

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #259
ON NOVEMBER 17, 2023

DATE OF REPORT DECEMBER 26, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ----- by his mother, ----- . In the remainder of the report, ----- will be referred to as "the student." ----- will be referred to as "the complainant" or "the mother" or "the parent."

The complaint is against USD #259, Wichita Public Schools. In the remainder of the report, USD #259 will be referred to as "the district".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on November 17, 2023 and the 30-day timeline due to a one day state holiday ends on December 18, 2023. Subsequently the complaint investigator requested and received a one-week extension due to personal reasons and due to an additional state holiday, the ending date is December 26, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham reviewed all evidence and documentation, which was provided by both the district and the complainant(s). Interviews with the mother and district were conducted. The following documentation and information were used in consideration of the issue(s):

1. Individualized Education Program, dated October 25, 2022
2. Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated October 25, 2022 and signed by parent on October 25, 2022
3. Student Discipline Profile dated between December 4, 2022 and March 2, 2023
4. Individualized Education Program amended, dated March 8, 2023
5. IEP Amendment Between IEP Meetings dated March 8, 2023
6. Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated March 8, 2023 signed by the parent March 8, 2023
7. Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated March 20, 2023 signed by parent March 28, 2023

8. Notice of Meeting dated May 5, 2023
9. Excusal from Attendance at IEP Meetings of Required IEP Team Members dated May 17, 2023 consent signed May 17, 2023
10. Individualized Education Program, dated May 17, 2023
11. Multidisciplinary Team Report (MTR) dated May 17, 2023
12. Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated May 23, 2023 consent signed May 23, 2023
13. IEP Progress Period Detail dated May 24, 2023
14. Student progress report Comparison chart between May 2023 and October 2023
15. Woodman Tiered Behavior Chart Revised August 1, 2023
16. 2023-2024 [student] Notes dated between August 18, 2023 and November 6, 2023
17. Daily Behavior Data Sheet dated August 18, 2023, August 29, 2023, and August 31, 2023
18. 2023-2024 [student] General Ed Student Contact Log dated between August 31, 2023 and November 15, 2023
19. Student Discipline Profile dated August 18, 2023 through November 9, 2023
20. Email between parent and principal dated between August 30, 2023 at 1:14 p.m. and September 12, 2023 at 4:34 p.m.
21. Email from mother to principal dated August 31, 2023, at 6:24 p.m.
22. Email from principal to school team dated September 1, 2023 8:08 a.m.
23. 2023-2024 [student] Special Ed Student Contact Log dated between September 1, 2023 and November 20, 2023
24. Email from principal to parent dated September 7, 2023 at 2:07 p.m.
25. Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated September 8, 2023, consent signed September 11, 2023
26. Email from school counselor to parent dated September 11, 2023 at 7:58 p.m.
27. Email from IR Special Education Teacher to Principal dated September 11, 2023 at 9:25 p.m.
28. Email from principal to school team dated September 14, 2023 6:23 p.m.
29. Email from parent to principal dated September 14, 2023 at 6:12 p.m.
30. Request for Tier 3 Behavior Consult dated September 18, 2023
31. Email between principal and parent dated September 20, 2023 between 9:09 a.m. and 9:45 a.m.
32. TASN Technical Assistance Action Plan dated September 27, 2023
33. TASN Meeting Notes dated September 27, 2023
34. IEP Progress Report – Annual Goal dated October 12, 2023
35. Quarter 1 Elementary Progress Report 2023-2024 school year

36. Social Worker message history between October 28, 2023 and November 28, 2023
37. Recovery Room Guidelines updated November 8, 2021
38. Notice of Meeting dated November 17, 2023
39. Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated November 20, 2023
40. Functional Behavior Assessment (FBA) dated December 6, 2023
41. Multidisciplinary Team Report (MTR) dated December 6, 2023
42. Protocol for Responding to Behavior and the Investigative Processes (undated)
43. Recovery Room description (undated)
44. Reset Room description (undated)
45. 2023-2024 Behavioral Programming Change Packet
46. Regulations Board Policy – P1464 student behavior
47. IR Teacher Fall 2023 Conference notes
48. 2023-2024 School schedule (Instructional, Specials and Assembly Seating)
49. 2023-2024 District schedule
50. District response to complaint dated December 7, 2023

Background Information

The student attends USD #259 as a second grader at a district elementary school and receives special education and related services under the exceptionality category of Autism. The student first started receiving Infant-Toddler services (Part C) and later was determined to be eligible for special education services under the primary exceptionality of Autism.

