

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES  
REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #340 JEFFERSON CITY SCHOOLS  
ON NOVEMBER 13, 2024  
DATE OF REPORT: DECEMBER 13, 2024

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

The complaint is against USD 340 Jefferson City Public Schools. It is noted that Keystone Learning Services interlocal provides special education services for USD 340 Jefferson City Public Schools. In the remainder of the report, only USD 340 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 November 13, 2024, and the 30-day timeline ends on December 13, 2024

### **Evidence Reviewed**

During the investigation, the Complaint Investigator, Gwen Beegle, reviewed all evidence and documentation, which was provided by both the district and the complainant(s). Interviews were held with the following district personnel: Doug Anderson (Special Education Director), Belinda O’Dell (Assistant Special Education Director) and Wes Sturgeon (Principal) on December 3, 2024. In addition, the special education director was contacted November 19, 2024 about the complaint. The parent was contacted on November 18, 2024, to clarify the concerns of the complaint and verify the IDEA issues, and the parent was interviewed on December 5, 2024. Emails were exchanged with the parent and the district from November 20 to December 10, 2024. The following documentation and information were used in consideration of the issue(s).

#### **Student information and related documents**

1. The student’s reevaluation report dated February 1, 2023
2. Prior written notice dated February 6, 2023, for a meeting on February 6, 2023 to change the IEP including substantial change in placement and material change in services signed by the mother giving consent on February 8, 2023

3. The student's IEP dated February 6, 2023
4. Prior written notice dated April 25, 2023, to review evaluation data and change the IEP including a material change in services and a substantial change in placement signed by the mother giving consent on May 1, 2023
5. Agreement to amend the student's IEP between meetings dated April 25, 2023, and signed by the mother giving consent on May 1, 2023
6. Progress report for the student with quarterly entries dated October 13, 2023, through December 20, 2023.
7. Team meeting notes dated January 31, 2024
8. The student's IEP dated January 31, 2024
9. Prior written notice dated January 31, 2024, for a meeting on January 31, 2024, to change the IEP including substantial change in placement and material change in services signed by the mother giving consent on February 15, 2024
10. Progress report for the student with entries dated March, 2024 (goal 6 only) and May, 2024 (all goals).
11. IEP amendment dated August 13, 2024, including rubric for determine eligibility for alternate assessment for students with most severe disabilities.
12. Team meeting notes dated August 13, 2024
13. Daily summary (morning report) attendance report for the student dated November 22, 2024
14. Student and staff schedule dated September 12, 2024
15. Student schedule, 2024-25 school year
16. Speech language therapy attendance form, 2024-25 school year
17. Occupational therapy service log, 2024-25 school year
18. Text from S. Caldwell to the mother dated November 13, 2024

#### **Staff training and related documents**

19. Certified Staff Inservice 2024, August 1st 8:00 a.m. to 4:00 p.m.
20. New Teachers and Paras Orientation dated August 2, 2024, 8 a.m. to 4 p.m.
21. New Para Monthly Orientation Agenda, Last Thursdays, 8:30 a.m. to 3:00 p.m.
22. BCBA training notes, undated document referring to staff training on October 14, 2024, and November 11, 2024
23. Fall 2024 Para Inservice (presentation slides)
24. Fall 2024 Certified Staff Inservice (presentation slides)

25. SLP statement regarding staff training, undated
26. De-escalation curve, undated
27. Work systems one page description, undated
28. Paraprofessional assignments to minimize the impact of a vacancy

**Staff materials**

29. Letter to parents regarding long term substitute dated August 14, 2024
30. Jeff West Team Members (list of classroom staff)
31. Kay Wheeler (SPL) Application and Resume
32. Rebecca Wilson Application and Resume
33. Melissa Strawn Application and Resume
34. Jessie Stitt, Application
35. Stacey Fleeker Resume and Professional License - Teaching
36. Sherry Caldwell Application and Professional License - Emergency Substitute Teacher
37. Tammy Scott Application
38. Hana Marie Dreiling Application and Professional License - School Psychologist
39. Rebecca Woolbert Application and Resume
40. Nicole Presnell Application
41. Neely Gower Resume
42. Matt Moher Resume
43. Laurel Lidman Resume
44. Marlene Jolly Application
45. Jamie Dempewolf Resume
46. Brianna Cobb Application
47. Sharon Bingham Application
48. Teri Base Application and Resume

