

**KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES  
REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #349 STAFFORD PUBLIC SCHOOLS  
ON AUGUST 18, 2023  
DATE OF REPORT SEPTEMBER 18, 2023**

This report is in response to a complaint filed with our office on behalf of ----- by his mother, ----- . In the remainder of the report, ----- will be referred to as “the student”. -----’s mother is ----- and in the remainder of this report she will be referred to as “the mother”, “the parent”, or “the complainant.”

The complaint is against USD #349, Stafford Public Schools. In the remainder of the report, the “school,” the “district”, and the “local education agency (LEA) shall refer to USD #349. Special education services are provided in USD #349 by the South Central Kansas Special Education Cooperative (SCKSEC).

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on August 18, 2023 and the 30-day timeline ended on September 19, 2023.

### **Evidence Reviewed**

Gwen Beegle, Complaint Investigator, interviewed the parent by telephone on August 21, 2023 in order to clarify the concerns and issues for investigation. The parent listed 11 concerns in the complaint, and these were grouped into four IDEA issues for investigation. Gwen Beegle also spoke with the parent on September 1, 2023 following her meeting with the district to attempt to resolve the complaint and interviewed the parent on September 5, 2023. The following individuals were also interviewed: Rhonda Brown (former Coaching Specialist in the district) on September 8, 2023; Meagan Etheridge (SCKSEC Special Education Director) on September 8, 2023; Ellen McClosky (SCKSEC Assistant Special Education Director) on September 8, 2023; Kim Ghumm, Principal of Stafford Elementary on September 8, 2023, and Tori Alstrom (School Psychologist Contracted by SCKSEC) on September 11, 2023.

The Complaint Investigator also received emails from the parent and USD #349 personnel between August 21, 2023 and September 11, 2023.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the complainant and district. The original complaint included text and email documentation, some of which is noted in the list below. Although additional documentation was provided and

reviewed, the following materials were used as the basis of the findings and conclusions of the investigation:

**Evidence: Documents**

1. IEP Contact Log with entries dated from January 10, 2022 through May 5, 2023.
2. IEP for the student dated January 31, 2022, amended on September 22, 2022.
3. Notice of Meeting dated September 8, 2022 for a meeting on September 8, 2023 and unsigned by the parent with waiver of 10-day notice
4. IEP amendment without a meeting for the student dated September 22, 2022 signed by the parent on the same date
5. Prior Written Notice for additions, changes or modifications to the IEP (other changes to the IEP) dated September 23, 2022 for a meeting on September 8, 2022
6. Prior Written Notice for Reevaluation and Request for Consent dated December 1, 2022 and signed by the parent giving consent on December 8, 2022.
7. Notice of Meeting dated January 26, 2023 for a meeting on January 26, 2023 to review evaluation, determine eligibility, and develop the IEP signed by parent on February 3, 2023 agreeing to waive 10-day notice
8. IEP for the student dated January 26, 2023
9. Prior Written Notice for Identification, Placement, Change in Services, Change of Placement and Request for Consent dated January 26, 2023, amended on February 15, 2023, and signed by the parent on February 15, 2023
10. Prior Written Notice for Identification, Placement, Change in Services, Change of Placement and Request for Consent dated January 26, 2023 and signed by parent giving permission on February 23, 2023
11. Notice of Meeting dated April 20, 2023 for a meeting on April 20, 2023 to discuss changes to the IEP signed by parent on April 21, 2023 agreeing to waive 10-day notice
12. Prior Written Notice for additions, changes or modifications to the IEP (other changes to the IEP) dated April 24, 2023 referring to a meeting on April 20, 2023 and signed with consent by the parent on April 21, 2023
13. Prior Written Notice for additions, changes or modifications to the IEP (other changes to the IEP) [date not provided to investigator] filed on May 17, 2023 referring to a meeting on April 20, 2023 and signed with consent by the parent on May 12, 2023
14. Parental Statement provided to school administrators dated April 26, 2023
15. Prior Written Notice for the district refusing to initiate or change placement or services (refusing Extended School Year - ESY) dated May 17, 2023 referring to a meeting on April 26, 2023 and signed by the parent on May 18, 2023.
16. IEP amendment without a meeting for the student dated May 10, 2023 signed by the parent on the same date

17. Notice of Meeting dated August 3, 2023 for a meeting dated August 15, 2023.
18. Notes provided by the district of the meeting to resolve the complaint dated August 25, 2023
19. The district's response to the complaint allegations dated September 1, 2023
20. The student's IXL Diagnostic Scores and TR CBMR English Scores (fluency) for the 2022-23 school year (Fall, Winter and Spring scores) provided via email to the investigator on September 8 and 9, 2023.
21. Coaching Specialist Log with entries from August 16, 2022 to May 19, 2023.
22. Screenshots of special education administrator visits to the school
23. USD #349 School Calendar, 2022-23

