

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #453  
ON DECEMBER 13, 2021

DATE OF REPORT JANUARY 19, 2022

This report is in response to a complaint filed with our office on behalf of \_\_\_\_\_ by Janae Gulley, Adoption Permanency Specialist for St. Francis Ministries. In the remainder of the report, \_\_\_\_\_ will be referred to as “the student” and Ms. Gulley will be referred to as “the complainant.”

It is noted that Laura Franken has been appointed the education advocate for this student by Families Together and, as such, has all of the rights of a parent under the law regarding special education. Ms. Franken provided a signed written consent on December 22, 2021 to share personally identifiable information with the following persons for the purposes of this investigation: the complainant; Janell Carter, Family Support Worker for St. Francis Ministries; and \_\_\_\_\_, Foster Parent. In the remainder of this report, Ms. Carter and Ms. \_\_\_\_\_ will be referred to by their titles.

The complaint is against USD #453 (Leavenworth Public Schools). In the remainder of the report, USD #453 will be referred to as the “school,” the “district” or the “local education agency (LEA).”

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 and the district both initially received the complaint on December 13, 2021. Because the district’s holiday break was a total of 12 days between December 22, 2021 and January 4, 2022, the 30-day timeline to investigate this complaint was extended by seven days and ends on January 19, 2022.

**Investigation of Complaint**

Nancy Thomas, Complaint Investigator, interviewed the complainant by telephone on December 17, 2021. A second interview was conducted with the complainant and the Family Support Worker on January 12, 2022. It is noted that the foster parent was provided with opportunities to schedule an interview as part of the investigation on December 31, 2021 and again on January 3, 2022 but that she did not respond.

USD #453 made the following school staff available for a telephone interview on January 5, 2022:

- Cathy Redelberger, Director of Special Education
- Rebekah Varvel, Assistant Director of Special Education
- Vicki Tharp, Special Education Teacher
- Mandi Manczuk, Special Education Paraprofessional

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the complainant and the LEA. The following materials were used as the basis of the findings and conclusions of the investigation:

- Individualized Education Program (IEP) dated April 14, 2021 and amended on May 17, 2021
- IEP dated April 4, 2021 and amended on September 17, 2021
- Evaluation Report dated October 11, 2021
- St. Francis Ministries Worker/Child Visit Activity Report dated October 19, 2021
- Student's Daily Home Note dated October 19, 2021
- IEP Goal Data Sheet dated October 19, 2021
- Teacher's handwritten classroom notes dated between October 13 and October 19, 2021
- Life Skills Classroom Lesson Plans for the week of October 18 – 22, 2021
- IEP Team Meeting Notes dated November 10, 2021
- Prior Written Notice (PWN) dated November 10, 2021
- Children's Mercy Hospital Safety, Care & Nurturing (SCAN) Clinic Notes written by Danielle Horton, M.D., dated November 12, 2021
- Meeting Notes dated November 17, 2021 between school staff and staff from the Kansas Department of Children and Families
- PWN dated December 20, 2021
- Daily Behavior Sheets dated between August 16 and December 14, 2021

- Aggressive Behavior Data Charts dated between August 16 and December 14, 2021
- Daily Classroom Schedule for the 2021-22 school year showing the eight students, one classroom teacher, and three paraprofessionals by five minute increments starting at 8:05 a.m. and ending at 3:30 p.m.
- Services Log for Board Certified Behavior Analyst (BCBA) and Registered Behavior Technician (RBT) Classroom Support for the 2021-22 school year
- USD #453 Response to the Allegations dated December 29, 2021
- USD #453 Calendar for the 2021-22 school year
- Picture of the Sensory/Quiet Room

### Background Information

This investigation involves a nine-year-old male student who is eligible for special education and related services under the exceptionality category of autism. The most recent reevaluation was conducted on October 11, 2021 and states, "The student has also been diagnosed with pica and has been reported to be impulsive and quick in regards to eating non-food items." The student moved to live with the foster parent in March 2021 and has been enrolled in USD #453 since that time. He is currently a fourth grade student at Henry Leavenworth Elementary School and receives special education in the Life Skills Program as well as adaptive physical education, speech/language therapy, and occupational therapy.

### Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the complainant raised one issue that was investigated.

