

**KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES**

**REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #298  
ON JANUARY 23, 2024**

**DATE OF REPORT FEBRUARY 22, 2024**

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

The complaint is against USD #298 (Lincoln Public Schools) and the USD #273 Beloit Special Education Cooperative (BSEC). In the remainder of the report, these two responsible public agencies may also be referred to as “the district”, “the local education agency (LEA)”, or “the school”.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on January 23, 2024 and the 30-day timeline to investigate the allegations ends on February 22, 2024.

### **Evidence Reviewed**

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation, which was provided by both the district and the complainants. The following documentation and information were used in consideration of the issues:

1. Enrollment packet for the student dated February 9, 2023
2. Discipline Report for the student dated between April 10 and October 11, 2023
3. Email dated April 25, 2023 at 1:26 PM written by Derek Knopp, School-based Clinical Services Coordinator at the Central Kansas Mental Health Center, to the mother regarding services
4. Email dated July 3, 2023 at 3:06 PM written by the mother to Mr. Knopp regarding the application for the Serious Emotional Disturbance Medicaid Waiver
5. The 2023-24 School District Calendar for USD #298
6. Emails dated August 28, 2023 at 4:39, 4:42, 5:54, and 7:19 PM between the mother and Megan Habiger, Second Grade Teacher, regarding the student’s behavior and a request for a 504 plan
7. Behavioral observations in the classroom dated between September 7 and October 12, 2023, handwritten by Barb Holtz, Lincoln Elementary Paraprofessional

8. Email dated September 20, 2023 at 9:43 AM written by Delaney Hamel, School-based Mental Health Counselor and Liaison, to the parent arranging a meeting to discuss a behavior plan for the student
9. The Alternative School Day Schedule which went into effect on October 16, 2023
10. Mother's handwritten request for a "504 evaluation" due to mental health diagnoses and medication dated October 31, 2023
11. Letter to parents dated November 7, 2023 acknowledging the 504 request
12. Team Meeting Notes dated December 5, 2023 written by Hillary Holeman, Elementary School Counselor
13. Email dated December 13, 2023 at 2:34 PM written by Ms. Hamel to the mother regarding an updated schedule
14. Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent dated December 15, 2023 and signed by the parent on January 2, 2024
15. The Alternative School Day Schedule which went into effect on January 2, 2024
16. Formal Complaint Request Form signed by the complainants on January 22, 2024
17. Email dated January 26, 2024 at 9:13 AM written by Ms. Hamel to the mother regarding an updated schedule
18. The Alternative School Day Schedule which went into effect on January 29, 2024
19. Response to the Allegations dated February 5, 2024, written by Scott Crenshaw, Superintendent of USD #298
20. Interview with the complainants on January 25 and February 6, 2024
21. Notice of Special Education Meeting dated February 8, 2024
22. Interview with the following district staff on February 9, 2024: Mr. Crenshaw; Nikki Flinn, K-12 Principal; Christie Gerdes, Special Education Director for the Beloit Cooperative; Ms. Hamel; Ms. Habiger; Felisha Bland, Beloit Cooperative School Psychologist; and Ms. Holeman
23. Counselor Notes for the 2023-24 school year written by Ms. Hamel
24. Blank Student Improvement Team / Multi-Tiered Systems of Support form used by USD #298
25. List of Tier II Interventions provided to the student during the 2023-24 school year
26. The student's district assessment data for the 2023-24 school year
27. Email dated February 19, 2024 at 9:15 PM written by Susan Severin, School Psychologist / Specialized Learning Services Supports Consultant for Greenbush Education Services Center, to Mr. Crenshaw regarding professional development training
28. Note that the mother requested and granted consent for an interview with Katrina Blalock, Case Manager at Central Kansas Mental Health Center (CKMHC); however, an interview was not able to be arranged within the investigation timeline

## **Background Information**

The student is an eight-year old male currently enrolled in the second grade in USD #298 and attends Lincoln Elementary School. Records and interviews show that he transferred into the district from USD #299 during the second semester of first grade during the 2022-23 school year without any special services or supports in place.