### **Evidence: Communications**

24. Text exchange between parent and Kylie Meyer (Teacher), beginning August 23, 2022 at 5:45 p.m. and continuing through August 24, 2022 at 11:42 a.m.
25. Email exchange between the parent, Rhonda Brown (Coaching Specialist), Meagan Etheridge (SCKSEC Special Education Director), Kim Ghumm (Stafford Elementary Principal), Kylie Meyer, and Bryan Mead (Special Education Teacher) beginning on August 29, 2022 at 3:48 p.m. and ending on August 30, 2022 at 11:05 a.m.
26. Email from the parent to Bryan Mead on September 7, 2022 at 4:41 p.m. and Mead's reply to the parent on September 7, 2022 at 5:21 p.m.
27. Text exchange between the parent and Kylie Meyer on September 8, 2022 at 4:29 p.m.
28. Email from the parent to Bryan Mead on September 13, 2022 at 7:49 p.m. and Mead's reply to the parent on September 13, 2023 at 8:03 p.m.
29. Email exchange between Rhonda Brown and the parent, Kylie Meyer and other unspecified members of the IEP team dated September 23, 2022 beginning at 12:03 p.m. with replies to the group through 4:22 p.m.
30. Text exchange between the parent and Kylie Meyer on September 26, 2022 at 12:33 p.m.
31. Text exchange between the parent and Kylie Meyer on October 5, 2022 at 5:03 p.m.
32. Email exchange between the parent, Bryan Mead and Rhonda Brown beginning on October 5, 2022 at 5:00 p.m. and ending on October 6, 2022 at 2:33 p.m.
33. Text exchanges between the parent and Kylie Meyer on October 7, 2022 at 1:52 p.m. and on October 10, 2022 at an unspecified time.
34. Email exchange between parent and Bryan Mead beginning on November 3, 2022 at 10:20 a.m. and ending on November 16, 2022 at 11:45 a.m.
35. Email from Bryan Mead to the parent on December 5, 2023 at 8:17 a.m. and reply from the parent on December 5, 2023 at 8:59 a.m.

36. Email from Bryan Mead to the parent, Toni Alstrom and Gretchen Spiegel (Speech Language Therapist) on December 5, 2023 at 8:23 a.m. with replies from Alstrom and Spiegel on the same day.
37. Email from the parent to Bryan Mead on December 8, 2023 at 9:12 a.m. with his reply on the same day at 9:16 a.m.
38. Email exchange between the parent and Bryan Mead on January 9, 2023 beginning at 12:52 p.m. and ending at 2:31 p.m.
39. Email exchange between the parent, Bryan Mead and Kim Ghumm beginning on January 18, 2023 12:40 p.m. and ending on January 20, 2023 at 12:50 p.m.
40. Email exchange between the parent, Bryan Mead, Kylie Meyer, Toni Alstrom, and Rhonda Brown on February 17, 2023 from 3:54 p.m. to 6:50 p.m.
41. Email from the parent to Kim Ghumm, Meagan Etheridge, and Traci Becker on April 21, 2023 at 5:42 p.m.
42. Email exchange between the parent, Kim Ghumm, Meagan Etheridge and Tracie Becker (former Superintendent USD#349), beginning April 25, 2023 at 3:07 p.m. and ending on May 5, 2023 at 4:24 p.m.

### **Background Information**

This investigation involves an 8-year-old student enrolled in the third grade at Stafford Elementary in USD #349. The student was first identified as a child with a developmental disability in 2018, when his evaluation revealed significant delays in speech/language and social emotional development. The student was assessed by the University of Kansas Medical Services in November, 2021; this assessment confirmed a prior diagnosis of ADHD. The student exhibited reduced social reciprocity, difficulty with social interactions, and some sensory issues but he did not meet the criteria for Autism Spectrum Disorder. In January, 2023, when he was reevaluated by the district and evaluation team, his eligibility category was changed from Developmental Disabilities to Other Health Impairment (OHI) with a secondary diagnosis of Learning Disabilities (LD), with continued eligibility for speech language therapy. The student's disability affects his ability to do work at grade level, including having difficulty in reading fluency and comprehension, oral and written expression, retaining concepts, and following routines and instructions in the classroom. The IEP notes that his working memory is poor, and his disability affects his ability to answer questions orally. He receives specialized instruction at his level in the general classroom for English Language Arts (ELA), special education support for his classes (math, PE, social studies, science and music), pull out speech-language therapy, and attendant care for transitions to recess and special classes. During his second-grade year (2022-23) his IEP included many accommodations, including extended time to do work, specific teaching methods, extended time, cues before transitions, weekly behavior chart, and the use of sensory breaks and tools among others. His IEP goals continue to address articulation, use of grammar, phonological awareness and reading fluency, but his

goals on peer social interaction and social behavior have been discontinued by the team, citing his progress in those areas.

## **Issues Investigated**

1. **ISSUE ONE**: The USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP, thereby denying the student a free appropriate public education (FAPE). Specifically, the services, accommodations, and supplementary aids and services were not provided during the 2022-23 school year.
2. **ISSUE TWO**: The USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), changed the student's placement and made changes to the IEP without providing prior written notice or obtaining parental consent if needed during the 2022-23 school year.
3. **ISSUE THREE**: The USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond to a parent request for an IEP meeting in a reasonable period of time during the 2022-23 school year.
4. **ISSUE FOUR**: The USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to safeguard the student's confidential information.

## **Issue One**

The USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP, thereby denying the student a free appropriate public education (FAPE). Specifically, the services, accommodations, and supplementary aids and services were not provided during the 2022-23 school year.