**Background Information**

The student is a 7 year old attending second grade who, in 2018, was diagnosed as experiencing autism spectrum disorder, global developmental delay, and mixed receptive-expressive disorder. The student attended the Tiny K program before transitioning to ECSE services as a student with autism and attended Kindergarten in the district for half of the school day at the time of re-evaluation in 2023. The reevaluation found that the student needed support to engage in classroom activities like play and to follow the routine and

schedule, needed to develop receptive and expressive language including to use an assistive communication device, and needs in the adaptive behavior domain such as handwashing and putting on and taking off a coat. At the time of the evaluation, the IEP team continued a shortened school day, adding the lunch period to the schedule. The student's placement is in the district's elementary school, in a special education classroom and general education classroom settings.

### **Issues Investigated**

1. **ISSUE ONE**: Did the district implement the student's IEP, specifically to provide special education, related services, attendant care, and placement as identified in the IEP?
2. **ISSUE TWO**: Did the district provide adequate staff qualified to implement the IEP, including having the ability to understand the student's disability, communication, and to provide the IEP services?
3. **ISSUE THREE**: Did the district develop an IEP designed to meet the needs of the student in light of their disabilities?

### **Issue One**

Did the district implement the student's IEP, specifically to provide special education, related services, attendant care, and placement as identified in the IEP?

### **Applicable Law**

Federal/State statutes and regulations at 34 CFR 300.39 define 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. Federal regulations at 34 C.F.R. 300.503(a) require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability. 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 has failed to implement the student's IEP due to staff shortages that have required the student to remain in the special education classroom rather than follow the scheduled placement in the student's IEP. The parent alleged that the district didn't provide proper care to the student and that the district was unable to provide the student's special education and related services as required by the IEP.

The district replied: "The student's IEP did not require "attendant care" support but all related services were regularly provided and/or adequately staffed to provide. Time out of schedule does not mean that services were not provided. When the student is in an emotional state that does not enable him to attend class he still receives instruction in communication strategies, self-regulation, and sensory desensitization. A review of attendance and staffing data indicates that the student received services in the resource room between 10:50-11:30 rather than with para support in the general education classroom as specified on the IEP. There are no accurate explanations for missed class periods so we must assume that every class period since the beginning of the year, minus the days that the student was absent (11 days) were not provided as required on the IEP. That is 1600 minutes (40 class periods) in the general education classroom missed due to staff absences, vacancies or the student's inability to attend due to sensory issues (refuses to go to class). The details of unscheduled interventions (de-escalation) are not documented so the impact of such interventions are impossible to support or deny."

The district offered to resolve this issue: "We will offer compensatory education by providing additional support in general education classes after his typical departure time by extending his day, and/or in summer programs in which general education students attend, or in other options agreed upon by the IEP team. The IEP team will make the decision regarding the number of minutes needed to compensate for these missed minutes for a time not to exceed 1600 minutes."

### **Findings**

The district reported and documents showed that no attendant care was included on the student's IEP. Special education support was scheduled for recess, lunch and other nonacademic activities.

The student's IEP dated January 31, 2024, included goals in the following areas (in brief): (a) use speech or AAC device to request preferred items, (b) complete interverbal tasks, (c) match, point to alphabet letters, (d) count to ten, (e) make sets of five objects, (f) use scissors, and (g) engage in parallel play. The student's accommodations included using LAMP on an Ipad, visual

schedule, visual timer, modified reading curriculum, modified math curriculum, sensory breaks and sensory time before activities.

Two IEP amendments occurred. On April 25 2024, the IEP was amended to include Extended School Year (ESY) for the student during the summer, 2024 due to his lack of progress toward his IEP goals, according to the PWN dated April 25, 2024. On August 13, 2024, the IEP was amended to review the criteria for and to qualify the student for alternate assessment. The student was rated as having the most significant cognitive limitations in every category of the Kansas Alternate Assessment (DLM) for Students with the Most Significant Disabilities.

