

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #259
ON NOVEMBER 4, 2024

DATE OF REPORT: DECEMBER 3, 2024

Background Information

This report is in response to a complaint filed with our office on behalf of a student, -----, by their parent, ----- . In the remainder of the report, the student will be referred to as “the Student” and the parent as “the Parent.”

The Complaint is against USD #259, Wichita Public Schools. In the remainder of the report, the “School,” the “District,” and the “local education agency (LEA)” shall refer to USD #259.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint. A complaint is considered to be filed on the date it is delivered to both the KSDE and the school district. In this case, the KSDE initially received the complaint on November 4, 2024, and the 30-day timeline ended on December 4, 2024.

Allegations

The following two issues will be investigated:

ISSUE ONE: Whether USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student’s IEP during the 2024-25 school year. K.A.R. 91-40-16(b)(3).

ISSUE TWO: Whether USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to offer the appropriate IEP services and denied the Student a free appropriate public education. K.S.A. 72-3429; K.A.R. 91-40-18; K.A.R. 91-40-1(z).

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video on November 18, 2024. The Special Education Director, the IEP Manager, and the Speech-Language Pathologist (SLP) were interviewed on November 26, 2024.

In completing this investigation, the Complaint Investigator reviewed the materials provided by the District. The Parent did not provide any materials. Although additional documentation was provided and reviewed, the following materials were used as the basis of the findings and conclusions of the investigation:

1. Classroom Photos, no date
2. [Student] Implementations, no date
3. Behavior Log, 08/26/24-10/18/24
4. Service Log, 01/19/24-05/21/24
5. Text Messages, 09/20, no year
6. Example of IEP Implementation, 09/06/24-11/07/24
7. Emergency Safety Intervention Parent Notification and Documentation, 03/29/24, 04/03/24, and 04/09/24
8. Email, re: requesting an IEP, 09/20/24
9. Email, re: follow up, 09/26/24-09/27/24
10. Email, re: observation notes, 10/29/24
11. Email, re: [Student] FBA progress and [Agency] info, 11/04/24-11/05/24
12. Observation Notes, 10/07/24
13. Daily Notes, 03/18/24-05/21/24
14. Daily Attendance Profile, 2024-25
15. Goal Progress Notes, 08/23/24-11/08/24
16. Visit Summaries, 08/13/24-11/06/24
17. Contact Log, 08/25/22-11/08/24
18. IEP, 01/11/24
19. IEP and 504 Team Meeting Notes, 01/11/24
20. PWN Signature Page, 01/11/24
21. PWN, 01/11/24
22. IEP Amendment, 03/25/24
23. IEP Amendment Form with PWN, 03/25/24
24. Disciplinary Action Form, 09/20/24
25. Notification of Short-Term Suspension, 09/20/24
26. Notice of Meeting, 09/20/24
27. Meeting Notes, 09/26/24
28. PWN, 09/26/24
29. IEP Progress Report - Annual Goal, 10/16/24
30. Interval and Intensity Data Sheet, 10/24-11/01, no year
31. IEP, 09/26/24
32. Signature Page, IEP, 09/26/24

Background Information

This investigation involved a ninth-grade student enrolled in the District. The Student is currently receiving services as a child with Autism per the Individuals with Disabilities Education Act (IDEA).

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Parent and staff in the District.

1. The IEP, dated January 11, 2024, included the following:
 - a. The Student was in the 8th grade and attending a Special Education School in the District and was identified as a student with Autism.
 - b. The reevaluation date was scheduled for January 10, 2027.
 - c. The Summary of Present Levels of Academic Achievement and Functional Performance for Transition Services were described:
 - i. The Student's "... disability affects [their] skills in all academic, social, and behavioral areas. [The Student] requires a modified curriculum in all areas, including math, reading, and science. [The Student] needs access to an alternate curriculum that focuses on early learning and basic language concepts. [The Student's] basic social skills are significantly delayed when compared to same-age peers."
 - ii. The Student's strengths and needs were described.
 - iii. The Student's postsecondary goals were described in the areas of Training/Education, Employment, and Independent Living Skills.
 - iv. The Student was not on an alternative graduation plan.
 - v. Transition services and the person responsible for implementation were listed in the areas of Instruction, Community Experience, Employment, Adult living and Post-School Training, and Daily Living.
 - d. The Summary of Present Levels of Academic Achievement and Functional Performance and Needs was described in the areas of General Intelligence, Educational: reading, writing, math, social-emotional, health/physical, communication, and other.
 - e. The Student required a Health Care Plan.
 - f. The Parent indicated that "[The Student] can be quite combative and is physically aggressive towards adults as well as peers."
 - g. The most recent evaluation results were considered.
 - h. The Student's behavior impeded their learning, the learning of others, or their ability to access the general education curriculum. Physical aggression and elopement were listed as behaviors.
 - i. "A Functional Behavioral Assessment is not warranted."