## **Applicable Law**

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 CFR 300.320 (a)(4) and state statutes require that a student's IEP include a statement of the special education and related services and supplementary aids and services 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 to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general curriculum, and to be educated and participate with children with disabilities and without disabilities. An IEP is to be in effect for each child with a disability at the beginning of each school year, and it must

include a statement of the present levels of academic and functional performance, a statement of measurable annual goals, how progress toward the annual goals will be measured and reported, and a statement of the special education and related services and supplementary aids, based on peer-reviewed research to the extent practicable, and services to be provided to the child, or on behalf of the child, a statement of the program modifications or supports for school personnel that will be provided for the child, testing inclusion and accommodations, and the projected date for the beginning of the services and modifications described in the IEP, along with the anticipated frequency, location, and duration of those services and modifications (K.S.A. 72-3429, CFR 300.320).

Supplementary aids and services are defined at C.F.R. 300.42 and at K.A.R. 91-40-1(ttt) as aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

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

The complainant alleged that there were four types of failures to provide the special education and supplementary aids and services (accommodations and modifications) in the student's IEP. First, the student's IEP required that behavior sheets were to be sent to the parents weekly, and the district failed to send the proper sheets home each week. Secondly, the student was to be offered sensory tools and breaks as much as necessary "until the student is regulated," and the student was not offered adequate tools and breaks as evidenced by his clothing having been extensively chewed during the school day. Third, the student was prevented from receiving a spelling packet and prevented from receiving a permission slip and then access to a class-wide activity during the school year. Finally, accommodated ELA lessons were not provided to the student from the time of the January 26, 2023 IEP meeting through the April 20, 2023 IEP meeting when it came to the attention of the parents during discussion at the meeting.

The district responded that "The staff at SCKSEC have implemented the IEP to the fullest extent. . . The accommodations and modifications were provided by the general education teacher, special education teacher, and paraeducator working with the student. Specialized instruction on the student's level was planned through collaboration with the general education teacher, special education teacher, coaching specialist, and paraeducator. The specialized instruction was also implemented with team input by the general education teacher, coaching specialist, and paraeducator in the general education classroom." The district also responded that they met with the parent to explain how the services were being provided in the classroom when the parents expressed their concern about the in-classroom services. Further, the district responded that the sensory breaks required by the student's IEP were provided both inside and outside of the general education classroom.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #232.

- The student's IEP dated January 31, 2022 and subsequently amended on September 22, 2022 includes 14 supplementary aids and services, including the following accommodations and modifications related to the substance of this complaint: (a) "[the student] will have a weekly behavior chart. These are to be sent home weekly in a folder, every day the child is attending school in all academic settings for the duration of the school day, start date 1/31/22 and end date 1/30/23," (b) "[the student] will be offered sensory tools and breaks every day the child is attending school in all academic settings until [the student] is regulated every day the child is attending school in all academic settings for the duration of the school day, start date 1/31/22 and end date 1/30/23" and (c) "[the student] will have accommodated spelling assignments and tests which will include up to 75% fewer words than his general education peers whenever spelling tests and assignments are given in the general education setting, until the assignment or test is completed." These accommodations were continued on the January 26, 2023 IEP.
- The January 31, 2022 IEP includes special education support services for ELA and Math every day the student is attending school in person in the general education setting for 60 minutes, 1/31/22-1/30/23, along with speech therapy 30 minutes twice a week), attendant care at recess, lunch, arrival/dismissal and transitions, and a social emotional curriculum (15 minutes a week). This IEP also includes two goals for the student's social emotional development, two goals for speech and language, one goal for reading and one goal for math.
- The parent and the district agree that a qualified paraeducator was present in the general education classroom to provide special education services in the IEP. The district reported that the paraeducator had necessary experience to serve successfully in this capacity. The district did not provide records of classroom or student specific paraeducator training to the investigator.
- Weekly Behavior Sheets:
  - The parent reported that in August at the beginning of the 2022-23 school year, the school did not provide weekly behavioral sheets on time. The parent reported that she contacted the teacher, who told her that an alternate self-rating system would be sent home instead of the 1-7 rating sheet referred to in the IEP. The parent contacted other members of the IEP team, who affirmed to the teaching team that the 1-7 rating sheet should be sent home weekly. An email August 29, 2023 from the coaching specialist showed that she directed the behavior rating sheet to be sent home weekly. The parent reported and email documentation in August and again in October showed that the school offered for her to pick up the document from school rather than sending the

sheet home. The parent reported that the sheets were late in arriving and text and email documentation showed that she repeatedly asked for the sheets to be sent home each week as late as October 5, 2022.