The IEP dated January 31, 2024, included the following special education and related services to continue through January 30, 2025: pull out speech language 20 minutes three times a week; pull out occupational therapy 20 minutes two times a week; pull out social work 20 minutes, one time each four weeks; and social work consult 15 minutes, one time each week. Special education and related services included through the end of the 2023-24 school year included pull out core instruction for reading and math 210 minutes, five times a week and special education support in general education settings for lunch, specials, recess and social emotional learning 125 minutes, five times a week. Along with the 20 minutes of related services daily, the student would receive 355 minutes of special education and related services daily.

Beginning August 16, 2024, through January 30, 2025, according to the IEP dated January 31, 2024, the amount of services changed to pull out core instruction for reading and math 165 minutes, five times a week and special education support in general education settings for lunch, specials, recess and social emotional learning for a total of 180 minutes, five times a week. Along with the 20 minutes daily of related services, the student would receive 365 minutes of special education and related services daily.

The parents and the district agree that the IEP services were not provided as described on the IEP. The parents and the district agree that the student did not receive time in general education as scheduled.

The student's daily schedule showed an attendance day of 7:55 a.m. to 1:30 p.m., with morning activity (20 minutes), recess (30 minutes), lunch (30 minutes), and specials (40 minutes) totaling 120 minutes in general education settings each day of an attendance schedule of 335 minutes. Follow up questions to the district via emails dated December 8 and 9, 2024 verified that this reflected the student's current schedule in general. According to an interview with the principal, the student began his schedule in the general education classroom each day till about 8:20 a.m. In the interview, the principal stated that the school staff were flexible in working with the student to get him to attend general education activities and that his behavior interfered with standard scheduling. In an email to the investigator, the principal stated that neither the afternoon "free time" period (15 minutes) nor the story time (30 minutes) occurred in general education.

The BCBA training notes provided by the district showed that the provider believed that the student's schedule in general education was 120 minutes daily: "His inclusion times would have been the same as they are now...going into his second grade class until 8:15, recess from 10:30 - 11:00, going to a first grade classroom for Science/SS/SEL from 11:00 - 11:20, lunch, and specials from 1:00 - 1:30."

The district reported in its response that the student did not go to his general education classroom as scheduled from 10:50-11:20 a.m. (30 minutes) each day for an undetermined number of weeks during the 2024-25 school year, with an assumption that each of these scheduled periods were missed by the student except when the student was absent from school.

The speech language therapy attendance form for the 2024-25 school year showed that the student did not receive speech language services three times a week (scheduled Monday, Tuesday, and Thursday). For the 12 weeks reported, the student received speech language services three times a week 5 times, two times a week 4 times (4 missed sessions) and one time a week 3 times (6 missed sessions). Student absences or no school days accounted for 8 of the 10 missed sessions.

Occupational therapy service logs for the 2024-25 school year showed that occupational therapy was provided one time a week for 10 of the 14 weeks reported. Student absences accounted for three missed sessions and staff unavailability for one missed session.

A statement provided by the social worker stated that the social worker provided one-time weekly indirect service to the student's classroom staff and one time monthly direct services to the student to gauge his social interaction with peers and to monitor progress.

Progress reports for the IEP dated January 31, 2024 showed that the quarterly reporting was completed for all 7 IEP goals in May, 2024 and only one goal (goal 6) had progress reporting in March, 2024. In each rating, the district answered "yes" to the question: "Is progress toward the annual goal adequate to achieve goal?"

## **Conclusion**

In this case, the student's IEP in place for the current school year required the district to provide 180 minutes of special education support in general education settings, including the general education classroom. The district acknowledged that the student missed one scheduled general education period (30 minutes) each day, and documents and interviews revealed that the student missed an additional 30 minutes of time in general education each day. Therefore, it is found that the district did not provide the required amount of service during the current school year.

Additionally, according to documentation submitted by the district, the related services in the IEP (speech language 20 minutes 3 times a week and occupational therapy 20 minutes 2 times a week) were not provided in total. Two speech language sessions were missed (not due to student absences or unavailability) and only one rather than two OT sessions was scheduled

weekly and one session was missed due to staff unavailability, accounting for 15 missed OT sessions.

