

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT # 234
ON NOVEMBER 8, 2024

DATE OF REPORT: DECEMBER 17, 2024

Issues Investigated

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 #234 Fort Scott Public Schools. In the remainder of the report, the “School,” the “District,” and the “local education agency (LEA)” shall refer to USD #234.

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 8, 2024, and the 30-day timeline ended on December 8, 2024.

Allegations

The following issues will be investigated:

ISSUE ONE: USD #234, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP with the necessary special education and related services needed for the Student to make adequate progress. K.S.A. 72-3429(d)

ISSUE TWO: USD #234, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student’s IEP accommodation of providing “support staff on field trips.” K.S.A. 72-3429(a)(1)

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent via video conference on December 3, 2024. The following District staff were interviewed on December 3, 2024: the Director of Special Education, the School Principal, and the New Special Education Teacher.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the Parent and the District. Although additional documentation was provided and reviewed, the following District materials were used as the basis of the findings and conclusions of the investigation:

1. Student Progress Report dated January 12, 2024 through October 21, 2024
2. Individualized Education Plan (IEP) initially dated December 7, 2023, amended May 7, 2024
3. IEP Amendment Between IEP Meetings dated May 14, 2024
4. Prior Written Notice (PWN) dated May 7, 2024
5. IEP initially dated December 7, 2023, amended January 17, 2024
6. IEP Amendment Between Annual IEP Meetings dated January 17, 2024
7. PWN dated January 17, 2024
8. Functional Behavior Assessment Report dated January 5, 2023
9. Conference Record and Manifestation Determination Review dated January 17, 2024
10. IEP Amendment Between IEP Meetings dated January 11, 2024
11. Conference Record dated January 11, 2024
12. PWN dated January 11, 2024
13. Conference Record dated December 7, 2023
14. PWN dated December 7, 2023
15. Request for Transportation dated December 7, 2023
16. Reevaluation Team Report dated December 7, 2023
17. Certification of Eligibility for Special Education dated December 7, 2023
18. De-escalation procedures dated November 1, no year
19. Interval Data Summary dated November 7, 2022 through November 12, 2024

Background Information

This investigation involved a fourth-grade student enrolled at an elementary school in the District. The Student is currently receiving special education or related services as a child with a Specific Learning Disability per the Individuals with Disabilities Education Act (IDEA). Records indicate the Student also has a diagnosis of Attention Deficit/Hyperactivity Disorder (ADHD). The Student has had an IEP since second grade and a regulated medication regime for ADHD since third grade. The Student splits their time between their Parents' homes.

Findings of the Investigation

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

1. Student de-escalation procedures updated on November 1 [2022-2023], outlined who to contact for assistance: the Special Education Teacher, the Principal or Assistant Principal, the Caseworker or Therapist, and then the Parent. (D151, Principal Interview, P1-P2, 02:12)
2. A December 7, 2023 "Reevaluation Team Report" indicated that the Student underwent an evaluation, and it was determined that the Student "struggles with a learning disability in the areas of math, reading, and written expression, and [the Student] continues to need special education services" The report included academic and behavioral assessment data, observation information, and input from parents, teachers, and other relevant school staff. A December 7, 2023 eligibility statement supported these findings. (D102-108, D120-121)
3. A December 7, 2023 District request for special transportation documented a need based on behavior information from the 2022-23 school year. (D100-D101)
4. A December 7, 2023 "Conference Record" documented an IEP annual review meeting on the same date. It was noted that a Functional Behavior Assessment (FBA) was in process, reading and math goals would be added to the IEP, the Parent requested support for field trips, and there was an increase in the Student's ability to focus following a medication change. (D93-D94)
5. A December 7, 2023 PWN indicated that services were determined as 270 minutes daily in the resource room, 180 minutes daily of inclusion support with a paraprofessional, and 45 minutes daily of special transportation. It was also noted that the Student would be served under the primary identification of "learning disability." (D95-D98)
6. A "Functional Behavior Assessment Report" dated January 5, 2023 indicated the assessment was conducted by the Special Education Teacher and the Behavior Specialist (signed January 11, 2024). During an interview with the Director of Special Education, it was determined that the date of the report should have been 2024 instead of 2023. The report included the following relevant information:
 - a. Background and purpose of the assessment:
 - i. The Student transitioned to an alternative learning environment in first and second grade and had spent the majority of their school days in a special education setting.
 - ii. The Student's parents were separated and shared custody. The Student also spent time with a babysitter after school and sometimes before school.
 - b. Student strengths:
 - i. Intelligence assessment scores in the normal range;
 - ii. Kind, creative, friendly, helpful, with a great imagination;
 - iii. Performed well with a schedule; and