- ii. "A Behavior Intervention Plan is warranted."
- i. The IEP Team considered the communication needs of the Student.
- j. The Student required assistive technology, a "Touch screen i[P]hone for [the classroom]."
- k. Adapted Physical Education was not needed.
- l. Parent concerns were addressed, "Behavior plan discussed to help mitigate the number and behaviors and the severity of the behaviors."
- m. Special training was required for teachers and staff, "Staff is trained in de-escalation techniques."
- n. The following Annual Goals were listed:
 - i. Math: "By the next annual IEP [the Student] will show understanding of 1:1 correspondence to ten when related to counting tasks with 60% accuracy on 4 / 5 trials as measured by classroom data," with instruction provided by the special education teacher.
 - 1. "When presented with a set of up to 3 objects, [the Student] is able to match an equal set in 0 out of 2 opportunities."
 - 2. Four benchmarks were listed, each with increasing accuracy percentages.
 - ii. Reading: "By the next annual IEP, [the Student] will identify and show the beginning letter of a 5[-]letter or less word with 60% accuracy on 4 / 5 trials as measured by classroom data," with instruction provided by the special education teacher.
 - 1. The score was listed as 20%, and four benchmarks were listed, each with an increasing accuracy percentage.
 - iii. Communication: "By the next annual IEP, with [the Student's] communication book available to [them], [the Student] will use [their] communication book or device to indicate [their] wants and/or needs when in an escalated state without being accompanied by maladaptive behaviors on 8 out of 10 trial[s] as measured by classroom data," with instruction provided by the SLP.
 - 1. The score was listed as "1 / 10 trials when escalated and without being accompanied by maladaptive behaviors."
 - 2. The four benchmarks listed the same goal.
- o. In the area of Special Education/Related Services, the following information was listed:
 - i. "[The Student] will receive all of [their] educational services in a special day school."
 - ii. "[The Student] will receive direct speech and language services 20 minutes per week, which will be provided in a group or individual setting."

- iii. The Student required transportation as a related service.
 - iv. The Student required behavior accommodations and accommodations for unstructured/unsupervised situations.
 - v. “[The] Student cannot be left alone and must [receive] line-of-sight by a pre-approved designated individual.”
 - vi. A harness and adult attendant care and supervision were listed as vehicle adaptations.
- p. The following Supplementary Aids and Services were listed:
- i. “Work clearly explains what [the Student] needs to complete to be done” to “help facilitate [the Student’s] understanding of the work [the Student] needs to do,” beginning on January 11, 2024, and occurring daily per the assigned attendance center calendar across all school settings for the duration of the school day.
 - ii. “Assignments and tests read aloud to [the Student]” because “[the Student] cannot read directions,” beginning on January 11, 2024, as needed throughout the day at the assigned attendance center for the duration of the school day.
 - iii. “Specific feedback from staff” to “help [the Student] in [the] understanding of tasks/behavior expectations” beginning on January 11, 2024, to occur daily per the assigned attendance center calendar across all school settings for the duration of the school day.”
 - iv. “Separate space for breaks/calming” because the Student “needs space when aggressive towards others,” beginning on January 11, 2024, as needed throughout the day at the assigned attendance center for the duration of the school day.
 - v. “Opportunities to support sensory needs; walks, lights off, quiet time, wheelchair/wagon rides, bear hugs, close proximity to an adult, proprioceptive input” in order “to help maintain sensory regulation in order to maximize ability to participate in [their] school/classroom environment” beginning on January 11, 2024, as needed throughout the day across all school settings for the duration of the school day.
 - vi. “Access to visual supports” to help “[the Student] understand and organize [their environment]” beginning on January 11, 2024, occurring daily per the assigned attendance center calendar across all school settings for the duration of the school day.
 - vii. “Close adult proximity” to help “facilitate academic instruction, self-help skills, transitions and expressive communication” beginning January 11, 2024 occurring daily per the assigned attendance center calendar across all school settings for the duration of the school day.
 - viii. “Modeled expectations” to help “facilitate understanding of expectations” beginning January 11, 2024 occurring daily per the

assigned attendance center calendar across all school settings for the duration of the school day.

- ix. "Access to communication device or book" to help the Student "communicate with staff [their] wants/needs" beginning on January 11, 2024, as needed throughout the school day at the assigned attendance center for the duration of the school day.
- x. The Student was eligible for Extended School Year (ESY) services for regression on academic/education goals.
- xi. The Student required assessment accommodations or modifications.
- q. The Least Restrictive Environment (LRE) for the Student was described as "a special day school setting due to [their] need for increased structure and supports. [The Student] will not have access to general education peers. [The Student's] IEP Team is in agreement that this is [their] Least Restrictive Environment. This placement will be reviewed at least annually."
- r. "[The Student] will not have the opportunity to participate with students who do not have exceptionalities. This includes extra-curricular and non-academic activities."
- s. The potential harmful effects of the LRE were described.
- t. The Student's Behavior Intervention Plan (BIP) listed the following behaviors: throwing, grabbing, pinching, biting, hitting, kicking, scratching, eloping, and screaming. Baseline data indicated the following:
 - i. Physical aggression, four times per week;
 - ii. Hitting, eight times per aggressive behavior;
 - iii. Kicking, ten times per aggressive behavior;
 - iv. Biting, two times per aggressive behavior;
 - v. Elopement, one to two times weekly; and
 - vi. Aggressive screaming, four times weekly.
- u. These behaviors occurred to avoid non-preferred tasks or to gain access to a preferred item, person, or activity.
- v. The following prevention strategies were listed:
 - i. "Communication book or device is always within reach."
 - ii. "Classroom rules and expectations posted around [the] room."
 - iii. "Use of schedule."
 - iv. "Reminding [the Student] [they] can use [their] words if [the Student] wants to be 'all done.'"
 - v. "Encouraging and praising positive behavior."
 - vi. "Social/Emotional Learning lessons."
 - vii. "Break card on desk."

