

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES  
REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #231, GARDNER PUBLIC SCHOOLS  
ON OCTOBER 16, 2024

DATE OF REPORT: NOVEMBER 14, 2024

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

The complaint is against USD #231 Gardner Public Schools. In the remainder of the report, USD #231 will be referred to as “the district”. The student attends Moonlight Elementary. In the remainder of the report, this elementary school will be referred to as “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 October 16, 2024 and the 30-day timeline ends on November 14, 2024.

### **Evidence Reviewed**

A group interview was conducted with Mackenzie Scholtz, classroom teacher, Katie Beach, principal, Mackenzie Jones, speech and language pathologist, Pshyra Bedell, special education coordinator, Christi Whitter, director of elementary education, Jody Marshall, assistant superintendent and Shay Carter, director of special education on October 31, 2024. The investigator spoke with the complainant on October 17, 2024, October 20, 2024, and November 2, 2024. During the investigation, the Investigator Donna Wickham reviewed all evidence and documentation, which was provided by both the district and the parent. The following documentation and information were used in consideration of the issues:

1. IEP dated December 7, 2023
2. Email between parent and principal dated August 23, 2024 between 12:32 p.m. and 1:24 p.m.
3. Speech and language pathologist log dated between August 26, 2024 and November 1, 2024
4. Email from the principal to the parent dated September 11, 2024 at 2:59 p.m. and 5:03 p.m.

5. Email between parent and superintendent dated September 12, 2024 between 9:09 a.m. and 9:30 a.m.
6. Email from the superintendent to parent, director of elementary education and assistant superintendent dated September 12, 2024 at 9:30 a.m.
7. Email between superintendent and director of elementary education dated September 12, 2024 between 9:31 a.m. and 9:37 a.m.
8. Email from parent to superintendent dated September 12, 2024 at 4:00 p.m.
9. Email exchange between SRO officer and director of elementary education dated September 13, 2024 between 9:53 a.m. and 9:58 a.m.
10. Text exchange between mother and classroom teacher dated September 13, 2024 between 9:47 and 10:05 a.m.
11. Email exchange between parent and superintendent dated September 13, 2024 between 2:56 p.m. and 5:37 p.m.
12. Email from superintendent to director of elementary education and assistant superintendent dated September 13, 2024 at 3:21 p.m.
13. Memo from director of elementary education to assistant superintendent and superintendent dated September 16, 2024
14. Prior written notice for evaluation or reevaluation and request for consent dated September 18, 2024, with parent consent obtained on September 24, 2024
15. Prior written notice for identification and request for consent dated September 18, 2024
16. Notice of Meeting dated September 24, 2024, signed by parent September 27, 2024
17. Email exchanges between parent and speech and language pathologist dated between September 24, 2024 at 3:48 p.m. and September 26, 2024 at 9:23 a.m.
18. Email from previous speech and language pathologist to current speech and language pathologist dated September 30, 2024 at 4:31 p.m.
19. Evaluation Team Report-3-Year Reevaluation dated October 8, 2024
20. IEP meeting notes, dated October 8, 2024
21. Progress report dated October 8, 2024
22. Email exchange between parent and speech and language pathologist dated October 8, 2024 between 8:00 a.m. and 4:18 p.m.
23. Email exchange between principal and parent dated October 8, 2024 between 1:36 p.m. and 1:48 p.m.

24. Email exchange between counselor and parent dated between October 9, 2024 at 10:08 a.m. and October 14, 2024 at 10:27 a.m.
25. Email from parent to director of elementary education dated October 11, 2024 at 11:29 a.m.
26. Email exchange between special education coordinator and director of elementary education dated October 14, 2024 between 8:33 a.m. and 8:37 a.m.
27. Email from principal to special education coordinator and director of elementary education dated October 14, 2024 at 8:34 a.m.
28. Email exchange between superintendent and director of elementary education between October 14, 2024 at 8:57 p.m. and October 15, 2024 at 7:20 a.m.
29. Email between SRO and parent dated October 15, 2024 between 10:31 a.m. and 2:24 p.m.
30. Email between special education coordinator and director of elementary education dated October 15, 2024 between 5:33 p.m. and 5:36 p.m.
31. Email between special education coordinator and parent dated October 15, 2024 between 3:30 p.m. and 5:33 p.m.
32. Email from director of elementary education to assistant superintendent and superintendent dated October 15, 2024 at 5:40 p.m.
33. Prior written notice for identification and request for consent dated
34. District response dated October 28, 2024
35. Written statement of bus caller regarding the September 11, 2024 incident submitted as part of district response dated October 28, 2024.
36. Email from the assistant superintendent to the investigator dated November 4, 2024 at 10:28 a.m.