Based on the foregoing, *it is substantiated* that the district failed to implement the student's IEP, specifically to provide special education, related services, and placement as identified in the IEP. *It is not substantiated* that the district failed to provide attendant care to the student.

## **Issue Two**

Did the district provide adequate staff qualified to implement the IEP, including having the ability to understand the student's disability, communication, and to provide the IEP services?

### **Applicable Law**

Federal regulations at 34 C.F.R. 300.156(a) require public agencies to ensure that children with disabilities are provided special education and related services by appropriately and adequately prepared and trained personnel who have the content knowledge and skills to serve children with disabilities.

Federal regulations at 34 C.F.R. 300.156(c) require that each special education teacher providing special education services has obtained full State certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher and holds at least a bachelor's degree.

Under some circumstances if a fully certified individual is not available, school districts are permitted to use emergency certified personnel. According to K.A.R 91-31-34(a)(4): "If a substitute teacher holding a valid Kansas substitute teaching license is not available, the education system shall use a person who holds a baccalaureate degree and an emergency substitute teaching license or certificate. An education system shall not allow a person who holds a baccalaureate degree and an emergency substitute teaching license or certificate to teach for more than 45 days in the same assignment."

In addition, in Kansas there is a tiered paraprofessional training requirement that describes the number of hours of professional development that must be provided to persons employed as paraprofessionals based on the number of years of experience working as a paraprofessional. Paraprofessionals with three or fewer years of experience must have a minimum of 20 hours annually while paraprofessionals with more than three years of experience must have 10 hours of professional development annually.

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

The findings of Issue One are incorporated herein by reference.



The parent alleged that the special education staff have repeatedly been replaced during the past two school years resulting in the failure of the staff to be appropriately prepared to provide special education, personal care, and related services to the student. The parent alleged that special education staff reported to the parents that they were left alone with no supervision and no support in the classroom. The parent alleged that a new paraprofessional accompanied the student when dismissed from school to his parent, when both the child and the paraprofessional appeared to be emotionally distressed. The parent alleged that upon returning home, the parent found a large deep bruise on the student's buttock in the shape of the student's boot print. The parent alleged that the school staff reported that they had toileted the student that day, and that in the past two years at the school, the staff had never toileted the child at school. The parent alleged that the student can communicate his protest during toileting.

The district responded: *"A multidisciplinary team was assembled to create and implement the complex elements of this student's IEP. Members of the team include a behavior specialist BCBA; speech language pathologist, occupational therapist, social worker in a consultation role, and teachers and paraprofessionals. Everyone with an educational need to know has access to the student's IEP and the paraprofessionals and sped teachers have received special training in positive behavior support and deescalation. In collaboration these team members have created and implemented educational task baskets, a multimodal communication system, and sensory diet to provide access to the curriculum and help the student navigate his day. . ."* The document entitled Jeff West Team shows that vacancies were filled relatively quickly and we maintained a staff to student ratio that provided the opportunity to cover required sped minutes. The documents in staff credentials show that most of our team members were licensed for the position in which they serve. All staff members at Jeff West Elementary participated in de-escalation training based on CPI standards. The district has access to certified CPI trainers on staff . . . All paraprofessionals attend an orientation training within their first month on the job. This included instructional strategies, behavior management, and confidentiality etc. . . The related service providers (OT, SLP, BCBA, and SW) provided ongoing support and strategies to develop materials and to meet the sensory and communication needs of the student. . . There are times during the day that the student does not have the emotional energy to fully participate in his schedule. Strategies are employed to help him return to a cooperative state but the time period of these out-of-schedule experiences and the team's responses are not documented.

The district proposed the following: *"Resolution: Implement a recording system that accurately reflects the implementation of all services and the student's time in schedule. Notify the parents daily and the IEP team will make a decision regarding the circumstances under which a meeting will be scheduled for time out of the schedule or lack of progress on a goal."*

## Findings

The parent reported that the staff turnover affected the student's education this school year. The district provided documentation that the emergency substitute teacher was replaced with a fully qualified teacher when that teacher was hired (October 23, 2024).