## **Positions of the Parties**

The parent reported that USD #298 failed to suspect the student may be a child with a disability in need of special education and related services even though there were a number of ongoing behavioral concerns. The parent indicated school staff first shared concerns regarding the student's behavior at the end of first grade and suggested the parent seek additional services for the student during the summer between first and second grade. These services were obtained and information regarding these services was shared with school staff in August 2024. The mother reported she asked for a 504 evaluation for special services to help the student at the beginning of second grade; however, the district failed to respond until the end of October 2023 when the student was placed on a shortened day schedule and the mother put her request for a 504 evaluation in writing. The parents indicated they were unfamiliar with what services to specifically request for their student but knew some type of special services were becoming necessary to support the student with being successful in the school setting due to the increase in inappropriate behaviors resulting in the student being partially excluded from second grade.

The district acknowledged that the student transferred into USD #298 during the second semester of the 2023-24 school year. The district stated,

*The student had no issues with academics or behaviors during the Spring semester of 2023. In the fall of 2023 when the student entered 2nd grade, there were behaviors of not following directions, breaking pencils, expressing profanities, and not staying on task. The school counselor attended the classroom to observe the student in a classroom setting. During those observations, the counselor was not concerned with the student's classroom behavior in the context of needing a SPED evaluation for behavior. Parents were contacted for a meeting to discuss behaviors and implement a behavior plan for this student based on the classroom teacher's request. As a result of this meeting, parents agreed to have the student meet with our school counselor once a week. In October 2023, the student's behavior escalated to include inappropriate touching of female students. Parents were contacted and attended a meeting to discuss these behaviors and to seek information on how to best support this student. This meeting took place on Friday, October 12. Based on the student's behavior, he was suspended for the day Friday. As a result of the parent meeting, an alternative schedule was agreed upon by the parents and the team. The parents requested that the student not be allowed to participate in recess, PE, and library. On October 31,*

2023, parents requested a 504 plan for this student. The district assembled a team to review the request on November 6, 2023. No documentation of a physical impairment or diagnosis was provided by the parents, therefore the 504 team determined that a 504 plan was not appropriate at this time. On December 5, 2023, the district met with parents, staff and the Director of Special Education to discuss the current behavior plan and a special education evaluation. On December 13, 2023, a follow up meeting was held with staff to discuss the start of second semester. The district feels that appropriate measures were taken providing accommodations and monitoring the student's behaviors until the time that the district recommended an evaluation for possible qualifiers for an IEP.

Because of the internal investigation regarding this child complaint, Christie Gerdes, Special Education Director for the Beloit Cooperative, and Scott Crenshaw, Superintendent of USD #298, shared that all school staff would be trained regarding the topics of student improvement teams, child find under the IDEA, and Section 504 eligibility procedures. This training is scheduled for April 17, 2024 and will be provided by Susan Severin, School Psychologist / Specialized Learning Services Supports Consultant for Greenbush Education Services Center.

### **Issues Investigated**

Based on the written complaint and an interview with the complainants, four issues were identified and investigated.

#### **Issue One**

USD #298, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow required child find procedures by not suspecting the student may be a student with a disability and in need of special education and related services during the past 12 months.

#### **Applicable Law**

Federal regulations at 34 C.F.R. 300.111(a)(1) requires school districts to ensure that all children with disabilities residing within the district boundaries and who are in need of special education and related services, are identified, located and evaluated, regardless of the severity of their disability.

Federal regulations at 34 C.F.R. 300.301(b) allows either the parents of the student or the school district to initiate a request for an initial evaluation to determine if the child is a child with a disability and in need of special education and related services.

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

The following findings of fact are based on interviews and documentation provided by both parties during this investigation. Please note that the parents and the district specifically

referred to Section 504 of the Rehabilitation Act throughout the interviews and documentation. This investigation will not address any requirements related to Section 504 but instead will focus on the IDEA child find obligation which requires districts to follow the initial special education evaluation process when a disability is suspected that would require special education and related services in order to provide the student with a free appropriate public education (FAPE). The Office of Civil Rights is the agency which has jurisdiction to investigate Section 504 complaints if the parents chose to make specific allegations of noncompliance.