- w. The strategy to teach replacement behaviors was “continual practice on using [their] speech book so [the Student] can indicate [their] wants and needs.” When the replacement behavior occurred, “Given immediate and specific praise [sic].”
 - x. When physical aggression occurred, the Student was:
 - i. “Required to use [their] words to indicate what [the Student] wants before leaving the task (Break).”
 - ii. “Taken to break area if too unsafe.”
 - iii. “Return to the task [the Student] was at once [the Student] is safe again.”
 - iv. “If [the Student] uses [their] words, [their] request should be honored immediately, or as soon as possible so [the Student] trusts that using [their] words will be effective for [them].”
 - v. In the break area:
 - 1. “Staff should immediately tell [the Student], ‘When you are ready, I will start your time.’”
 - 2. “Once [the Student] is quiet and ready, staff should start a timer (5 minutes, example).”
 - 3. “Keep [an] eye on [the Student] but give [them] little attention.”
 - 4. “Once [the] timer goes off, staff reads [a] social story to [the Student].”
 - 5. “[The Student] returns to the activity [the Student] was doing at the time and get[s] back on schedule.”
 - 6. “Repeat as needed.”
 - y. The IEP Manager was responsible for managing the BIP and collecting data, which was collected and analyzed quarterly.
 - z. The Parent signed and consented to the IEP. (D199-D218; D238)
- 2. The IEP Meeting Notes, dated January 11, 2024, described the areas of the IEP that were discussed and the outcomes/next steps. (D234-D235)
 - 3. The Prior Written Notice (PWN), dated January 11, 2024, noted the change in services, the description and explanation of the actions proposed or refused, other options considered, a description of the data used to propose or refuse action, and other relevant factors. (D239-D241)
 - 4. The following Service Log information was collected by the SLP for the Student:
 - a. Goal: Using the communication book or device to indicate wants/needs in an escalated state without the accompaniment of maladaptive behaviors on 8/10 trials as measured by classroom data.
 - i. 1/19/24, 20 minutes in the classroom.
 - ii. 2/2/24, 20 minutes in the classroom.
 - iii. 2/22/24, 20 minutes in the classroom.

- iv. 2/23/24, 15 minutes of communication functions using “visuals and prompting to search for communication book for self-advocacy.”
 - v. 2/28/24, a 20[-]minute observation “utilizing sensory break provided.”
 - vi. 3/1/24, 29 minutes of self-expression of wants/needs using “gestures to point to preferred objects and words approximation of ‘all done’ to indicate disinterest.” Notes indicated that “Staff provided a first/then statement with the noticed [Student] vocalizations and gestures changing in an activity. [The Student] responded well to the phrase and reminder to take a breath.”
 - vii. It was noted that the Student “indicated wants/needs in 1 out of 6 opportunities provided.”
- b. For the same goal, the following data was collected:
- i. 3/22/24, 15 minutes of “Identifying emotions from a field of 2 with visuals.” The notes indicated that the Student performed at “80% accuracy independently” and “used appropriate communication 0/1 to communicate wants/needs before escalation.” Notes indicated that the session ended due to behaviors.
- c. Notes indicated that the goal was amended, “When provided prompting, [the Student] will use communication/visual supports to communicate wants/needs such as a preferred sensory break, discontinuation of activities, and/or self-advocacy phrases in 6 out of 8 opportunities provided to support self-regulation skills as measured by SLP and classroom data.” The baseline was listed as 2 out of 3 opportunities.
- i. 3/29/24, 20 minutes of describing actions with “75% accuracy with models. Requested 2 sensory breaks independently. Remained calm during waiting period provided visuals.”
 - ii. 4/5/24, 20 minutes of choice board. It was noted, “Discussed with staff choices for a choice board.”
 - iii. 4/19/24, 25 minutes of group in which the data noted was “0/1 to communicate finished/upset; Communication book accessible on the table but [the Student] began using actions to communicate wants/needs.”
 - iv. 5/3/24, 5 minutes of prompting for visuals. Notes indicated a “Discontinuation: 0/1 opportunities before pushing materials.”
 - v. 5/8/24, 5 minutes of discontinuation of activities, “0/1 provided modeling.”
 - vi. 5/21/24, 10 minutes of visuals in which the Student “Pointed to no to indicate no participation.”
 - vii. The Student utilized communication/visual supports to communicate wants/needs for self-regulation in 1 out of 4 opportunities. (D15-D16)
5. An IEP Amendment dated March 25, 2024, included the following:

- a. The Summary of Present Levels of Academic Achievement and Functional Performance indicated that in the area of communication:
 - i. “When provided visual/communication supports, [the Student] can navigate these supports independently and or with rare prompting to express wants/needs regarding sensory breaks, preferred activities, etc. when in a regulated state in 2 out of 3 data sessions. When provided access to visual supports, [the Student] can navigate familiar and novel visual communication supports to enhance [their] communication with others prior to becoming escalated.”
 - ii. “[The Student] is provided encouragement and/or prompting to get [their] communication supports/visuals to communicate with others. [The Student] can become upset/escalated quickly which can impact [their] ability to consistently communicate in a safe way for [the Student] and others. When escalated, [the Student] can self-harm, hit, bite, and/or kick others.”
 - b. The Description of Specially Designed Instruction and Related Service indicated that “[The Student] will receive all of [their] educational services in a special day school. *[The Student] will receive direct speech and language services 20 minutes every 4 weeks which will be provided in a group or individual setting.” (D244-D263)
 - c. The Parent consented to the changes on March 25, 2024. (D269)
6. The IEP Amendment form dated March 25, 2024, indicated that the Student’s “direct Speech/Language services will reduce from 20 minutes a week to 20 minutes a month.” The document was signed electronically by the Parent. (D264)
 7. A PWN dated March 25, 2024, noted the change in speech-language services. (D265-D268)
 8. An Emergency Safety Intervention, restraint, was used on the Student on March 29, 2024, twice on April 3, 2024, and on April 9, 2024, for “behavior that presented a reasonable and immediate danger of physical harm to your child or others.” The documentation indicated the Student had a BIP. (D24-D25; D32-D34; D36-D39; D40-D43)
 9. Behavior data was collected on the Student from March 18, 2024 through May 21, 2024. Data was noted with a “-” indicating the behavior was not observed and a “+” indicating the behavior was observed. Tick marks were used to denote the frequency of a behavior.
 - a. From March 18, 2024 through March 29, 2024, nine days of data was collected.
 - i. On four out of eight days in which the data was collected, the Student came to school with a positive attitude and put their belongings away.
 - ii. According to the data collected, the Student followed expectations in 29 out of the 45 time slots over the course of the month.
 - iii. There were 47 instances of physical aggression, not including the day in which it was noted there were “too many” to count.