- iv. Performed well with math, but it could be a trigger.
- c. Student deficits:
 - i. Could escalate quickly when they did not want to do something;
 - ii. Was lagging behind academically;
 - iii. Could become angry quickly;
 - iv. Low tolerance for nonpreferred activities;
 - v. Hard time being around peers for extended time periods; and
 - vi. Was determined to have a learning disability at a three-year reevaluation.
- d. Setting events:
 - i. Changes in medication, home environments, schools, staff; and
 - ii. Lack of ability to express themselves around other people.
- e. Antecedents/triggers, precursors/signal behaviors, escalation process, challenging behaviors, and interventions in place (as listed in the IEP below).
- f. Considerations:
 - i. Team approach;
 - ii. Consistent communication;
 - iii. IEP accommodations;
 - iv. Calm and consistent staff;
 - v. Distracting the Student;
 - vi. Debriefing with the Student and staff; and
 - vii. A Behavior Intervention Plan (BIP). (D48-D54; Director of Special Education Interview, P5, 15:09)
- 7. A BIP, no date, included all of the information from the FBA plus proactive strategies for addressing the target behaviors, implementation steps, de-escalation strategies, and an "If...Then..." chart. (D86-D92)
- 8. A PWN, a "Conference Record" with notes, and an "IEP Amendment" document dated January 11, 2024, indicated that the IEP Team had reviewed the FBA, including the Student's triggers and target behaviors. It also noted reviewing the strategies and interventions in the BIP and adding field trip support to the IEP accommodations. It was also noted that the Student "did well on [their] field trip to the movies." (D61-D67)
- 9. Two IEP cover pages with the same amendment date of January 11, 2024, indicated different signatures and signature dates.

- a. One was dated January 11, 2024 and was signed by the Parent, the Math/Science teacher, the 3rd Grade Reading Teacher, the Behavior Specialist, the Principal, and the Special Education Teacher.
 - b. Another was dated January 17, 2024 and was signed by the Mental Health Case Manager, the School Psychologist, the Father, the Parent, the Classroom Teacher, the Assistant Principal, the Principal, and the Paraprofessional. (D28-D31)
10. A January 17, 2024 "Manifestation Determination Review" listed the following relevant information:
- a. A summary of the Student's behavior on January 12, 2024 including tipping desks over, knocking things off other desks, knocking down room dividers, picking up and swinging a dowel rod, and running out of the room. It was noted that the Student's stepfather came to pick them up and they cleaned up the room before leaving the school.
 - b. A summary of the Student's IEP information.
 - c. Regular Education/Homeroom Teacher observation information that noted the Student's schedule (only in regular education classroom at the beginning of the day, and then specials and lunch) and refusal to participate in nonpreferred tasks. It was also stated that the Student was reading at a kindergarten level.
 - d. A summary of information provided by the Parent regarding the Student's behavior at each home.
 - e. A list of the Student's medications.
 - f. A list of dates with noted behaviors:
 - i. January 3, 2024: threw things in class and kicked the teacher's desk;
 - ii. January 8, 2024: eloped from specials;
 - iii. January 9, 2024: eloped from the resource room; and
 - iv. January 10, 2024: eloped from music.
 - g. Two statements marked "NO:"
 - i. "Was the conduct in question caused by or have a direct and substantial relationship to the child's disability?"
 - ii. "Was the conduct in question a direct result of the school's failure to implement the IEP?"
 - h. Determination: The Team determined that the behavior was not a manifestation of the disability, and disciplinary removal could occur. However, the District had to continue providing the Student with a free appropriate public education (FAPE). It was also noted that the School would conduct an FBA and develop a BIP.
 - i. Signatures from the IEP Team. (D57-D59)