Upon request for staff qualifications and credentials, the district provided information such as job applications, resumes and licenses for 20 individuals.

The district listed the following certified or licensed staff members and their direct current or former roles in the student’s classroom.

Neely Gower Special Education Teacher Professional License # 9135895292 Building Administrator K-9 Elementary K-9 Master of Education Administration Date-of-Hire: 10/23/2024	Sherri Caldwell Emergency Substitute Teacher License Number: 9492955873 Date-of-Hire: 08/02/2022 Date-of-Separation: 10/20/2024
Rebecca Woolbert Board Certified Behavior Analyst (BCBA) License # LBA 00439 Bachelors of Psychology Masters of Applied Behavioral Science Date-of-Hire: 07/24/2023	Stacy Davis Occupational Therapist License # 1701063 Date-of-Hire: 08/01/1998
Kim Wheeler Speech Language Pathologist License/Registration # 2496 Date-of-Hire: 08/07/2003	Matt Mohr Certified Occupational Therapy Assistant Certified Occupational Therapist Assistant License # 18-01623 Date-of-Hire: 08/05/2019
Hana Dreiling School Psychologist License # 2463157577 Date-of-Hire: 08/01/2013	Jamie Dempewolf Social Worker License # LMSW 12851 Date-of-Hire: 08/01/2023

The district reported that the following current or former staff provided paraprofessional services in the classroom.

<p>Brianna Cobb Paraeducator for #340 Elementary 2023-2024, transferred to JDLA for 2024-2025. 11/11/2024 temporarily transferred to #340 elementary due to resignations from (Bingham and Scott) Em. Sub. License # 6897667765 Date-of-Hire: 04/03/2024</p>	<p>Melissa Strawn Nurse Aide Certification # 154889 Nursing Support / Paraprofessional Date-of-Hire: 11/21/2024</p>
<p>Teri Base Paraprofessional Date-of-Hire: 11/18/2024</p>	<p>Kayleigh Osborn Paraprofessional Date-of-Hire: 8/5/2024</p>
<p>Sharon Bingham Paraprofessional Date-of-Hire: 01/12/1994 Date-of-Separation: 11/01/2024</p>	<p>Rebecca Watson Paraprofessional Date-of-Hire: 08/05/2024 Date-of-Separation: 10/22/2024</p>
<p>Tammy Scott Paraprofessional Date-of-Hire: 09/05/2023 Date-of-Separation: 11/01/2024</p>	

The district provided an additional list and credentials of persons who support the classroom in the case of absences or vacancies: Stacy Fleeker (Special Education Teacher), Jesse Stitt (Paraprofessional, BA in Social Work), Marlene Jolly (Paraprofessional), Nicole Presnell (Paraprofessional) and Laurel Lidman (Paraprofessional).

The district reported that all paraprofessionals receive orientation training within one month of their hire and the district provided content documentation on de-escalation, confidentiality, behavior support and specialized instruction. The district reported that paraprofessionals meet monthly for 3 hours of professional development and provided an example agenda.

The district provided documentation in the form of BCBA notes that paraprofessional staff received in classroom coaching on student specific needs and all staff received de-escalation training October 14, 2024 and the BCBA reported extensive coaching of the Emergency Substitute Teacher on student specific needs (language, assistive communication device, transitions, curriculum and specialized instruction). The BCBA reported providing training on structured learning to the classroom staff on November 11, 2024.

The district provided documentation in the form of the SPL therapist's statement that the classroom staff were trained in student specific needs such as the LAMP, visual schedules and timers, first/then boards, token boards, reinforcement and prompts, and evidence-based practices for students with autism.

## **Conclusion**

In this case, the district provided documentation that the classroom personnel were qualified to hold the positions for which they were employed. An emergency substitute was in place at the beginning of the 2024-25 school year and was replaced with a fully qualified educator. The paraprofessionals were provided initial orientation (6 hours), monthly professional development (3 hours) and in classroom student specific training. Based on the foregoing, *it is not substantiated* that USD #340 failed to provide adequate staff qualified to implement the IEP, including having the ability to understand the student's disability, communication, and to provide the IEP services.