13. Communication with the Parent from August 21, 2024 through November 8, 2024 was documented in the Special Education Student Contact Log on topics related to the Student's behaviors, the iPad, the Student's hospitalization, staff interventions, and medication. (D195-D197)
14. Photos documented interactions with staff and the Student in a variety of activities from September 6, 2024 through November 4, 2024. Photos also documented the following visual supports for the Student:
 - a. Posters depicting "Independent Work," "Voice Levels," and "When I Feel Angry, I Can" with photos and words.
 - b. A poster with a check box and the word "Task" and a check box and the word "Break."
 - c. A handwritten schedule on a whiteboard depicting the time, the activity, and photos representing the activities. (D8-D12; D20-D21)
15. During the first quarter of the 2024-25 school year, according to the service log, the SLP did not provide services to the Student on two occasions in September: September 13, 2024, and September 20, 2024. It was noted in the log that the Student experienced behaviors on September 27, 2024, and the SLP logged five minutes with the Student. There were no indications that Speech-Language services were provided in October 2024. (D148) In an interview with the Complaint Investigator, the SLP relayed that the Student did not receive all of their Speech service minutes in September. (SLP Interview, P3, 03:41)
16. Behavior data was collected on the Student from August 30, 2024 through October 18, 2024, and indicated the following:
 - a. On-task behavior was collected on five occasions and indicated the Student was on task between 15% of the time and 58% of the time.
 - b. Safe hands, feet, and object behaviors were collected on five occasions and indicated the Student was safe between 15% and 58% of the time.
 - c. Staying in assigned area behavior was collected on five occasions and indicated that the Student stayed in their assigned area between 3% and 46% of the time. (D14)
17. The IEP Manager described in an interview with the Complaint Investigator that the behavior data collection program was new to the District, and there was a learning curve regarding its use. Regarding academic data, the IEP Manager shared, "I only had a couple [of] times where even after trying more than once that I could get [the Student] to actually work with me so I could get the data." According to the IEP Manager, the data collected was shared with the Parent via progress reports. (IEP Manager Interview, P3, 07:17)
18. In an interview with the Complaint Investigator, the IEP Manager indicated that the Student was able to utilize the crash pad as a calming space when the Student was escalated. The IEP Manager said that "the pictures ... on the wall ... some of them are some that we were trying to make [the Student] feel more welcome ... and then some of [them], when [the Student's] upset, [the Student] can choose those activities on those pictures that are on ... visuals that are permanent to the windows. And then the

schedule is one for so [the Student] can know when [they're] supposed to work, when [the Student] has breaks, when specials are, and when [the Student's] supposed to transition to the cafeteria." The IEP manager indicated that the visual supports started when the Student "moved into the room" and the crash pad came shortly thereafter. The IEP Manager described that the alphabet blocks were introduced after a meeting with the Agency. (IEP Manager Interview, P2, 02:23)

19. The IEP Manager shared in an interview that the Staff were trained on non-violent crisis intervention. The Student's main staff was trained in the use of Ukeru mats. According to the IEP Manager, the relevant staff were provided copies of the Student's IEP, goals, and BIP, and they reviewed the information with the IEP Manager. (IEP Manager Interview, P2, 04:16)
20. The District provided a document that described how the staff would respond to the Student in various situations. The document described a combination of de-escalation techniques, structured calm-down periods, and positive reinforcement used to manage the Student's behavior. (D13)
21. On September 20, 2024, a Disciplinary Action Form indicated the Student was suspended for one day for "Assault/Battery on Staff." The Student "hit kicked [sic] and bit staff and a small student." (D271) A suspension letter was sent to the Parent on the same day. (D272)
22. On September 20, 2024, the Parent emailed the District to request an IEP meeting to change the Student's behavior plan, indicating that they would like to meet "as soon as possible, but no later than October 4, 2024." (D51) A Notice of Meeting was generated for a meeting scheduled on September 26, 2024, to discuss possible changes in the IEP. (D293-D294) On that same date, the IEP Manager and the Parent exchanged texts regarding dates and times for an IEP meeting. The IEP Manager indicated they would send the consent to electronically communicate, a waiver of the 10-day notice, and paperwork to invite outside agencies. (D17-D18)
23. The IEP dated September 26, 2024, included the following:
 - a. The Student was in 9th grade and attending a Special Education School. The Student's reevaluation was scheduled for January 10, 2027.
 - b. The annual goal for communication was:
 - i. "By the next annual IEP, when provided prompting to use visual supports/communication book, [the Student] will communicate [their] wants/needs such as a preferred choice of break, discontinuation of an activity, self-advocacy, etc. to improve self-regulation skills in 6 out of 8 opportunities provided as measured by SLP and classroom data."
 1. The score was listed as "2 out of 3 opportunities provided."
 2. There were four benchmarks, each with an increasing number of successful opportunities out of 8. The dates of the benchmarks were: 3/8/24, 5/23/25, 10/11/24, and 1/10/25. (D326)
 - c. The Student's BIP listed the following target and peak behavior examples and non-examples:

- i. "The target behaviors look like [the Student] walking up to others and biting, pinching, hitting, and or kicking them. It can also look like [the Student] throwing objects at them or the walls. The target behavior does not look like [the Student] working, sitting quietly, or following directions of staff."
 - ii. Peak behavior was listed as noncompliance, "Peak behavior can look like [the Student] being disregulated [sic], throwing things, headbutting others or windows and doors to gain escape from the activity. It can also look like [the Student] walking up to others and hitting, kicking, biting, or pinching them to try and escape the activity or safe area."
 - iii. The function of the target behavior was to "Avoid Tangible/Activities." The hypothesis was "to avoid/delay a non[-] preferred task or activity or to gain access to a preferred item, activity or person."
 - iv. The updated baseline was described as follows:
 1. "Physical aggression - 4 times weekly";
 2. "[H]itting - 8 times per aggressive behavior";
 3. "[K]icking - 10 times per aggressive behavior";
 4. "[B]iting - 2 times per aggressive behavior"; and
 5. "Aggressive screaming - 6 times daily (in sync with physical aggression)."
 - v. The description of the replacement behavior was "using multi-modal communication to get [their] wants and needs met without the aggression [sic] taking place."
 - vi. The procedure for addressing instances of peak non-compliance involved the following steps:
 1. "Planned ignorong [sic] unless not safe."
 2. "[R]eminder to use [their] words."
 3. "Take away the audience if possible."
 4. "Once regulated go back to the previous task for completion."
 5. "If [the Student] uses [their] words then the communication must be honored unless unable to do so."
 - vii. The fidelity of the BIP was measured by classroom observations, which were reported to the Parent quarterly by the IEP Manager. (D316-D336)
 - viii. The Parent signed the September 26, 2024 IEP. (D337)
24. Meeting Notes dated September 26, 2024 listed the reason for the meeting as "[The Parent] requested an IEP Review." The Team discussed ignoring maladaptive behaviors, using a timer, adding a personal visual schedule, adding a work/task break schedule, minimizing verbal directives when dysregulated, and "suggestion of bringing the classroom or tasks to [the Student] so [the Student] has less opportunity to elope." The IEP Manager indicated that the "Classroom has a duct tape section in the room that is a

designated space for [the Student]." The Notes listed that "[The Parent] would like the classroom to have more structure for [the Student] to have set areas and to help [the Student] know [their] expectations. [The] Classroom currently has a visual schedule on the board. [The Parent] is requesting a specific schedule posted for [the Student]. Suggestions of 2 or 3 tasks, such as cards for [the Student] to know which task occurs at each time. A developed work system for [the Student] knows what is expected and how long [the Student] is required to be completing each task. [The Parent] suggested [the] use of a timer to provide a visual for [the Student] to see the time left." Additional notes included looking into switching the Student's communication device, adding a work/break schedule, limiting transitions to certain areas. The BIP was reviewed and they "will add a behavior goal after completing the new FBA [Functional Behavior Assessment]." It was noted that the social worker would get consent from the Parent to complete a new FBA. (D295-D296)

25. A PWN dated September 26, 2024, indicated the District proposed conducting a reevaluation, which included a social/emotional/behavioral assessment. Proposed actions were described and explained, and a description of the data used to make the proposal was included. The Parent consented. (D297-D302)

26. A PWN dated September 26, 2024, listed the changes in service:

- a. "Adding supplementary aides for reinforcement system including but not limited to jigsaw puzzles, pictures, movie character, superhero's, kids school songs, photos, and positive praise."
- b. "Added supplementary aide of visual times."
- c. "Added supplementary aide of visual schedule."
- d. "Added supplementary aide of limiting verbal feedback."
- e. "Added supplementary aide of planned ignoring of maladaptive behaviors."
- f. "Added supplementary aide for limiting transitions to areas within the building that are enclosed and secured." (D328)
- g. "The team recognizes that [the Student's] behavior is changing and the team agrees that a new FBA may provide further information to guide the team in supporting [the Student] in finding success. Removed an accommodation for within the behavior plan."
- h. Other relevant factors indicated that the Student "may have some struggles in adapting to some of the new accommodations. However, the potential of [the Student] finding greater success and remaining safe in [their] school environment far outweighs the potential negative effects." (D305-D307;D338-D342)
- i. The PWN was signed by the Parent on November 18, 2024, consenting to the changes. (D342)

27. The Parent recalled that during the September 26, 2024 IEP meeting, some of the Student's accommodations were missing from the IEP. The Parent shared that the accommodations were added back in and that the District was "...very willing and supportive of doing that. We have met Friday and today and I don't know if it's just paperwork errors or some of those things did not make it to the final copy of the

September 26th meeting paperwork. I don't know if they were implemented and just not in the paperwork." (Parent Interview, P3, 07:31) The Parent was unsure as to whether the accommodations were provided after the September 26, 2024 meeting. (Parent Interview, P4, 09:42)