**ISSUE ONE:** The USD #453, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to

implement the student's IEP, specifically by not providing the one-to-one paraprofessional support during the 2021-22 school year.

### **Positions of the Parties**

The complainant alleges that USD #453 has not provided the student with a one-to-one paraprofessional as required by his IEP. Due to the behaviors associated with the student's autism and pica, he requires constant supervision to keep from getting hurt.

Since his enrollment in USD #453, the student has frequently arrived back at the foster home at the end of the school day with bruises, scratches, and red marks which the complainant and the foster parent believe are the result of lack of appropriate supervision at school.

The complainant indicated that the Family Support Worker conducted a classroom observation of the student on October 19, 2021. Significant concerns were noted with appropriate supervision of the student on that date including allowing the student to have a "root" or stick from the playground to play with and to chew on. The notes from the observation indicated the classroom was disorganized, chaotic, and understaffed. The observer reported that the classroom staff appeared to be overwhelmed and did not provide the constant supervision the student needed for safety reasons associated with his autism and pica during the observation.

The complainant reported the student was medically evaluated by Children's Mercy Hospital for suspected abuse on November 12, 2021 and the physician concluded that the student's injuries were not abuse but instead the result of play at school. The complainant reported that the student has been observed to roll around on the floor and to dart after objects to put in his mouth while at school because he is not being appropriately supervised by a one-to-one paraprofessional.

USD #453 reports the student's IEP in effect during the 2021-22 school year includes "attendant care" and "instructional support" as well as specialized instruction, adaptive physical education, speech/language therapy, and occupational therapy services but does not include a one-to-one or personal paraprofessional for support. The district reports the IEP is implemented as written and furnished both student and staff

schedules as well as data collection sheets to document that these services are being provided to the student. The student is placed in a class with only eight students who are supported by a team of three paraprofessionals, one special education teacher, two registered behavior technicians, and one board certified behavior analyst.

In addition, the district highlighted the progress the student has made towards reducing his aggressive behavior in the classroom during the 2021-22 school year as shown by the behavior data charts. The district indicated that "This degree of progress would not be possible if he had not been provided the level of adult support required by his IEP."

The district acknowledged that the foster parent has suspected abuse by school staff and stated,

The basis for the complaint appears to stem from the fact that the student sometimes has bruising, marks, and scratches on his body, and the complainant believes this is occurring because he is not provided with adult support as required by his IEP. While the district appreciates her concern for the child, this is simply not the case.

The student engages in aggressive and self-harming behaviors both inside and outside of school. He often comes to school with marks and bruises that he did not have the previous day, and the nurse records when this occurs. She also records any marks or bruises that occur during the school day. Any marks or bruises that occur during the school day are most often a result of the student's behaviors but do not represent a lack of adult support.

USD #453 reported that the student's IEP team met to specifically discuss the concerns related to the level of supervision at school on November 10, 2021 and that school staff met with DCF regarding these same concerns on November 17, 2021. School staff stated,

His daily schedule was reviewed by the team, including which individual staff members are assigned to him throughout his day. DCF has been included in these discussions and has affirmed that the District is providing

the level of adult support required by the student's IEP. DCF has also acknowledged that due to the nature of his behaviors, the student is likely to get marks and bruises in the school setting even with adult support by his IEP.

USD #453 believes they have provided the level of adult support required by the student's IEP through the provision of attendant care, instructional support, specialized instruction, adaptive physical education, speech/language therapy, and occupational therapy services. They report there is no requirement for a one-to-one or personal paraprofessional in the student's current IEP and they deny the complainant's allegation that the student's IEP is not being implemented.

### **Findings of the Investigation**

The following findings are based upon a review of documentation and interviews with the complainant, the Family Support Worker, and LEA staff in USD #453.

The current IEP for the student was developed on April 14, 2021 and amended on May 17, 2021 and again on September 17, 2021. The education advocate participated in the development of these IEPs. All of the IEPs state, "Due to the high needs and safety concerns, the student requires one-to-one support at all times of the day in order to be successful within the Life Skills special education classroom." In addition, the IEP requires either one-to-one attendant care or one-to-one instructional support in the general education setting due to "the student's high needs and safety concerns."