Hillary Holeman, Elementary School Counselor, stated that she saw the student on a weekly basis during first grade beginning in March 2023 due to dysregulation, verbal and physical outbursts, and lying. She and the parents both reported that a referral was made to the Central Kansas Mental Health Center (CKMHC) in May 2023 so the student could continue to receive counseling services during the summer between first and second grades.

The parents reported and documentation shows the CKMHC began providing services to the student in July 2023 under the Serious Emotional Disturbance (SED) Medicaid Waiver due to mental health diagnoses of Disruptive Mood Dysregulation Disorder (DMDD) and Attention Deficit Hyperactivity Disorder (ADHD). These services included case management, counseling, and medication management.

August 17, 2023 was the first day of the 2023-24 school year for USD #298. The parents indicate the CKMHC interventions were shared with school staff at the beginning of the school year but school staff indicate that they were not made aware of these services being provided to the student outside of school until much later in the school year. It is unclear when the district first became aware of these outside services and the mental health diagnoses; however, documentation shows this information was shared in writing with school staff on October 31, 2023.

Megan Habiger, Second grade Teacher, emailed the mother at 4:39 PM stating,

*The student had an okay day. He talks a lot out of turn. He is talking and making noises when I'm trying to teach. Since he is talking he gets lost and is not getting his work done. He had some issues with getting along with others in the bathroom today. We will be having him use the bathroom separately instead of using it when we go as a class. He is breaking several of his pencils in half and pulling the erasers off of them. He does have a hard time following the rules/directions but when I remind him he does try to comply.*

The mother responded in an email that same date stating, "And this is why I am pushing for a 504 behavioral plan to be done asap!" Ms. Habiger then responded by asking if the parent had contacted school administrators regarding this request and the mother replied, "Yes. But I haven't heard anymore."

Discipline Reports show three office referrals on August 29, September 1, and September 5, 2023 for inappropriate verbal behavior. Hand written informal observation notes by the classroom paraprofessional dated between September 7 and October 12, 2023 describe more than 15 incidents of inappropriate verbal and physical behaviors causing classroom disruptions.

Interviews and documentation found Delaney Hamel, School-based Mental Health Counselor and Liaison, first contacted the parent on September 20, 2023 in order to schedule a meeting to develop a behavior plan. This meeting was held on September 21, 2023 resulting in a behavior plan consisting of a behavior chart with rewards for appropriate behavior and the student receiving 30 minutes per week of school-based mental health counseling.

On October 10, 2023, the student was sent home because of inappropriate behavior in the classroom. The October 10, 2023 Discipline Report states,

*The student has been extremely disrespectful to the classroom and has caused students the inability to learn by his actions and behavior in the classroom . . . The student has been impeding on the learning of the other students in the classroom. He blurts out inappropriate things. Like I hate you. I hate this school. You are stupid. You are dumb. Most of the time these blurts have foul language and usually uses the F word regularly.*

On October 11, 2023, the student was accused of inappropriate touching of a female peer and an investigation found this had happened to nine different female classmates at recess, in line, at specials and lunch. The Discipline Report dated October 11, 2023 documents the student was out-of-school suspended for two days and unilaterally placed on a shortened school day beginning October 16, 2023. The Discipline Report stated,

*The continued behavior plus the additional acting out and foul language that has caused continuous discipline actions and office referrals. The student will now follow an alternative schedule for the protection and safety of the other students in the classroom. The student will come to school at 12:30. He will receive math instruction, therapy, and library time during this time and will leave at the completion of this scheduled. This will be the alternative schedule until progress is made in therapy to help with his behaviors and the classroom could possibly be safe again.*

Both the parents and district reported a written request for a 504 evaluation was made on October 31, 2023. In the request, the parent shared the student's mental health diagnoses of DMDD and ADHD and that the student was taking medication for these diagnoses.

The district responded by convening a meeting on November 6, 2023 with a 504 team for the student including the superintendent, the elementary principal, the mental health counselor, the classroom teacher, and the school counselor. The 504 team sent a letter to the parent dated November 7, 2023 acknowledging the request for a 504 plan for the student and indicating the team had met and was working on a plan.