11. An "IEP Amendment Between Annual IEP Meetings" document (no date) described a proposed change of "[R]educing/increasing minutes from resource room and general education classroom. Switching PE and music to music then PE with another classroom. Everything else will stay the same and we will meet again in about a month." The Parent and the Principal signed it on January 17, 2024. (D43)
12. A PWN dated January 17, 2024 and signed by the Parent on the same date stated, "[The Student] will receive 270 minutes of daily resource room time and 180 minutes of daily inclusion para[professional] support. [They] will receive special education transportation 45 minutes per day. All services will be 5 days per week for the duration of the IEP. [The Student] will be served under the primary identification of learning disability. Breaching the gap in [their] learning on [their] level going back to the basics. Changing minutes to resource room and general education classroom. Switching [physical education] PE and music were [sic] [the Student] goes to music first then PE." (D44-D47)
13. A "Conference Record" dated January 17, 2024 included notes from a meeting with both of the Parents and stated that the Student preferred the resource room to the classroom, had one-to-one support when working on grade-level tasks, demonstrated more behaviors in the morning, had paraprofessional support during specials, and was going to switch when they went to PE and music. (D56, D60)
14. An "IEP Amendment Between Annual IEP Meetings" document (no date) stated proposed changes of adding Extended School Year (ESY) services to the Student's IEP to help the Student from "falling further behind in academics" due to the Student "regressing during the summer and to give [them] the support [they need] during ESY." It indicated the change was proposed via phone call to the Parents. The document was signed on May 14, 2024 by the Parent and the Principal. (D20)

A May 7, 2024 PWN documented this change to the IEP and was signed by the [Parent] on May 9, 2024. (D21-D24)

15. An IEP with an amendment date of May 7, 2024 and an "annual initiation" date of December 7, 2023, indicated:
 - a. "Social and Emotional: "[The Student's] behavior impedes the learning of self or others. [The Student] requires a Behavior Intervention Plan."
 - b. Present level statement: "[The Student] has met [their] IEP goal from last year: using appropriate responses at least 25% of each day. [The Student] exhibits appropriate behaviors throughout the school day when at baseline and [they] often [want] to demonstrate for others what appropriate behaviors look like. [The Student] exhibits appropriate abilities to listen, attend to tasks, and follow through with assignments and/or task completion when at baseline. [The Student's] ability to maintain a safe body (no displays of physical aggression) has increased and [the Student] has a safe body between 90-100% of the day and has throughout November and December ...
."

- c. Concerns included the Student's display of the following behaviors at school:
 - i. Physical aggression: "hitting, kicking, punching, grabbing, forceful pushing, biting, scratching, pulling hair and slapping."
 - ii. Property destruction: "throwing items, pushing dividers over, altering items from their original state."
 - iii. Verbal aggression: "screaming, cussing, and calling others names, whining, screaming, yelling."
 - iv. Eloping: "running away from staff and not stopping when directed to wait, running around the hallways in the school, and running out or attempting to run out of the school building."
 - v. Refusal: "moving away from the desk, saying, 'I am not going to do this,' running from the work area to another area in the room, and/or not completing a task/activity after 2 minutes with multiple prompts."
 - vi. "After the most recent data collection, given interactions with peers and staff, [the Student] is able to appropriately respond to a situation with 3-5 adult prompts across staff, settings, and subjects with an average of of [sic] 60% of the time across 5 data days."
- d. Area of need: "[The Student] struggles with a learning disability in the areas of social-emotional skills and [their] adaptive behavior which greatly impacts [their] educational day and other students around [them] to the point that it is difficult for [them] and others in class to learn. [The Student's] behaviors are aggressive and impulsive, and they can escalate quickly. This need will be met by goal(s) and accommodations or modifications."
- e. Goals for social-emotional (appropriate requests), reading (sight words), and math (multiplication facts). Discrepancies in the reading and math goal sections were noted during this investigation. Both areas stated that [the Student] did not need specially designed instruction in the area and could access the general education curriculum with general education interventions and supports. However, both areas also indicated strengths and concerns and included baseline data and "area of need" statements with correlating goals.
- f. "Academic/Functional Performance: The Team has no concerns about [the Student] in the area of Academic/Functional Performance at this time."
- g. Accommodations for "social-emotional, reading, and math" for general and special education settings with a start date of December 7, 2023 and an end date of December 6, 2024:
 - i. "[The Student] will utilize breaks throughout the day, upon appropriate request or after task completion, [for] 3-5 minutes."