### **Background Information**

The student is a second grader at the elementary school where he is eligible for special education and related services under the category of developmental delay. The student has been receiving special education interventions in the area of articulation since he was in preschool. He has a medically diagnosed skin condition, and the IEP includes a health care plan and accommodations for that condition. He receives 20 minutes of speech services two days every week to work on two IEP goals regarding articulation. He has met criteria for those two goals.

## **Issues Investigated**

1. ISSUE ONE: Did the district develop an IEP to meet the student's need for adequate supervision to not leave the school premises during the 2024-2025 school year?
2. ISSUE TWO: Did the district follow correct procedures to discontinue special education services from the student services during the 2024-2025 school year?

### **Issue One**

**Did the district develop an IEP to meet the student's need for adequate supervision to not leave the school premises during the 2024-2025 school year?**

### **Applicable Law**

Federal regulations at 34 C.F.R. §300.324, Development, review and revision of IEP state In developing each child's IEP, the IEP Team must consider—1) The strengths of the child; 2) The concerns of the parents for enhancing the education of their child; 3) The results of the initial or most recent evaluation of the child; and 4) The academic, developmental, and functional needs of the child.

### **Analysis: Findings of Fact**

The parent alleged that the student was wrongly sent home as a walker to an intersection that is very busy and dangerous, and he could have lost his life. He was allowed to leave school premises multiple times by the principal's reckless authority, but the principal blamed the parent instead. The parent stated that the teacher and multiple staff members knew he was not a walker and begged for him not to leave as a walker, but the principal told him to leave.

The district responded in their October 28, 2024 response that no members of the IEP team, including the mother, have previously raised concerns about the student's supervision. No concerns were ever raised that he was a risk for elopement from the school building or that the dismissal procedures, if followed, would not work for him. The incident on September 11th was the result of a serious mistake, but it is not an IEP issue. The district took responsibility for the mistake, quickly and deeply examined and improved internal procedures. The district quickly and thoroughly addressed the personnel aspects of the incident. Finally, the district staff have repeatedly and sincerely apologized to the parent and genuinely want to regain her trust.

The IEP dated December 12, 2023 does not include any services, goals or supplementary aids and supports for the student's safety in leaving the building. The IEP does not list a need for special transportation. Present levels of performance and parent concerns do not document a need for safety in leaving the building.

The classroom teacher wrote as part of the October 28, 2024 district response, "There was no concern that [student] would need additional supervision to not leave school premises, such as elopement or trouble getting on and off the bus. [Student] is always a bus rider and I have

had no instances where he could not handle getting to and from the bus by himself or any troubles on the bus.”

The principal reported in the district response dated October 28, 2024 that, “The IEP team did not identify any concerns of [student] needing any additional supervision when leaving the school premises. This has never come up by school personnel or by [student’s] parents. There was no recommendation from SPED coordinators or the district office to develop an IEP to meet any needs for supervision of [student] at dismissal. There would be no need for any accommodations for dismissal supervision. He has always been a very responsible and trustworthy student.” Further, “As soon as we realized [student] walked home instead of riding the bus on 9/11/24, I immediately tried calling [student’s] mother. I repeatedly tried calling that afternoon and also sent an email apologizing and trying to check in to verify [student] had safely made it home.” “Mom emailed me the same afternoon (9/11/24) saying she had no reason to talk to me, she refused to visit with me.” “In an in-person conversation I had later that week with [director of elementary education] later that same week I let [director of elementary education] know I was not having any luck getting Mom to answer her phone or talk to me. She told me at this point it was okay for me to stop calling.”

During the October 31, 2024 interview with the district staff they stated there were no discussions about safety in leaving the building. The staffing notes from the October 8, 2024 Reevaluation and IEP meeting did not document any discussion or decisions about safety of the student leaving the building.