The student receives special education services in general education and is also pulled out. His IEP team has met several times in the twelve months to discuss his behavior and amount of time with general education peers. The student transferred to a different elementary school during the course of this investigation.

Issues Investigated

1. **ISSUE ONE:** USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to implement the student's IEP, specifically the general education service minutes, thereby denying the student access to general education peers during the 2023-2024 school year.
2. **ISSUE TWO:** USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to call an IEP meeting in response to lack of student progress during the 2023-2024 school year.
3. **ISSUE THREE:** USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to complete an FBA within timelines during the 2023-2024 school year.

4. **ISSUE FOUR:** USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to develop an appropriate annual individualized education plan (IEP) based on student food allergies and behaviors resulting in suspensions during the past twelve months.

Issue One

USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to implement the student's IEP, specifically the general education service minutes, thereby denying the student access to general education peers during the 2023-2024 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. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

The parent allege that the district did not meet the provisions on the student's IEP to keep the student in a general education classroom and instead was kept in a cubicle in a special education classroom away from his peers.

The district acknowledge that although they were not always implementing the general education service minutes as written into the IEP, the IEP accommodation of a soft start to the school year allowed them to serve the student based on his changing behavioral needs in his least restrictive environment at any given time. They further respond that the soft start to the school year documents that behavioral data collection would guide the amount of time the student spends with peers in the general education setting and they used that to make decisions.

The Multidisciplinary Team Report (MTR) dated May 17, 2023 describes the Student's response to interventions in the general education setting: "At the beginning of the school year, [student's] IEP was written for him to receive special education services in the general education classroom with non-exceptional peers for the majority of the school day. This setting appeared to be overwhelming for [student] as he was frequently displaying disruptive behaviors such as blurting out, property destruction (pulling materials off shelves and throwing to the ground), and eloping. When extremely dysregulated or overstimulated, [student] exhibits aggressive behavior towards staff and peers such as hitting, kicking, and in one instance, purposely urinating on property. [Student] displayed these behaviors in both the

general education and special education classrooms, and in less structured settings such as recess. As a temporary placement and upon parent request, [student's] services during core were moved into the special education classroom with support from the special education teacher and various paraeducators. [Student's] behaviors impacted fewer students in this setting, but he continued to have difficulties regulating his emotions."

The MTR dated May 17, 2023 lists a recommendation "To accommodate [student's] aversion to change and difficulty with transitions, initially he will have a soft start to his school year next year, spending more time in the special education classroom as he transitions back to school and acclimates to 2nd grade expectations."

The IEP dated May 17, 2023 (in effect at the beginning of the 2023-2024 school year) shows an accommodation of a "Soft start when transitioning to a new year or a new program" with a rationale allowing the student to adjust to changes in his routine and recognizing that starting the school year is a big change for him. The frequency was listed as at major transition times and in all school settings throughout the day and for the first 30 - 60 days.

The IEP dated May 17, 2023 shows "[Student] will receive Speech and Language services twice a week for 15 minutes. Services will be provided individually or in group setting. The student will receive special education services in a special education classroom without non-exceptional peers for English/Language Arts (Pull Out). He will receive special education services with non-exceptional peers for the remainder of the day including Math and specials, with the exception of lunch and recess. These services are for the same duration and frequency as his grade level peers."

The PWNP dated May 23, 2023 and signed by the mother on May 23, 2023 states that while the Student has made good progress with the current level of support and staffing, he still struggles with transitions, and the Team anticipates that he would need extra support at the beginning of the 23-24 school year to acclimate back to school expectations and his new classroom/peer group.

The PWNP dated May 23, 2023 and signed by the mother on May 23, 2023 recorded, "Time without nonexceptional peers was increased to 110 minutes/daily; support in the general education classroom was decreased."

The district reported in their response that the student's school schedule shows that English/Language Arts, lunch, and recess total 150 minutes daily in pull-out special education without access to nondisabled peers. Additionally, twice a week for 15 during speech and language service time the student is pulled out without access to nondisabled peers.