28. In an interview with the Complaint Investigator, the Parent was asked which sections of the Student's BIP were not implemented. The Parent replied, "[The Student] did not have a break card available to [the Student] on [their] desk. Then ... is [the] use of a schedule, and I don't think [the Student] had a schedule available to [them] at that time. Again, the communication book or device is always within reach. ... The response to behavior on this says, 'Take into break area if too unsafe.' And with their new regulations, they cannot put hands on a child unless the child is in [imminent danger to themselves or others]. ... I mean, like a black eye isn't even on the list. It's like broken bones, profuse bleeding is of imminent danger. And so a lot of what we're seeing is their failure to be able to back up their expectations with any kind of firm boundary with [the Student]." (Parent Interview, P5, 12:14) The Parent believed that the District needed to put "... some physical boundaries into place without hog tying. I'm not saying I want [the Student] hogtied or anything like that, but just some firm boundaries of 'This is where you need to be and you need to stay there.' ... And these last two days are all initiated by me ... 'Hey, we need different strategies, we need different supports, we need to be gathering different information to put something together' has not been happening." (Parent Interview, P6, 14:27)
29. The IEP Manager shared how the accommodations from the September 26th, 2024 IEP meeting were implemented, "... We do limit verbal feedback and do the planned ignoring that [the Parent] wanted whenever [the Student] starts getting escalated. We have limited [the Student's] transitions. If [the Student's] having a bad day, we do what [the Parent] asked, and we don't even offer the specials or the times out of the classroom. [The Student] does have a visual schedule that is posted in the room. ... And then there's the visual timers that we use on the staff member's phone or on [the Student's] iPad. And then we also, it's a visual/audio timer that plays [the Student's] favorite song, 'You've got a friend in me,' so [the Student] knows that ... is time to transition." (IEP Manager Interview, P4, 09:51)
30. The IEP Manager shared in an interview with the Complaint Investigator that the implementation of supports were impacted by the Student's behavior. The IEP manager indicated that "Planned ignoring takes a lot of time, and if we are supposed to be doing academics, the planned ignoring winds up being more of the hour than the teaching ... because every time you bring up anything academic or anything that isn't related to [the Student's] iPad or something that [the Student] is requesting, the behavior start[s] all over again." (IEP Manager Interview, P6, 12:47)
31. In an interview with the Complaint Investigator, the Parent shared that they felt like the Student's individual needs (intellectual, developmental, sensory, and communication) were disregarded in the Student's special education plan. They argued that while restraints were not a long-term solution, they should be available as a last resort to prevent serious harm, particularly because the Student's sensory differences and

developmental level impair their ability to protect themselves. The Parent wanted to ensure the Student's safety needs were met and to understand what alternatives existed. (Parent Interview, P6, 16:10)

The Parent described that their understanding was that "physical restraint could only be used in situations in which it is imminent. ... And it includes situations such as physical disfigurement, broken bones. A concussion is imminent. ... I was told that at the moment that [the Student] leaves the building, [the Student's] not in any imminent danger, and thus they cannot physically stop [the Student]. And, according to that definition, when [the Student] is soaking wet in the rain ... 60 degrees isn't terribly cold. I totally know that. But when you're wet for a long time, it kind of is. [The Student's] not in imminent danger and imminent severe danger to [themselves] or others. And so they cannot physically escort [the Student] against [their] will into a dry setting." (Parent Interview, P6, 18:51)

The Parent believed the District was providing supervision to the Student. (Parent Interview, P7, 21:40) The Parent shared that on one occasion, the Student was banging their head on the pavement in the parking lot. Staff were unable to restrain the Student or effectively protect the Student's head with mats due to training restrictions that prevent them from touching the Student once any part of the Student's body was on the ground. This policy, stemming from state regulations against prone or supine holds, left staff powerless to intervene even when the Student was harming themselves. The Parent highlighted the conflict between safety and strict interpretation of the regulations. (Parent Interview, P7, 23:13)

32. The Special Education Director shared in an interview with the Complaint Investigator that the School followed a strict policy on physical restraint, using it only as a last resort when a student is a serious danger to themselves or others. The Special Education Director shared that the new Department of Justice (DOJ) requirements add an extra layer of scrutiny to ensure that restraints are used only when absolutely necessary and in accordance with the nonviolent crisis intervention model. Seclusion was also being phased out. The School emphasized that any physical intervention would be a last resort, used after all other options had been exhausted. (Special Education Director Interview, P2, 02:49) The Special Education Director described that before the DOJ requirements were in place, there were occasions in which the Student was physically restrained. (Special Education Director Interview, P3, 04:32)
33. In an interview with the Complaint Investigator, the IEP Manager expressed that the Student's behavior changed several weeks after the start of the school year. The IEP Manager described that initially, the Student seemed well-adjusted, using their iPad in their own space. However, the Student's behavior quickly escalated to include aggression towards staff and students, attempts to damage furniture, elopement from the building, and self-harm. The school responded by planned ignoring and attempts to de-escalate situations, which was in line with the new DOJ guidelines that restrict the use of restraints and seclusion. (IEP Manager Interview, P3, 04:58)

34. The Parent indicated in an interview with the Complaint Investigator that if the District did not "... have the skills and if FAPE cannot be achieved at this current setting, then they need to be offering the more restrictive setting" The Parent requested that the District look at a local boarding school to support the Student's needs, but the District had not yet responded to that request. (Parent Interview, P8, 26:38)
35. The IEP Manager indicated in an interview with the Complaint Investigator that additional supplementary aids and services discussed at the September 26, 2024, IEP meeting were added to the Student's services on the accommodations and modifications page. The IEP Manager described that there were several people working on the Student's IEP, and the document was not signed by the Parent because "... it just slipped through the cracks that none of us had gotten that signed, because when we had the actual meeting a PWNE was brought to the meeting and not the PWNP, and then we said that we would get it back to [the Parent], and I think it just slipped through the ... cracks." (IEP Manager Interview, P7, 15:41)
36. On September 26, 2024, the Assistant Principal emailed the Parent to share that "[The Previous School] said they didn't require an FBA for a behavior plan at the time so there is not one for [the Student] so having an actual FBA done is a step in the right direction." (D52)
37. In an interview with the Complaint Investigator, the Parent shared, "One of the things that was brought to their attention and my attention back in September was that [the Student] did not always have a communication device, a nonverbal way to communicate [their] wants and needs with [the Student]. And I will be honest, I think it's hit and miss still at this point. Some of the reasoning ... is because [the Student] uses [their] communication book as a weapon and throws it at people, which makes it difficult. Other things in place are visual schedules first. Then scheduling the things that [the Student] needs that help [them] to regulate and maintain [their] anxiety in the classroom." (Parent Interview, P1, 02:35)