- ii. “[The Student] will utilize manipulatives for both math ... and spelling ... assignments, for the duration of the assignment.” The end date was written as December 7, 2023.
- iii. “[The Student] will receive assignments, broken down into smaller steps ... Staff may also read the work to [the Student] upon [their] request or have [the Student] complete an answer and then have the staff complete an answer, [for] all assignments, through the completion of the assignment.”
- iv. “[The Student] will be provided a choice of [two]. ‘Do you want to do this or this first?’ ‘Are you going to write fast or slow’ etc., when [the Student] has difficulty getting started on an assignment, [for] 3-15 minutes.”
- v. “[The Student] will be given a movement break to aid with focus in the general education setting and during transition times or in between learning tasks, until [they are] able to withstand longer amounts of time with focus without excessive movement. [The Student] will also have access to sensory items such as a pop it, theraputty, or moon sand, etc., upon appropriate request, during transition out of the classroom, between learning tasks, or when [the Student] needs to decompress, [for] 3-15 minutes.” The end date was written as December 7, 2023.
- vi. “Prompt [the Student] to do things or answer questions that [they] [know] the answer to when [the Student] is displaying challenging behaviors (touch your head, touch your nose, $1+1=2$, $2+2=4$, etc.) You may need to model or complete them first and then [the Student] typically will start to answer ... You can also prompt [the Student] to take slow breaths. Talk about something that is not related to what [the Student] is saying when [they] [are] upset; When [the Student] is displaying a challenging behavior, [for] 3-5 minutes.”
- vii. “[The Student] will be seated in an area that is considered [theirs] and an environmental position that will allow [them] to be successful, [for] all seated activities, through the duration of seated activities.”
- viii. “If [the Student] says that [they want] to lay down to sleep, allow [them] to do that in [their] area. If [they] are restless, it helps to have a staff member sit next to [them] and rub [their] back; Upon request to lay down until [the Student] is rested.”
- ix. “[The Student] requires special transportation as there are delays in [their] self-expression and social skills, daily for 45 minutes.”
- h. “Supports for school personnel” in the areas of “social-emotional, reading, and math” in the general and special education settings with a start date of December 7, 2023 and an end date of December 6, 2024:
 - i. “Staff will seat themselves positioned between [the Student] and the nearest exit so that if [the Student] attempts to run out of the immediate area, staff

are with him, during all seated activities, through the completion of the assignment.”

- ii. “If [the Student] is physically aggressive or throwing items, staff will move items out of [their] immediate area/reach, when [the Student] becomes physically aggressive or is throwing items, until [they are] no longer physically aggressive.”
- i. A social-emotional accommodation was added with a start date of January 11, 2024 and an end date of December 6, 2024. It stated, “[The Student] requires support staff for field trips as there are delays in [their] self-expression and social skills, [for] all field trips outside of school with [the] class, for the entire duration of the field trip.”
- j. A description of the Student’s behavior plan was included within this IEP document. It noted the following:
 - i. Student’s strengths and motivators
 - ii. Behaviors of concern (as listed previously)
 - iii. Possible triggers for the behavior (academic and nonpreferred tasks, loud noises or environments, transitions, the beginning of the day or of a task, lunchtime, recess, and being woken from a nap)
 - iv. Hypothesis/reasons for the behaviors (escape demands, avoid specific adults, get tangibles, escape environment, communicate wants/needs, avoid other students, gain attention or control)
 - v. Strategies (provide choices, redirect/distract, use rewards, identify and review clear expectations, sensory break, visual cues, academic accommodations)
 - vi. Other strategies (mental health services, access to food, staff support, alternative learning environments, choices of where to go, modifying tasks, shortening tasks, choice of assignments, break space, work toward preferred items, work/break system, movement breaks)
 - vii. Three targeted behaviors:
 1. Physical aggression;
 2. Eloping; and
 3. Refusal.
 - viii. A crisis management plan that included:
 1. Signs of escalating behavior;
 2. Signs of crisis; and
 3. Implementation steps/de-escalation strategies.