- Sensory Breaks:
  - The parent reported that the student returned home with chewed clothing and that she contacted the school about this problem beginning on September 8, 2022. The parent provided text and email documents that showed communication regarding the provision of adequate sensory breaks and access to specific sensory tools for chewing between the parent and the school from September 8, 2022-September 23, 2022. In this communication, the teacher indicated that all students received brain breaks and the student received these breaks. The parent reported that this problem was resolved after the September 26, 2022 clarification by the coaching specialist to the special education and general education teachers on the necessity of and how to provide student specific sensory breaks and tools to address the student's sensory needs.
  - The school reported that the student had continual access to sensory tools (in his desk or provided by the para educator) and breaks as needed during this period of time. The school reported that the teacher provided "brain breaks" in her classroom regularly.
- Spelling Packet and Bartering Activity:
  - Spelling packet: The parent reported that she contacted the teacher after the student had forgotten to bring home the weekly spelling packet. The parent reported and provided text documentation on October 5, 2022 that showed that the teacher declined to give the parents the spelling packet, stating that the student should have to work on it over the weekend as a natural consequence for forgetting his work.
  - Bartering Activity: The parent reported and provided text documentation that the teacher had agreed and then refused to provide the parents a copy of a permission slip for an April 12, 2023 bartering activity after the student had forgotten to bring it home from school, stating that he needed to learn responsibility. The parents reported and the school agreed that they acquired the permission slip from another parent, put it and the materials needed for the activity in the student's backpack in time to participate in the activity. The school reported that the student did not get the materials out of the backpack when asked to do so, and therefore he did not participate with the class in the activity. The parents reported, and the school agreed, that the principal reenacted the activity with the student at the end of the school day on April 12, 2023.
- ELA Instruction:



- o At the January 26, 2023 annual IEP meeting, the district proposed that the child be pulled out of the general education setting for specialized instruction in ELA. After discussion at the meeting, the parent and team determined that the child would remain in the general education setting for ELA. The January 26, 2023 IEP (amended April 20, 2023) states that the student will receive, under anticipated services, "specialized instruction at the student's current level in ELA every day the student is attending school in person, general education setting, 90 minutes, 1/26/23 to 1/25/24." Other services include speech language therapy (30 minutes twice a week), attendant care for recess and transitions to and from specials, special education services provided by special education staff for Math, P.E., Science, Social Studies and Music.
- o The PWN dated January 26, 2023 and signed by parent giving consent on February 23, 2023 states that the district proposed a change in services from the draft it had provided to the parents: "FROM the provision of special education services for ELA every day the student is attending school in person in the special education setting for 60 minutes 1/26/23 to 1/25/24 TO Provide the provision [sic] of para assistance for ELA every day the student is attending school in person in the regular education setting for 90 minutes."
- o The January 26, 2023 IEP includes 9 supplementary aids and services, including the following accommodations and modifications related to the substance of this complaint: (a) "[the student] may be provided ELA supports including but not limited to multiple exposures to readings, opportunities to read out loud, choral reading, words broken down into letter sounds, and front loading of comprehension questions whenever the student is working on reading in all academic reading/ELA settings both general and special education for the duration of all reading/ELA assignments/activities, start date 1/26/23 end date 1/25/24;" (b) "[the student] may be provided academic supports including but not limited to work being broken down into chunks or retaught and material being presented in multiple modalities, whenever academic work is presented in all academic settings including general education and special education settings for the duration of all classroom activities and assignments start date 1/26/23 end date 1/25/24;" (c) [the student will have extended time on any assignments, tests, and assessments whenever assignments, tests and assessments are given, general and special education room until the assignments, tests and assessments are completed, start date 1/26/23 end date 1/25/24, (d) [the student] will have accommodated spelling assignments and tests which will include up to 75% fewer words than his general education peers start date 1/26/23 end date 1/25/24." These accommodations were continued on the April 20, 2023 IEP amendment, which added two accommodations related to retaking

assessments and assignments if the student scored less than 80%, and on the May 10, 2023 amendment, with the addition that the student's grade would not suffer if he re-took an assessment or re-did an assignment.

- Email exchanges among the school team and the parent in mid-February, 2023 showed that there was confusion by the general and special education teacher about the student's ELA instruction, including that the student's spelling word list was changed to a Kindergarten level and the location of his ELA instruction.
- The parent reported and other IEP team members confirmed that, at the April 20, 2023 IEP meeting, it was disclosed by the student's general and special education teachers that the student's ELA instruction had not occurred as specified in the January 26, 2023 IEP.
- Interviews with district staff supporting the classroom reported concerns with the IEP's implementation.
- The district reported that the instruction had been accommodated and the principal reported that on an unspecified date she witnessed the para educator reteaching an ELA lesson using first grade materials and that there was a quiet location in the classroom for the student and picture cues taped to his desk. An email from the principal dated Friday, May 5, 2023 stated that the student was receiving the accommodations listed on his IEP, "that included extra time, quiet setting in the classroom and chances to do his work." The district asserted that the child's progress on school assessments showed the success of the student's ELA instruction.
- The special education director observed the student's classroom several times during the school year and reported that accommodations were being provided.
- An email exchange on May 8, 2023 between the parent and an itinerant teacher showed that she observed in the classroom on an unspecified date in April, that she made suggestions for the student's ELA instruction at that point, and that the para educator and the general education teacher reported using her suggestions. No evidence suggested that the itinerant teacher supported the classroom's instructional staff prior to April 2023. An interview with another team member indicated this assistance occurred after the April 20, 2023 IEP meeting.
- No documents such as lesson plans, instructional team meeting notes, records of service provision from para to teacher, systematic observation of the student's ELA lessons, service logs, directions to the paraeducator, student specific training for the para educator, grade specific training to the paraeducator, or other documentation showing the implementation of the student's IEP accommodations were provided to the investigator.