The district's response to the complaint stated, "while on any given day, the school may have had to exceed the amount of time the Student's IEP called for him to be away from general education peers, it was to meet his unique needs and to try to serve him appropriately in a way and setting in which he could receive the services at that time. The school was not denying the

student access to general education peers during the 2023-2024 school year, but serving him in his least restrictive environment on a moment's notice as his behaviors required, during this re-evaluation period."

Conclusion

Although the student minutes dictate the number of minutes the student receives services with general education peers the accommodation, "soft start to school year" as defined in the MTR dated May 17, 2023 allows for the alternative of minutes to provide the student the level of support to be successful within the first 30-60 days of the school year. Based on the foregoing, *it is not substantiated* that USD #259 failed to implement the student's IEP, specifically the general education service minutes, thereby denying the student access to general education peers during the 2023-2024 school year.

Issue Two

USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to call an IEP meeting in response to lack of student progress during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.324(b)(1)(ii)(A) and state statute at K.S.A. §72-3429 states that the IEP team is obligated to review the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate.

Analysis: Findings of Fact

The parent allege that she was told her student was failing and was suspended four times this school year for his behavior.

The district respond that the student was progressing during the 2023-2024 school year, as evidenced by his Elementary Progress Reports and the first quarter IEP Progress Report. Further, the district scheduled an IEP meeting on December 6, 2023 after allowing time to conduct a functional behavior assessment (FBA) and offered an IEP meeting earlier during the fall semester.

The findings of Issue One is incorporated herein by reference.

The October 17, 2023 Quarter 1 Elementary Progress Report shows that the student is rated emerging for grade level behavior and work habits, emerging and partial success for grade level English Language Arts, emerging for grade level mathematics, developing and proficient for grade level physical education, emerging for grade level science, developing and proficient for grade level visual arts and developing for grade level vocal music.

The Progress Reports dated May 24, 2023 and October 12, 2023 shows:

Student goal	May 24, 2023	October 12, 2023
Orally produce simple narrative	child did not work on this goal during the reporting period	Progress has been made towards reaching the goal by the annual IEP.
Produce /R/ and vocalic /R/	child did not work on this goal during the reporting period	Progress has been made towards the goal, but the goal may not be met by the annual IEP.
Breathe slowly & deeply, relax tense body, ask calmly to be by self when angry	child did not work on this goal during the reporting period	Progress has been made towards the goal, but the goal may not be met by the annual IEP.
Answer complex WH questions	child did not work on this goal during the reporting period	Progress has been made towards reaching the goal by the annual IEP
Keep hands to self and stay in assigned area	child did not work on this goal during the reporting period	Progress is not sufficient to meet this goal by the annual IEP.
Write sentences using graphic organizer	child did not work on this goal during the reporting period	Progress has been made towards the goal, but the goal may not be met by the annual IEP.
Develop skills to regulate emotions	child did not work on this goal during the reporting period	Progress has been made towards the goal, but the goal may not be met by the annual IEP.

The October 12, 2023 Parent-Teacher Conference Teacher notes document meeting with the parent and describing new supports being implemented from the TASN action plan.

The Tier 3 Request Form dated September 18, 2023 describes academic and behavior successes along with level of support.

The emails describe the coordination of the TASN consultation and resultant Action Plan along with follow-up team meeting discussing their implementation and student changes document the IEP team met during the 2023-2024 school year.

The consultation between the IEP team and TASN for behavior intervention show that ideas generated during the meeting assisted the team to develop an Action Plan with new ideas to address the Student's behaviors.

An email dated September 20, 2023 from the principal to the mother states, "let us know if you wanted an IEP meeting before the TASN meeting and/or if you'd like to wait and hold the IEP when we finalize the FBA as part of the re-evaluation."

The TASN action plan and teacher notes from the TASN meeting document the instructional changes recommended. Teacher notes and emails detail the resultant student progress from implementing the recommendations.