- k. A statement regarding the regular education environment read, “[The Student] will receive a total of 270 minutes of specialized instruction in the resource room for all [their] academics, 5 days per week and will receive 180 minutes of inclusion para[professional] support 5 days per week. This includes 45 minutes for transportation 5 days per week. All services will be for the duration of the IEP. The IEP team has determined that for the student to have opportunities to participate with non-identified peers in extracurricular and nonacademic activities, regularly scheduled special education and related services may not occur when their delivery would prevent the child from participating in field trips, assemblies, special events for the general education classroom or school, state or district-wide assessments and other such activities.”
- l. Extended school year: “The IEP team has enough information to determine that [the Student] does require extended school term services.”
- m. Parental concerns: “Parents expressed concerns that [the Student] has missed out on a lot of time with non-identified peers. They both expressed that [the Student] wants to be back in [their] classroom as well. A reintegration plan has been formulated so that [the Student] can spend more time with [their] non-identified peers.”
- n. Service summary:
 - i. For the year 2024, with start dates of December 7, 2023, and end dates of May 16, 2024:
 - 1. Special education direct service outside the regular education classroom, “addressing deficits in the area of social[-]emotional support, 2024 minutes, 5 days per week.” This was discrepant from another section of the same IEP that stated the same service for 270 minutes, 5 days per week.
 - 2. Special education direct service in the regular education classroom as “in[-]class support for social[-]emotional support, 180 minutes, 5 days per week.”
 - 3. Special education transportation, “extracurricular, 2024 minutes, 5 days per week.” This service was also listed as “45 minutes, 5 days per week” with a start date of August 16, 2024 and an end date of May 10, 2024.
 - ii. For the year 2025, with start dates of August 16, 2024, and end dates of May 30, 2025:
 - 1. Special education direct service outside the regular classroom, “addressing deficits in the area of social[-] emotional support, reading, and math, 2025 minutes, 5 days per week.” This was listed on previous versions of the IEP as “270 minutes, 5 days per week.”

2. Special education direct service in the regular classroom as “in[-]class support for social[-]emotional support, reading, and math, 180 minutes, 5 days per week. (D6-D19, D41, D86-D92)
16. An “Interval Data Summary” ending May 15, 2024 indicated behavior data collected from August 28, 2023 through May 15, 2024 at regular intervals. Data on physical aggression, property destruction, verbal aggression, eloping, refusal, on-task behavior, appropriate refusals, and appropriate requests was collected. Overall, daily percentages of physical aggression showed a decrease in occurrence. Eloping showed an inconsistent pattern of decreasing and increasing. Refusal showed an increase in occurrence with several spikes on certain days. (D154)
 17. A “Student Progress Report” for the 2024-25 school year indicated three goal areas and corresponding progress. Relevant information included:
 - a. “Social-Emotional Goals: Appropriate Requests - by the end of the IEP year (December 2024, given interactions with peers and staff, [the Student] will be able to appropriately respond to a situation (appropriate request and safe body) with 3-5 adult prompts across staff, settings, and subjects with an average of of [sic] 85% of the time across 5 data days.”
 - i. Baseline behaviors included physical aggression, property destruction, verbal aggression, eloping, and refusal.
 - ii. Progress updates:
 1. January 12, 2024: average of 30% of the time;
 2. March 22, 2024: average of 50% of the time;
 3. May 1, 2024: average of 40% of the time; and
 4. October 21, 2024: average of 65% of the time.
 - b. Two additional goals in reading (sight words) and math (multiplication facts) were reported with progress. As of October 21, 2024, neither goal had been met. (D1-D3)
 18. An “Interval Data Summary” ending November 12, 2024 indicated behavior data collected from August 20, 2024 through November 12, 2024 at regular intervals. Data on physical aggression, property destruction, verbal aggression, eloping, refusal, on-task behavior, appropriate refusals, and appropriate requests was collected. The data shows increases and decreases in occurrence but no significant decrease in targeted behaviors over time or significant increase in positive behaviors. (D156)
 19. During interviews with the Complaint Investigator, the Parent stated they believed the Student was prevented from attending two field trips last school year and two field trips during the current school year. The Parent also noted that the School would often tell the Student that if they did not improve their behavior, they would not be allowed to attend whatever field trip was coming up, regardless of how close or far away the trip date was. Then, if the Student perceived they had corrected their behavior, the field trip