The parents, the members of the 504 team and Christie Gerdes, Director of Special Education for the Beloit Cooperative met on December 5, 2023. Meeting Notes written by Ms. Holeman, indicate the parents shared information about CKMHC services, the student's mental health diagnoses, and information about medication. The team discussed a special education evaluation and the shortened school day schedule. The parents requested a plan to have the student gradually return to full-day school attendance. The notes state, *"The student will meet w/Beloit School Psychologist – Felicia Bland – an evaluation to find out his skills and needs."*

The 504 team then met on December 13, 2023 and developed a schedule which added English/Language Arts instruction and lunch to the student's shortened schedule and emailed a copy of this updated schedule to the mother on that same date. The email also stated,

*At the end of January, our team will meet and reevaluate how the student is doing on the schedule and if there needs to be any change made at that time. Hopefully, by the end of January, we will have heard from the Beloit Special Education Cooperative and know if the student has qualified for those services as well.*

The parents reported and documentation shows that USD #298 provided prior written (PWN) requesting consent for an initial special education evaluation on December 15, 2023. The mother provided written consent for this initial special education evaluation on January 2, 2024. The parents reported the student has been evaluated and that an eligibility determination meeting has been scheduled for February 21, 2024.

On January 26, 2024, the teachers and administration at USD #298 met to develop a new schedule for the student. The mother was emailed a copy of an updated scheduled for a full-day of school which limited contact with his same grade peers and continued to provide the three 30-minute counseling sessions per week on that same date.

USD #298 provided a copy of a blank Student Improvement Team / Multi-Tiered Systems of Support (MTSS) form which includes background information, assessment scores, as well as examples of Tier I, Tier II and Tier III levels of support offered by the district. However, a completed form for this student was not provided; instead a listing of Tier II supports was provided for the 2023-24 school year showing multiple academic interventions focusing on targeted instruction in small group settings and the use of a couple of behavior plans.

USD #298 also provided copies of ongoing district assessments of academic growth. At the beginning of the second grade school year, the student scored at the 1st percentile with a below Kindergarten reading level on the STAR Reading Assessment. Mid-year testing showed the student had made progress and scored at the 18th percentile and at the 1.8 [First Grade – Eighth Month] reading level.

## **Conclusion**

According to federal regulations at 34 C.F.R. 300.111(a)(1), school districts are required to ensure that all children with disabilities residing within the district boundaries and who are in need of special education and related services, are identified, located and evaluated, regardless of the severity of their disability.

In this case, documentation shows that USD #298 first noted concerns with the student's behavior at the end of first grade and provided support through school counseling and a referral to an outside agency, CKMHC, for additional support services. The parent followed up on the referral and obtained case management, medication management, and counseling services starting in July 2023.

Documentation shows the parent suspected the student was a student with a disability and was in need of a "504 Plan" to support appropriate behavior at school in an email exchange with the second grade teacher as early as August 28, 2023. However, while there is no documentation to show the district responded to this request for a 504 plan at that time or that the parent pursued the request. Further, the district did proceed with interventions through MTSS including paraprofessional support in the general education classroom setting.

Discipline Reports show three office referrals on August 29, September 1, and September 5, 2023 for inappropriate verbal behavior. Hand written informal observation notes written by the paraprofessional dated between September 7 and September 15, 2023 describe ongoing incidents of inappropriate verbal and physical behaviors causing classroom disruptions. The parents met with school staff on September 21, 2023 and the district developed a behavior plan and began to provide 30-minutes per week of mental health counseling with Ms. Hamel.

On October 10, 2023, the student was out-of-school suspended for one day due to inappropriate behavior in the classroom setting. The Discipline Report noted that the student's behavior was impeding the learning of others in the classroom setting. On October 11, 2023, the student was accused of inappropriately touching female peers and an investigation substantiated this accusation. The student was suspended for two additional days and USD #298 then unilaterally shortened the student's school day beginning October 16, 2023 noting the alternate schedule would remain in effect *"until progress is made in therapy to help with his behaviors and the classroom could possibly be safe again"*.