Conclusion

Review of the documentation shows that the student was progressing in the grade level standards and IEP goals. While the student was struggling behaviorally the parent requested and the district consented to conduct social-emotional evaluation and functional behavior assessment for the student as well as use the outside expertise of TASN. Both the complainant and district agreed to meet the IEP at the conclusion of the re-evaluation on December 6, 2023 and the IEP team met regularly to discuss and improve the student's behavioral supports as evidenced by meeting notes and emails. Based on the foregoing, *it is not substantiated* that USD #259 failed to call an IEP meeting in response to lack of student progress during the 2023-2024 school year.

Issue Three

USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to complete an FBA within timelines during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.301(c)(1)(i) and K.A.R. §91-40-17(a) states the initial and re-evaluation must be conducted within 60 school days of receiving parental consent for the evaluation. The activities that must be completed during the 60 school days include: 1) conduct an evaluation of the child; 2) conduct a meeting to determine if the child is an exceptional child and if so, develop an IEP, and finally; 3) give notice of this meeting.

Analysis: Findings of Fact

The parents allege that they requested a behavioral plan and IEP meeting on August 31st but the first dates they were offered were in December. Further, as of November 15, 2023 they had not been notified that the FBA was completed.

The district responds that after receiving the request for the reevaluation to conduct a FBA on August 31, 2023 they examined the existing data collected as part of the school's Child Study Team and on September 8, 2023 sent home a PWN agreeing to conduct the FBA and evaluation, noting the potential to revise the IEP based on the evaluation findings. The content for evaluation was signed on September 11, 2023 and the school began conducting the evaluation. During the evaluation TASN was brought in and they helped design some of the FBA data collection tools. During October and mid-November evaluation data was collected and the social worker attempted to collect evaluation data and conduct social histories with

the family. After failing to reach the family to set a date for the re-evaluation and IEP discussion the school sent a Notice of Meeting on November 17, 2023 for December 6, 2023. The district reported that this meeting occurred, and an IEP review meeting was held on December 11, 2023, meeting the 60 school day timeline for completing a re-evaluation.

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

The parent log recorded that on August 31, 2023 at 6:02 a.m. the mother called the principal and the "Mom requested IEP meeting & FBA to address behavior."

The Prior Written Notice for Evaluation or Reevaluation and Request for Consent (PWNE) dated September 8, 2023 proposed to use existing data and collect new data to determine Social/Emotional Status/Behavioral Status. The explanation recorded, "Following a parent request, the team is proposing to conduct a limited scope social/emotional reevaluation to determine if [student] is eligible for any additional special education supports or services. Additionally, if applicable the team will determine if [student] needs an FBA and behavior plan as a result of the social/emotional reevaluation." Parental consent was signed on September 11, 2023.

Staff notes documented on August 31, 2023 "Wrapping up FBA observations"

The Special Education Logs show school staff contacted parents by phone or face-to-face on September 26, September 29, October 3, October 18, and October 26, 2023 to collect re-evaluation data.

Documentation shows that on November 2, 2023 at 10:36 a.m. the social worker contacted the mother "I was contacting you to schedule [student's] staffing for his re-evaluation. We are proposing December 6th or December 8th at 2:30 p.m. Let know if either of those dates work for you and/or your husband. I tried to stick to that after 2 p.m. time." to which the parent replied, "Let me check with everyone and get back to you."

Documentation showed that on November 13, 2023 at 11:30 a.m. the social worker contacted the mother and left a message, "Hey checking back in on the date to schedule [student's] meeting. Does 12/6 or 12/8 at 2pm (work)?"

Documentation showed that on November 18, 2023 at 3:00 p.m. the Mediation/Due Process Supervisor called the mother. During the conversation, the following was reported, "she [mother] said they had [contacted her] and offered two December dates, but she had not responded to the school because of the recent incident. She asked how she would know when they would meet, and I shared that the school would be sending a meeting notice, but if the date they selected is not one that works for her, to let the school know and they can try to accommodate."

Documentation showed that the district sent the parents a Notice of Meeting dated November 17, 2023 for a meeting on December 6, 2023.

The district report that the meeting occurred on December 6, 2023 and an FBA and Evaluation report were distributed. The district reported that an IEP meeting was held on December 11, 2023 to discuss changes based on the reevaluation containing the FBA evaluation.

Conclusion

A functional behavioral assessment can be requested and conducted as part of an initial evaluation or reevaluation in order to develop a BIP when the student exhibits behaviors that impact their performance at school. If that is the case in Kansas, the district has 60 school days from the time the parent signs consent to complete the initial or reevaluation.