was still taken away. The Student's Parent added that when they asked the school why the field trip was taken away, the answer was just that the Student lost the opportunity (with no specific details) or that the School didn't have enough support staff for the Student to attend "even though it is mandated in [the Student's] IEP." The Parent confirmed they'd been verbally told more than once by the Principal, usually the day before or the day of a field trip, that there wasn't enough support staff for the Student to attend. (Parent Interview, P1-P2, 02:54)

To the Parent's knowledge, there were no incidents of the Student eloping from campus last school year or the current school year. Additionally, they understood that the Student had attended one field trip last school year, and the School had given a positive report. "They said [the Student] behaved really well. [The Student] did really great, and [they] enjoyed it." (Parent Interview, P3, 06:19)

20. During interviews with the Complaint Investigator, the Principal stated that the Student had not attended three field trips with their class last school year and two this school year. They also said that other students did not attend this year's field trips due to similar behavior as the Student's and for other behaviors such as classroom outbursts, physical aggression, and not following directions. (Principal Interview, P2, 04:26; P4, 07:25)

When asked for the reasons for the Student's non-attendance on the field trips last school year, the Principal responded, "Elopement out of the classroom, not following directions, and violent responses to being asked to do unwanted tasks." The reasons for non-attendance of the current school year's field trips were "[e]lopement and violence. Again, when being asked to not do the task. Also, not following teacher directives. If a teacher were to say, 'Go down this hallway, go to this room,' [the Student] does not follow directions like that." (Principal Interview, P3, 04:56)

The Principal stated that parents have generally been offered to accompany their students on field trips if the students' school behavior warranted it. They described accommodating the Student for the one attended field trip last school year by sending a paraprofessional to provide one-to-one support. They said [the Student's] behavior near the trip date had been better and that the field trip day "was a struggle, but [the Student] was able to mostly make it through." The Principal elaborated that the Student had difficulty sitting and listening during the trip and needed to be up and moving around, so the paraprofessional walked around with them. The Director of Special Education added that per the Student's IEP accommodation of field trip support staff, someone would have been available to attend other field trips with the Student. They said, "We had adequate staff if [the Student's] status would've been, made [them] eligible to go, yes." (Principal Interview, P5, 09:06; P4, 08:49)

The Director of Special Education also indicated that after missing the second field trip this year, the Student was offered an opportunity to "re-earn an equal opportunity for a

field trip” but that the Student’s behavior was “very volatile during that timeframe and it did not happen because of that.” They explained that the trip would not have been with the Student’s peers but that the staff would have taken the Student to do “something of equal, extra curriculum” (Director of Special Education Interview, P6, 16:16)