## **Issue Three**

**Did the district develop an IEP designed to meet the needs of the student in light of their disabilities?**

## **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 of self or others, the need for braille or the impact of limited English proficiency, the child's communication needs, and the need for assistive technology.

Additionally, under 34 C.F.R. § 300.324(b), IEP reviews and revisions are appropriate to address, among other issues: any lack of expected progress toward meeting the annual goals; the results of any reevaluation; information about the child provided to, or by, the parent; the child's anticipated needs; or other matters. Other matters can include behavior that leads to short term removals from schooling, with the potential to affect the student's progress or free appropriate public education.

Recent OSEP (2022) guidance states: "frequent use of short-term or informal removals of children with disabilities may indicate that the child's IEP does not appropriately address their behavioral needs. . . School staff should be aware of, and gauge the need for and effectiveness of, behavioral interventions when implementing exclusionary disciplinary measures that continually or significantly interfere with a child's instruction and participation in school activities (e.g., a pattern of office referrals, repeatedly sending a child out of school on "administrative leave" or regularly requiring a child to leave the school early and miss instructional time)."

## **Analysis: Findings of Fact**

The parent alleged that the student had a shortened school day, which was being gradually lengthened to allow the student to participate in general education settings during the school day. The parent alleged that the student has autism with global developmental delays, and that

the student is nonverbal, learning to use a communication device at school and home, and communicates his wants and needs in ways his parents understand. The parent alleged that the school is not providing an individualized program that allows the student the opportunity to be integrated with the general school population throughout the school day. The parent alleged that during the 2023-24 school year, the student developed behavioral problems, like hitting himself, which the parent associated with the student's experience at school. The parent alleged that during the past 12 months, school staff were abruptly changed without regard for maintaining the student's school routines and without communication to the parents so they could support the student through the changes. The parent alleged that the school did not appear to take their concerns regarding the toileting incident seriously.

The district responded: "District Response: The IEP and notes reflect that a multidisciplinary team of required IEP team members including the parents developed and amended IEPs that were designed to meet the complex needs of the student in light of his disabilities. The district wrote and implemented IEPs on 2/6/23 and 1/31/24 and the associated amendments included in this folder. The IEP documents and associated notes demonstrate that all aspects of special education and related services were considered and amended as needed by the team with parent input. The parent's responses to these recommendations were also noted."

The district continued: "Response: The IEP reflects a team that was sensitive to the social emotional needs of the student and his capacity to tolerate unpredictable or "loud" environments as he engages in school activities. The team was focused on sensory integration activities to help increase his ability to stay engaged in non-preferred tasks throughout the day. They also implemented a multimodal communication system to increase his opportunities for successful social interactions. The progress on his goals and the efforts to increase time spent in general education and the lengthening of his school day demonstrates progress in light of the student's circumstances. Unfortunately, accurate records of time in schedule are not available for review."

In addition, the district stated: "Resolution: Data has not been collected regarding the student's ability to tolerate school work and social settings in a consistent manner. The school team will document time in schedule and time out of schedule each day on the communication form and the reasons for those deviations. As always, the district is willing to meet to review and amend an IEP at parent request. We will always consider all information provided when making an IEP team decision."

## **Findings**

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

The district and the parent agree that the student's behavior, including reluctance to attend school or activities within school, was a concern through the past 12 months. Both the parent and district reported that the student at times would strike himself during a tantrum. The parent and the principal agreed that the IEP team determined the shortened school day to address the student's behavior such as meltdowns at school.

The PWN dated February 6, 2023, stated that the student would continue to attend half day through the kindergarten (2022-23) school year. The PWN dated February 6, 2023 stated that student's school day was to be extended by 20 minutes, to include a total of 110 minutes in general education (lunch, recess, morning activities, and read aloud; and 210 minutes in the special education classroom, along with related services (20 minutes of speech three times a week and 20 minutes of occupational therapy two times a week), for a total of 355 minutes per day.

The IEP dated January 31, 2024, showed that during the current school day, the length of the school day was from 7:55 a.m. to 1:30 p.m., or 335 minutes per day. The PWN dated January 31, 2024, stated that special education services would be 165 minutes in a special education classroom, 180 minutes in a general education classroom, and 20 minutes daily of related services for a total of 365 minutes. The school website (Elementary School Handbook) showed that the regular school day ended at 3:15 p.m.