In this case, the IEP team did consider and specify in detail the supplementary aids and services to be provided to this student in the general education setting. The team revised these accommodations at each IEP meeting and amended them without a meeting during the school year in question (2022-23). The district put a paraeducator in place to provide services in the general education classroom and reported that the student's accommodations were provided by the paraeducator, the general educator and the special educator. However, there is no evidence that the paraeducator received guidance necessary to implement the many supplementary aids, services and accommodations/modifications listed in the student's IEP. The district was not able to provide examples of instructional plans, team meeting notes, or instructions to the paraeducator that would assure that the student's January 26, 2023 IEP was being carried out in the classroom. Interviews with persons with knowledge of the IEP's implementation in the classroom indicated that they were aware that the IEP was not being followed. Attempts by the district to correct the situation, including the increasing supervision and coaching of the special educator, failed to remedy the instructional problems. General education staff evidenced a lack of awareness of the IEP's requirements and ultimately disclosed that they did not follow the IEP's requirements for instruction and supplementary aids and services.

Based on the reports of school personnel and the documentation provided by both parties, it is likely that some of the student's accommodations were implemented such as extra time, quiet setting in the classroom, and reteaching by the paraeducator. However, the general and special education teachers stated that they did not implement the ELA specialized instruction, further defined in the ELA and spelling related supplementary aids and services/accommodations in the IEP. While the student made progress during the school year, it is unknown if the missed specialized ELA instruction would have provided the instruction necessary for the child not only to progress but to achieve grade level performance.

In addition, early in the school year there was a problem with understanding and implementing sensory breaks and access to tools designed to ameliorate the effects of the student's disability in the classroom, and this was corrected by the end of September, 2022, after the parent's advocacy and the coaching specialist directed the instructional staff to properly implement the accommodation for the child's sensory needs. Another issue arose early in the school year, recording the student's behavior on a specified behavior chart and returning it to the parent. This problem continued from August, 2022 through at least October, 2022, despite intervention and direction from the coaching specialist. Finally, there were two incidents of withholding materials needed for classroom participation because the student had forgotten to take them home in the backpack in order to teach him responsibility through natural consequences, although the parents sought to assist the student through acquiring his schoolwork and working with the student at home.

It is noted that the district brought resources to the classroom in the form of increased supervision by the special education administrator, meetings with the school administrator, a classroom observation and consultation, and instructional coaching by the coaching specialist. It is also noted that the district used human resources to assist in improving employee performance.

### **Conclusion**

Based on the foregoing, according to IDEA and Kansas special education regulations it *is* substantiated that the district failed to implement the IEP, thereby denying the student a free appropriate public education (FAPE). Specifically, the student's supplementary aids and services or accommodations/modifications were not fully provided during the 2022-23 school year.

### **Issue Two**

The USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), changed the student's placement and made changes to the IEP without providing prior written notice or obtaining parental consent if needed during the 2022-23 school year.

### **Applicable Law**

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. "Material change in services" is defined at K.A.R. 91-40-1(mm) as an increase or decrease of 25% or more of the frequency or duration of a special education service, related service, or supplementary aid or service specified in the child's IEP. "Substantial change in placement" is defined at K.A.R. 91-40-1(sss) as the movement of an exceptional child for more than 25% of the child's school day from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment.

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

The complainant alleged that the district changed the student's placement from special education services provided in the general classroom to special education services in a special education classroom. The parent alleged that on December 5, 2022, the special educator requested to initiate a one-week trial period for pullout ELA instruction, to be reviewed at a meeting then scheduled on December 9, 2022 (a period of 5 days). Between December 5,

2022 and January 18, 2023, the parent expressed concern about the pullout instruction to the special educator and the principal. No meeting was held until January 26, 2023 and the student remained in the special education room for ELA instruction during that period. No PWN for a change of placement was provided.

The district responded that "The student's placement was not changed during the implementation of the IEP without written notice or parental consent. . . The school and parents were in communication on a weekly basis discussing any changes that needed to be made to the student's programming." The district reported that the trial period was proposed because the district was proposing that the student be pulled out for ELA instruction and that it lasted only a few days because the parent expressed their concern about the pull out.

The following findings are based upon a review of documentation and interviews with the parent, former staff, and staff in USD #349.

- The findings of Issue One are incorporated herein by reference.
- The contact log showed that a Notice of Meeting was sent home on November 17, 2023 and a Draft IEP was sent home to the parent on December 1, 2022. Copies of these were not available to the investigator.
- The parent reported and the district agreed that the special education teacher acquired verbal permission from the parent to initiate a trial period of pull out ELA instruction on or about December 5, 2023. The district asserted that the trial period was only a few days in length in anticipation of their proposal of pull-out special education for the student's ELA instruction in the upcoming IEP.
- Email documentation showed that the special education teacher acquired the parent's permission on December 5, 2023 in an email exchange. The text of the email asked if the pull-out arrangement could start before the upcoming meeting. No PWN was provided at that time.
- Email documentation showed that an IEP meeting scheduled for December 9, 2022 was not held. An IEP meeting was scheduled for January 26, 2023 so that evaluation could be completed.
- Prior Written Notice to Evaluate dated December 1, 2022 was signed by the parent giving consent on December 8, 2022.
- Email documentation showed that parent expressed concerns about the continued ELA instruction as a pull out occurring in the special education classroom in an email exchange between the parent, teacher and principal on January 18 and 20, 2023.
- Behavior sheet documentation showed that the student's behavior was rated during a 3- minute ELA period in Mr. Mead's room on the following dates: December 5, December 6, and December 8, 2022; January 3, January 5, January 9, January 10, January 12, January 13, January 16, January 19, January 23 and January 26, 2023.