During the October 31, 2024 interview with the district staff they stated there were no other instances during the 2024-2025 school year where the student’s safety when leaving the building occurred.

The parent stated during the November 2, 2024 interview that she was never given a good explanation of how and why the mistake was made and that many staff persons tried to stop the mistake from happening. She stated that this lack of full transparency and any accountability on the behalf of the principal makes it difficult for her to trust the district with her student.

## **Conclusion**

After reviewing the student’s IEP and interview with the parent and district it is found that a significant safety incident occurred with this student and IDEA regulations do not apply in this particular situation. There were no safety concerns identified in the student’s IEPs or reevaluation document. The student did not have a history of leaving or needing additional monitoring. The incident put a student’s safety in jeopardy, but it was a breakdown of district procedures, not a result of the student’s IEP not being appropriately developed or the services not being implemented. Based on the foregoing, *it is not substantiated* that USD #231 developed an IEP that did not meet the student’s need for adequate supervision to not leave the school premises during the 2024-2025 school year.

## **Issue Two**

Did the district follow correct procedures to discontinue special education services from the student services during the 2024-2025 school year?

### **Applicable Law**

Federal regulations at 34 C.F.R. §300.305(e)(1) provides that a public agency must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.

Federal regulations at 34 C.F.R. §300.503 state that written notice must be given to parents before the district proposes to or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

### **Analysis: Findings of Fact**

The findings of Issue One are incorporated herein by reference.

The parent alleged that the district withheld the truth of the events resulting in the student being wrongly sent home as a walker putting the student's safety in jeopardy. She alleged that shortly thereafter the district concluded that the student's special services were no longer needed and finds the timing suspicious, especially after she was told that the student's speech services would not start until late August or early September.

The district responded in their October 28, 2024 response that they followed IDEA procedures in determining if dismissal from speech/language services were warranted following an evaluation. In fact, the district continues to follow procedures by continuing to provide speech/language services since the mother has not provided consent for dismissal.

The IEP dated December 7, 2023 documents the student is eligible for special education and related services as a child with developmental disabilities. The student receives 20 minutes of pull out speech services for articulation twice a week. No supplementary aids or supports are included. This IEP further documents "[student] has a diagnosis of [name of diagnosis] which causes [describes results of condition]. [Student's] needs will be met through a healthcare plan and accommodations."

The IEP dated December 7, 2023 documented that the next reevaluation was due December 12, 2025.

The speech and language pathologist stated during the October 31, 2024 interview with the investigator that the reevaluation was indicated for two reasons, 1) the student was on track to meet the two IEP goals early in the school year, and 2) the speech and language pathologist mistakenly thought the reevaluation was due in 2024 after the IEP tracking system was changed at the beginning of the school year.

Documentation shows that a prior written notice for evaluation or reevaluation and request for consent was provided to the parent on September 18, 2024 and the parent signed consent to

reevaluate on September 24, 2024. The reevaluation plan listed new testing for communication and the use of existing data for hearing, vision, academic performance and communication. Considerations in conducting the evaluation included, "not conducting an evaluation but this option was rejected because the IEP Team feels that more information is needed in order to determine [student's] current level of functioning in the area of speech sound production and language skills."

A notice of meeting dated September 24, 2024 was provided to the mother for a planned October 8, 2024 meeting to discuss 1) your child's academic achievement, functional performance, and educational needs; 2) whether your child has or continues to have an exceptionality; and 3) whether your child needs special education and related services. The parent waived her rights to a 10-day prior written notice to develop, review or revise the IEP for the student on September 27, 2024.

The Progress Report dated October 8, 2024 documents that both IEP goals were met. The speech and language pathologist logs show that the student worked with the student between August 30 and October 8, 2024.

The October 8, 2024 reevaluation report, titled, Evaluation Team Report-3-Year Reevaluation documented that "A reevaluation is needed to determine if [student] continues to qualify and or demonstrate a need for direct speech/language therapy." The report included existing documentation for vision, hearing, academic performance and communication. Speech and language reevaluation information was gathered using standardized assessments, therapy sessions and classroom data and input from the student's teacher. The Summary and Conclusions of the report is, "Based on the re-evaluation information, [student] demonstrates developmentally appropriate articulation skills when compared to same age peers. [Student] also demonstrate developmentally appropriate voice/fluency skills and language skills at this time. [Student] no longer demonstrates a need for speech services to support [student] in the area of articulation skills in order to effectively participate in the general education classroom. It is proposed to dismiss [student] from speech services at this time."