At the time of the IEP dated January 31, 2024, according to parental concerns in the IEP, "Mom is concerned about [the student] not wanting to go to school and having more meltdowns at school." to be addressed in the social emotional PLAAFP of the IEP. According to an interview with the principal, this would have stimulated a compassionate response from the team to support the parent. The IEP's social emotional section states, "[The student] needs to continue to grow his ability to interact with his peers so that he can develop relationships with people who will be going to school with. In order to increase his ability to engage with his peers he will have to be offered more opportunities to interact with those peers" and that the need will be addressed through a goal. No further mention of meltdowns are in the IEP document or addressed in the IEP goal or behavior intervention plan.

The PWN dated January 31, 2024, stated: "[The student] is making progress with his speech and OT goals. It is believed he would make more progress in social emotional skills with more support given through general ed and special education teacher/paras rather than directly through the social worker. He will be increasing the length of his school day, which will increase his special education pull out and inclusion services."

In its response to the complaint, the district stated that they were not able to provide the investigator with information related to the impact of the student's behavior, stating: "Data has not been collected regarding the student's ability to tolerate school work and social settings in a consistent manner."

The parent and the principal agree that the student has not attended parts of the school day as scheduled, as found in Issue One.

The attendance daily summary report showed that the student had 10 "other approved" absences during the 2024-25 school year: August 14, September 4, October 4, 15, and 24, November 13, 14, 15, 18, and 20, 2024, five of which occurred prior to the complaint being filed. The principal reported that an example of the use of "other approved" was when the student would not enter the school building in the morning, which had occurred on the day of

the investigator's inquiry (December 9, 2024). The parent reported that prior to the complaint being filed, the school called the parent upon an unspecified number of occasions to come pick up the student when the student had a "meltdown."

The parent reported that the student was injured at school on November 12, 2024. The parent reported that the student was reluctant to enter the school on that day, and at the end of the day, the parents discovered the injury. The parent reported that he contacted school administrators and other authorities in response to the incident and that the parents withheld the student from school following the incident (November 13, 14, 15, 18, and 20, 2024). The parent reported that the school administrators, including the special education director, had contacted him after filing the complaint to attempt to resolve the issues of the complaint and to address his concerns. The parent also reported that the school was providing more information to the parents regarding the student's day at school and that they are no longer sending the student home when he has a tantrum.

The district reported that the student received instruction in a structured learning model with individualized task boxes. The district reported and provided evidence through interviews and staff statements that the student's special education classroom was supported by multidisciplinary team members with specialties in social work, behavior intervention, autism, and communication/language. In interviews with the district, the principal reported that the classroom staff used calming techniques when the student had a meltdown at school, laid down on the floor, or refused to attend scheduled activities.

The parent reported that the parents were reluctant to have the student attend school for a full day, due to both the student's behavior and the student's lack of toilet training that may stigmatize the student at school. The parent reported in an interview that he was unaware that the functional daily living skills such as toileting could be included as IEP goals.

The IEP Progress Report entry dated May 24, 2024, for the IEP goal 7 (engage with peers in parallel play) stated that the student's progress was adequate and that the student's willingness to engage appeared to be mood and preferred activity dependent.

## **Conclusion**

In this case, the student's IEP team used a shortened school day as a solution to the student's unique behavior at school, described by school and parent as meltdowns. The student was also reported to refuse to attend certain activities, show preference for others, and to be administratively excused as absent if he refused to get out of the parent's car to enter the school building. The district reported that a multidisciplinary team, including specialists in social behavior, communication, specialized instruction, and behavior intervention provided direct, indirect, and training services to the student and the student's special education classroom staff. In its response to the complaint, the district acknowledged that no data were kept monitoring the student's absences from all or parts of school days or specific activities due to behavioral refusals or other indications of protest. The parent expressed concern about the student's reluctance to attend school and "meltdowns" at the IEP meeting on January 31.