The IEP in effect for the 2021-22 school year includes ten goals/objectives and requires the following special education and related services beginning on August 16, 2021 through April 13, 2022: 259 minutes per day of specialized instruction and instructional support in the special education setting; 90 minutes per day of attendant care in the general education setting for recess, lunch, and transitions; 60 minutes per day of instructional support in the general education setting for specials classes; 30 minutes per month of direct adaptive physical education (APE) and 10 minutes per month of indirect APE; 50 minutes per week of direct speech/language therapy; and 30 minutes per week of direct occupational therapy.

The IEP notes that the attendant care in the general education setting would gradually increase from 30 to 90 minutes per day by one minute increments as the student is able to safely handle that environment. The IEP notes that the instructional support in the general education setting for specials classes would also gradually increase from one minute to 60 minutes per day by one minute increments as the student is able to safely handle those classes.

The Daily Classroom Schedule for the 2021-22 school year shows that there are eight students, one classroom teacher, and three paraprofessionals assigned to the Life Skills classroom. The schedule documents and interviews confirmed that the student is either working one-to-one with an assigned school staff or a school staff is assigned to provide supervision throughout the entire school day starting at 8:05 a.m. and ending at 3:30 p.m. The student’s daily schedule is as follows:

Time	Activity	Staff Assigned
8:05 -8:10 a.m.	Arrival	Mandy Manczuk
8:10 – 8:35 a.m.	Breakfast	Mandy Manczuk
8:35 – 9:00 a.m.	Morning Meeting	Mandy Manczuk
9:00 – 11:00	IEP Goal Work	Vicki Tharp
11:00 – 11:35	Recess	Vicki Tharp
11:35 – 12 noon	Lunch	Vicki Tharp or Carisma Mueller
12 noon – 2:00 p.m.	IEP Goal Work	Mandy Manczuk
2:00 – 2:45 p.m.	Structured Social Skills / Play	Mandy Manczuk
2:45 – 3:00 p.m.	Snack	Mandy Manczuk
3:00 – 3:10 p.m.	Pack up	Mandy Manczuk
3:10 – 3:30 p.m.	Dismissal	Mandy Manczuk

The complainant specifically referred to a classroom observation made by the Family Support Worker on October 19, 2021 as documentation that the one-to-one paraprofessional supervision was not being provided by USD #453. For this reason, investigation focused on this date for the implementation of the IEP.

The St. Francis Ministries Worker/Child Visit Activity Report documents a classroom visit between 12:30 and 1:00 p.m. on October 19, 2021. According to the student's daily schedule, he should be working on his IEP Goal Work with Ms. Manczuk. The Family Support Worker stated in her report:

When this worker arrived to check in at front office, the principal accompanied this worker to the student's classroom. Upon entering, Mandi [paraprofessional] was sitting in a chair facing the door, Vicki [special education teacher] was sitting in a chair at a desk, the student was sitting on the floor in front of a projector screen watching a video with other children sitting on floor around him. The student was holding a red chew toy in his hand, periodically putting it into his mouth to chew. This worker went to sit by the student, when the student saw this worker, he grabbed this worker's hand to lead this worker away from the video screen, into what Vicki referred to as "his quiet room." The quiet room appeared to be a closet, with plywood walls and one mat on the floor. Once in the student's "quiet room," he laid down on the mat on the floor with an iPad that was playing a video. Vicki followed this worker and the student, when the student saw Vicki, he stood up to approach her and began reaching into her fanny pack repeatedly saying, "Brown, brown." This worker asked the student not to get into Vicki's personal space, then this worker asked what the student was looking for. Mandi responded from a distance, "his stick." Vicki responded, "it's not a stick, it's a root." Vicki told the student she didn't have it and advised the student to go look in his "quiet room" for the "root." It was observed that the student felt comfortable approaching Vicki's fanny pack, as though he had gone to this location for his items before. This worker reminded Vicki and Mandi that the student should not have possession of a "stick or a root." The student found his "root" under his mat in his "quiet room." This worker gently asked the student to either hand over the stick for this worker to throw away, or the student could throw it away himself. Mandi and Vicki said that they would put it in his backpack for later. This worker advised that it needed to be thrown away now at school, otherwise they would be setting up his placement for a tantrum when he goes home with it in his backpack later. The student refused to give the stick to anyone,