- Behavior sheet documentation showed that the student was in the library during ELA instructional time January 31, February 1, February 2, February 3, 2023; these dates exclude testing days in February. Email exchanges on February 17, 2023 between the parent, teacher, special educator, coaching specialist, and school psychologist showed that the team was continuing to discuss the pull out and that the accommodated instruction was to be conducted in the general education classroom.

In this case, the evidence indicates that the student was removed from the general education classroom for ELA instruction in the special education classroom during the period between December 5, 2022 and January 26, 2023. When corrected by other team members, the general and special educator removed the student to the library for instruction for at least 4 additional days. No documentation was provided to the investigator to document if the number of minutes of service specified in the IEP was maintained during the special education pull out. It cannot be determined if additional days of pull-out instruction occurred.

### **Conclusion**

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), changed the student's placement and made changes to the IEP without providing prior written notice or obtaining parental consent if needed during the 2022-23 school year.

### **Issue Three**

The USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond to a parent request for an IEP meeting in a reasonable period of time during the 2022-23 school year.

### **Applicable Law**

Federal and state statutes and regulations at CFR 300.324(b)(1)(ii)(c) and KSA 72-3429(f) require that the IEP team meets at least annually and that it revises the IEP as appropriate to respond to a parent's request for an IEP meeting to address a lack of progress, evaluation, the child's anticipated needs, information provided to or by the parents, or other matters. In Kansas, a reasonable time to respond to parental requests such as the request for an evaluation or for an IEP meeting is two weeks, or 10 school days.

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

The complainant alleged that, after meeting on January 26, 2023 for the annual IEP meeting, the parents requested a meeting to assure those who could not attend the entire IEP meeting were aware of the decisions made. The parent requested a meeting on February 2, 2023 and again on February 6, 2023 and the meeting was scheduled for February 16, 2023 without a set

time of day. The meeting was subsequently rescheduled for February 22, 2023 and then canceled by the school, saying it was not needed.

The district responded: "The IEP team met many times throughout the school year. Each of these meetings included the parents attending with lists of items and discussion points that extended the meeting times up to 5 hours. The IEP meetings would last anywhere from 3-5 hours each time. The suggestions of the educational staff was that providing explanations, discussion, and complaints about almost every service became overwhelming and difficult for the staff to keep up with all of the parent requests. Since this situation, we have implemented additional training on IEP paperwork, meeting notes, and length of meetings. During the formal complaint collaboration meeting, the parents requested quarterly IEP meetings. The district and cooperative both agreed to hold quarterly IEP meetings to review progress and update information."

The following findings are based upon a review of documentation and interviews with the parent, former staff, and staff in USD #349.

- The findings of Issue One and Issue Two are incorporated herein by reference.
- The student's IEP team met on September 8, 2022; January 26, 2023; and April 20, 2023. The student's IEP was amended on September 22, 2022 and April 20, 2023. The student's IEP was amended without a meeting on May 10, 2023.
- On September 8, 2022, the district provided a Notice of Meeting for an IEP meeting on the same date, signed by the parent waiving 10-day notice.
- The parent reported and provided documentation that she requested a meeting on November 3, 2022 and repeated the request formally in writing on November 15, 2022. The parent reported and provided email documentation that she was told that the IEP meeting was scheduled on December 5, 2022 and then postponed until January 26, 2023 to accommodate the student's reevaluation. The contact log and email documentation showed that a Notice of Meeting was sent home to the parent with the child on January 9 (email) or January 10 (contact log), 2023; this Notice of Meeting was not provided to the investigator. A Notice of Meeting dated January 26, 2023 for a meeting dated January 26, 2023 was signed by the parent waiving 10-day notice on February 3, 2023.
- The parent reported and provided documentation that she requested a meeting on February 3, 2023, which was scheduled for February 16, 2023, delayed to February 22, 2023 and then canceled by the district.
- The district reported that it is their policy that parent requests for meetings are responded to within 10 school days to clarify the purpose and begin to schedule the meeting. The district reported that it is the special education teacher's responsibility to respond to meeting requests by parents and notes that the staff in this instance did not follow the policy.