2024, and these meltdowns were reported by both parties to be a continuing feature of the student's behavior at school. Both the parent and the school reported the use of informal removals (such as calling parent to pick up student, excusing student absences when the student refused to enter the building, or student refusal to follow his schedule at school) which were not systematically tracked by either party.

It is noted that the IEP team determined the shortened school day and the mother participated in the development of both IEPs that required the shortened school day, and that the father relayed the parents' concern regarding the student's tolerance for a full day of school. It is noted that, although no IEP team meeting has been held following the November 12, 2024, incident, the school district has attempted to address the parent's concerns and that the parent has reported improved communication regarding the student's educational program from the school.

However, the IEP team, including the school personnel, did not address the student's behavior through a goal, service, assessment, or intervention plan included in the student's IEP which had been amended in April and in August 2024 for other purposes. Additionally, the parent expressed reluctance to have the student attend a full day of school due to his lack of toilet training, which could have been addressed by the IEP team as an individual need of the student.

Based on the foregoing, *it is substantiated* that USD 340 failed to develop an IEP designed to meet the needs of the student in light of their disabilities.

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

1. **ISSUE ONE:** A violation of 34 C.F.R. 300.323(c)(2) was found, based on facts above, including the failure to provide special education services in the general education classroom, speech language, and occupational therapy services as required by the student's IEP. Corrective action is required (as follows):
  - a. **CORRECTIVE ACTION:**
    - i. By January 13, 2025, USD #340 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations at 34 C.F.R. 300.323(c)(2) which require that the district implement the student's IEP as soon as possible after it is developed.
    - ii. By January 13, 2025, USD #340 shall calculate the number of minutes of services lost to the student and offer the parent compensatory education specifically directed toward assisting the student to achieve the student's IEP goals, to include no fewer than 2880 minutes special education services in general education settings (Figured at 57 days of school till November 13, 2024 minus 9 days of student absences during that period is 48 days @ 60 minutes daily), 40 minutes of speech



language therapy, and 300 minutes of occupational therapy. The parents may accept all, some or none of the compensatory education offered by the district and must reply to the district with their decision no fewer than 15 business days following the date of the district's offer. Only at the parent's request and within 10 days of the date of the district's offer, the IEP team may meet to negotiate changes to the special education in general education minutes but not the speech language therapy or occupational therapy portions of the district's compensatory education offer.

- iii. The district will provide PWN to the parents resulting from the parents' response to the compensatory education offer. The district shall submit the parent's request for the meeting to negotiate the special education in general education settings portion of the district's offer of compensatory education (if any), the parent's response to the offer of compensatory education, the PWN, and any notice of meeting, IEP team meeting notes or IEP amendments to SETS as evidence of the completion of this corrective action by February 10, 2024.
2. **ISSUE TWO:** A violation of 34 C.F.R. 300.156(a) was not found based on the facts above, including that the district provided adequate staff to provide student services. Corrective action is not required.
3. **ISSUE THREE:** A violation of 34 C.F.R. 300.324(a) and (b) was found based on the facts above, including the additional informal removals and separations of the student in addition the shortened school day required by the IEP, the unaddressed concern of the parent about student meltdowns and reluctance to enter school. Corrective action is required (as follows):
  - a. **CORRECTIVE ACTION:**
    - i. By January 13, 2025, USD #340 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will, subject to consent requirements, comply with federal regulations at 34 C.F.R. 300.324(a) and (b) which require that the district develop and revise the student's IEP to address 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 of self or others, the need for braille or the impact of limited English proficiency, the child's communication needs, and the need for assistive technology.
    - ii. By January 13, 2025, USD #340 shall provide notice and convene the student's IEP team to consider each of the provisions of 34 C.F.R.

300.324(a) listed above and specifically the barriers to the student's full attendance at school including behavioral interventions, communication, and functional needs, including whether a functional behavioral assessment and behavior intervention plan is appropriate. The IEP team must discuss the length of the student's day and determine the appropriate services to ensure that the IEP addresses the student's needs.

- iii. The district will provide PWN to the parents resulting from the parents' response to the compensatory education offer. The district shall submit the notice of meeting, IEP team meeting notes, any IEP amendments, and PWN to SETS as evidence of the completion of this corrective action by February 10, 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](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)