The principal reported in the October 28, 2024 district response that "During [student's] IEP meeting on 10/8/24, Mom attended via speaker phone. She asked the team questions about having [student] evaluated for a 504 Plan. I let her know that our school counselor facilitates all 504 evaluations and I would have our counselor reach out to Mom. I did share with her that [student] would likely be a good candidate for a 504 plan since he currently has an IHP for his [condition]. I asked mom what would be the best way for the counselor to get in touch with her. Mom requested email communication. An hour later after the IEP meeting had ended, Mom emailed me asking for the counselor's contact info. I emailed her back, sharing the counselor's email and phone number."

The staffing summary (IEP meeting notes) from the October 8, 2024 meeting record, "The results of the articulation testing that was completed with [student] were shared. [Student] scores fell in the average range in this testing. Testing around [student] voice and fluency was

also completed and no concerns found in these areas. [Student language was screened. [Student] used age-appropriate grammar and language and no concerns were found. [Student] progress on [student] two current articulation goals was shared. [Student] had met both of these goals and is no longer showing a delay in articulation. [Student] no longer needs specialized training in these areas. The team recommends dismissal from [student] IEP. Mom will be sent a hard copy of the dismissal paperwork to sign. Mom is wanting a 504 plan due to [student] health needs. [Student] currently has an Individualized Health Plan to consider. The school counselor facilitates all 504 requests. The counselor will email Mom with more info on the 504 evaluation process.”

The prior written notice for identification and request for consent dated September 18, 2024 stated, “On October 8, 2024 we met to review the evaluation/assessment data on your child.” The PWN recorded three decisions, 1. “Special education services are not necessary to enable your child to receive educational benefits in accordance with his/her abilities or capabilities.” 2. “... we are proposing a change that results in a decrease or increase of 25% or more of the duration or frequency of a special education service, a related service, or a supplementary and or a service specified on your child’s IEP.” 3. “...we are proposing a change in placement that results in the movement of more than 25% of your 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.” The description of the proposed action is that the student be dismissed from speech/language services. As speech/language goals are met and recent reevaluation information indicated speech and language skills within normal limits. The speech and language pathologists acknowledged that the date of the PWN recording the decisions of the October 8, 2024 meeting is incorrect and the PWN should be dated October 8, 2024.

The mother stated during a phone conversation with the investigator that she spoke with Families Together about concerns with the student not having an IEP and concerns that it was in retaliation to the mother’s actions to discover the truth about the student being dismissed as a walker when staff tried to overrule the principal insisting the student was a walker and to consequences for this incident that put her child’s life in jeopardy. The mother stated that after talking with Families Together she decided to not sign consent to dismiss special education services.

The principal reported in the October 28, 2024 district response that “On 10/14/24 the school counselor let know that Mom had contacted her saying she no longer wanted to pursue a 504 plan. Counselor forwarded me the email conversation that she and mom had.”

The district and parent report that the PWN dated September 18, 2024 regarding the October 8, 2024 meeting was not signed by the parent for consent.

The district and parent agree that the student continues to receive the services from the December 7, 2023 IEP and that IEP continues to be in effect.



## **Conclusion**

When a district or parent suspect that a child is no longer eligible for special education and related services a reevaluation must be conducted. If the IEP team, then determines, using that reevaluation that the child is no longer a child with a disability the district must provide the parent prior written notice of the decision to discontinue services and obtain parental consent before discontinuing services. It is found that the district completed all of these steps. In this case parental consent was not obtained in response to the prior written notice and therefore the services continue. Both the parent and district agree that the services are continuing. Therefore, *it is not substantiated* that USD #231 failed to follow correct procedures to discontinue special education services from the student services during the 2024-2025 school year.

## **Summary of Conclusions/Corrective Action**

1. ISSUE ONE: A violation of 34 C.F.R. §300.324 was not found, based on documentation and interview with parent and district staff. Corrective action is not required.
2. ISSUE TWO: A violation of 34 C.F.R. §300.503 was not found, based on documentation and interview with parent and district staff. Corrective action is not required.

## **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](mailto: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)