In this case, the parent requested an IEP team meeting on November 3, 2022 and on November 15, 2022, and the special educator indicated that the meeting could be held on December 5, 2022, later changed to December 9, 2022. The contact log notes that a Notice of Meeting was sent home on November 17, 2022. This was occurring at the same time as a draft IEP dated December 1, 2022 was reportedly sent home for parental review, proposing to change the student's ELA instruction to special education pull out. Also, the Prior Written Notice - Evaluation dated December 1, 2022 was signed by the parent giving consent on December 8, 2023. Due to the upcoming required triennial evaluation, an annual IEP meeting to review the evaluation and develop the IEP was scheduled for January 26, 2023. In the end, the special educator communicated with the parent regarding her request for a meeting but did not effectively schedule a meeting based on the parental request; instead the district held the annual IEP when it came due.

In the second example, on February 3, 2023, the parent requested a meeting to assure that all team members understood the requirements of the January 26, 2023 IEP. The special educator received the request, changed the intention of the meeting to include the next year's general education teacher, determined that it was premature to include that teacher, and then canceled the meeting that had been scheduled for February 22, 2023. Thus, in both instances, the parental request for an IEP meeting to discuss her concerns regarding implementation and progress were functionally denied by the district.

It is noted that the district reported their policy is to respond to parental requests in a reasonable period of time by determining the concern and resolving that concern through collaboration, including meeting with parents. Further it is noted that the district reports that in this case, an employee failed to follow the policy.

It is noted that the district has made efforts to resolve this issue with the parents and that offered to meet quarterly with the parents during the upcoming school year. It is also noted that the district has implemented additional training for its staff on IEP meetings.

### **Conclusion**

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond to a parent request for an IEP meeting in a reasonable period of time during the 2022-23 school year.

### **Issue Four**

The USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to safeguard the student's confidential information.



## **Applicable Law**

Federal regulations implementing IDEA at 34 C.F.R. 300.32 state that the term “personally identifiable information” (PII) means information that contains the name of the child, the child’s parent, or other family member; the address of the child; a personal identifier, such as the child’s social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. A student’s disability status and any information about a student’s IEP services would fall under the definition of PII.

Federal regulations implementing IDEA at 34 C.F.R. 300.622 require that parent consent must be obtained before personally identifiable information is disclosed to any party, other than officials of the public agency with a right to know. Federal regulations implementing the IDEA at 34 C.F.R. 300.615 require that If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

## **Analysis: Findings of Fact**

The complainant alleged that the district disclosed their own child’s and other children’s special education accommodations in two ways. First, the accommodated assignments were identified by the student’s initials in the classroom’s GoEduStar gradebook during the second and third 9-week period of the school year. These assignments could be seen by all users of the gradebook, including other parents of children in the classroom. Second, the teacher sent home assignment folders at the end of the school year on or about May 16, 2023 that identified other children, their accommodations, and IEP progress reporting on their goals.

The district responded that: “SCKSEC provides confidentiality training for all staff and has all staff sign a confidentiality agreement. Special education teachers are provided with a locking filing cabinet and asked to share only “need to know” information with other staff members to effectively implement the IEP. Accommodations, modifications, programming, and goals are all included in the information shared with general education staff for the implementation of the IEP. Personnel issues that have come up in regards to this situation have been handled by the Human Resource Department and are private employee information that cannot be shared with others. When the administration met with the parents at the formal complaint discussion meeting, the parents requested that the staff member be fired and the IEPs not be shared with anyone except the special education teacher. Suggestions from the administration included that the IEP information be locked up in the general education teacher’s classroom, similar to the locking filing cabinets in the special education classroom so that implementation of the programming in the IEP is still accessible for staff working with the special education students. This was agreeable for both parties. . . We will do our best to address the concerns of the parents, while maintaining individual privacy of staff members.”

The following findings are based upon a review of documentation and interviews with the parent, former staff, and staff in USD #349.

- The findings of Issue One, Issue Two, and Issue Three are incorporated herein by reference.
- The parent reported, provided documentation, and the district agreed that the teacher posted assignments, which were identified with the student's initials in the electronic gradebook and that could be seen by other parents. The parent reported and the district agreed that the school corrected the error as soon as the parent made the principal aware of it, in the gradebook going forward. The parent reported that the previous assignments were not corrected in this way. The school reported that the teacher misunderstood how the electronic platform displayed information to end users based on the platform's feature that displayed a student's scores only to their own parents. Other informants indicated that the teachers were also end users of the electronic platform as parents in the district and thus understood the parent's view of the gradebook.
- The parent reported, provided documentation, and the district agreed that confidential documents had been sent home with the student and another student in the class. The district reported that the special education teacher had provided the confidential IEP progress reports to the classroom staff to place into the students' backpacks and that the information was mistakenly switched when putting it into the students' backpacks. The documentation provided by the complainant showed that more than one student's confidential information was included on a single document that she received. The progress reports listed the other students by name and included their progress on goals and information such as accommodations in the classroom. The parent reported that a second parent in the classroom also received confidential information for two students other than their own child.

In this case, the evidence shows that the school failed to properly safeguard confidential information of the student in the electronic gradebook and failed to fully correct the problem when it was brought to their attention. Secondly, the school failed to properly safeguard the students' and other student's confidential information by sending information to parents about children who were not their own.

It is noted that the school provides confidentiality training and that employees sign a confidentiality statement each year. It is further noted that the district has reported taking human resources actions related to this issue. The district also offered to resolve this issue with the parents by providing a locked cabinet for general educators in which to store confidential documentation needed by a teacher in order to provide instruction to children with disabilities in their classrooms.