The Principal further explained that their greatest concern is safety for all the students, especially given that the two field trips this year were out of town. They said, “And outbursts of violence are less, but they’re still there. ... When [the Student] does have outbursts, they’re significant. When [the Student] elopes and [they’re] mad, there’s [sic] some times that you cannot reason or calm [the Student] down in a decent amount of time that would keep [them] safe and others safe. And I think these are things that we have to be aware of for a student, and in the end, [the Student’s] safety is my responsibility, and can I send a child somewhere and know that they’re going to be able to be safe and follow directions. The reality is I do not feel like [the Student’s] behavior this year or last year warranted [them] going and being safe. When it did, I did give [them] the field trip and [they] can for the rest of the year, if [their] behavior is better, can also go on field trips. And again, we will accommodate and provide all the support that [the Student] needs to go.” (Principal Interview, P3, 05:49; P5, 10:04)

Additional Findings

During this investigation, several discrepancies or errors were found within the IEP paperwork and provided documents. The Complaint Investigator attempted to clarify these via interviews with District staff. However, the Special Education Teacher was new and did not participate in developing any of the provided documents, so could not speak about them. The Director of Special Education did not have the Student’s file with them during the interview, so attempted to clarify based on memory. The Director of Special Education indicated that some errors may have been due to a change in the IEP computer software system and a need for staff training. When asked to clarify the discrepancies in the present levels and functional performance statements, the Director of Special Education said they would need to get clarification from the IEP Team. They also added, “Every meeting I’ve attended, it hasn’t been about ability. It’s been about the interfering behaviors.” (Director of Special Education Interview, P2, 05:11)

The following discrepancies or errors were noted:

1. The most recent IEP with an amendment date of May 7, 2024 indicated:
 - a. The Student did not need specially designed instruction for reading or math and could access the general education curriculum. However, both areas had concerns, areas of need, and goal statements.
 - b. “The Team has no concerns about [the Student] in the area of Academic/Functional Performance at this time.” However, numerous concerns about academics or functional performance were indicated.

- c. Listed service times for “direct service outside of the regular education classroom” and specialized transportation were input as 2024 and 2025 minutes.
 - d. Listed end dates for some accommodations were input as December 7, 2023 instead of December 6, 2024. (D6-D19)
2. A January 17, 2024 PWN indicated a change in service minutes, but no aligned changes were documented on the IEP for that date. (D44-D47)
 3. Meeting notes from December 7, 2023 indicated the Parent had requested support for field trips, but the accommodation was not added and documented until January 11, 2024 (D65, D94)
 4. The FBA report listed a date of January 5, 2023, but it was confirmed that it should have been January 5, 2024. (D48-D54; Director of Special Education Interview, P5, 15:09)
 5. A BIP was provided that was not dated. It was unclear when it was written. Interviews indicated it would have been from January 2024, but then it was mentioned that other associated documents had come from previous years at a different school. (D86-D92)

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

USD #234, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP with the necessary special education and related services needed for the Student to make adequate progress. K.S.A. 72-3429(d)

According to 34 CFR §300.320 and K.S.A. 72-3429(d), the IEP team must consider student strengths and needs, parental concerns, evaluation results, and language or communication needs when developing an IEP. Additionally, K.A.R. 91-40-18 indicates that if an IEP team determines that a child needs behavioral interventions, strategies, accommodations, or modifications, those must also be included in the IEP.

The Parent alleged that the Student was struggling and lacked the resources necessary to succeed. The Parent claimed the Student had been frequently excluded from field trips over multiple years due to their behavior. To address this, the Parent ensured the Student's IEP included an accommodation requiring support staff on field trips. However, despite having an IEP since second grade, the Student had only attended one field trip in their five years of schooling.

According to District records, an IEP had been developed and was in place for the Student. It had also been amended twice based on the Parent's input and behavior data including an FBA.