exited the quiet room, opened a glass door that led to another classroom area, and went in that room to lay down on the floor with his stick. This worker got down to the student's level and gently reminded him the stick would need to go to the trash can, when the student handed it to this worker, but then quickly snatched it back. The student got up from the floor, and went to sit at a chair at a table by the window. During this time, there were other children moving about the room, Vicki was following this worker and the student around, until she was tasked with helping two other paras with another child. During this time that Vicki was distracted, the student crawled under a white curtain at the entrance of the bathroom, this worker followed him, where he was putting his chew toy into the toilet with intentions of putting it back into his mouth. This worker was able to get the toy from the student, wash it in the sink with soap and hot water, then explained to the student he could not put his toys in the toilet. After exiting the bathroom, this worker sat in a chair at a table next to the window, observing the student's activity as he wobbled around on the floor, easily distracted by others, at one point trying to take a toy from another child, then crawling around and messing with anything that he could. The student came near where this worker was sitting, he knocked a cup off of the table intentionally causing it to flail out the window. The student went back to the floor. Once Vicki was done with her other task, Vicki went over to the student, asserting herself, she stood over the student trying to trade the student a pencil for the stick. She forcefully took away the stick, this worker interjected the pencil exchange since that was not an appropriate alternative, then this worker asked Vicki to please put the stick in the trash, handing the pencil back to Vicki and redirecting the student to another activity. The student was upset and got up to push and yell at Vicki "No! (inaudible other words)" The student calmed down, then laid back down on the floor on his back, scooting around freely. This worker laid down on the floor with the student to let him know this worker was going to be leaving. The student gave this worker a hug and a fist bump. Observation of the child in his classroom setting was unorganized, and chaotic with lack of proper supervision. The student was observed to be dysregulated and unsettled, bored without organized activity or

direction, the student was aggressive and did not use manners, the student did not use his words rather yelled, pointed, and whined. The student was overstimulated and unable to focus. Observation in the classroom setting is not equivalent to previous observations in the home. Visit ended at 1:00pm.

Ms. Tharp was asked to explain the “root” the student was fixated with during the observation by the Family Support Worker. She explained that the student enjoys digging in the dirt at recess and often collects sticks or twigs that he has unearthed and attempts to bring these into the classroom. This is not allowed and all “roots” are supposed to be left outside; however, the student does occasionally bring a “root” into class from recess and will hide it in various places in the classroom. When a “root” is discovered, it is disposed of after redirecting the student to another more appropriate activity or sensory toy so as to avoid triggering a tantrum or melt-down.

Both Ms. Tharp and Ms. Manczuk acknowledge that the Family Support Worker visited the classroom on October 19, 2021. However, they reported that the Family Support Worker took the student from the scheduled classroom activity in order to visit with him in a one-to-one setting. Both indicated they offered to stay with the student but the Family Support Worker refused their assistance. Ms. Tharp stated that she remained in the vicinity of where the student and the Family Support Worker were visiting but allowed them to visit and interact without her interference. She reported that the student became increasingly upset during his interactions with the Family Support Worker and that she needed to intervene. Once the Family Support Worker left the classroom, the student was redirected back into the classroom routine.

The teacher’s handwritten classroom notes regarding the student dated October 19, 2021 state, “The student wanted to be left alone. Had a visit from Case Manager. Was here between 15 and 20 minutes. Played in quiet room and play area – Told us to go away both times.”

The IEP Goal Data Sheet dated October 19, 2021 shows the student completed both the morning and afternoon task box activities for reading and math as well as participated in two parallel play activities. A handwritten note states, “There were a few

times he bit or kicked but none were being truly mean or aggressive. They were leave me alone or he looks upset about something.”

The Children’s Mercy Hospital Safety, Care & Nurturing (SCAN) Clinic Notes written by Danielle Horton, M.D., on November 12, 2021 indicate she did a physical exam of the student as well as reviewed documentation provided by both the foster parent and the school district including photos. Based on that data, Dr. Horton made the following conclusion:

Based on the currently available information, there are no specific disclosures of abuse and the injuries visualized in photos are non-specific. While abusive injury cannot be ruled out, most of these injuries are in areas a child of the student’s age and developmental state could sustain through routine play and activity.