The Parent continued, "... in the beginning, [the Student] wasn't in a classroom at all. So I don't think [the Student] had it available really at all to [them]. And that was for the first seven weeks of school until they created a private classroom for [the Student] ... which I think it's more often available to her. But if [the Student] is eloping and moving away from it, it's not always taken when [they're] in a new location." (Parent Interview, P2, 04:25) The Parent did not recall who told them the Student did not have access to the communication book. (Parent Interview, P2, 05:29)

38. The Board Certified Behavior Analyst (BCBA) described the following in their observation notes dated October 7, 2024:
 - a. Staff provided access to a calming space.
 - b. The Student engaged in preferred activities/reinforcers.
 - c. Staff attempted to address sensory needs.
 - d. Staff attempted to engage the Student with a puzzle/academics.

- e. "[The Student's] staff were new and it appeared they were not trained on [the Student's] BIP or tasks"
 - f. "I did not observe [the Student] having access to [their] communication book. I checked [their] backpack and I only found a stack of family pictures in a ziplock bag. Does [the Student] have access to a communication book? What was offered was several poster sized communication boards for [the Student] to use. [The Student] did not approach the communication boards when [the Student] was in the classroom."
 - g. "I did not observe staff using First/Then being used [sic]."
 - h. "I did not observe anyone taking data during the school day. I too was unable to take frequency data throughout the day due to [the Student] engaging in dysregulated behavior most of the day." (D71-D73)
39. In an interview with the Complaint Investigator, the IEP Manager shared that the Student used an iPad and communication books. The books were usually kept in different places in the classroom, but sometimes another student took them. On the day of the BCBA observation, the books were out of sight, and the staff working with [the Student] that day were unfamiliar with their usual locations. As a result, they couldn't find the communication books. (IEP Manager Interview, P5, 11:51)
40. An IEP Progress Report dated October 16, 2024 indicated the following:
- a. Math: Progress was made toward 30% accuracy and 45% accuracy. For 50% accuracy, progress was not made "due to refusal and behaviors." The 60% accuracy, "... will be addressed in December."
 - b. Reading: Progress was made toward 30% accuracy and 45% accuracy, but the annual goal may not be met. 50% accuracy was not met "due to refusal and behaviors."
 - c. Communication: This goal was not "target[ed] this quarter" for 3 / 8 opportunities or 4 out of 8 opportunities and was not met in 5 out of 8 opportunities or 6 out of 8 opportunities. (D303-D311)
41. From October 24, 2024 through October 31, 2024, data was collected on the Student's rate of hitting, biting, kicking, and screaming. All of those behaviors occurred together on 16 different occasions over the course of six days. Biting did not occur on 17 other occasions in which the other behaviors occurred. (D312-D313)
42. On October 29, 2024, the Assistant Principal emailed District Personnel to describe that there was frequent communication with the Parent and that the Student struggled with getting on and off the bus. The Assistant Principal indicated that the Student's personalized space and consistent routine were contributing to the Student's progress. The Assistant Principal shared that an assistant provided valuable support for the Student and that the next step was to integrate more academics into the Student's day because they were currently practicing tasks and breaks. (D60)
43. On November 4, 2024, the Parent emailed the District to request an update on the FBA, "... it has been over 9 weeks this school year that [the Student] has been exhibiting these behaviors. I do not get daily or weekly updates as promised" That same day

the Assistant Principal responded via email, "We are in the middle of [the Student's] FBA. [The School Psychologist] or [the School Social Worker] will contact you to schedule the FBA meeting. [The IEP Manager] will be able to answer your data questions. Our district[-]wide behavior collection system has been down a few weeks which could be why you haven't seen it. [IEP Manager], can you make sure [the Parent] is getting data daily?" (D62-D64)

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP during the 2024-25 school year. K.A.R. 91-40-16(b)(3).

According to 34 CFR §300.323(a) and K.A.R. 91-40-16(b)(3), an IEP must be in effect for each exceptional child at the beginning of each school year and be accessible to each teacher and provider who is responsible for its implementation.

The Parent alleged that during the first twelve weeks of school, the Student had not been assigned to a classroom but spent the days either in the hallway refusing to move or in a private classroom. The Parent further alleged that the School failed to implement behavior supports and structure that kept the Student in the classroom. The Parent stated that the Student has "maladaptive behaviors to seek attention and gain control of [their] environment" and had "eloped from the building numerous times."