It appears USD #298 provided early intervention services related to the behavior of the student beginning at the end of first grade. When the student's behavior had not changed and became more frequent and intense during second grade, USD #298 provided a series of more intense additional supports through MTSS including access to a classroom paraprofessional, a positive behavioral support plan, and added mental health school-based counseling from Ms. Hamel. The data showed these MTSS interventions were not successful and ultimately the student was placed on an alternative schedule for school which significantly decreased the student's access to the general education curriculum and instruction from a highly qualified teacher.

Documentation shows that USD #298 also provided early intervention services through MTSS for academics during the second grade. Data shows the student responded to these interventions and was making some progress academically although still displaying below grade level skills as compared to his peers.

As stated previously, no findings related to the parent's request for a 504 evaluation will be made. However, based upon the increase in the frequency and intensity of the student's inappropriate behaviors and the district's conclusion that the student's behaviors were impeding the learning of others in the general education classroom, the district should have suspected the student may be a student with a disability and in need of special education and related services when it suspended the student on October 11, 2023 and unilaterally placed the student on an alternative schedule *"until progress is made in therapy to help with his behaviors and the classroom could possibly be safe again"*.

It is unclear if the student's mental health diagnoses of DMDD and ADHD from CKMHC was provided to USD #298 at the beginning of the 2023-24 school year; however, the mental health diagnoses were shared in writing with school staff on October 31, 2023 and again verbally at the December 5, 2023 parent meeting. At this point, the parent had put the evaluation request in writing and the district had direct knowledge of mental health diagnoses. These factors combined with the previous data from the district's MTSS interventions showing the student's continued behavioral problems and lack of success were even more reason for the district to suspect that the student may be eligible under the exceptionality categories of Emotional Disturbance or Other Health Impaired and might require special education and related services. Documentation shows the district did finally proceed with obtaining parent consent for an initial special education evaluation on December 15, 2023.

Based on the foregoing, *it is substantiated* that USD #298 failed to follow child find procedures when it failed to identify, locate, and evaluate the student when the district had substantial knowledge and data to suggest that the student may be a student with a disability and in need of special education and related services beginning on October 10, 2023.

## **Issue Two**

USD #298, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow required initial evaluation procedures by not responding appropriately to the parent's request for a special education evaluation during the 2023-24 school year.

### **Applicable Law**

Federal regulations at 34 C.F.R. 300.301(a) require school districts to conduct a full and individual initial evaluation in accordance with 34 C.F.R. 300.304 through 34 C.F.R. 300.306 to determine if the student is a student with a disability under the IDEA and to determine if the student is in need of special education and related services.

Federal regulations at 34 C.F.R. 300.301(b) allows either the parents of the student or the school district to initiate a request for an initial evaluation to determine if the child is a child with a disability and in need of special education and related services.

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

The findings of Issue One are incorporated herein by reference.

There is multiple evidence that the parent suspected the student was a student with a disability and in need of classroom accommodations under a Section 504 plan beginning as early as August 28, 2023. But again, this investigation will not address any issues related to compliance with Section 504 requirements and procedures as this falls under the authority of the Office of Civil Rights and not the KSDE.

Documentation shows that, while the parent made multiple request for a 504 plan, the parent never requested an initial special education evaluation in writing. However, the parent's concerns with the increased frequency and intensity of the student's inappropriate behavior at school as well as the student's mental health diagnoses were discussed at the December 5, 2023 meeting with the MTSS team. The December 5, 2023 Meeting Notes from Ms. Holeman indicate there was discussion regarding an evaluation to be conducted by the school psychologist from the Beloit Cooperative.

USD #298 provided the parents with prior written (PWN) requesting consent for an initial special education evaluation on December 15, 2023. The PWN included an explanation of why the action was proposed stating,

*The student was referred for a special education evaluation by the Lincoln elementary MTSS team due to concerns with social/emotional skills. Additional data is required in order to make appropriate educational recommendations.*

### **Conclusion**

According to federal regulations at 34 C.F.R. 300.301(b), a request for an initial special education evaluation to determine if the child is a child with a disability and in need of special education and related services may be made by either the parents of the student or the school district.