## **Conclusion**

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the USD #349 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to safeguard the student's confidential information.

### **Summary Of Conclusions/Corrective Action**

1. **ISSUE ONE:** A violation of 34 C.F.R. 300.320 was found based on the findings of fact that the school did not provide the supplementary aids and services in the student's IEP, in two main ways: (a) the special and general education teachers did not follow the IEP's specifications in teaching the student's ELA instruction, and (b) the student's sensory breaks and tools were not provided as needed to regulate the student's sensory needs. Secondly, the teacher did not attend to the effects of the disability as described in the IEP when she failed to, or failed to direct the paraeducator to, assist the student following instructions related to classroom routines, despite parental advocacy to acquire the items and support the student's participation and academic progress in the general education curriculum. Corrective action is required (as follows):

- a. **CORRECTIVE ACTION:**

- i. Within 20 days of this report, USD#349 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.300.320, which require that the IEP includes supplementary aids and services as defined in 34 C.F.R 300.42, that the IEP is in effect for each student with a disability at the beginning of the school year, and that the IEP specifies the anticipated frequency,
- ii. USD #349 shall provide training to the student's school on the development and implementation of IEPs that emphasizes (a) the responsibilities of general educators to provide supplementary aids and services and other accommodations in the general education classroom, (b) the supervision of paraeducators providing supplementary aids and services specified in student's IEPs, and (c ) the documenting supplementary aids and services provided in the classroom. The training must be approved by SETS such as that provided by the Kansas-TASN technical assistance providers or its equivalent. The training must be given to all general and special education teachers and administrators in the building. A copy of the training's content and attendees shall be provided to SETS.location, and duration along with the projected dates to begin and end the IEP services and modifications.

a. **Date due for the completion and documentation of training: December 30, 2023**

- iii. The USD#349 shall offer to the parent compensatory education for specialized ELA instruction required in the January 26, 2023 IEP meeting, for 4680 minutes or 78 hours. The parent can accept none, any or all of the compensatory education. The compensatory education shall be directed toward assisting the student to meet his reading goal and to progress in the general education curriculum toward grade level performance in reading and ELA. The compensatory education must be based on evidence-based teaching strategies and individualized to the student's needs.

1. **Date due: The district shall provide evidence of its offer of compensatory services and the parent's response to SETS by October 19, 2023.**

2. **ISSUE TWO:** A violation of Federal and state statutes at 34 CFR 300.503 was found based on findings of fact that the student was removed from the general education classroom and services were provided for a period of time in the special education classroom without providing Prior Written Notice to the parent.

Corrective action is required (as follows):

a. **CORRECTIVE ACTION:**

- i. Within 20 days of this report, USD #349 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. 300.503 which require that Prior Written Notice is provided to parents when a change of special education services or placement is made by the district.
- ii. USD #349 shall provide training to the special education staff and school administrators at the student's school on the requirements for providing Prior Written Notice when changing the implementation of services or accommodations in IEPs. USD #349 will provide a copy of the policy, training agenda, dates and names of individuals trained to SETS. This training may be provided to individuals as part of coaching or supervisory meetings.

1. **Date due for the completion and documentation of training: November 1, 2023**

3. **ISSUE THREE:** A violation of 34 C.F.R. 300.324(b)(1)(ii)(c) and KSA 72-3429(f) was found, based on the finding of facts described previously, that the district failed to schedule meetings requested by parents. Corrective action is required (as follows).

a. **CORRECTIVE ACTION:**

- i. Within 20 days of this report, USD #349 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 300.324(b)(1)(ii)(c) and K.S.A.72-3429(f) on responding to parental requests for IEP meetings.
  - ii. USD #349 shall provide training to the special education staff and school administrators at the student's school on the requirements to respond to parental requests following the district's policy and practice. USD #349 will provide a copy of the policy, training agenda, dates and names of individuals trained to SETS. This training may be provided to individuals as part of coaching or supervisory meetings.
    1. **Date due for providing the policy to SETS: Within 20 days of this report. Date due for providing training: November 1, 2023.**
4. **ISSUE FOUR:** A violation of Federal regulations implementing IDEA at 34 C.F.R. 300.32 and 34 C.F.R. 300.622 was found, based on facts previously described that confidential information was not safeguarded in the building. Corrective action is required, as follows:
- a. **CORRECTIVE ACTION:**
    - i. Within 20 days of this report, USD #349 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. 300.32 and 34 C.F.R. 300.622 to properly safeguard confidential documents of students.
    - ii. USD #349 shall provide a copy of their policy and a statement to SETS on how they intend to improve safeguarding confidential information at the student's school, including (a) providing locked cabinets to house confidential documents needed for teaching in the general education classroom, and (b) training to the general and special education staff and school administrators at the student's school on the requirements to maintain confidentiality of students records and information, including on the use of the locked cabinets. USD #349 shall provide the training agenda, dates and names of individuals trained to SETS.
      1. **Date due for providing the policy and statement of improvement to SETS: Within 20 days of this report. Date due for providing training: November 1, 2023.**

### **Investigator**

*Gwen P. Beegle, Ph.D.*

Gwen P. Beegle, 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](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)