The District indicated that "... it was in violation of state and federal regulations implementing the IDEA in part in implementing the Student's IEP during the 2024- 2025 school year by not providing the student their anticipated services for the entirety of the student's total monthly speech/language service minutes for two months; the district has offered to [the] parent that it will make-up 40 minutes of speech/language. The school also made procedural and clerical errors and for which the school currently is working to correct and will be re-training staff." (D1)

"Accommodations provided to the student were per [the Student's] IEP, including those the team discussed and added at the 9-26-24 meeting. The school failed to present the parent with the PWNP at the conclusion of the 9-26-24 meeting but presented the parent with a PWNE at that time for the FBA to be conducted, which the team believed was necessary before reviewing and possibly revising the student's current BIP. While the team reached consensus about implementing the new accommodations, the school was in error not to provide the parent with a PWNP regarding the IEP amendment; the school has followed up by asking the parent for their consent to implement the accommodations per the 9-26-24 meeting (see email). Training will be provided to the staff so that they understand in the future to request consent for IEP items requiring consent before implementation, which is included in the Proposal to Resolve provided to KSDE." (D1)

The District believed that they implemented the Student's "... current IEP during the 2024-2025 school year with those exceptions to which the district has stipulated ... and worked with the parent as a team to address the student's behavioral needs, including elopement. Altogether, the team has met and revised the IEP, consulted outside resources, and is in the middle of conducting an FBA to help inform the team as to the function(s) of specific behaviors and what they should include in the student's IEP to meet [their] needs in light of [their] circumstances. The school is committed to correcting any errors and/or making up any missed services. Staff training provided regarding procedural/clerical errors should lessen the chances of these types of errors occurring in the future." (D4)

The District described that "The meeting notice for that meeting sent on 12-13-23 contained a typographical error showing the meeting on 1-8-24, but everyone came to the meeting on 1-11-24 and no corrected [Notice of Meeting] (NOM) was found." (D5)

The IEP Amendment, dated March 25, 2024, stipulated a reduction in speech-language service minutes from 20 minutes per week to 20 minutes per month. However, service logs indicated the Student did not consistently receive these services, even at a reduced frequency. The SLP acknowledged that the Student did not receive all of their minutes in September 2024, and there was no record of speech-language services provided in October 2024. Additionally, the Student's communication book, which should have been "always within reach," was, at times, unavailable for the Student to use. The primary challenge in implementing the Student's BIP was the "planned ignoring," which impacted the School's ability to provide academic instruction.

There were procedural errors with Prior Written Notices (PWN) that were not properly signed by the Parent, and the September 26, 2024 IEP did not contain the additional supplementary aids and services documented in the PWN.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is substantiated* that the District failed to consistently implement the Student's IEP.

Issue Two

Whether USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to offer the appropriate IEP services and denied the Student a free appropriate public education. K.S.A. 72-3429; K.A.R. 91-40-18; K.A.R. 91-40-1(z).

When creating or reviewing an IEP, the team must follow these guidelines:

- a. Use state and district test results to inform the IEP.
- b. Evaluate the student's needs in all areas, including behavior, assistive technology, and accommodations.

- c. Include any needed support in the IEP to ensure the student receives a free appropriate public education (FAPE). K.S.A. 72-3429, K.A.R. 91-40-18, and 34 CFR §300.320

A "free appropriate public education" and "FAPE" means special education and related services that meet the following criteria:

- a. Are provided at public expense, under public supervision and direction, and without charge;
- b. Meet the standards of the state board;
- c. Include an appropriate preschool, elementary, or secondary school education; and
- d. Are provided in conformity with an individualized education program. 34 CFR §300.17 and K.A.R. 91-40-1(z)

The Parent alleged that the School was unable to maintain a safe and orderly learning environment for the Student and asserted that the situation impeded the Student's ability to receive an effective education. The Parent stated that the District should implement a behavior intervention plan (BIP) that will provide a FAPE, including the use of physical restraint and consider a more restrictive setting if needed.

During the 2023-24 school year, the District used physical restraint as an emergency safety intervention for the Student. Since then, the United States DOJ has issued a directive that prohibits the District from using physical restraint except for imminent risk of harm (Settlement Agreement between the United States of America and Wichita Public Schools, July 2, 2024). In this case, the Student did not engage in behaviors that constituted "risk of substantial physical harm." The use of physical restraint was not part of the Student's IEP during the complaint period and the District was not required nor authorized to implement this type of intervention for the Student.

The District indicated that "... it is in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) by failing to implement the Student's IEP speech and language services in their entirety, this [sic] denying the student [their] FAPE ... but did not fail to offer the appropriate IEP services for the remainder of the time." (D5) The Student's progress report dated October 16, 2024, indicated that the communication "goal was not target[ed] this quarter" and the Student had not made progress toward the goal.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it substantiated* that the District's failure to provide speech and language services denied the Student a Free Appropriate Public Education as required by law.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. A violation occurred in the following area:

- A. Federal regulations at 34 CFR §300.323(a) and K.A.R. 91-40-16(b)(3) specify an IEP must be in effect for each exceptional child at the beginning of each school year.

In this case, the evidence supports the finding that USD # 259 did not provide 40 minutes of speech and language instruction to the Student.

Based on the foregoing, USD # 259 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD # 259 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 CFR §300.323(a) and K.A.R. 91-40-16(b)(3) and provide the required 40 minutes of missed speech and language instruction.
2. Within 15 calendar days of the date of this report, USD # 259 shall also submit the corrected Notice of Meeting(s) found in error during the District's internal investigation.
3. Further, by February 1, 2025 USD #259 shall submit a written statement of assurance to Special Education and Title Services (SETS) that the District's practices and procedures for IEP implementation have been reviewed and revised as appropriate to be responsive and compliant with evaluation procedures of the Individuals with Disabilities Education Act (IDEA) and the Kansas Special Education for Exceptional Children Act.

Tania Tong, Licensed Complaint Investigator

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f).

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

- (A) The issuance of an accreditation deficiency advisement;
- (B) the withholding of state or federal funds otherwise available to the agency;
- (C) the award of monetary reimbursement to the complainant; or
- (D) any combination of the actions specified in paragraph (f)(2)