In this case, there is no clear documentation that the parents ever requested an initial special education evaluation for the student but instead consistently requested an evaluation for a 504 plan for accommodations in the general education setting. The district appeared to be following district procedures for providing multiple intervention services through the MTSS process to address the behavioral concerns of the student.

The district had no obligation to respond to a parent request for an initial special education evaluation when no request was ever made by the parent. In this case, the parent consistently requested and referred to Section 504 and the need for a 504 Plan. Again, no findings related to the district's response to the request for services under Section 504 will be made as this falls under the jurisdiction of the Office of Civil Rights.

Based upon the foregoing, a violation of federal regulations at 34 C.F.R. 300.301(b) *is not substantiated* because there is no clear documentation that the parent ever requested a special education evaluation so the district was not required to respond.

### **Issue Three**

USD #298, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow required initial evaluation procedures during the past 12 months.

### **Applicable Law**

Federal regulations at 34 C.F.R. 300.304(a) requires that parents are provided with prior written notice that describes any evaluation procedures the school district proposes to conduct.

Federal regulations at 34 C.F.R. 300.300(a) require school district to obtain parent consent prior to conducting any proposed initial special education evaluation.

Federal regulations at 34 C.F.R. 300.301(c) require school districts to complete initial evaluation for special education within 60 days of receiving parental consent. State regulations at K.A.R. 91-40-8(f) clarify the timeline to complete the initial evaluation and determine eligibility is 60 school days.

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

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

Documentation shows the parents and school staff discussed an initial special education evaluation at the meeting on December 5, 2023 and provided the parents with a PWN proposing additional assessments in the areas of general intelligence, social/emotional/behavioral status, and academic performance. The mother provided written consent for this proposed evaluation on January 2, 2024.

Both the parents and school staff indicated that the special education evaluation has been completed. The parent was provided with a Special Education Meeting Notice dated February 8, 2024 scheduling an eligibility determination meeting for February 21, 2024. Based on the 2023-24 school calendar, USD #298 will have completed the evaluation and determined eligibility for the student within 36 school-days of obtaining written parent consent.

### **Conclusion**

According to federal regulations at 34 C.F.R. 300.304(a) and 34 C.F.R. 300.300(a), school districts are required to provide parents with prior written notice describing any evaluation procedures the school district proposes to conduct and to obtain parent consent prior to conducting any proposed special education evaluation.

According to federal regulations at 34 C.F.R. 300.301(c) school districts must complete initial evaluation for special education within 60 days of receiving parental consent. State regulations at K.A.R. 91-40-8(f) clarify the timeline to complete the initial evaluation and determine eligibility is 60 school-days.

In this case, the parent provided the district provided the parents with PWN proposing a special education evaluation on December 15, 2023. The parents then provided the district with written consent for the proposed special education evaluation on January 2, 2024. Interviews and documentation show the evaluation was conducted and an eligibility determination meeting is scheduled for February 19, 2024, which is well within the required timeline to complete the evaluation. Based on the foregoing, a finding of noncompliance *is not substantiated*.

## **Issue Four**

USD #298, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate disciplinary procedures for a student suspected of having a disability by unilaterally shortening the student's school day as a result of disciplinary incidents during the 2023-24 school year.

### **Applicable Law**

Federal regulations implementing the IDEA at 34 C.F.R. 300.536 states that a removal of more than 10 consecutive school days or a removal of more than 10 cumulative school days when a pattern of behavior exists constitutes a disciplinary change of placement. School staff make the determination if a pattern of behavior exists.

Federal regulations at 34 C.F.R. 300.534 states that a child who has not yet been determined eligible for special education and related services and has engaged in behavior that violated a code of student conduct may assert the protections available under the IDEA if the school district had knowledge that the child was a child with a disability before the behavior resulting in the disciplinary action occurred.

The IDEA at 34 C.F.R. 300.530 allows school officials to discipline students with disabilities for violations of the student code of conduct and requires that specific procedures are followed whenever a student with a disability is subject to a disciplinary change of placement.

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

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

The Disciple Report for the 2023-24 school year shows the student was suspended out-of-school for three consecutive school days on October 10, 11, and 12, 2023 for inappropriate behavior including disrespectful language and inappropriate touching of peers which resulted in a disruption of learning in the general education classroom.