The district is only obligated to conduct an FBA to develop a BIP if change of placement is considered due to discipline action. In this case the student has not been suspended ten days in order to evaluate if a change of placement has occurred. It is found that the parent signed consent to examine existing data and conduct new evaluation for social-emotional and conduct an FBA on September 11, 2023. According to the district's 2023-2024 school year calendar, sixty school days end on December 11, 2023. Based on the foregoing, *it is not substantiated* that USD#259 failed to complete an FBA within timelines during the 2023-2024 school year.

Issue Four

USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to develop an appropriate annual individualized education plan (IEP) based on student food allergies and behaviors resulting in suspensions during the past twelve months.

Applicable Law

Federal regulations at 34 C.F.R. §300.324(a)(1)(ii), 34 C.F.R. §300.324(a)(1)(iv), and 34 C.F.R. §300.324(a)(2)(i) and state statutes at K.S.A. §72-3429 state that when developing the student's IEP, the IEP team shall consider the strengths of the child, the concerns of the parents, the results of the most recent evaluation of the child, the academic, developmental and functional needs of the child and in the case of a child whose behavior impedes the child's learning or that of others, the use of positive behavioral interventions and supports and other strategies to address that behavior.

Further, federal regulations at 34 C.F.R. §300.530 (f)(1)(i) states that if the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP team must either conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child.

Analysis: Findings of Fact

The parent alleges two issues were not appropriately addressed in the student's IEP. The mother states that the student was suspended from school four times this year for behaviors and a behavioral plan has not yet been set up for the student. As well the student is not able to eat lunch at school because his dietary restrictions cannot be accommodated with school lunches and the district will not warm up food sent from home for him.

The district responds that the student's IEP over the past 12 months was developed to address the student's needs related to food allergies and that they were unaware of the request to warm food sent from home. They respond that they are happy to honor that request.

The district responds that they have used data and outside behavioral consultants to address the student's behavior and completed an IEP meeting following a reevaluation and FBA on December 6, 2023 to address the behavior concerns. They state that the student's transition to the new school year was a trigger and the IEP team anticipated that with the accommodation for a soft start to the school year and school day. They acknowledge that the student's behavior has been volatile, but they assert that the IEP was developed appropriately addressing the behavior of the student at the time of development as evident by the reevaluation.

The findings of Issues One, Two, and Three are incorporated herein by reference.

Food Allergies

The IEP dated May 17, 2023 lists a parent concern as to how little the student eats at school and would like the student to have extra time to eat. The IEP lists an accommodation, "extra time at lunch or at snack time to eat" initiated 10/25/22 due to sensory sensitivity causing him to eat very slowly. This accommodation is to be accessed daily throughout the school day.

The Health Assessment portion of the Multi-Disciplinary Report (MTR) dated 5/17/23 states: "[Student] is a 5 year-old male with diagnoses of Asthma, Autism, Food allergies/Anaphylaxis, GI Reflux. He has Albuterol inhaler and EpiPen at school. He is 48.5 inches tall (97%), weighs 43 pounds. He has known food allergies of dairy, eggs, nuts, and shellfish. He is current on childhood immunizations and passes hearing and vision screenings."

The MTR dated May 17, 2023 includes the following from a Social History dated April 22, 2022, "Sensory/Adaptive: [Student] does not like loud sounds, dirty hands, certain clothing textures, has skin sensitivities, and has aversion to suit and food textures. [Student] will only eat 7 foods which are chicken nuggets, fries, oatmeal, blue tortilla chips, original sun chips, vanilla wafers, and orzo noodles. If [student] is given something other than the seven foods, he will eat he will vomit." Later in the same MTR, parent reports that "[student] does not eat or attempt to eat non-preferred items that are offered to him. He brings his own snacks and lunch to school."

The IEP dated May 17, 2023 shows some of the Health/Physical present level section changed, but the food allergy was not changed. However, the Health/Physical Needs as they Affect

Learning section did change to include: “[Student] is allergic to shellfish, nuts, dairy and eggs. [Student] knows this and will often say he can't eat something because he is allergic to it. He has a limited diet of things he likes to eat hence he is very thin. We encourage him to take extra time after lunch to finish any of his food that is left over from his lunch that is packed for him from home,” The May 17, 2023 IEP nor MTR do not document a parent request nor team determination that the student’s disability required the school to warm his food.