A reevaluation report from December 7, 2023 indicated that academic and behavioral assessments and observations had been completed, and this information was combined with input from school staff and the Parent to determine eligibility and develop an IEP. The IEP outlined baseline data and goals for reading, math, and social-emotional areas. It listed specific behavior concerns, including physical and verbal aggression, property destruction, elopement, and refusal. It also included pull-out and push-in services and accommodations for academic and social-emotional support and special transportation. An FBA was also completed in January 2024, resulting in a team-developed BIP that included proactive strategies for addressing target behaviors, implementation steps, and de-escalation procedures. The IEP was amended in January 2024 based on information from the FBA and BIP. Field trip support was added as an accommodation at this time. Following a Manifestation Determination Review in January 2024, the IEP Team decided to switch the order of specials in the Student's schedule to help improve behavior. In May 2024, the IEP was amended again, and Extended School Year services were added to help maintain academic support for the Student over the summer. An IEP Progress Report indicated progress and regression toward the social-emotional goal from January 2024 through October 2024. The Student ultimately made progress from their baseline score but did not meet the criteria set for accomplishing the goal.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the district failed to develop an IEP with the necessary special education and related services needed for the Student to make adequate progress. District records indicated that all areas of concern were evaluated and then considered in developing the IEP, FBA, and BIP. Multiple meetings were held during the year to address behavior information and input from the Parent and to amend the IEP accordingly.

Issue Two

USD #234, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP accommodation of providing "support staff on field trips." K.S.A. 72-3429(a)(1)

According to 34 CFR §300.320 and K.S.A. 72-3429(a)(1), an IEP must be in effect at the beginning of each school year.

The Parent alleged the District failed to provide support staff for field trips. According to the Parents, the Student was often excluded from field trips due to their behavior and lack of staffing. This occurred again on November 5th, when the Student was not allowed to attend a field trip with their class due to behavior. The Parent expressed concern that the Student's behavioral issues stemmed from missing this field trip. They felt the Student was still struggling despite having supports in place, including appropriate medication and the IEP accommodation intended to ensure field trip participation with support.

The District responded via interviews that the Student's school behavior did not warrant participation in field trips, but if it had, there were support staff available to accompany the

Student, or Parent accompaniment would have been considered. The District indicated that the Student had been given an opportunity to earn a substitute field trip this year but had displayed volatile behavior, and therefore, that field trip did not happen. The District claimed that their decision to prevent the Student from attending field trips was based on significant safety concerns for the Student and other students.

The IEP accommodations stated that the Student required support staff for all field trips outside of school with their class for the entire field trip. However, it did not list specific field trips or state that Student attendance was required for all scheduled field trips. The District stated that the Student was afforded similar opportunities to attend field trips as other students and that support staff was available to accompany the Student if they had “earned” the field trips. They also stated that when the Student had displayed appropriate behavior, they attended a field trip with paraprofessional support as indicated by the IEP accommodation. According to information obtained through interviews with the District and the Parent, the Student was not the only one excluded from attending field trips due to behavior or safety concerns. The Parent and the District gave discrepant information regarding the availability of support staff to fulfill the IEP accommodation regarding field trips. No other written or recorded documentation was provided to corroborate either stance. The IEP, as written, did not require the District to ensure the Student’s attendance for class field trips or specify criteria for determining whether or not the Student was permitted to attend a field trip. It only indicated that support was required when the Student did attend a field trip.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the district failed to implement the Student’s IEP accommodation of providing “support staff on field trips.”

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 §300.320 and K.A.R. 91-40-18 specify that an IEP must be developed, reviewed, and revised in a meeting and include certain components, including a statement of the child's present levels of academic achievement and functional performance, the projected dates and anticipated frequency, location, and duration of services and modifications, and any necessary behavior interventions or supports.

In this case, the evidence supports the finding that USD # 234 did not develop an IEP that accurately reflects the Student’s present academic and functional performance levels or includes accurate dates and frequencies for all services, accommodations, and behavior interventions.

Based on the foregoing, USD # 234 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #234 shall review and revise the IEP and associated documents listed in this report, correct errors, and submit updated paperwork to the Parent and KSDE Special Education and Title Services (SETS).
2. No later than May 16, 2025, USD #234 will train all staff responsible for writing IEPs and related documentation on the requirements for the content of IEPs and PWNs and the steps for reviewing, revising, and ensuring accuracy. USD #234 will provide SETS with a copy of the sign-in sheet documenting who received this training as well as the name and credentials of the person who provided the training. In addition, USD #234 will provide SETS with any handouts and/or a copy of the presentation.

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)