### **Conclusion**

According to federal regulations implementing the IDEA at 34 C.F.R. 300.536, a removal of more than 10 consecutive school days or a removal of more than 10 cumulative school days when a pattern of behavior exists during a school year constitutes a disciplinary change of placement. School staff make the determination if a pattern of behavior exists. According to federal regulations at 34 C.F.R. 300.530, school officials are allowed to discipline students with disabilities for violations of the student code of conduct and requires that specific procedures are followed whenever a student with a disability is subject to a disciplinary change of placement.

In this case, the student was suspended out-of-school for a total of three consecutive days during the 2023-24 school year which does not constitute a disciplinary change of placement. While the shortened school day could be seen as a significant change in the educational placement of the student, it appears the district was not imposing the alternative schedule as a disciplinary action but rather as either an intervention through the MTSS or as an accommodation during the Section 504 process.

Based on the foregoing, a disciplinary change of placement was not imposed by the school district; therefore *no special disciplinary procedures were required* at that time even if the student was suspected of having a disability.

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

1. **ISSUE ONE:** A violation of federal regulations at 34 C.F.R. 300.300.111(a)(1) is substantiated because the district failed to ensure the student was identified, located, and evaluated as required by Child Find, specifically by not initiating a request for an initial special education evaluation of the student when there was ample reason to suspect the student may be a child with a disability and in need of special education and related services on October 10, 2024. Corrective action is required as follows:
  - a. **CORRECTIVE ACTION:**
    - i. USD #298 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will ensure that all students who may have a disability and be in need of special education and related services will be identified, located, and evaluated as required by IDEA's child find requirements.
      1. No later than March 15, 2024
    - ii. USD #298 shall complete the initial evaluation of the student and determine eligibility within 60 school-days of January 2, 2024 and provide the parent with appropriate prior written notice regarding eligibility. If the student is found eligible for special education and related services, an IEP will be developed to provide the student with a free appropriate public education (FAPE). USD #298 will offer compensatory services to the parent for a total of eight weeks to offset the delay between October 10, 2023 and December 15, 2023 for providing the parent with PWN proposing the initial special education evaluation. USD #298 will provide SETS with documentation of whether the parent accepted all, part, or none of the offered compensatory services.
      1. No later than April 1, 2024
    - iii. USD #298 will provide training to all school staff involved in the student improvement team process including, but not limited to, school counselors and school administrators, on the child find requirements under the IDEA, specifically when a disability should be suspected and a

referral for an initial evaluation should be made. USD #298 will provide SETS with a copy of the sign-in sheet documenting who received this training as well as the name and credentials of the person who provided the training. In addition, USD #298 will provide SETS with any handouts and/or a copy of the presentation.

1. No later than May 1, 2024
2. **ISSUE TWO:** A violation of federal regulations at 34 C.F.R. 300.301(b) is not substantiated because there is no clear documentation that the parent ever requested a special education evaluation. Instead, documentation shows the parents consistently referred to a Section 504 plan. In the future, the district may want to review its procedures to include a process for clarifying the difference between a 504 accommodation plan and an IEP to parents who may not be familiar with the differences in these special services programs.
3. **ISSUE THREE:** A violation of federal regulations at 34 C.F.R. 300.304(a) and 34 C.F.R. 300.300(a) as well as 34 C.F.R. 300.301(c) and state regulations at K.A.R. 91-40-8(f) is not substantiated as interviews and documentation indicate that parent was provided with PWN describing the proposed initial special education evaluation and provided USD #298 with written consent to proceed with that evaluation. In addition, interviews and documentation show the evaluation has been completed and an eligibility determination meeting has already been scheduled well within the required 60 school-day timeframe.
4. **ISSUE FOUR:** A violation of 34 C.F.R. 300.530 and/or 34 C.F.R. 300.536 was not found for failing to follow appropriate disciplinary procedures during the 2023-24 school year as no disciplinary actions resulting in a disciplinary change of placement have been imposed during that time frame.

### **Investigator**

*Nancy Thomas*

Nancy Thomas, M.Ed., 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)