attentive to the communication and social development needs of the child, and implemented the IEP's services and technology to address them. The district provided a health plan to address parental concerns regarding the student's health. The district conducted a timely re-evaluation that included an assessment of the student, including the need for social work services for social development, assistive technology and other services. The IEP included multiple accommodations and assistive technology, which was extensively tried using school provided technology including apps suggested by the parent. The parent brought student needs and requirements to the IEP team and the district implemented many of the suggestions and services to meet those student's needs.

Therefore, it is found that the district did develop an IEP that addressed the student's disability, specifically considering parental concerns and input into accommodations, and staff training on student support needs.

Although the student's teachers did not note physical aggression as problematic in the fall when they completed their assessment for the reevaluation, the student's physically aggressive behavior was being discussed at the December 4, 2023 and February 8, 2024 IEP meetings. Although a new behavior (physical aggression) was added to the BIP, the strategies were not substantially changed from that in place from the beginning of the school year, carried forward from the IEP developed in 2022. The student's behavior plan called for sensory breaks throughout the day, not defined as seclusion by the school or consequent strategies in the behavior plan. It is noted that the sensory breaks may have operated as consequent strategies, but it is beyond the nature of this investigation to make this determination.

The student's behavior apparently began to deteriorate after January 18, 2024, requiring brief periods of restraint 5 times between late January and mid-May. Progress report data in May reported that the student had physically aggressive behavior more than one time each school day. In late April, 2024, the parent began to communicate with the school about the student's behavior problems and her lack of information on the reasons for the student's behavior problems at school, which took the form of protesting the format of the daily behavior notes sent home. After the two IEP meetings May 9 and May 17, 2024, the district amended the IEP with regard to accommodations, staff support for the health plan, and the student's health

plan, but the district did not move to address the core concern lodged by the parent or its own evidence that the student's behavior was deteriorating across time at school.

Therefore, it is found that the district failed to meet its obligation to revise the IEP to address the lack of progress (C.F.R 300.324(b)(ii)(A), K.S.A.72-3429(f)(ii)(A)).

Based on the foregoing, *it is not substantiated* that USD #263 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP that addressed the child's disability, specifically considering parental concerns and input into accommodations and behavior planning, avoiding use of restraint and isolation, and staff training on student support needs. However, *it is substantiated* that USD #263 failed to consider the parental input into behavior planning and avoiding use of restraint and isolation.

Issue Three

The USD #263 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to providing Prior Written Notice to parent for actions such as denying parental requests

Applicable Law

According to federal regulations at 34 CFR § 300.503(a)(2) and K.S.A 72-3430(b)(2) a procedural safeguard afforded to parents is the Prior Written Notice for certain proposed special education actions. The Prior Written Notice documents a description of the action proposed or refused by the district. It is required when the district proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or provision of FAPE to a child. This requirement is triggered regardless of whether it is the school or the parent who is initiating the request.

State regulations at K.A.R. 91-40-27(a)(3) require school districts to obtain parent consent before making a material change in services or a substantial change in placement. The Kansas Special Education Process Handbook clarifies a material change in services: "A change in the instructional methodology used to provide a service, even if the methodology is specified in an IEP, is not a material change in services. For example, a change to a strategy within a behavior intervention plan is a change in the instructional methodology, not a material change in services" (p.8).

Analysis: Findings of Fact

The parent alleged that the district did not provide PWN to her when making changes to the IEP, specifically the assistive technology requirement of a "school provided speech generating device (currently proloque2go Ipad app) AAC for communication of emotions and needs at school and a second AAC device for communication of emotions and needs in the home." The

parent alleged that the district did not provide timely PWN to the parent and that her requests were denied at IEP meetings.

The district responded that the parent's requests were discussed at IEP meetings and proper PWN was provided to the parent.

The findings of Issue One and Issue Two are incorporated herein by reference.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #263.

Six instances of PWN were provided to the parent during the 2023-24 school year.