Dr. Horton recommended that DCF evaluate the student’s care environments. She also recommended that both home and school should be supportive and provide appropriate supervision to address the student’s developmental and behavioral needs.

School staff and DCF met to review the student’s program on November 17, 2021. Handwritten notes from the end of that meeting state, “Keep doing what we’re doing.”

### **Applicable Regulations and Conclusions**

It appears that all parties involved in the investigation of 22FC453-001 are aware of the appropriate procedures for reporting incidents of suspected abuse/neglect and the authority of the Kansas Department of Children and Families to conduct these investigations. The IDEA does not address abuse/neglect issues or the investigation of such allegations and therefore, no conclusions were made related to the substance of these issues. The documentation provided related to issues of abuse/neglect was considered only as it relates to appropriate supervision being provided to the student by USD #453.

The focus of this investigation is on the federal regulations implementing the IDEA at 34 C.F.R. 300.301 which require a free appropriate education (FAPE) be provided to students with disabilities who are ages three through 21. Federal regulations

implementing the IDEA at 34 C.F.R. 300.17(d) define FAPE as providing the special education and related services in conformity with the IEP.

Federal regulations implementing the IDEA 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. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case, interviews and documentation found the student has a current IEP that states, "Due to the high needs and safety concerns, the student requires one-to-one support at all times of the day in order to be successful within the Life Skills special education classroom." The IEP requires 259 minutes per day of specialized instruction and instructional support in the special education setting.

In addition, the IEP requires either one-to-one attendant care or one-to-one instructional support in the general education setting due to "the student's high needs and safety concerns." The IEP requires 90 minutes per day of attendant care in the general education setting for recess, lunch, and transitions as well as 60 minutes per day of instructional support in the general education setting for specials classes.

USD #453 provided the daily schedules of the eight students in the Life Skills Program, the three paraprofessionals, and the special education teacher. The schedule shows that the student is assigned supervision by either Vicki Tharp, the special education classroom teacher, or Mandi Manczuk / Carisma Mueller, two of the Life Skills Program paraprofessionals throughout his school day starting at 8:05 a.m. until 3:30 p.m. and in all settings throughout the school environment. Ms. Tharp and Ms. Manczuk confirmed that they are responsible for working one-to-one with the student and supervising the student in all classroom activities on a daily basis.

The complainant specifically refers to the October 19, 2021 observation as documentation that the required one-to-one supervision is not being provided to the student. The Family Support Worker's written observation initially shows the student was participating in a class activity watching a video with peers and being supervised by

both Ms. Tharp and Ms. Manczuk when she entered the classroom. The Family Support Worker reported school staff subsequently failed to provide the appropriate supervision of the student during the classroom visit. However, the school staff reported the Family Support Worker and the student left the classroom activity to visit in a one-to-one setting and, while Ms. Tharp did remain close by, she did not interfere with the interactions between the student and the Family Support Worker during the 20-30 minute visit.

The documentation shows the student was not provided one-to-one support by school staff during the October 19, 2021 observation; however, it also shows the Family Support Worker did not simply observe the student in the classroom setting but instead interacted with the student and removed him from the scheduled classroom activity and away from his supervision.

The explanation from school staff that they believed the Family Support Worker wanted to visit one-to-one with the student and that they did not want to interfere with the interactions between the student and the Family Support Worker is plausible. The school staff assumed that the Family Support Worker would provide the one-to-one supervision of the student during the classroom visit. While there is some question as to the closeness of the supervision provided by school staff on October 19, 2021 with the student was able to bring "a root" into the classroom and hide it in the "quiet room" after recess, there is no clear lack of one-to-one support for the student during the observation.

The complainant specifically referred to a medical statement that shows the appropriate supervision is not being provided at school. The documentation dated November 12, 2021 from Children's Mercy Hospital provided by the complainant noted that "most of these injuries are in areas a child of the student's age and developmental state could sustain through routine play and activity." The attending physician from the Children's Mercy SCAN Clinic recommended that both the home and school environments be evaluated for supervision. DCF met with USD #453 on November 17, 2021 and recommended the district continue to provide the current program and level of support/supervision.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to provide the attendant care and instructional support services as required by the IEP during the 2021-22 school year.

### 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), which can be found at the end of this report.

*Nancy Thomas*

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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)