The district reports in their response that during a November 17, 2023 phone conversation between the mother and Mediation/Due Process Supervisor that the student has several food allergies, is a picky eater, and that the school says they cannot warm up food that he can and will eat, such as spaghetti, so they just send cold snacks from home. Further, the grandmother reported she believes it is disability-related to a certain degree because the student participated in a swallow study and received eating therapy.

The Special Education Student Contact Log shows that the Mediation/Due Process Supervisor assured the Parent that she would speak to the Principal about heating up food sent from home on November 17, 2023.

The Principal reported that the school agrees to warm the food that family sends to school for the student.

Behavior

The March 8, 2023 IEP Amendment documents that data from behavior charts and incident reports were used to revise special education service minutes to best meet the student’s behavior needs in his least restrictive environment. Keeping the service minutes the same was considered but rejected due to the student’s challenges without the additional supports.

A PWNE dated March 20, 2023 with parent signed consent on March 28, 2023 documents a re-evaluation (with boxes checked for existing and new data), will include “assessment of social/emotional/behavioral development in relation to the child’s learning, interpersonal relationships, feelings and/or physical symptoms as well as a functional behavioral assessment or evaluation to determine appropriate positive behavioral supports.”

A MTR dated May 17, 2023 reports the student struggled with behaviors early during the 2022-2023 school year and that his parents had “requested a (limited scope) behavioral re-evaluation to determine appropriate positive behavior supports, accommodations and placement/services in order to help him progress.”

The May 17, 2023 IEP includes goals and accommodations for behavior and the progress reports from quarter 4 of the 2022-2023 school year to Quarter 1 of the 2023-2024 school year show improvement. One accommodation, “starts the school day with a soft start where the adult can assess his behavior for the day. An accommodation was added to the IEP when transitioning to a new year or a new program to allow [student] time to adjust to changes in his routine throughout the day and for the first 30 - 60 days.

Issue Three found that the timeline for the conducting a functional behavior assessment to develop a behavior intervention plan is December 6, 2023. At this time, the district is on track to meet that timeline.

The school Principal reported during the interview that she met with Mother on November 27, 2023 and agreed to her request for the student transfer to another USD #259 elementary school, one that has behavioral supports in the school to be able to meet the Student's needs, for a fresh start per their proposed solution in their Formal Complaint, and will work with the new school as [school] team completes the re-evaluation and subsequent IEP review on December 6, 2023 to aid in as smooth a transition as possible.

Conclusion

In regard to the allegations about developing an appropriate IEP based on food allergies and sensitivities it is found that the district is in compliance and the district consented to warm the student's food in the school setting based on a parent request. Additional accommodations are in place to provide additional time to eat.

In regard to developing an appropriate IEP for the past twelve months in regard to a behavior plan the district demonstrated they have evaluated and implemented many strategies and accommodations for the student's behavior and revised the IEP in anticipation of a transition. During the 2023-2024 school year the behavior intervention plan development was dependent on the PWN for reevaluation of behavior to develop the plan. The timeline of 60 school days as investigated in Issue three was in effect. Based on the foregoing, *it is not substantiated* that USD #259 failed to develop an appropriate annual individualized education plan (IEP) based on student food allergies and behaviors resulting in suspensions during the past twelve months.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was not found based on document review. Corrective action is not required.
2. **ISSUE TWO:** A violation of 34 C.F.R. §300.324(b)(1)(ii)(A) and K.S.A. §72-3429 was not found based on document review. Corrective action is not required.
3. **ISSUE THREE:** A violation of 34 C.F.R. §300.301(c)(1)(i) and K.A.R. §91-40- 17(a) was not found based on document review. Corrective action is not required.
4. **ISSUE FOUR:** A violation of 34 C.F.R. §300.324(a)(1)(ii), 34 C.F.R. §300.324(a)(1)(iv), 300.530 (f)(1)(i) and 34 C.F.R. §300.324(a)(2)(i) and state statutes at K.S.A. §72-3429 were not found, based on review of documents and interview with staff. Corrective action is not required.

Right to Appeal

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