1. Prior written notice dated September 8, 2023 for changes to the IEP including material change in services and substantial change in placement signed by the parent giving consent on September 8, 2023
2. Prior written notice for re-evaluation dated September 19, 2023 and signed by the parent giving consent on September 20, 2023
3. Prior written notice dated October 24, 2023 for changes to the IEP including material change in services for a meeting on October 24, 2023 signed by the parent giving consent on October 26, 2023
4. Prior written notice for eligibility, services and changes to the IEP with material change in service and change in placement dated December 4, 2023 unsigned by parent
5. Prior written notice (revised) for eligibility, services and changes to the IEP with material change in service and change in placement dated December 4, 2023 signed by the parent giving consent on February 18, 2024
6. PWN dated May 9, 2024 for meetings on May 9, 2024 and May 17, 2024 for changes to the IEP including a material change in services, with parental signature dated May 22, 2024 giving consent

The assistant special education director reported in an interview that she contacted the parent to discuss the second device and that she believed the parent agreed to use only one device to meet the student's needs at school and at home until the IEP could be amended.

Conclusion

Based on the evidence reviewed above and in Issue One and Two, the district provided PWN associated with each IEP amendment with or without IEP meetings through the year. The evidence did not show that the district denied parental requests for services. The IEP meeting on October 24, 2023 discussed the virtual reality technology requested by the parent and determined an alternative (assessment for social work services for social development).

With regard to the student's assistive communication device, the IEP dated December 4, 2023 changed the IEP stating that only one, not two, assistive technology devices for communication were required. The IEP as amended on October 24, 2023 and the PWN associated with it required two devices, one for school and one for home.

It is noted that the district provided a device that functioned for the purposes of the IEP's provisions as a communication device in both settings. However, the district should have provided PWN at the time they realized that a single rather than two devices could serve the purposes of the IEP. Unless this change met the definition of a material change in services in K.A.R. 91-40-27(a)(3), parental consent would not be required.

Findings in Issue Two point to a second issue with the district's provision of PWN. After the discussion at the May 17, 2024 IEP meeting, the parent believed that the IEP team had agreed to change the behavior plan to call her when the student was in the sensory room 30 minutes at a time or 3 times in a day. It is unclear if the parent requested it, the district suggested it in the course of the discussion, or the IEP team agreed to it. However, as an important option related to the student's behavior problems, the PWN dated May 17, 2024 should have included it in its provisions as proposed or refused. It is noted that the parent signed the PWN dated May 17, 2024.

Based on the foregoing, *it is substantiated* that USD #263 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to providing Prior Written Notice to parent for actions such as denying parental requests

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of 34 C.F.R. 300.323(c)(2) was not found, based on the facts above. Corrective action is not required.
2. **ISSUE TWO:** A violation of 34 CFR 300.324(a)(2)(1) and K.S.A.72-3429(f)(ii)(A)) was found, based on the facts above. Corrective action is required (as follows):
 - a. **CORRECTIVE ACTION:**
 - i. By September 6, 2024, USD #263 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal and state regulations at C.F.R 300.324(b)(ii)(A) and K.S.A.72-3429(f)(ii)(A)).
 - ii. The district shall bring in an outside behavior expert from TASN to assist the IEP team in planning for and conducting an FBA as well as writing a BIP that comes from the FBA, if the team determines the FBA or BIP is needed. The IEP team shall discuss and determine if the outside expert should continue to provide technical assistance and follow along to review the data to support the IEP team. The district shall provide PWN recording the decisions made about this plan. The district shall submit evidence to SETS that the district completed these actions, such as the IEP team meeting notes, the PWN provided to the parent, the outside expert consulted and the resulting plan of action.
 - iii. **Date due: September 30, 2024**

3. **ISSUE THREE:** A violation of 34 CFR § 300.503(a)(2) and K.S.A 72-3430(b)(2) was found based on the facts above. Corrective action is required (as follows):
 - a. **CORRECTIVE ACTION:**
 - i. By September 6, 2024, USD #263 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal and state regulations at 34 CFR § 300.503(a)(2) and K.S.A 72-3430(b)(2).
 - ii. The district will provide PWN for providing only one rather than two school provided communication devices.
 - iii. The district will review their policy and procedures for writing and providing PWN to parents. The district will consult with KSDE to acquire out of district training and provide that training on PWN to relevant special educators and administrators in the district, to include the relevant members of the student’s IEP team. The district will provide the agenda and date, the training provider, a list of participants, and outline of the training content to KSDE as evidence of its completion.
 - iv. **Date due: September 30, 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)